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Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

MADAGASCAR

This report, prepared for the third Trade Policy Review of Madagascar, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Madagascar on its trade policies and practices.

Any technical questions arising from this report may be addressed to Jacques Degbelo (tel.: 022 739 5583) and Catherine Hennis-Pierre (tel.: 022 739 5640).

Document WT/TPR/G/318 contains the policy statement submitted by Madagascar.

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SUMMARY

1. Madagascar is slowly recovering from the sociopolitical crisis which broke out in 2009 and was brought to an end by the December 2013 presidential elections. The economic upturn which began in 2014 has been boosted by the strong performance of rice farming and the extraction and subsequent exportation of heavy metals such as nickel, cobalt and titanium. Trade reforms, especially in the area of trade facilitation, have also played a part.

2. Madagascar has experienced far-reaching changes in the structure of its merchandise trade since the previous review of its trade policy in 2008. The country has become a major exporter of nickel and other minerals and ores. Agrifood exports have become more diversified, reflecting the immense wealth of Madagascar’s land and of Malagasy know-how. Services exports have also grown, representing a market of close to US$1.4 billion, in view of the importance of tourism. Exports of made-up clothing, traditionally Madagascar's leading export group, plummeted with the end of the preferences granted by the United States under the AGOA, which were reinstated in June 2014.

3. Overall, economic growth in the period 2009-2014 (averaging less than 1% per year) remained well below its potential, as Madagascar emerged from its fourth sociopolitical crisis in 20 years. These recurrent crises have discouraged external partners and plunged the population into severe poverty: more than 90% of the country's inhabitants (compared to less than 70% in 2005) are living on less than 2 US dollars a day, and many people suffer from malnutrition. Madagascar will be unable to achieve most of the Millennium Development Goals (MDGs) by 2015, even those which had been considered achievable before the most recent crisis.

4. The crisis and its various consequences (including the rundown state of basic infrastructure – transport, energy and water in particular, the worsening of the country’s governance problems and the subsequent drying up of all forms of foreign aid), caused a sharp fall in government revenue. With operating expenses remaining high, the public deficits which should have ensued were contained by cuts in the investment budget. Even so, the fiscal deficit (including grants) amounted to 3.5% of GDP in May 2015. The Central Bank has contributed, in accordance with its statutes, to financing the budget deficit, and the other domestic banking institutions have also made contributions. The resulting crowding-out effect, along with a judicial environment inspiring but little confidence (including in regard to the realization of bank guarantees), has been instrumental in maintaining lending rates at very high levels approaching 50%.

5. Inflation in Madagascar, the main determinants of which include the prices of agricultural products (especially food products) on local markets and the prices of imported petroleum products, has been gradually lowered from 10.3% in 2007 to around 6% recently, as a result of State subsidies in the form of a parallel preferential exchange rate (overvaluation of the national currency, the ariary) for imports, together with several successful rice-growing seasons. The import subsidies on petroleum products did, however, contribute to the shrinking of the country’s international reserves (equivalent, on average, to 2.9 months of goods and non-factor services imports between 2008 and 2013), leading to the reintroduction of the requirement that a portion of export earnings be repatriated and converted into ariary. The national currency has fluctuated somewhat, with an overall trend towards appreciation of the real effective exchange rate and, therefore, towards a less competitive domestic economy. Overall, the sharp decline in imports and exports of goods and services, which fell from 80% to less than 70% of GDP between 2008 and 2014 despite the growth in mining exports, reflected, among other things, a slight dip in the importance of trade for Madagascar.

6. The mining sector owes its strong performance to major foreign direct investment in two mining projects, despite the country’s political instability. Since the start of operations to extract nickel, cobalt, titanium and other heavy metals in 2013, the Malagasy economy has become essentially mining-based, and now obtains a third of its export earnings from these products. Nevertheless, the mining sector’s contribution to GDP is just 4%, as the products exported are generally unprocessed, and gold and precious stones are extracted and exported for the most part on an informal basis. In any event, at present Madagascar does not have the infrastructure needed to produce electricity in the quantity normally required by a mineral processing industry.

7. Restructuring the electricity operator JIRAMA and upgrading the country's electricity supply had already been identified as priorities in Madagascar's previous review, in 2008. These priorities remain as relevant as ever, and Madagascar's per capita electricity consumption is less than one tenth of average African consumption. Although the sector is, *de jure*, open to competition, the fact that electricity selling prices are fixed by the State at low levels (below production cost) does not encourage the entry of new operators. Some economic operators are obliged to lease costly and polluting generators in order to produce their own power.

8. In the petroleum sector, the State has also intervened in many trade-related areas, such as price setting, the suspension of duties and taxes, and a parallel preferential exchange rate. Some services, in particular maritime cabotage of petroleum products and the provision of aviation fuel, are currently in the hands of suppliers holding monopolies. In this connection, the drop in global prices in 2014 should prompt the Government to reinstate the "true price level" of these products on the domestic market and undertake a reform of the sector. Customs duties on mining and energy products are 7% on average, with rates ranging up to 20%.

9. Madagascar's agriculture has also been through very difficult years since 2010, with virtually zero growth over the review period and a sharp decline in 2013, when the rice and maize harvests were destroyed by swarms of locusts, a cyclone, floods and drought. Unlike a number of African LDCs, Madagascar appears to have been unable, over the past decade, to adopt the means needed to bring about a real increase in food production; in 2013, net food production per capita had fallen back to its 2004 level. As a result, there has been a substantial increase in imports of most food products since 2008.

10. The agricultural sector also offers tremendous export potential through a range of niche products, such as cloves, vanilla, lychees, honey, foie gras, groundnuts, cocoa paste and unroasted coffee. Madagascar still has vast swathes of potentially arable, but still unexploited land on which to develop such production, but the land problem is currently one of the key challenges to investment in the country. A wide-ranging reform of land legislation, initiated in 2005, has already led to significant progress in making property ownership more secure. It would be sensible to broaden this reform to encompass the conditions of access to real estate by foreigners, which might be re-examined and published on the Internet. Although foreigners have access only to titled, state-owned land by means of long leases, many other texts contain references to the "acquisition" of land by foreigners, and some companies change nationality or use nominees for this purpose.

11. Madagascar has substantial fishery and aquaculture potential, and its shrimp and crab exports are significant. However, deep-sea fishing in Madagascar's waters takes place under trading conditions which are favourable to foreign companies, in that there are no maximum catch limits. Reforms are needed in order to achieve sustainable management of resources while maximizing income from fisheries. Forest management has been affected by serious abuses, and the authorities have not yet succeeded in halting exports of rare timbers (palisander and rosewood), or of crocodiles and other wild animals, despite commitments made within CITES. The average level of protection of the agricultural sector (including plant, animal, fisheries and forestry production) is 14.1%, slightly higher than in 2008 (13.9%).

12. Provided that appropriate policies are introduced, the manufacturing sector offers exceptional opportunities, especially in the agrifood and handicrafts areas, because of Madagascar's abundant flora and fauna, its rich waters and the wealth of Malagasy know-how. It is highly likely that growth in these areas will largely come from small-scale SMEs, as long as the State does away with the excessive, complicated and less than transparent taxation which is currently discouraging them from moving out of the informal economy. Industries, especially those which are export-oriented, are adversely impacted by the high taxes on businesses and cumbersome labour legislation, as well as by the difficulty of obtaining foreign currency to purchase inputs and the high rates of duty on the latter, long delays in the payment of VAT refunds, the high cost of customs controls and quality controls, burdensome export documentation requirements and, lastly, the requirement that a portion of earnings be repatriated and converted into the national currency.

13. The Free Zones and Enterprises (ZEF) regime, under which a large number of enterprises have registered (in many cases fictitiously), could provide a partial solution to the problem. The bulk of industrial investment in Madagascar would not have taken place without this regime, which

offers all manner of generous benefits to investors that undertake to export, in principle, 95% of their production. However, as the regime is being widely abused it is a prime candidate for far-reaching reforms, with a view to better integration in the ordinary law regime.

14. During the period under review, significant progress was made in the area of trade reforms, especially as regards trade facilitation. Madagascar continues to grant at least MFN treatment to all its trading partners. It has never been involved as either complainant or defendant in a WTO dispute settlement process. The country has recently made remarkable efforts to update its WTO notifications; its WTO Reference Centre is operational, and local participation in WTO online training courses has increased significantly as a result. Madagascar is party to trade agreements covering around 50 trading partners, including COMESA and the SADC, the most recent of these being the interim Economic Partnership Agreement (EPA) between the EU and the Eastern and Southern Africa States, which entered into force in 2012. Madagascar grants duty-free entry to all its SADC and COMESA partners, on a non-reciprocal basis. Tariff reduction under the EPA began in January 2014.

15. There have been a number of tariff reductions, essentially on agricultural inputs, bringing Madagascar's simple average applied (mainly *ad valorem*) MFN rates down from 13% in 2008 to 12.2% in 2015. However, less than one third of tariff lines are bound; a few of the applied rates exceed the bound level; and less than 6% of the applied tariff is zero-rated. Having lowered its customs duties, Madagascar would do well to resist the temptation to generate tax revenue from import and export flows by increasing the rates of other duties, as illustrated by the new excise duty on imported vehicles. Import taxes (levied internally and on entry), which account for more than half of tax revenue, still figure prominently in the government budget, and this is thwarting attempts to eliminate taxes on international trade.

16. Madagascar has been striving constantly since 2005 to improve its customs services. Since March 2015, minimum import values are reportedly no longer being used for customs valuation purposes. Significant progress has been made with the electronic Single Window, and the move towards paperless customs clearance procedures is very close to completion. The MIDAC System, an integral part of the Single Window, now allows several of the numerous control institutions required to approve import and export transactions to transmit their respective authorizations electronically to the Customs. However, work still remains to be done to ensure that the fees assessed actually reflect the services provided. Technical and financial assistance to upgrade the legislative and institutional framework for standards and technical regulations, such as sanitary and phytosanitary measures, seems essential, particularly in order to boost Malagasy exports.

17. Government procurement volumes fell sharply in 2009, probably owing to the sociopolitical crisis. Foreign sources of supply accounted for a mere 0.6% of total government procurement in 2013. Madagascar is neither a member nor an observer of the Plurilateral Agreement on Government Procurement concluded under WTO auspices. The country has nevertheless made significant efforts to be transparent by publishing its automated government procurement management system on the Internet.

18. The authorities are aware that any reform of trade policy will be ineffective if it is not underpinned by improvements in Madagascar’s sociopolitical system. These would involve, in particular, strengthening political and constitutional stability and ensuring the rule of law, enhancing the legal protection of persons, strengthening real-estate ownership rights and improving governance, including within the many state-owned enterprises. If these reforms are achieved, the Malagasy people, who have seen most of their social and economic indicators plummet over the past seven years, will have renewed cause for optimism.

1 ECONOMIC ENVIRONMENT

1.1 Main features of the economy

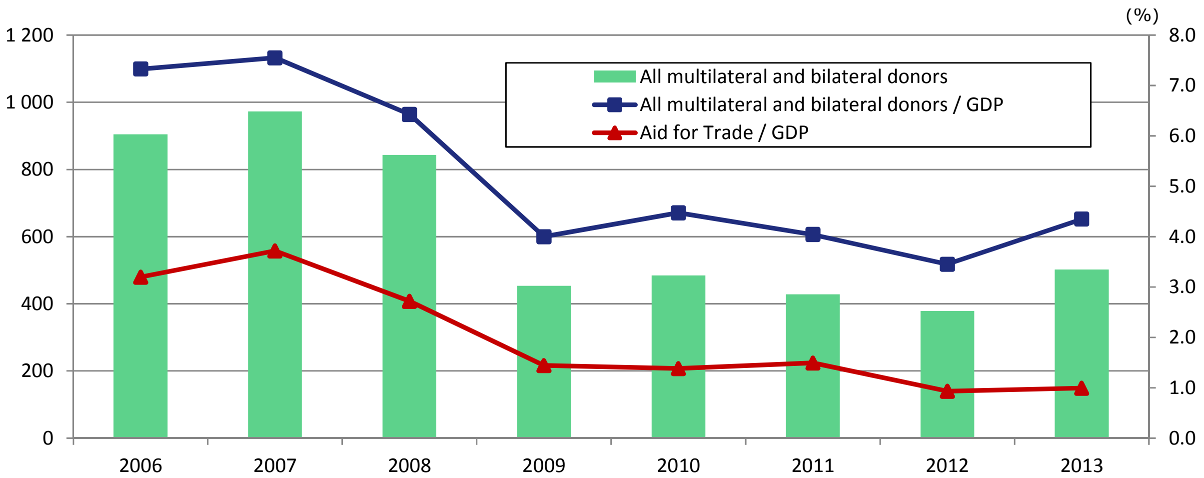
1.1. Since the start of operations to extract nickel, cobalt, titanium, and other heavy metals in 2013, the Malagasy economy has become essentially mining-based, and now obtains the bulk of its export earnings from these products. Madagascar also has huge swathes of potentially arable, but still unexploited land, and substantial fishery and aquaculture potential. Its unique natural and cultural resources make it an ideal tourist destination for a wide range of travel interests. There are also promising opportunities in the agrifood processing industries, based on the unique features of certain Malagasy products and the know-how of Madagascar's industries, particularly in the fish and marine animal, wood product, vanilla, cocoa, coffee, clove and lychee subsectors.

1.2. One of the main constraints on the island's development at the present time, particularly in relation to its foreign trade, is the rundown state of its infrastructures, particularly for energy supply and road and rail transport. Upgrading these infrastructures is one of the most pressing challenges in order to reduce transport costs for traded goods and services. The island is also vulnerable to cyclones, floods, drought and locust invasions (Section 4.1), which are all the more difficult to combat with dysfunctional infrastructure.[1]

1.3. Madagascar received less than US$400 million in Official Development Assistance (ODA) in 2012 (Chart 1.1), which is equivalent to US$17 per inhabitant and far less than what is needed to restore its infrastructure. Roughly one quarter of this total ODA consisted of Aid for Trade — a category of assistance that has fallen away sharply since 2007. As the two areas in which Aid for Trade is concentrated are agriculture, and transport and storage, this assistance naturally supports two of the Government's current priorities, namely increasing the supply of food products and rebuilding infrastructure. Madagascar's public debt represents around one third of its gross domestic product (GDP).[2]

Chart 1.1 Official development assistance (ODA), 2006-2013

US$ million



Note: US dollars at constant 2012 prices.

Source: Organisation for Economic Co-operation and Development (OECD), viewed at: http://www.oecd.org/trade/aft/aid-for-tradestatisticalqueries.htm; and World Bank, *World Development Indicators*.

1.4. In October 2014, the Ministry of the Economy and Planning (MEP) was preparing a National Development Plan for the period 2015-2019. The International Monetary Fund (IMF) restored links with the Malagasy Government after the elections, in March 2014. This has given access to other foreign partners which announced financing for developing the priority sectors defined in this Plan.

[1] Deputy Prime Minister's Office responsible for the Economy and Industry (2013).
[2] The risk of Madagascar's government debt was most recently rated as B-stable in 2007 by Standard and Poor's.

The World Bank is supporting the Government in its efforts to formulate growth-generating policies, such as an environment that promotes both domestic and foreign private-sector development, in particular through a second Private-Sector Development Project and the Integrated Growth Poles Project (IGPP).

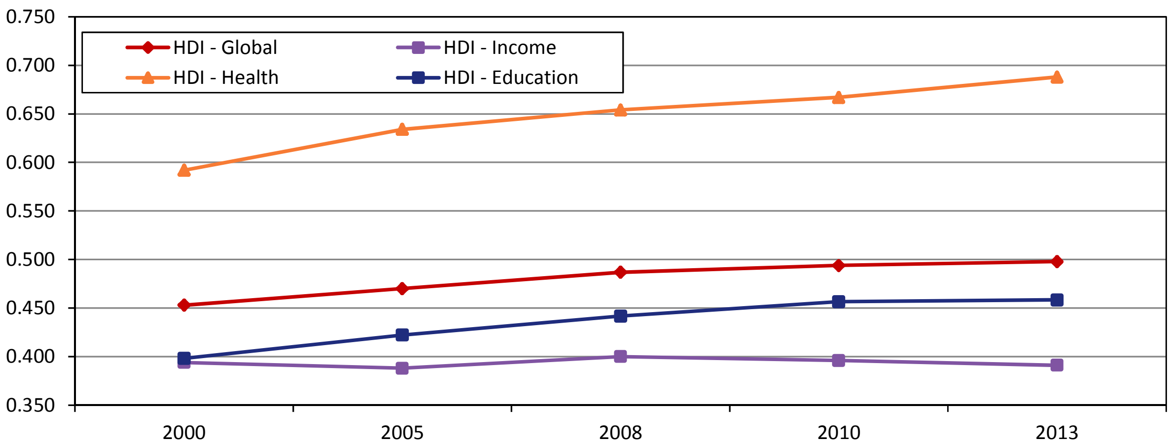
1.5. Monetary policy is the responsibility of the Central Bank of Madagascar (BCM)[3], which operates a regime of exchange controls applicable to both current payments and capital transfers abroad.[4] Current transactions are approved by authorized banks, whereas capital transfers require approval by the Ministry of Finance. Given the shortage of available foreign exchange, in August 2014 the Government reintroduced the requirement to convert a portion of export earnings into domestic currency, the ariary (MGA).[5]

1.2 Recent macroeconomic trends

1.6. In early 2015, the Malagasy economy was showing signs of a tentative recovery, driven by an upturn in rice production in 2014, new exports of mining products, and the recovery of foreign aid flows, according to the IMF, which conducted its first Article IV Consultation in five years.[6] Since the last WTO review of the country's trade policy in April 2008, the Malagasy economy has endured five years of a new sociopolitical crisis. The situation after these five years is serious: 92% of the population is living on less than two US dollars a day, and many people suffer from malnutrition, particularly in the towns. Madagascar will be unable to achieve most of the Millennium Development Goals (MDGs) by 2015, even those which had been considered potentially achievable before the crisis, such as the targets for reducing child mortality, raising the net school enrolment rate, and eradicating extreme poverty.

1.7. Nonetheless, as shown in Chart 1.2, although incomes have collapsed, human development has been sustained by the high quality of the country's health system (Section 3.3.1.5) and education system, which continued to improve despite the crisis. Consequently, Madagascar's human development level is comparable to those of higher-income African countries. In particular, the country has abundant, generally high-skilled, labour.

Chart 1.2 Trend of the human development index, 2000-2013



Source: United Nations Development Programme (UNDP), viewed at: http://hdr.undp.org/en/data.

1.8. Apart from the uncertainties it has imposed on private investment, this crisis has greatly accelerated the deterioration of infrastructures mentioned above, owing to a lack of investment and financing from most foreign partners, which have been discouraged by the absence of democracy and good governance (Section 2.1). This degradation in turn has severely prejudiced the economic environment in general and international trade and investment conditions

[3] Online information from the BCM, viewed at: http://www.banque-centrale.mg.
[4] IMF (2014b).
[5] Order No. 26612/2014-MFB/SG/DGT/DOF/SSOC of 25 August 2014, making it compulsory to surrender foreign exchange on the interbank foreign exchange market.
[6] Online information from the IMF, viewed at: http://www.imf.org/external/np/sec/pr/2015/pr1509.htm.

in particular. Restoring infrastructures and combating severe poverty are the two most urgent issues facing the Government in 2015.

1.9. Madagascar's economic growth rate collapsed from above 6% in 2007-2008 to an average of zero in 2009-2013, partly owing to the steep decline in gross fixed capital formation over the period (Table 1.1). Nonetheless, the IMF is forecasting GDP growth of 3% in 2014, rising to 5% in 2015.

Table 1.1 Basic economic indicators, 2007-2014

	2007	2008	2009	2010	2011	2012	2013	2014[a]
Miscellaneous								
Nominal GDP (MGA trillion)	13.8	16.1	16.8	18.3	20.0	21.8	23.5	25.7
Nominal GDP (US$ billion)	7.3	9.4	8.6	8.7	9.9	9.9	10.6	..
Growth rate of GDP (at 1984 prices)	6.2	7.1	-4.1	0.4	1.4	3.0	1.0	3.0
Population (million)	19	20	20	21	22	22	23	21.7
Inflation (CPI, variation %)	10.3	9.2	9.0	9.2	9.5	5.8	5.8	6.4
GDP per capita (US$)	379	472	417	414	456	445	464	491
	(% of GDP)							
National accounts (at current prices)								
Private final consumption	80.2	73.9	81.9	86.7	87.8	88.0	84.8	..
Government final consumption	12.3	10.1	10.0	10.6	10.2	9.6	11.5	..
Net exports	-21.7	-24.3	-23.6	-18.1	-15.6	-15.0	-12.4	..
Exports of goods and services	30.3	26.5	22.4	25.0	26.7	29.0	28.5	..
Imports of goods and services	52.1	50.9	46.0	43.0	42.3	44.0	40.9	..
Gross fixed capital formation	29.3	40.3	31.7	20.8	17.6	17.3	16.1	..
Variation in stocks, nominal	0.0	0.0	0.0	0.0	0.0	0.0	0.0	..
GDP by sector of economic activity at constant 1984 prices								
Agriculture	15.7	15.5	17.7	17.7	17.3	15.2	13.0	12.7
Livestock and fishing	14.5	13.9	14.6	13.5	14.0	11.9	11.8	11.8
Forestry	2.9	2.7	3.7	3.7	3.6	2.8	2.7	2.6
Mining and quarrying	0.2	0.2	0.2	0.4	0.5	1.1	3.4	4.2
Energy	1.6	1.6	1.6	1.8	1.7	1.5	1.6	1.6
Manufacturing	9.5	9.2	8.8	8.9	9.3	8.0	8.0	8.0
Free zones	2.1	2.0	1.7	1.5	1.5	1.3	1.3	1.3
Construction and public works	4.8	5.7	4.9	5.0	5.2	4.5	4.6	4.6
Freight transport	11.2	11.3	10.5	10.6	10.4	9.1	9.2	9.3
Passenger transport	3.2	3.1	2.6	2.8	2.8	2.6	2.6	2.6
Ancillary transport services	3.0	3.0	2.7	2.7	2.3	2.1	2.1	2.1
Telecommunications	2.1	2.4	2.9	3.2	3.3	2.9	2.9	2.9
Commerce	11.3	11.0	11.8	11.7	11.9	10.2	9.7	9.7
Banking	2.4	2.3	2.8	3.1	3.1	2.8	2.9	2.9
Insurance	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1
Business services	13.6	13.9	12.3	12.4	12.2	10.4	10.2	10.0
Administration	5.1	4.9	4.8	4.9	4.9	4.2	4.2	4.1
Non-imputed banking services	-3.0	-2.9	-3.5	-3.9	-3.9	-3.5	-3.6	-3.6
Central government financial operations								
Total income and grants	..	15.5	11.5	13.2	11.7	10.8	10.9	12.3
Total income	..	12.1	9.9	11.2	9.7	9.6	9.6	10.2
Tax revenue	..	11.8	9.4	9.8	9.5	9.1	9.3	10.0
Taxes on international trade	..	6.3	4.5	4.5	5.0	4.8	4.0	..
Domestic taxes on goods and services	..	5.5	4.9	5.2	4.6	4.3	5.3	..
Non-tax income	..	0.3	0.5	1.5	0.2	0.5	0.3	..
Grants	..	3.4	1.7	1.9	1.9	1.2	1.3	2.1
Total expenses and net borrowing	..	17.4	14.1	14.0	14.1	13.4	16.0	14.4
Current expenses	..	9.7	9.2	9.0	9.9	10.7	12.9	10.5
Capital expenses	..	7.7	4.9	5.0	4.2	2.7	3.1	4.0
Overall balance (accruals basis)	..	-2.0	-2.5	-0.9	-2.4	-2.6	-5.1	-2.1
Payments in hand	..	0.2	0.0	0.2	-0.1	0.1	0.2	..
Variation in domestic arrears (- = increase)	..	0.0	0.0	0.0	-0.7	-1.4	-2.2	..
Overall balance (including grants, cash basis)	..	-2.1	-2.5	-1.1	-1.6	-1.4	-3.1	..

	2007	2008	2009	2010	2011	2012	2013	2014[a]
	(% of GDP, unless otherwise indicated)							
External sector								
Exchange rate (MGA/US$)	1,874	1,708	1,956	2,090	2,025	2,195	2,207	2,414
Real effective exchange rate (period average, percentage variation)[b]	..	10.5	-1.6	-0.6	5.8	-0.2	9.5	..
Current account	-11.9	-18.7	-21.1	-10.2	-7.0	-7.6	-5.8	..
Balance of trade in goods and services	-16.0	-23.2	-23.7	-14.2	-11.4	-10.5	-8.6	..
Goods exports, f.o.b.	16.9	13.9	12.3	13.2	14.9	15.3	18.1	..
Goods imports, f.o.b.	-30.5	-34.1	-31.8	-25.2	-25.0	-26.5	-26.1	..
Exports of services	13.6	13.8	10.1	11.8	11.9	13.3	11.9	..
Imports of services	-16.0	-16.8	-14.2	-14	-13.2	-12.6	-12.6	..
Gross official reserves (US$ million)	..	1,013	965	821	1,171	1,045	763	..
In months of goods and non-factor services imports	..	2.5	2.9	2.9	3.7	3.3	2.2	..
Public debt	..	31.8	33.4	32.0	32.6	33.8	34.2	35.3
Foreign	..	24.5	25.7	24.4	24.3	24.3	22.8	26.0
Domestic	..	7.3	7.7	7.6	8.3	9.5	11.4	9.3

.. Not available.

a Preliminary estimates.
b A minus sign indicates a depreciation.

Source: IMF Country Report No. 14/181, July 2014. National Institute of Statistics of Madagascar, viewed at: http://www.instat.mg/pdf/inflation-madagascar-2000-2013.pdf. IMF Press Release No. 15/09. BCM, *Rapport annuel 2009*. African Development Bank, *African Statistical Yearbook 2014*, viewed at: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Statistical_Yearbook_2014.pdf. IMF, *International Financial Statistics*, viewed at: http://elibrary-data.imf.org/ [September 2014].

1.10. Since 2009, macroeconomic balances have been maintained despite the fall in total government income, at the cost of deep cuts in its capital expenditure in particular. Inflation, heavily influenced by changes in the prices of agricultural products on local markets and by the prices of imported oil products, was held below 10% until 2011, after which it stabilized below 7%, thanks partly to a favourable trend in world market prices, despite the collapse of rice production in 2013.

1.11. The domestic currency depreciated by just 6% per year on average between 2007 and 2014, reflecting the central bank's policy until mid-2013 of maintaining a degree of stability in the domestic currency. The existence of a second preferential exchange rate (2,000 MGA/US$) agreed upon for imports of petroleum products was the main factor squeezing Madagascar's foreign exchange reserves in 2013. Changes in relative prices led to an appreciation in the exchange rate in real effective terms over this period. Monetary policy instruments include compulsory reserve requirements, the level of the policy interest rate (which has been fixed at 9.5% since 2009, however) and repurchase agreements (repos).

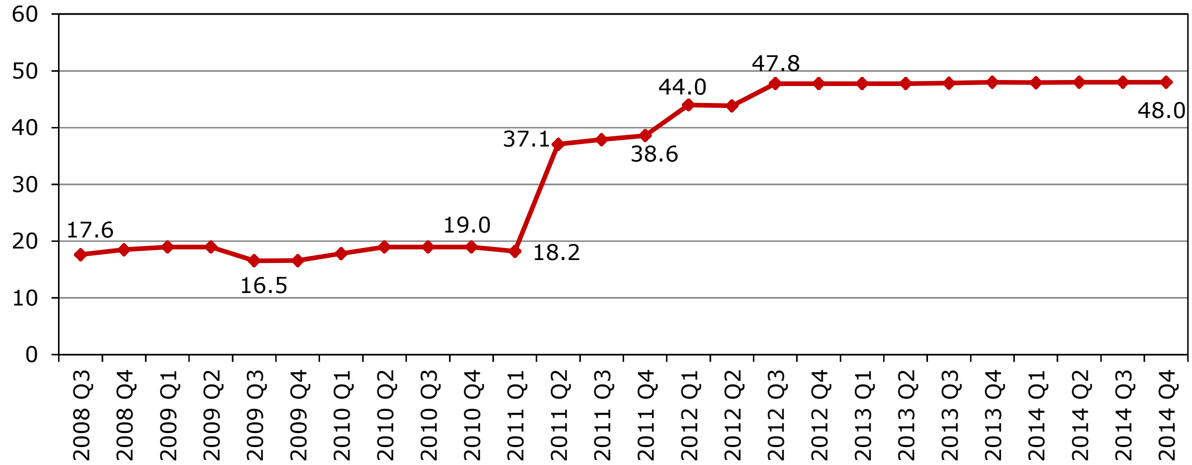
1.12. The Government's current expenses were partly financed by a credit line with the BCM from late 2013 to March 2014. In 2013, this source of funding (MGA 271 billion) represented about 1% of GDP and 10% of total government income. Under its statutes, the BCM cannot lend the Government more than 15% of its revenue for the previous fiscal year.

1.13. In addition, the sharp decline in imports of goods and services since 2007, combined with the start of mining exports, made it possible to reduce the significant deficit on the balance of merchandise trade, and hence the current account deficit. Nonetheless, the potentially inflationary effect of the new mining revenues remains a challenge.

1.14. Two of the main obstacles to Madagascar's economic recovery are the fact that interest rates are currently at levels that discourage economic activity (Chart 1.3), and the fact that the banks are lending very little for productive activities. The Malagasy banking sector consists of 11 banks, all of them foreign owned. Despite the crisis, the banking sector as a whole has not reported losses since 2008. The squeezing of both public and private foreign capital flows has reduced bank liquidity and further discouraged lending, thereby pushing up interest rates.

Chart 1.3 Maximum medium-term lending rate applied by the banks, 2008-2014

(%)



Note: Maximum rate of each month.

Source: BCM.

1.15. In 2014, the Government launched a priority plan of action to strengthen public finance management, focusing particularly on revenue performance since tax revenue does not exceed 10% of GDP. In particular, the tax on intermittent income (IRI) hitherto levied essentially on imports (Section 3.1.4.4), was extended in January 2015 to all persons not registered with the Tax Directorate and supplying goods and services to any registered entity, with the latter being responsible for withholding tax at a 5% rate and transferring it to the Government.

1.16. Other fiscal problems that need to be resolved as a priority include the burden and complexity of tax procedures; tax controls considered excessive, the quasi-systematic penalties that accompany them, and the resulting corruption. These problems damage formal operators relatively to those in the informal sector, and encourage them to operate informally. The Diagnostic Study performed in 2003 (Section 2.1.3.2) had already revealed that the tax system discourages small-scale businesses from gaining the size at which they would be targeted by the tax authorities, thereby helping to restrict the diversification of the economy.

1.17. In addition, certain provisions of the General Tax Code (CGI) are rendered ambiguous by numerous orders, decisions, instructions, notices and explanatory notes issued to assist in their interpretation. This gives rise to subjectivity and hence the need for a large-scale regulatory reform. Moreover, according to the authorities, the CGI does not cover para-fiscal charges, which are not regulated or subject to specific monitoring. Uncontrolled para-fiscal liabilities of this kind increase corporate costs and charges considerably.

1.18. Lastly, the labour market is another sphere where major reforms are needed. Measures aimed at increasing agricultural supply and rebuilding infrastructures should rapidly provide employment to the population, which has seen the number of enterprises plummet over the last few years, with a concomitant increase in the number of job seekers. Nonetheless, labour legislation outside the free zones is burdensome and complex, which can slow down hiring and economic recovery.

1.3 Trade performance

1.19. Overall, the share of trade in GDP declined from 77% in 2007 to less than 69% in 2013. The financial account of Madagascar's balance of payments (Table 1.2) was seriously destabilized by the drying up of foreign financing after 2009; and the overall deficit consumed a large proportion of the country's international reserves, which shrank to less than US$800 million in 2013 (Table 1.1). In contrast, the weakening of goods imports and the coming on stream of mining projects caused the trade deficit to narrow. The deficit on the services balance also declined thanks to an increase in tourist arrivals.

Table 1.2 Balance of payments, 2007-2014

US$ million

	2007	2008	2009	2010	2011	2012	2013	2014[a]
Current transactions	-877	-1,762	-1,808	-886	-691	-759	-621	-29
Goods and services	-1,178	-2,186	-2,023	-1,242	-1,125	-1,042	-919	-446
Trade balance	-1,002	-1,904	-1,667	-1,047	-997	-1,114	-848	-547
Exports, f.o.b.	1,238	1,310	1,052	1,149	1,473	1,516	1,923	2,195
Imports, f.o.b.	-2,240	-3,214	-2,719	-2,196	-2,470	-2,630	-2,771	-2,742
Net services	-176	-282	-356	-195	-128	72	-71	101
Services exports	998	1,296	862	1,030	1,174	1,317	1,263	1,302
Services imports	-1,174	-1,579	-1,218	-1,226	-1,302	-1,245	-1,334	-1,201
Investment income	-56	-50	-91	-130	-155	-315	-336	-297
Income	52	63	34	63	85	34	18	15
Payments	-108	-113	-126	-193	-241	-349	-354	-311
of which public-sector interest	-11	-14	-21	-16	-18	-18	-18	-19
Current transfers	358	474	307	486	589	598	634	715
Public administration	46	80	6	61	65	68	68	126
Other sectors	312	394	301	426	524	530	566	589
Capital and financial account	1,172	1,812	1,691	945	867	702	368	63
Capital account	273	247	76	75	184	120	134	129
Financial account	899	1,564	1,615	870	683	583	234	-66
Direct investment (net)	741	1,136	1,269	766	772	778	551	324
Portfolio investment	0	0	0	2	0	0	0	-1
Other investment	158	429	-251	102	-89	-195	-318	-389
Errors and omissions	-68	55	93	1	-48	-28	-11	-11
Overall balance	227	104	-24	59	127	-85	-264	24
Financing	-227	-104	24	-59	-127	85	264	-24
Net foreign assets (- = increase)	-227	-104	24	-59	-127	85	264	-24
IMF net	12	59	0	-2	-4	-7	-9	27
Other assets (- = increase)	-239	-164	24	-57	-124	91	274	-51

a Provisional.

Source: BCM, *Rapports annuels 2009 et 2010*; and information provided by the authorities.

1.3.1 Merchandise trade

1.20. Madagascar experienced far-reaching changes in the structure of its merchandise trade in the period 2007-2014. On the export side, the country became a major exporter of nickel and other minerals and ores (Chart 1.4 and Section 4.5.5). In contrast, exports of clothing and other manufactures, which had traditionally comprised the main group of products exported by Madagascar, plummeted in the wake of the trade sanctions imposed by Madagascar's trading partners (Sections 2.2.4 and 4.6.2.2).

1.21. Exports of plant products also grew, consisting of cloves, vanilla, cocoa beans, groundnuts, lychees, unroasted coffee, beans and Cape peas. In the case of products produced by the food industries, sugar exports grew vigorously thanks to a remarkable increase in export volume and a slight improvement in the export price. In contrast, exports of animal products declined in both value and volume terms, reflecting the sharp reduction in shrimp exports (Section 3.3.1).

1.22. There were also major changes in the geographic structure of Madagascar's export markets (Chart 1.5). In the space of six years, the country's export markets have become highly diversified, with the shares accounted for by the European Union (EU) and the United States declining considerably, while those of Middle Eastern and Asian countries, and to a lesser extent African countries, have grown. The EU share, in particular, has shrunk from 63% of total Malagasy exports in value terms in 2007 to less than 49% in 2014. Within the EU, France remains the leading export market, despite a sharp reduction in its share. Similarly, the United States' share of Malagasy exports plummeted from almost 18% to 8.5%.

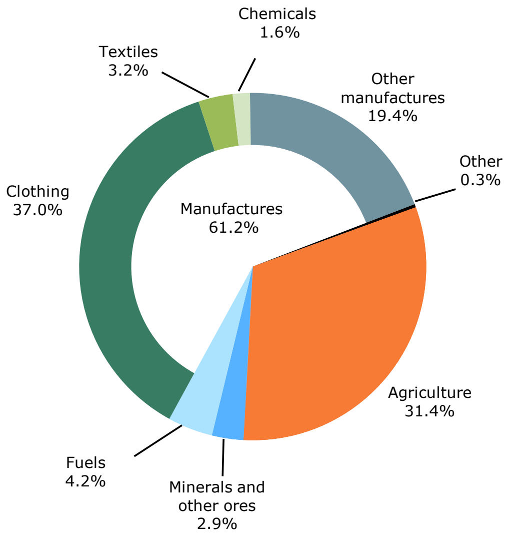
1.23. Within the Southern African Development Community (SADC) (Section 2.2.2.2), the share of exports absorbed by Mauritius, which was Madagascar's leading export outlet thanks to the substantial volumes of Mauritian direct investment in Madagascar, has dropped from 2.9% to less than 1.5% in value terms. In contrast, exports to South Africa have grown almost tenfold to nearly US$80 million. The fastest-growing exports were not only nickel and cobalt, but also clothing, which has lost the North American market. Madagascar has also strongly developed its exports to Seychelles and Mozambique.

Chart 1.4 Structure of merchandise trade, 2007 and 2014

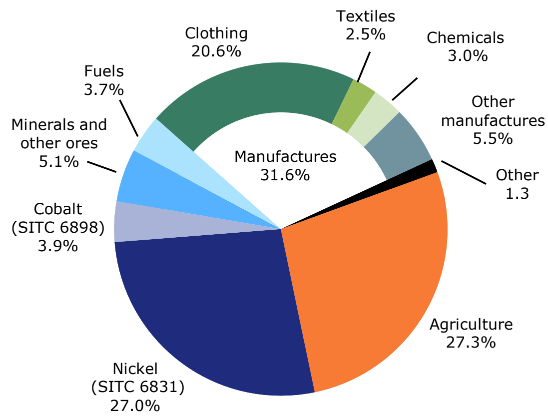
(%)

2007 **2014**

(a) Exports, including re-exports (f.o.b.)

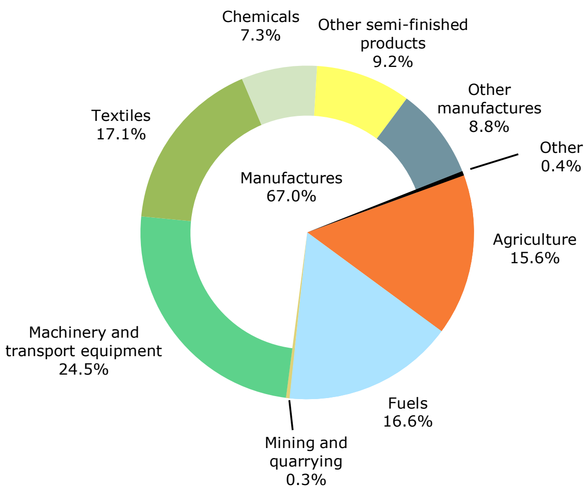


Total: US$1.3 billion

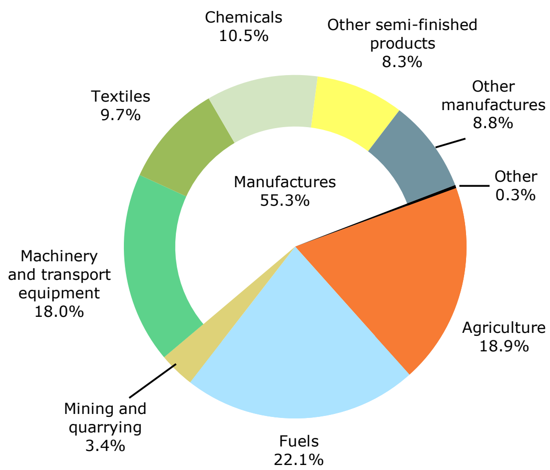


Total: US$2.2 billion

(b) Imports (c.i.f.)



Total: US$2.4 billion



Total: US$3.3 billion

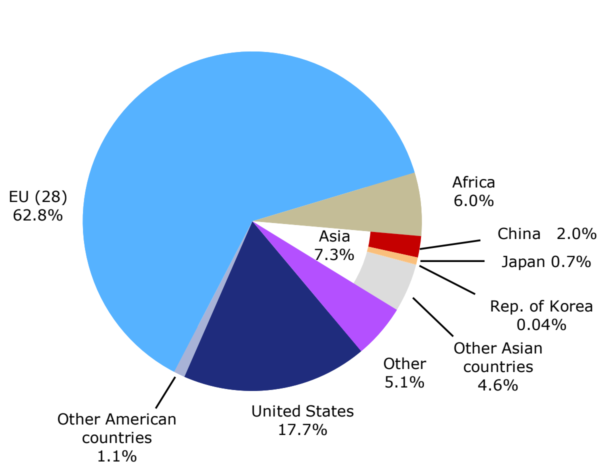
Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database (SITC Rev. 3), and information provided by the authorities.

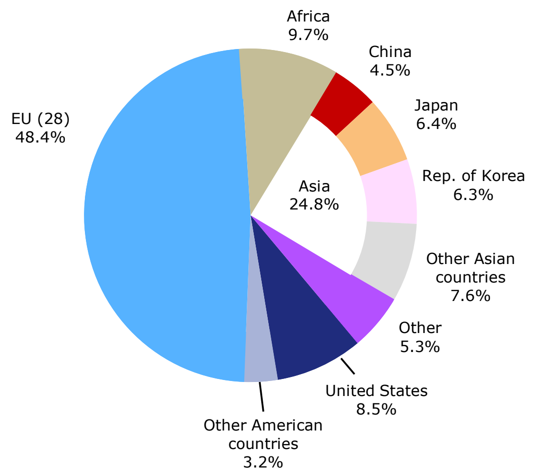
Chart 1.5 Direction of merchandise trade, 2007 and 2014

(%)

2007 **2014**

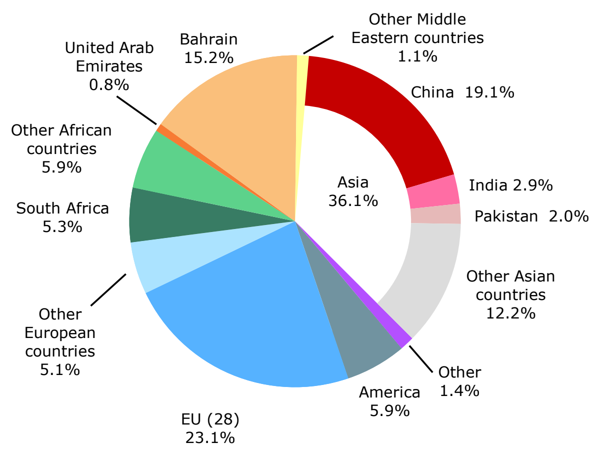
(a) Exports, including re-exports (f.o.b.)

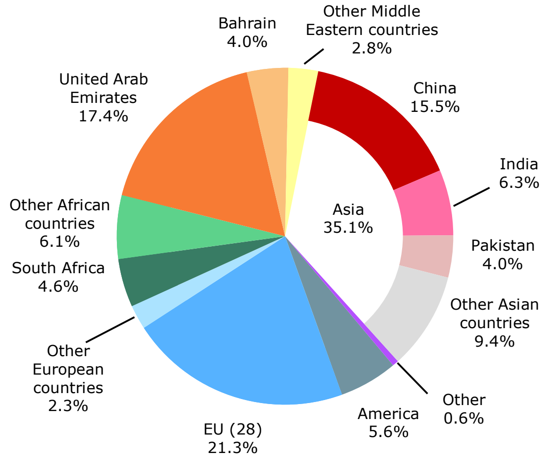




Total: US$1.3 billion **Total: US$2.2 billion**

(b) Imports (c.i.f.)





Total: US$2.4 billion **Total: US$3.3 billion**

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database, and information provided by the authorities.

1.24. Madagascar's exports to China attained a level of US$130 million, representing 4.5% of the total compared to 2% in 2007. This increase is largely due to exports of nickel and other ores of HS code 2615. Similar growth rates were posted by Malagasy exports of nickel to Japan (total exports of US$83 million in 2013), and titanium to both Canada (US$82 million) and Viet Nam (US$15 million), while exports to the Republic of Korea (US$92 million in 2013) have grown by 138% per year, driven mainly by the nickel trade.

1.25. On the import side, the steepest fall occurred in machinery and transport equipment, reflecting the decline in infrastructure investment, followed by textile inputs. The share of fuels in total imports increased sharply, reflecting the rise in prices in 2008, while agricultural products, particularly rice, almost tripled their share during the period (Section 4.1.2.1.).

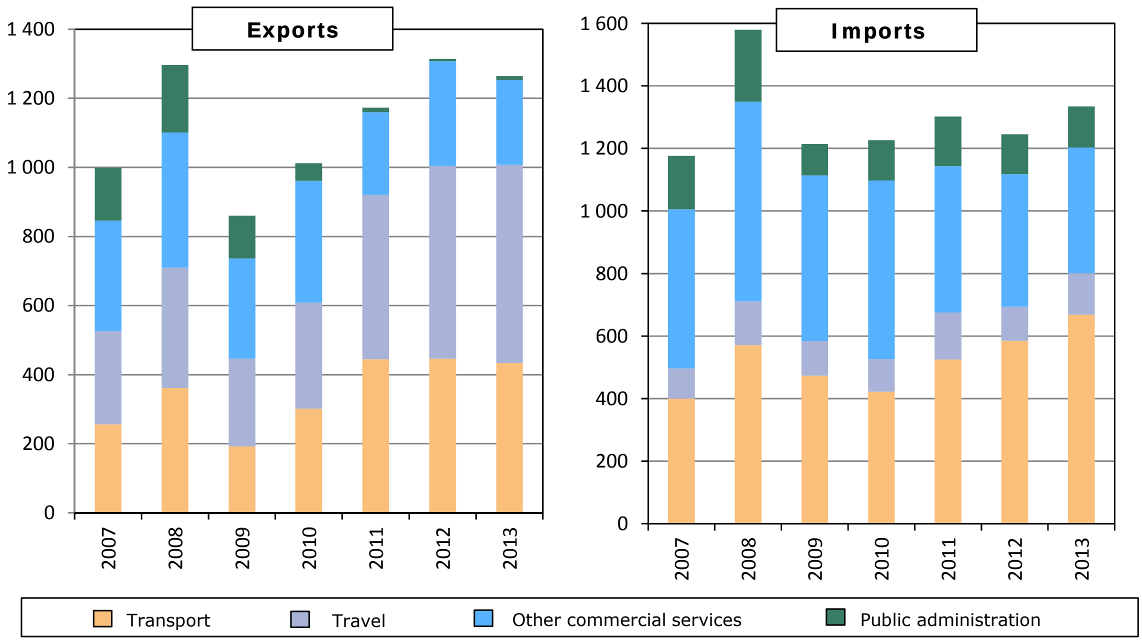
1.26. Imports from the European Union plummeted, while the United Arab Emirates (UAE) became one of Madagascar's main suppliers, accounting for over 17% of its imports in value terms in 2014, while China ranks second with a 15.5% share in 2014. The UAE provides Madagascar with medium and heavy oils, along with numerous manufactured products. Imports from India have also grown significantly in terms of market share, rising from 2.9% to 6.3% of total Malagasy imports, mainly rice.

1.3.2 Trade in services

1.27. Madagascar's services exports represent a market of close to US$1.4 billion, equivalent to about 40% of the country's total exports of goods and services, basically reflecting the importance of tourism as a key export sector (Chart 1.6). Income from travel (spending by foreign visitors to Madagascar) has grown substantially since 2009 (+32% per year on average) to over US$600 million, mainly accounted for by hotel and restaurant revenues and thereby illustrating the importance of tourism for the Malagasy economy.

Chart 1.6 Trade in services, 2007-2013

US$ million



Note: The category "Other commercial services" includes communication, construction, insurance, financial, information technology and information services, royalties and licence fees, other business services, and personal, cultural and recreational services

Source: UNCTAD-ITC-WTO Trade in Services database.

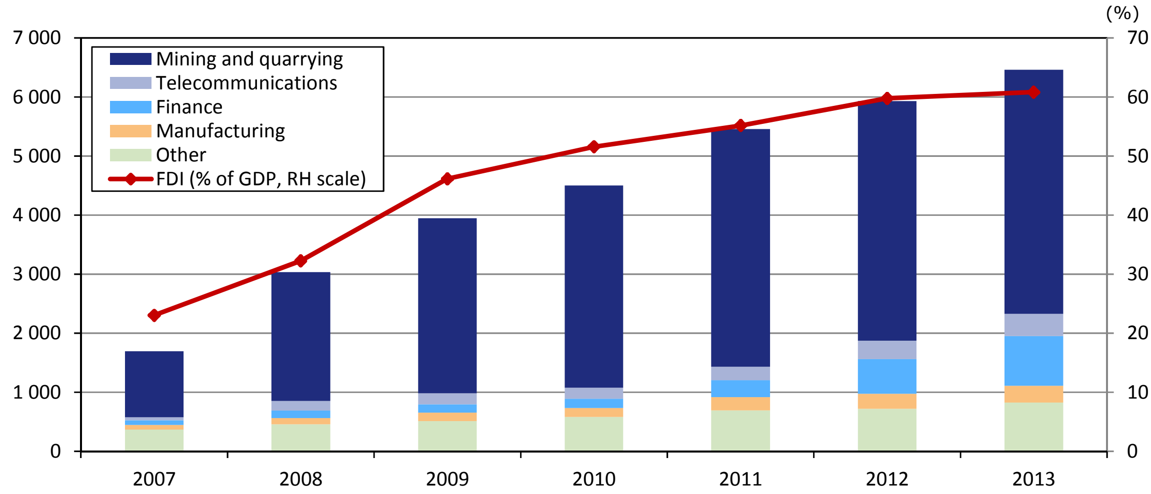
1.28. Transport services, which generate about US$400 million in export earnings, represent air tickets sold to non-residents by the national airline Air Madagascar (Section 4.7). Exports of other commercial services have flat-lined, while exports of public administration services, namely the expenses of foreign diplomatic personnel in Madagascar, dropped sharply, from US$158 million per year to just US$7 million in 2012. Imports of transport services basically represent freight expenses. Imports of other commercial services are significant, although their growth has also stalled.

1.4 Foreign investment

1.29. Since 2007, Madagascar has received sustained flows of foreign direct investment (FDI) (Chart 1.7), surpassing 10% of GDP in the three years 2009-2011, before easing to 8% thereafter until 2013, according to a study on foreign investment in Madagascar published every year by the National Institute of Statistics (INSTAT). This situation reflects the undertaking of two large-scale investments in the mining sector since 2006 — QIT Madagascar Minerals (QMM) and the Ambatovy project. These two projects have enabled the country to accumulate an FDI stock estimated at US$5.45 billion.[7] The other main FDI destinations are financial activities (FDI stock of US$586 million), telecommunications (US$457 million), manufacturing (including free-zone manufacturing) and construction activities, and building and public works. The bulk of investment undertaken in Madagascar is direct; portfolio investments represented just 0.1% of foreign investment entering Madagascar in 2011.

Chart 1.7 Stock of inward foreign direct investment, 2007-2013

US$ million



Source: Online information from the United Nations Conference on Trade and Development (UNCTAD), viewed at: http://unctadstat.unctad.org. [January 2015].

1.30. The four leading investor countries are those whose companies are active in the large mining projects: United Kingdom, Canada, Japan, the Republic of Korea and France. According to the INSTAT study, the reasons why foreign investors have shown interest in Madagascar include its low wage costs and the quality of its telecommunications infrastructure. Nonetheless, three key factors hinder the development of foreign-investment enterprises in Madagascar: the political environment, insufficient demand, and financial constraints. For these reasons, the number of jobs in foreign-investment enterprises fell sharply from 80,767 in 2008 to 61,160 in 2011.

[7] INSTAT (2012).

2 TRADE AND INVESTMENT REGIMES

2.1 General framework

2.1. The Government, aware that the current sociopolitical and legal system is not conducive to international trade and foreign investment in Madagascar, has announced a series of reforms in areas regarded as having high priority. These include strengthening political and constitutional stability, enhancing the legal protection of persons, improving governance, including that of state-owned enterprises, strengthening real-estate ownership rights and facilitating the business environment, especially by improving access to credit and energy.

2.2. A succession of political crises have taken their toll on trade and investment. The outcome of the December 2013 presidential election brought an end to Madagascar's most recent political crisis, which had lasted almost five years following a coup d'état in March 2009 that caused the Constitution to be suspended for the fourth time in 20 years. December 2010 saw the establishment of a new Constitution.[1] Among the changes, the minimum age of the President was reduced to 35 and the possibility of passing legislation governing foreigners' access to real-estate ownership was introduced (Section 2.3.6).

2.3. Aside from their economic and social consequences, these political conflicts severely damage confidence in the sustainability of government policies and, therefore, confidence in the country's long-term stability, which is vital for investment and trade. Measures envisaged with a view to strengthening the country's political and constitutional stability and improving governance include the creation of a High Council for the Defence of Democracy and of the Rule of Law.[2]

2.4. The 2010 Constitution introduced no major changes over the 2007 Constitution in respect of executive power, which continues to be exercised by the President of the Republic, who is elected by direct universal suffrage for a term of five years, renewable once only. Presidential and parliamentary elections were held at the end of October 2013, with a second round of voting on 23 December 2013; the next elections are scheduled for the end of 2018. Under Articles 63 *et seq*. of the Constitution, the Government implements the general policy of the State and is responsible to the National Assembly. The Prime Minister, who is Head of Government, conducts the general policy of the State, initiates legislation and ensures its implementation. The ministries prepare draft legislation in their respective areas of competence, for submission to the Council of Ministers. The present Government took office on 25 February 2015, replacing the Government of 18 April 2014.

2.5. Legislative power is exercised by the Parliament which should, according to the Constitution, consist of two chambers: the Senate and the National Assembly. The deputies in the National Assembly are elected by direct universal suffrage for a five-year term. The latest legislative elections took place in December 2013. The Senate, whose responsibilities were to include representing the decentralized territorial authorities, was still not in existence in 2014. Madagascar is divided into six provinces and 22 regions, subdivided into communes; in principle, they are to move progressively towards administrative and financial autonomy.

2.6. To be adopted, draft laws must be approved by the National Assembly. The President of the Republic promulgates draft laws that have been passed, after their constitutionality has been reviewed; he signs international treaties and agreements, and promulgates them after ratification by the National Assembly. Under the Constitution (Articles 137 and 138), the President negotiates and ratifies treaties. He is informed of any negotiations for the conclusion of international agreements which are not subject to ratification. The ratification or approval of trade agreements, treaties or agreements relating to international organization, and treaties or agreements that have financial implications for the State, including external borrowing, must be authorized by law. The Prime Minister negotiates and signs international agreements that are not subject to ratification.

2.7. Duly ratified or approved treaties or agreements take precedence over laws once they have been published, subject in each case to their application by the other party. Ratified international

[1] Independent National Electoral Commission for Transition, viewed at: http://www.ceni-madagascr.mg.

[2] Two other texts have been adopted: Law No. 2014-043 of 9 January 2015 on the High Court of Justice, and Law No. 2014-007 of 12 July 2014 instituting the Independent National Commission on Human Rights.

treaties and agreements are followed in importance by the Constitution, and then laws, ordinances[3], decrees and orders. All of these texts, apart from orders, are subject to mandatory publication in the *Official Journal of the Republic* (OJ), which is available only as a printed document of which there are currently insufficient copies. The authorities would like technical and financial assistance to publish the OJ electronically on the Internet; legislation would be required for this purpose. In addition to its own website, the Ministry of Justice hosts the website of the National Commercial and Companies Register (http://www.rcsmada.com). The LEGIS Centre in the Office of the Prime Minister is also tasked primarily with modernizing the collection, management and free dissemination of Madagascar's legislation.[4]

2.8. As a result of the political crisis, until 2014 there was very little legislative activity, including in international trade-related areas. The principal new laws and ordinances and new regulations affecting trade are listed in Table 2.1. Moreover, in September 2014 Madagascar acceded to the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL), which is due to enter into force in September 2015. No reforms were required for this accession. Madagascar is not a member of the Organization for the Harmonization of Business Law in Africa (OHADA), but its company law framework is based on the OHADA Uniform Act on Commercial Companies.[5] The Business Law Reform Commission, which was established in 1997 under the auspices of the Office of the Prime Minister and includes government, civil society and business representatives, is tasked with the reform of business law.

2.9. In 2014, several reforms were undertaken with a view to strengthening governance and the rule of law, intensifying the fight against corruption and reforming various legislative and regulatory frameworks. Interministerial coordination could also be enhanced; indeed, as the OECD has pointed out[6], lack of coordination among government agencies, especially border agencies, is one of the main factors in border delays and overall border costs (Section 3.1.2).

2.10. Moreover, it would also be useful to systematically publish draft laws, decrees and orders so that interested parties can comment on them prior to their final enactment. At present, only in the case of the Finance Law is submission to Parliament preceded by an informal private sector consultation process. Similarly, Madagascar has yet to introduce a permanent structure for public-private dialogue and the State relies primarily on ad hoc consultation mechanisms. In 2015, the new Ministry of Industry and Private Sector Development was tasked with enhancing this dialogue.

2.11. The authorities are fully aware that weak legal governance poses a serious problem for the Malagasy economy[7] even though, since 2004, the World Bank, the European Union (EU) and the African Development Bank (AfDB) have funded a number of projects aimed at governance enhancement and institution building. Further external financial assistance will be required in order to provide training and capacity for monitoring the functioning of the courts and combating corruption. According to the Independent Anti-Corruption Bureau (BIANCO), which has been responsible for implementing the national anti-corruption strategy since 2004 and lacks the means to perform its task, overall there has been no progress to date.

[3] Pursuant to Article 99 of the 2007 Constitution, the Parliament, by an absolute majority of votes, may authorize the President of the Republic to take measures by ordinance which normally require legislation. Ordinances are adopted by the Council of Ministers and enter into force upon publication in the Official Journal of the Republic.

[4] LEGIS Centre, viewed at: http://www.cnlegis.gov.mg.

[5] Law No. 2003-036 of 30 January 2004, viewed at: http://www.edbm.gov.mg/fr/content/download/478/2743/version/1/file/societe_commerciales_loi_n_2003-036_30012004.doc.

[6] See OECD Trade Facilitation Indicators – Madagascar, viewed at: http://www.oecd.org.

[7] The judiciary consists of the Supreme Court, composed of the Court of Cassation, the Council of State and the Court of Auditors; Courts of appeal and the lower courts attached to them; and the High Court of Justice. Judges are appointed by the President of the Republic, by decree. On 27 August 2014, the President of the Republic opened the Malagasy Bar Association's National Conference on "The credibility of the judicial system for the effective rule of law", noting the importance of "restoring public confidence in respect of impunity, the fight against corruption, illicit wealth and other problems, to contribute to our development". Viewed at: http://www.presidence.gov.mg/?p=2480.

Table 2.1 New trade related laws and regulations, 2007-2014

Field	Instrument/text
Value added tax, excise duties and customs border levies	General Tax Code (published annually) and annual Finance Laws
Management of petrol prices	Successive half-yearly decrees
Ozone-depleting substances	Decree No. 2007-327 of 24 April 2007 regulating the importation and use of ozone-depleting substances
Single Window for investment	Decree No. 2007-396 of 7 May 2007 repealing Decree No. 2003-938 of 9 September 2003 establishing the Single Window for investment and the development of enterprises (GUIDE)
Law on Investment (LI)	Law No. 2007-036 of 14 January 2008 on investment in Madagascar
Free zones and enterprises (ZEFs)	Law No. 2007-037 of 14 January 2008 on ZEFs in Madagascar
Conditions of concession or other allocation of public property	Law No. 2008-013 of 23 July 2008 on public property; Implementing Decree No. 2008-1141 of 1 December 2008
Rights of persons under public law to real estate and movable property capable of private ownership	Law No. 2008-014 of 23 July 2008 on the private property of the State, of decentralized authorities and of legal entities under public law
Constitution	Constitution of the Fourth Republic (11 December 2010)
Requests for land >2,500 hectares	Circular No. 321/10/MATD/SG/DGSF of 25 October 2010
Responsibilities of the Ministry of Livestock	Decree No. 2011-373 of 1 June 2010, amended and supplemented by Decree No. 2011-487 of 6 September 2011 establishing the responsibilities of the Ministry of Livestock
Medical professions, SPS controls	Law No. 2011-002 on the Health Code
Civil aviation	Law No. 2012-011 on the Malagasy Civil Aviation Code
Food safety and quality	Decree No. 2013-260 of 9 April 2013 on the organization and functioning of the Agency for the Monitoring of Food Safety and Quality
Trade in scrap metal and aluminium and copper waste	Decree No. 2013-428 of 14 November 2013 suspending the purchase and sale of scrap metal and aluminium and copper waste
Marketing of vanilla	Interministerial Order No. 35 255/2013 of 8 December 2013 regulating the general conditions for marketing vanilla
Regulation of the telecommunications sector	Decree No. 2014-1650 setting out the procedures and measures to be applied by the Regulatory Agency for the regulation of the telecommunications sector
Regulation of telecommunications (backbone)	Decree No. 2014-1652 establishing the framework for the sharing of telecommunications infrastructure
Regulation of telecommunications networks and services	Decree No. 2014-1651 of 21 October 2014 regulating telecommunications networks and services
Trade remedies	Decree No. 2014-1726 of 19 December 2014 on the establishment, organization and functioning of the National Authority for Trade Remedies
Cybercrime	Law No. 2014-006 of 17 July 2014 on combating cybercrime
Commercial companies	Law No. 2014-010 of 21 August 2014, amending and supplementing Law No. 2003-36 of 30 January 2004 on commercial companies
Businesses	Law No. 2014-015 of 21 August 2014, amending and supplementing Law No. 2003-38 of 3 September 2004 on businesses
Security	Law No. 2014-016 of 21 August 2014, amending and supplementing Law No. 2003-041 of 3 September 2004 on security
State-invested companies	Law No. 2014-014 on state-invested commercial enterprises
Electronic transactions	Law No. 2014-024 of 10 December 2014 on electronic transactions
Electronic signature	Law No. 2014-025 of 10 December 2014 on electronic signature
Confidential data	Law No. 014-038 of 9 January 2015 on the protection of personal data
Copyright and related rights	Law No. 2013-015 of 24 February 2014 authorizing the ratification of the WIPO Treaties on copyright (WCT) and related rights (WPPT)
	Decree No. 2014-745 of 4 June 2014 ratifying the WIPO WCT and WPPT Treaties
	Law No. 2013-016 of 20 February 2014 authorizing the ratification of the Rome Convention on related rights
	Decree No. 2014-746 of 4 June 2014 ratifying the Rome Convention on related rights

Source: Malagasy authorities.

2.1.1 Trade policy objectives

2.12. As part of the preparation of the National Development Plan, which was under way in 2015, the Ministry of Trade and Consumer Affairs (MCC) identified a series of operational priorities aimed at enabling trade to contribute effectively to economic recovery, while endeavouring to meet the Millennium Development Goals (MDG), especially poverty reduction, and continuing to focus on sustainable development and respect for the environment (Section 3.3.1.6).[8]

[8] Viewed at: http://www.commerce.gov.mg.

2.13. Domestically, the Ministry aims to improve market fluidity and protect consumers, while easing administrative procedures in order to facilitate trade; to improve the provision of information to operators; and to foster accountability among all stakeholders. Internationally, the stated objective is to open up new markets for Madagascar and set up specialized export services in the different regions, particularly in fields where Madagascar has exceptional export capabilities. A concurrent objective is to improve the compliance of Malagasy products with international standards, so that they can compete on export markets. The following have been identified as priority export sectors: mining, agriculture (including organic), fisheries and aquaculture, the textile/clothing and agrifood industries, handicrafts, information and communication technologies (ICT), and tourism. Each ministry is responsible for promoting exports in its own sphere.

2.1.2 Institutions responsible for trade strategy

2.14. In addition to the MCC, which is responsible for WTO matters and bilateral and regional trade agreements, the Ministry in charge of finance is also heavily involved in the implementation of trade policy, particularly through the Customs where tariff and trade facilitation matters are concerned. Malagasy Customs, with its partner GasyNet (Section 3.1.2), operates a Single Window for both exports and imports of goods. This electronic platform interconnects those involved in customs clearance, and therefore plays a central role in coordinating import and export processes.

2.15. The Economic Development Board of Madagascar (EDBM), another of the entities involved in export promotion, is a Single Window for investment which offers promotion and facilitation services, including in the ZEFs (Section 2.3.2). The International Trade Board of Madagascar (ITBM) is a private association dedicated to export promotion and international trade, which was set up in 2010 by the principal employers' organizations, with the assistance of the French Development Agency (AFD). It offers support and capacity building to enterprises. Closer integration of the activities of the Customs, the EDBM and the ITBM would be beneficial.

2.16. Indeed, in March 2015 the ITBM was intending to develop a (third) single window to expedite and facilitate administrative formalities at exportation, as a means of boosting exports.[9] Once operational this single window, like the one operated by Customs (TradeNet, Section 3.1), should enable those engaged in export and export production to lodge standardized data and documents at a single location. Moreover, there is already a (fourth) one-stop window to facilitate export formalities for mining products (Section 4.5.6).[10]

2.17. In general, coordination between the different ministries and agencies involved in trade matters could usefully be improved, including in the areas of trade facilitation and aid for trade (described below, Section 2.1.3). The MCC's leadership of the trade integration strategy could be strengthened by better interministerial cooperation and additional technical and financial resources. Rapid establishment of a national trade facilitation committee within the MCC could assist in that direction.

2.18. No national body is responsible for the evaluation of Madagascar's trade policy, but impact assessments may be carried out (for example, concerning the EPA with the EU). The evaluation of trade policy could be a task for the National Trade and Competition Institute, established by decree in 2013.[11]

2.19. A number of employers' and trade union organizations contribute to the elaboration of trade policy in Madagascar, again on an ad hoc basis. They include the Industrial Trade Union of Madagascar, the Madagascar Employers Group, the Chamber of Agriculture, the Madagascar Enterprises Group and the Group of Free Enterprises and Partners. The Federation of Chambers of Commerce and Industry of Madagascar (FCCIM, see also below), a public sector professional body, federates the network of 24 Chambers of Commerce and Industry established by a law of 2006.[12] It is funded by a State subsidy and by the local Chambers' subscriptions.

[9] Viewed at: http://www.itbm.mg.

[10] Interministerial Order No. 12506/2003/MEFB – MEM of 11 August 2003 establishing a Single Window for commercial exports of precious stones, semi-precious stones, precious metals and jewellery.

[11] Viewed at: http://www.commerce.gov.mg/images/Infohebdo/textefin1.pdf.

[12] Law No. 2006-029 of 24 November 2006.

The Chamber of Mines of Madagascar represents the collective interests of some 20 major companies engaged in mineral exploration, production and processing.

2.1.3 Aid for Trade

2.20. The trade development assistance received by Madagascar from its external partners has decreased significantly since 2007 (Chart 1.1). The MCC and the other institutions tasked with developing Madagascar's trade (Customs, EDBM, ITBM, FCCIM, etc.) cooperate on technical assistance and aid for trade with a number of main counterparts, whose actions would benefit from more effective coordination. Thus, in October 2014 the WTO, the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ICC), the United Nations Development Programme (UNDP), the World Bank, the IMF and the Enhanced Integrated Framework were engaged, concurrently, in actions aimed at promoting Madagascar's foreign trade; much more should be done in the way of integration and exchanges between the protagonists of the different projects, perhaps in the framework of the TPR follow-up workshop.

2.21. The MCC considers that its ability to coordinate the various assistance programmes effectively is hampered by a lack of financial and technical resources.[13] The authorities are looking to this third review of the country's trade policy to identify priorities and determine their trade-related technical assistance needs, with a view to achieving the various objectives (Section 2.1.1).

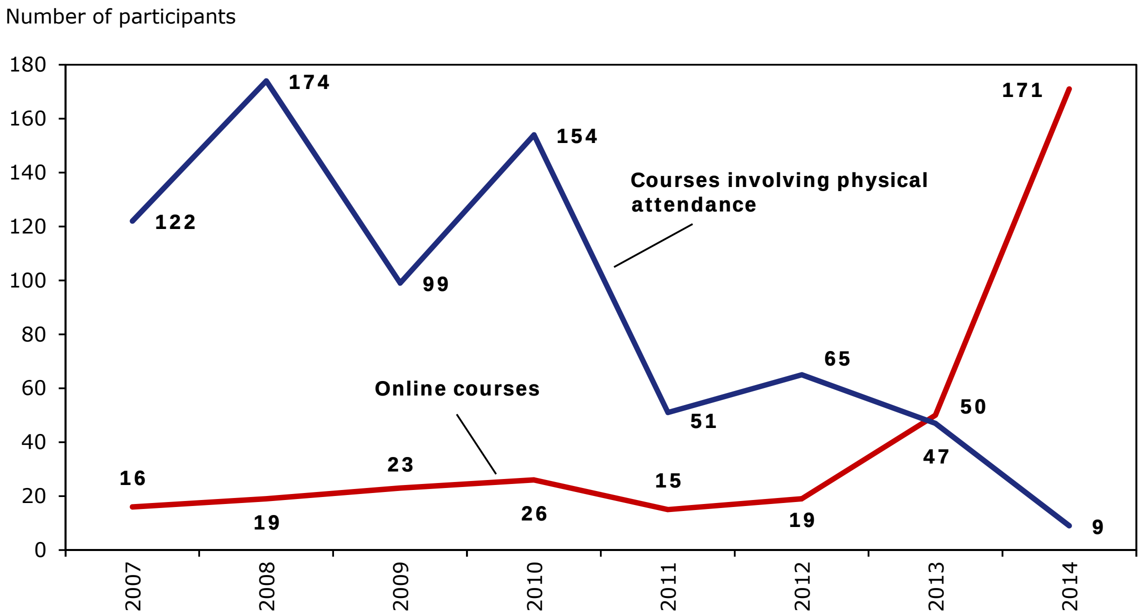
2.1.3.1 Assistance from the World Trade Organization (WTO)

2.22. Assistance to Malagasy officials by the WTO Institute for Training and Technical Cooperation averaged around CHF 250,000 per year during the period 2007-2013. The number of officials receiving WTO training fell sharply after 2010, with the total number of participants dropping from an average of around 160 per year in 2007-2010 to an average of 80 in 2011-2013. Training in which the trainers are physically present accounted for most of the decrease, with online course attendance remaining stable in 2007-2012, averaging around 20 participants per year, followed by a sharp increase to 50 participants in 2013 and then 171 in 2014, which testifies to the usefulness of WTO courses to Malagasy participants despite the crises and the lack of financial resources for physical attendance at courses (Chart 2.1.). This increase also reflects the revitalization of Madagascar's WTO Reference Centre in 2013 (see below).

2.23. Irrespective of the mode of training (that is, online or involving physical attendance), general courses on the WTO continued to form the bulk of the activities in which Malagasy officials participated. Three topics stand out as having been the subject of several specific training courses. They are: intellectual property rights (Section 3.3.6), WTO rules, and services (Chart 2.2).

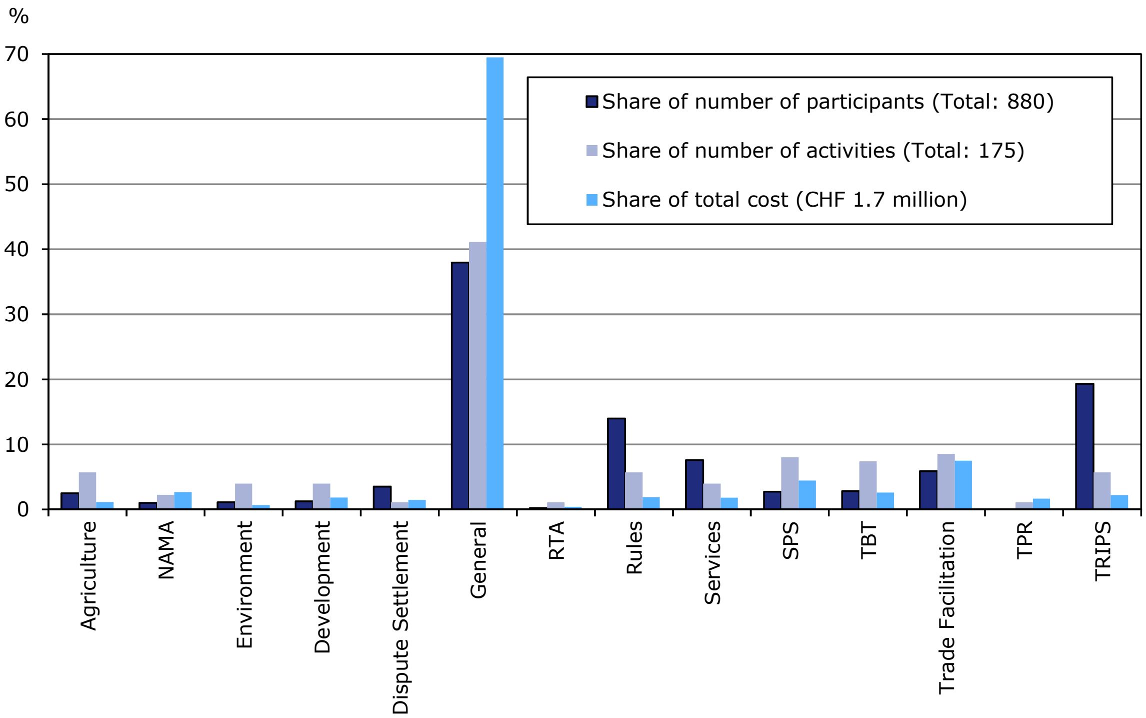
[13] The Ministry had a total budget of US$4.2 million in 2014, including an international contribution of US$2.4 million.

Chart 2.1 Number of participants in WTO technical assistance and training activities, 2007-2014



Source: WTO Secretariat.

Chart 2.2 WTO assistance to Madagascar by sphere of activity, 2007-2013



Source: WTO Secretariat.

2.24. Another WTO technical assistance initiative aimed at fostering trade was the setting up of a Reference Centre in the MCC's premises. The Reference Centre facilities are well maintained, well used and accessible to the public, which can thus obtain timely information about the WTO. In 2013 the WTO provided new computer equipment for the Reference Centre, and its coordinator received training at a symposium in Geneva.

2.1.3.2 Developments in the Enhanced Integrated Framework

2.25. Madagascar was one of three pilot countries selected in 2001 for the implementation of the "Integrated Framework", a trade-related assistance programme aimed specifically at least developed countries.[14] Almost 15 years on, it has to be acknowledged that this has produced little in the way of tangible results. A Diagnostic Trade Integration Study (DTIS) which looked at mainstreaming trade in the national economic development strategy was carried out in 2001-2003, with the assistance of the six participating agencies (WTO, WB, IMF, UNCTAD, ITC and UNDP). The DTIS included a "Matrix of Priority Actions", which was validated in July 2003 after the study process had been suspended in 2002 because of another political crisis. The 2003 DTIS listed 52 areas for action. Two programmes, one on capacity building and the other on export development support, were then delivered for Madagascar.

2.26. In 2005, after the Integrated Framework had been "enhanced" (EIF) by additional funding from international organizations or donor countries so that the needs identified in the DTIS could be met, two funding windows were established: Tier 1 is aimed at supporting capacity building for national civil servants, while Tier 2 is for priority projects to build trade-related and supply-side capacities. A first review of the Action Matrix in 2008 showed that only 60% of the activities identified had been carried out, and even these had been completed late. As the evaluation was activity-based as opposed to results-based, this percentage may have significantly over-represented the impact of the activities. Among the principal reasons for this low level of implementation were lack of capacity within the MCC, and the provision of only limited support by external partners because of the political crisis. Madagascar has not yet submitted any Tier 2 projects.

2.27. At the end of 2014, funding was available again for an update of the initial Study and a review of progress in the area of trade reforms. The Government therefore requested that the DTIS be reviewed and reached agreement with the World Bank, as implementing agency, on general terms of reference for this exercise. It should be noted that the TPR follow-up workshops could be of great assistance for the DTIS in particular.

2.1.4 Other trade assistance initiatives

2.28. The ITC, for its part, has recently turned its attention to non-tariff barriers affecting import-export enterprises in Madagascar.[15] It is also helping the Malagasy authorities to mobilize resources for the establishment of the ITBM's Single Window for exports (see above). In addition, it has financed information activities on the benefits of the WTO Agreement on Trade Facilitation for the private sector, and is supporting Madagascar with the formulation of Category C projects to be submitted to donors for possible funding.[16] The ITC is also working with the MCC on a Trade and Export Development Support Project which would be financed by the UN International Fund for Agricultural Development (IFAD). This US$9.4 million programme would focus on developing the export competitiveness of non-traditional subsectors such as essential oils, organic cocoa, pepper, Cape peas and organic vanilla.

2.29. IFAD has also set up the Support Programme for the Rural Microenterprise Poles and Regional Economies (PROSPERER) in Madagascar.[17] The project involves encouraging producers to enter into formal contracts with market operators, so that they can become better integrated into subsectors offering high potential and enjoy better market access. PROSPERER has made it possible to organize certain agricultural subsectors, in partnership with the FCCIM which has received resources enabling it to offer services tailored to the needs of rural enterprises.

2.30. The World Bank also has a trade-related technical assistance project – the Integrated Growth Poles Project (IGPP).[18] This project aims, *inter alia*, to construct and rehabilitate critical

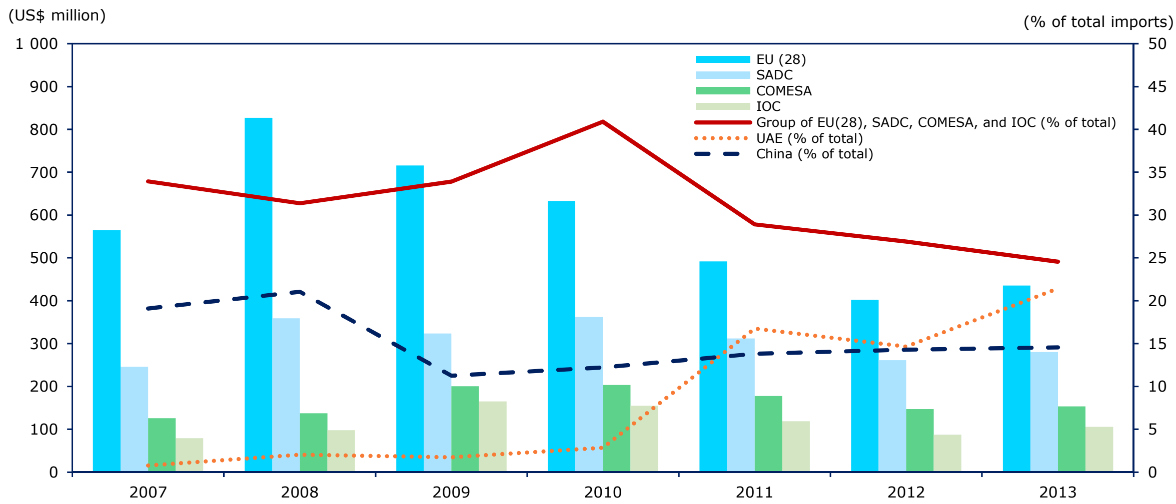
[14] Enhanced Integrated Framework website: http://enhancedif.org/en.
[15] ITC (2014).
[16] Category C measures are provisions of the Trade Facilitation Agreement that developing countries will need external technical assistance to implement.
[17] Viewed at: http://operations.ifad.org/web/ifad/operations/country/project/tags/Madagascar/1401/project_overview.
[18] Viewed at: http://www.worldbank.org/projects/P110405/mg-integrated-growth-poles-additional-financing-credit?lang=en.

infrastructure essential for sustained economic activity in the tourism, manufacturing, agri-business and mining sectors, and to put in place appropriate incentive measures to achieve rapid, equitable and sustainable growth. The IGPP is classed as Aid for Trade, in that it helps to boost agricultural and manufacturing exports, as well as promoting tourism. As for the AFD, it is pursuing its Trade Capacity Building Programme (PRCC), which assists export enterprises by: (i) strengthening their internal business capabilities; (ii) improving market research; and (iii) promoting Madagascar's image on certain foreign markets.[19]

2.2 Trade agreements and arrangements

2.31. Madagascar is party to a number of trade agreements and arrangements as described in this section. As can be seen from Chart 2.3, the granting of tariff preferences to members of these agreements has not been followed by an increase in the Malagasy import market share of the preferential partners concerned, while the EU's share of imports into Madagascar contracted sharply during the period 2008-2013 (Section 1.3).

Chart 2.3 Imports from various partners, 2007-2013



Note: Certain countries belong to more than one grouping.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

2.2.1 World Trade Organization (WTO)

2.32. The previous review of Madagascar's trade policy (its second TPR) took place in April 2008. Madagascar signed the Marrakesh Agreement on 15 April 1994, and became a WTO Member on 17 November 1995 following ratification by its Parliament.[20] Before that Madagascar had been a member of the GATT since September 1963, that is, three years after independence from France in 1960. It is recognized as a "least developed country" (LDC). It is not a signatory to any plurilateral agreement or to any of the protocols and agreements concluded under WTO auspices, with the exception of the Protocol of Amendment to insert the Trade Facilitation Agreement into Annex 1A of the WTO Agreement, adopted in November 2014.[21] As an LDC, Madagascar will have one year to ratify the Protocol (and notify its Category A, B and C measures) after its entry into force, which will occur when 106 WTO Members have ratified it.

2.33. Madagascar grants at least most-favoured-nation (MFN) treatment to all its trading partners. Its GATT and, subsequently, WTO tariff bindings are contained in Schedule LI[22] for goods

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[19] Viewed at: http://www.diplomatie.gouv.fr/fr/IMG/pdf/OMD_8_PRCC_Madagascar.pdf.

[20] Law No. 95-008 of 10 July 1995 authorizing ratification of the Agreement Establishing the WTO (OJ No. 2312 of 24 July 1995); and Decree No. 95-555 of 22 August 1995 ratifying the Agreement Establishing the WTO (OJ No. 2321 of 4 September 1995, p. 2355).

[21] Viewed at: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_agreement_e.htm.

[22] WTO document G/MA/TAR/RS/362 (including Table containing bound duties), viewed at: http://docsonline.wto.org/imrd/gen_redirectSearch.asp?query=(@meta_Symbol+%20WT/Let/988).

(Section 3.1.4.2). Its commitments on trade in services are specified in document GATS/SC/51. Between 1995 and 2005, Madagascar participated as a third party in four WTO dispute settlement proceedings, concerning export subsidies on sugar and trade in bananas; it has not participated in any proceedings since that time.[23] Since 2010, Madagascar has done a great deal of work on updating its WTO notifications (Table 2.2), including its Integrated Database (IDB) notifications.

Table 2.2. WTO notifications by Madagascar since 2008

Agreement and notification date	WTO document	Content
Import Licensing Procedures (Article 7.3)		
19 May 2011	G/LIC/N/3/MDG/6	No changes to the import licensing systems
1 April 2009	G/LIC/N/3/MDG/4	No changes to the import licensing systems notified in document G/LIC/N/3/MDG/3 of 19 September 2008
26 January 2010	G/LIC/N/3/MDG/5	Description of new procedures
23 September 2014	G/LIC/N/1/MDG/3	No change
Subsidies and Countervailing Measures (Article XVI:1 of the GATT 1994 and Article 25)		
22 June 2010	G/SCM/N/186/MDG	No prescribed measures
7 October 2013-23 March 2015	G/SCM/N/220/MDG G/SCM/N/253/MDG G/SCM/N/202/MDG	No prescribed measures
Regional Trade Agreements (Article XXIV:7(a) of the GATT 1994)		
10 February 2012	WT/REG307/N/1	Establishment of a free trade area for trade in goods
Trade-Related Aspects of Intellectual Property Rights (Article 63.2)		
15 February 2011	IP/N/1/MDG/1	Legislation on industrial property protection in Madagascar
17 February 2011	IP/N/1/MDG/I/2	Industrial property protection regime in Madagascar
	IP/N/1/MDG/C/2 IP/N/1/MDG/E/2	Decree No. 98-434 of 16 June 1998 on the status and functioning of the Malagasy Copyright Office (OMDA)
	IP/N/1/MDG/E/1	Decree No. 92-994 establishing and organizing the Malagasy Industrial Property Office (OMAPI)
	IP/N/1/MDG/C/3 IP/N/1/MDG/E/3	Decree No. 98-435 of 16 June 1998 establishing general regulations on the collection of fees on copyright and related rights
	IP/N/1/MDG/C/4 IP/N/1/MDG/E/4	Interministerial Order No. 12226/2006 establishing measures to more effectively combat counterfeiting of literary and artistic works
	IP/N/1/MDG/I/1	Ordinance No. 89-019 establishing an industrial property protection regime in the Democratic Republic of Madagascar
	IP/N/1/MDG/C/1	Law No. 94-036 on literary and artistic property
Anti-Dumping Practices (Articles 16.4 and 16.5)		
26 February 2010	G/ADP/N/193/MDG	No prescribed measures
Agreement on Agriculture (Articles 10 and 18.2)		
19 September 2011	G/AG/N/MDG/3	No export subsidies in the years 2000-2010
7 July 2014	G/AG/N/MDG/4	Domestic support commitments in the years 2000-2012
Sanitary and Phytosanitary Measures		
11 April 2008	G/SPS/N/MDG/2	Draft Food Law
11 April 2008	G/SPS/N/MDG/1	Draft decree regulating the veterinary profession, livestock sector activities, animal health requirements and the various penalties under Law No. 2006-030 of 24 November 2006 on livestock farming in Madagascar
9 April 2010	G/SPS/N/MDG/3	Order No. 3669/2010 of 1 March 2010 establishing varroasis control measures
23 April 2010	G/SPS/N/MDG/9	Order laying down specific hygiene rules for food of animal origin
23 April 2010	G/SPS/N/MDG/8	Order laying down specific rules for the organization of official controls on products of animal origin intended for human consumption (excluding fisheries and aquaculture products)
23 April 2010	G/SPS/N/MDG/6	Order laying down the sanitary control measures for certain substances and residues in honey and honey products
9 April 2010	G/SPS/N/MDG/4	Order laying down the health requirements for crustaceans and products thereof
23 April 2010	G/SPS/N/MDG/7	Order on the hygiene of foodstuffs
13 April 2010	G/SPS/N/MDG/5	Interministerial Order regulating the conditions for the granting of approval to and the sanitary control of establishments engaged in the treatment and marketing of guano
31 October 2011	G/SPS/N/MDG/11	Ministerial Order No. 29179/2011 of 11 October 2011 designating the authority responsible for the phytosanitary inspection and certification of plants for human consumption intended for export
31 October 2011	G/SPS/N/MDG/10	Interministerial Order No. 25482/2011 of 29 September 2011 establishing sanitary control measures for certain substances and residues found in plants and plant products for human consumption intended for export

Source: WTO Secretariat.

[23] *European Communities - Regime for the Importation, Sale and Distribution of Bananas* (DS27); *European Communities - Export Subsidies on Sugar*, DS265, DS266 and DS283.

2.2.2 African Union

2.34. Madagascar is a founding member of the African Union (AU).[24] Eventually, the AU aims to be an economic and monetary union. To this end, the African Economic Community (AEC) was founded in June 1991 under the terms of the Treaty of Abuja, which provides for the creation of an African common market in six stages spread over 34 years, i.e., up to 2025. The integration process is based on the coordination and harmonization of tariff and non-tariff measures between several Regional Economic Communities (RECs), with a view to establishing firstly, a continent-wide customs union, and subsequently an economic area.

2.35. Madagascar belongs to two of the eight RECs recognized by the AU, namely the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). In order to rectify the problems posed by this dual membership, the AU recommended that these two RECs and the East African Community (EAC) (Chart 2.4) establish a Tripartite Free Trade Area (FTA) in December 2014 (see below).

2.2.2.1 Common Market for Eastern and Southern Africa (COMESA)[25]

2.36. Although Madagascar is one of the founding members of the Treaty establishing COMESA (signed in 1993), having ratified the Treaty in July 1995, its name does not appear in the list of countries contained in the 1995 notification made to the WTO under the Enabling Clause of the GATT 1994.[26] It is therefore desirable that Madagascar notify the WTO of its membership of the Treaty.

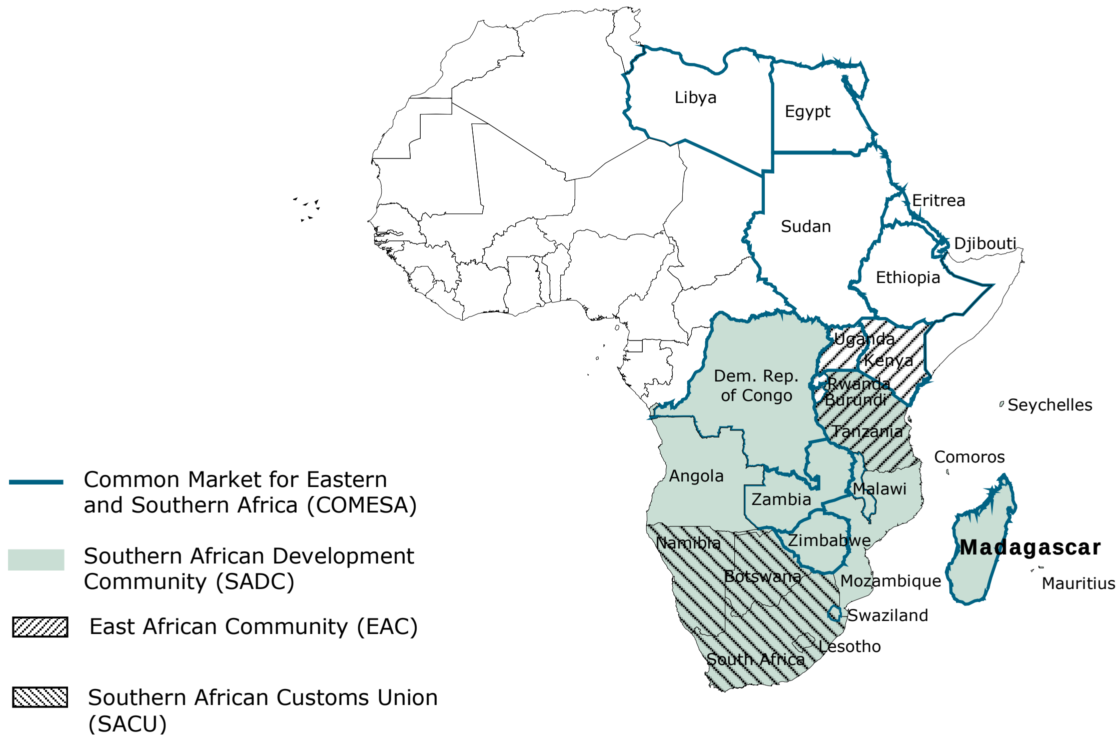
2.37. The COMESA tariff reduction programme began on 1 November 2000. Its guiding principle is the exchange of preferences on originating products on a reciprocal basis. Nevertheless, Madagascar grants duty-free market access to all COMESA members without a reciprocity requirement. The COMESA member countries apply the Harmonized System (HS) 2002, the Automated System for Customs Data (ASYCUDA) and EUROTRACE.

2.38. Moreover, COMESA has a draft Common External Tariff (CET), the rates being 0% for raw materials and capital goods, 10% for intermediate products and 25% for finished goods. In March 2015, Madagascar had submitted three provisional lists to the COMESA Secretariat in this context: List I for products whose MFN rates are already aligned on the CET; List II for sensitive products whose rates will take longer than the transition period to align (no more than 30% of national tariff lines); and List IIIa for products not covered by the CET.

2.39. The COMESA Fund provided for by the Treaty was adopted in 2002; it consists of two windows: the COMESA Adjustment Facility (CAF) and the COMESA Infrastructure Fund (CIF). The CAF is financed by the European Union through the Regional Integration Support Mechanism. The Funds are intended to assist economies with the adjustment process during the implementation of regional integration programmes.

[24] The Charter establishing the Organization of African Unity was signed on 25 May 1963. The Constitutive Act of the AU was adopted at the summit held in July 2000 in Lomé (Togo).
[25] Viewed at: http://www.comesa.int.
[26] WTO document WT/COMTD/N/3 of 29 June 1995, viewed at: http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=121.

Chart 2.4 Madagascar: Network of Regional Trade Agreements



Source: WTO Secretariat.

2.40. The Eastern and Southern African Trade and Development Bank finances foreign trade transactions and projects by public or private investors resident in one of the member States.[27] It is currently shifting its focus towards activities aimed at improving the efficiency of clearing operations, to complement the services offered by commercial banks; providing traders with political risk insurance for their intra-regional trade; and facilitating the harmonization of monetary and fiscal policy within the region.

2.2.2.2 Southern African Development Community (SADC)[28]

2.41. Madagascar has been a member of the SADC (established in 1992) since 18 August 2005, but its name does not appear on the notification made to the WTO by Tanzania. This agreement was notified to the WTO in May 2007 pursuant to Article XXIV of the GATT 1994, and was examined by Members in May 2007.[29] It would be helpful if the authorities could notify the Secretariat accordingly.[30] At the SADC Extraordinary Summit held in Swaziland in 2009, Madagascar was suspended from the Organization's activities because of its ongoing political crisis and did not take part in any negotiating meetings until 2014. Since then, Madagascar has resumed its participation in the various SADC meetings.

2.42. Within the FTA, trade in goods considered as SADC-originating has been completely duty free since 2012, with a few exceptions (Section 3.1.4.4). The institutional framework of the SADC is comprised of the Conference of Heads of State and Government, the Council of Ministers, the Secretariat, headquartered in Gaborone (Botswana), a Court, established in Windhoek, and technical committees (for example, the Council of Ministers responsible for trade matters (CMT)). The SADC Protocol on Trade (and the amendment thereto), applicable

[27] Not all COMESA members are members of the PTA Bank. Equally, countries that are not COMESA members may join the PTA Bank.
[28] SADC web portal: http://www.sadc.int.
[29] WTO document WT/REG176/N/1/Rev.1 of 27 August 2004, see the RTA database at: http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=45.
[30] By sending an email to: rta@wto.org.

from 1 September 2000, progressively established an FTA from 2008 onwards[31]; Madagascar deposited its instruments of ratification on 21 February 2006.[32]

2.2.2.3 Tripartite Free Trade Area (FTA)

2.43. In 2008, the COMESA, EAC and SADC Heads of State and Government ordered the expeditious establishment of a Tripartite FTA. They also agreed that the Tripartite FTA would build upon the acquis and the tariff liberalization achieved within the FTA of each REC. At the Second Tripartite Summit, held in Johannesburg in June 2011, the negotiating principles and structures were endorsed, together with a roadmap for establishing the Tripartite FTA and a Declaration launching the negotiations. The Declaration was not signed by Madagascar, pending an impact assessment of its accession to this new organization.

2.2.2.4 Indian Ocean Commission (IOC)

2.44. Madagascar is a founding member of the IOC, which was established in 1984 by the Victoria Agreement with a Secretariat based in Quatre Bornes (Mauritius). The IOC has five members: Comoros, Madagascar, Mauritius, Réunion (France) and Seychelles. Almost 70% of the IOC's activities are funded by the EU, through the European Development Fund (EDF).[33]

2.2.3 Relations with the European Union (EU)

2.45. Madagascar is one of the 79 countries making up the African, Caribbean and Pacific Group of States (ACP), with which the EU concluded the Cotonou Agreement in June 2000.[34] As from 1 January 2008, the trade provisions contained in Chapter II of this Agreement were replaced by those contained in European Council Regulation No. 1528/2007 20 December 2007.[35] This Regulation applies to products originating in Madagascar, as in all the ACP countries or regions (listed in Annex I to the Regulation) which have signed (or "initialled") an Economic Partnership Agreement (EPA) with the EU.

2.46. An interim EPA (IEPA) of this kind was concluded in August 2009 between the EU and four countries of the Eastern and Southern Africa (ESA) group, namely Madagascar, Mauritius, Seychelles and Zimbabwe.[36] The WTO notification was made on 9 February 2012.[37] The IEPA entered into force on 14 May 2012.[38] It deals with three areas: market access, fisheries, and development cooperation.[39]

2.47. One of the main declared objectives of this Agreement is to promote economic cooperation and good governance in the ESA region (Article 2(b)).[40] Another objective is "to establish an

[31] Implementation of the SADC Protocol on Trade commenced on 1 September 2000. The SADC members that have acceded to the Protocol are: the five members of the Southern African Customs Union (SACU: Botswana, Lesotho, Namibia, South Africa and Swaziland), Angola, Madagascar, Malawi, Mauritius, Mozambique, Tanzania, Zambia and Zimbabwe.

[32] According to the authorities, Madagascar has signed and ratified the Protocol on Immunities and Privileges, the Protocol on the Tribunal, the Protocol on Education and Training, the Protocol on Health and the Protocol Against Corruption.

[33] Online information from the IOC, viewed at: http://www.coi-ioc.org.

[34] The Agreement was signed on 23 June 2000 in Cotonou (Benin), and officially entered into force on 1 April 2003 after its ratification. The Agreement replaced the Lomé Convention, in effect since 1975, whose fourth extension expired at the end of February 2000.

[35] Council Regulation (EC) No. 1528/2007of 20 December 2007 applying the arrangements for products originating in certain ACP states provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements. Viewed at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:348:0001:0154:FR:PDF.

[36] Malagasy Customs, Interim Economic Partnership Agreement (IEPA), viewed at: http://www.douanes.gov.mg/?page_id=569 [11 June 2014].

[37] WTO document WT/REG307/N/1, viewed at: http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=469.

[38] Prior to the entry into force of the IEPA, trade with the EU was governed by Market Access Regulation No. 1528, under which preferential access was provided for all products except rice and sugar.

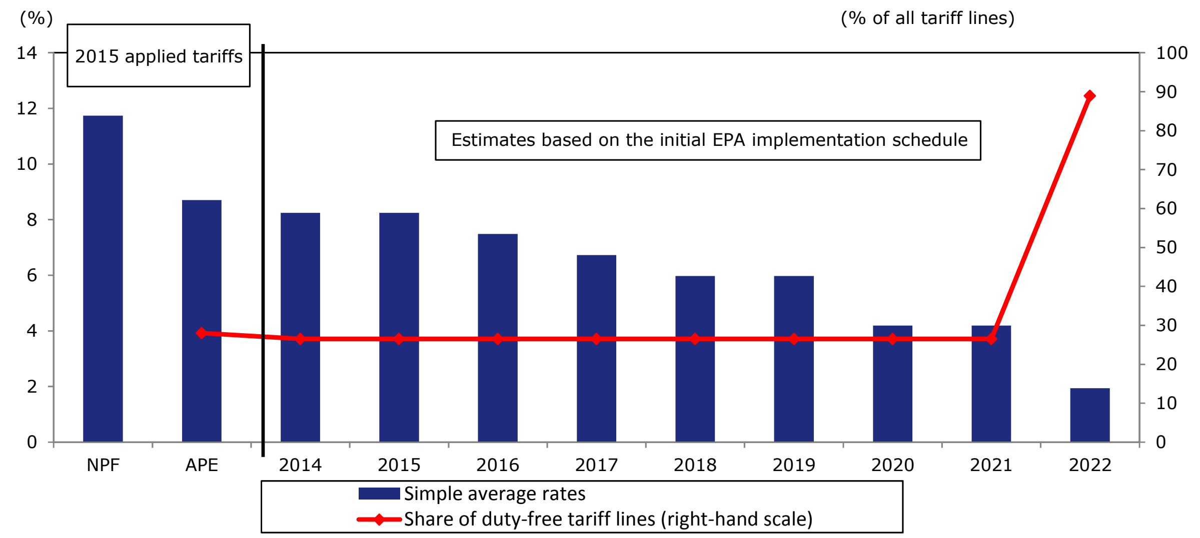
[39] Viewed at: http://www.douanes.gov.mg/?page_id=569.

[40] Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States,

agreement consistent with Article XXIV of General Agreement on Tariffs and Trade 1994 (GATT 1994)" (Article 3). The IEPA specifies that the liberalization of trade will take place asymmetrically (pursuant to Article 4(c)). The EU is maintaining the full duty-free and quota-free market access conditions provided for by Regulation No. 1528/2007, except in the case of sugar: part 5 of Annex I specifies that the EU may, during the period between 1 October 2009 and 30 September 2015, impose the MFN duty on products of tariff heading 1701 originating in ESA States, imported in excess of specified levels, if such imports are deemed to distort the EU sugar market.[41]

2.48. Madagascar's tariff reduction schedule, covering the period 2014-2022, is set out in Annex II of the IEPA.[42] As can be seen from Chart 2.5, customs duties will be reduced progressively, but only at the very end of the phasing-out period, that is, in 2022, will there be full duty-free access. The January 2014 duty reductions related essentially to capital goods and raw materials. Some 200 tariff lines are totally exempt from liberalization; they account for around 19.2% of average imports in 2004-2006. These are goods such as certain meats, fish, other products of animal origin, vegetables and beverages.[43]

Chart 2.5 Share of imports from the European Union entering duty free, and simple average rates under the EPA



Note: Calculations based on the 6-digit HS. 2015 applied tariff based on the HS12 nomenclature. EPA schedule (to 2022) based on the HS07 nomenclature.

Source: Estimates based on tariff information supplied by the authorities.

2.49. Article 17 provides for the elimination, upon entry into force of the IEPA, of all restrictions and prohibitions affecting trade among the parties, other than the customs duties, taxes, etc. provided for under Article 7. Products traded among the parties may not be made subject to new taxes arising out of agreements concluded with third parties subsequent to the signature of the IEPA (Article 18).

2.50. Protocol 1, Article 38, deals with dispute settlement. In all cases the settlement of disputes between the importer and the customs authorities of the importing country is to take place under

on the other part, viewed at: http://eur-lex.europa.eu/resource.html?uri=cellar:75184c8b-f721-4002-87c8-e301d4adef11.0002.01/DOC_2&format=PDF [13 June 2014].

[41] Viewed at: http://eur-lex.europa.eu/resource.html?uri=cellar:75184c8b-f721-4002-87c8-e301d4adef11.0002.01/DOC_2&format=PDF (p. 32).

[42] Viewed at: http://eur-lex.europa.eu/resource.html?uri=cellar:75184c8b-f721-4002-87c8-e301d4adef11.0002.01/DOC_2&format=PDF.

[43] IEPA, viewed at: http://eeas.europa.eu/delegations/madagascar/documents/eu_madagascar/ape_interimaire_fr.pdf [11 June 2014].

the legislation of that country.[44] Also, provisions on the settlement of disputes between the governments of the parties are set out in Article 54; Article 53 contains a rendez-vous clause with a view to the conclusion of an EPA that includes an elaborated dispute settlement mechanism.

2.51. In addition to the market access agenda, there is a development component which provides for technical and financial assistance, in particular for the funding of the priority development projects listed in the regional and national matrices. EU funding of €950,000 is foreseen for the implementation of the IEPA, in order to finance these projects.

2.52. According to the authorities, the IEPA also includes an additional quota of 2,500 tonnes of "non-ACP originating" tuna that national tuna industries will be able to import, and then re-export canned as an originating product, that is, duty free to EU markets, creating a foreign exchange surplus and more jobs for the Malagasy tuna industry, as well as satisfying European market demand.

2.53. Furthermore, Madagascar continues to benefit from preferences under the EU's Generalized System of Preferences (GSP), which incorporates the "Everything but Arms" initiative[45] under which the EU has granted duty-free access since 2001, with no quantitative restrictions, to products (except for arms and ammunition) originating in least developed countries, including Madagascar.

2.2.4 Relations with the United States of America

2.54. In June 2014, Madagascar rejoined the group of 37 countries eligible for the programme set up by the United States in 2000 under the African Growth and Opportunity Act (AGOA)[46], having been excluded from the programme in December 2009 as a result of the 2009 coup d'état. The beneficiary countries are granted duty-free and quota-free access to the United States market for a range of products, including certain agricultural and textile products.[47]

2.55. As can be seen from Chart 2.6, the 2009 exclusion was followed not only by a sharp drop in US imports from Madagascar, but also by a radical change in their structure, with the end of the AGOA preferences halting production and exports of textiles and clothing to the United States (Section 4.6.2.2).

2.56. Madagascar is also eligible for United States preferences under the GSP, which Malagasy economic operators used more extensively during the AGOA preferences stoppage. Also, it is granted preferential access for its sugar, within the limits of a 7,258-tonne quota which is, however, not filled (Section 4.6).

2.2.5 Other trade agreements and arrangements

2.57. Several other countries extend (non-reciprocal) preferential tariff treatment to goods originating in Madagascar under the GSP, including Canada, China, India, Japan and Morocco. Each of these countries has its own rules of origin which should be complied with in order to benefit from tariff preferences under these arrangements. Madagascar has also signed bilateral trade agreements with some 15 countries. These agreements establish an overall framework for trade cooperation, without granting tariff preferences.

[44] Viewed at: http://eur-lex.europa.eu/resource.html?uri=cellar:75184c8b-f721-4002-87c8-e301d4adef11.0002.01/DOC_2&format=PDF (p. 1 038).

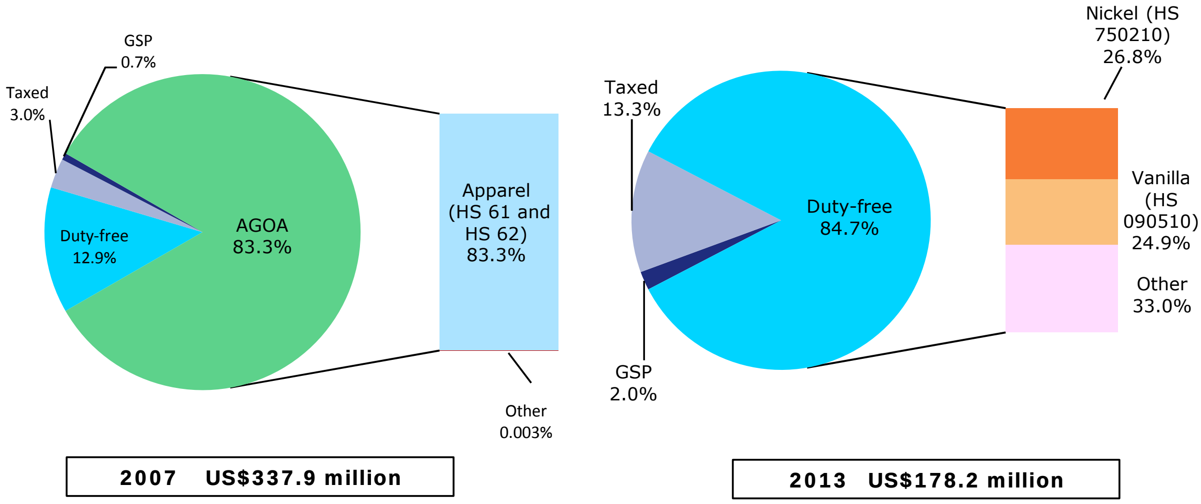
[45] WTO document WT/COMTD/57 of 29 March 2005.

[46] Viewed at : http://www.ustr.gov.

[47] African Growth and Opportunity Act, viewed at: http://www.agoa.gov/index.html.

Chart 2.6 United States imports from Madagascar, 2007 and 2013

(% of total imports)



Note: "Taxed" includes products subject to non-zero duty rates, and products eligible for preferential programmes which have not been availed of (3.0% and 1.0% of total imports in 2007 and 2013, respectively).

Source: US International Trade Commission, viewed at: http://dataweb.usitc.gov.

2.3 Investment regime

2.58. One of the particularities of Madagascar's investment policy regime, which has not changed significantly since 2008, is that on the whole the relevant legislation applies identically to Malagasy citizens and foreigners, and to domestic and foreign (direct or portfolio) investment. UNCTAD has a website that lists all texts containing provisions relating to international investment in Madagascar.[48] In March 2015 the UNCTAD Secretariat was in the process of preparing an Investment Policy Review of Madagascar.

2.59. Enterprises can invest in Madagascar under three principal regimes, which are not cumulative although it is possible to switch from one to another. They are: (i) the ordinary law regime, contained in the Law on Investment in Madagascar (LI)[49], which applies to enterprises that sell the vast majority of their products on the local market; (ii) a specific framework established for large-scale mining investment (Section 4.5)[50] and investment in hydrocarbons; and (iii) an exceptional regime, contained in the Law on ZEFs in Madagascar, which applies to enterprises that export at least 95% of their production.

2.60. However, it is also possible to make an investment under a special arrangement concluded with the State, the provisions of which are governed by decree. It was not possible to obtain a list of the special arrangements in force.

2.61. Since 2007, the EDBM[51] has become one of the key institutions for promoting and supporting investment in Madagascar, and for the application of the country's investment regime. All companies (apart from sole proprietorships), whether Malagasy or foreign-owned, must be registered with the EDBM when they are set up; this should facilitate the monitoring and analysis of trends in the domestic and foreign investment which is so necessary for economic recovery.

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[48] UNCTAD – Investment Policy Hub, viewed at: http://investmentpolicyhub.unctad.org/IIA/CountryIris/125#iiaInnerMenu.

[49] Law No. 2007-036 of 14 January 2008 on investment in Madagascar, viewed at: http://www.banque-centrale.mg/index.php?id=m4_4_1_11.

[50] Law No. 2001-031 of 8 October 2002 establishing a special regime for large-scale investment in Madagascar's mining sector (LGIM), amended by Law No. 2005-022 of 17 October 2005, viewed at: http://eiti-madagascar.org/loi-sur-les-grands-investissements-miniers-lgim-2005.

[51] Decree No. 2006-382 of 31 May 2006. Information on the EDBM was obtained from its web portal: http://www.edbm.gov.mg.

2.62. The EDBM has a website which is operational and is updated regularly, where most of the regulations relating to domestic economic activity can be accessed.[52] The EDBM has also assumed the responsibilities of the Single Window for investment and the development of enterprises (GUIDE)[53], set up in 2004 to group together all of the services concerned with business start-up formalities, which could be completed within four days, without costs. At present, the only documents still being issued by the EDBM are applications for approval under the ZEF regime, as well as the investor visa, the foreign worker visa[54] and the family reunification visa. According to information received in connection with this report, the EDBM no longer deals with applications for land access authorization[55], or authorizations for setting up tourism establishments; neither does the EDBM issue the professional identity card for self-employed foreigners (CIPENS), which remains a requirement for foreign investors (Section 2.3.5).

2.3.1 Investment under ordinary law

2.63. Under the LI, both Malagasy and foreign legal and natural persons may establish businesses in all areas of activity and hold 100% of an enterprise's capital, subject to the provisions applicable to certain sectors which are specifically regulated, including banking, insurance, mining, petroleum, telecommunications, and medical, paramedical and pharmaceutical activities. The LI offers the customary guarantees for foreign investors in respect of security of capital and investment, compensation for expropriation, equal treatment, and freedom to make both current and capital transfers abroad, although the latter must be declared.

2.64. In order to facilitate foreign investors' work arrangements, the LI allows their entry and short-stay visa to be extended and converted into a "professional category resident visa", whether they have a contract of employment with a Malagasy enterprise or are occupying a senior management or executive position in that enterprise. This professional visa authorizes holders and their families to reside in Madagascar. The provisions of the Malagasy Labour Code apply.

2.65. The LI offers no fiscal privileges to (foreign or domestic) investors, but is aimed specifically at "maintaining a simple, fair and growth-friendly tax environment" (Article 6). Enterprises are subject to personal and corporate income tax (IR), the rate of which has been reduced from 30% to 20% with a minimum leviable amount.[56] In order to revive the economy, IR reductions for newly established enterprises, which had been abolished during the 2007 tax year, were reintroduced in 2015 for a whole range of sectors, curiously not including agrifood activities.

2.66. Pursuant to the CGI (Article 02.02.32), any domestic or foreign direct or portfolio investment, in any sector (including mining), is also subject to the tax on capital formation (DA) amounting to 0.5% of the capital invested. Investments are also subject to miscellaneous duties and charges on the purchase of buildings (by Malagasy companies) or the long-term rental of buildings (by foreign companies).

2.67. In 2008, the flat-rate transfer tax was abolished and replaced by a tax on income (IR). This is a 10% tax on payments and transfers by Malagasy companies for the benefit of natural or legal persons abroad who are not taxed in Madagascar. It therefore relates to imports of services under mode 1 in the WTO General Agreement on Trade in Services (GATS).

2.68. Existing tax treaties with France (1984) and Mauritius (1996) are designed to prevent double taxation of nationals resident in one or the other of the partner countries.

2.3.2 Free zones and enterprises (ZEFs)

2.69. Enterprises (whether domestic or foreign) wishing to manufacture in Madagascar for export can operate under Law No. 2007-037 of 14 January 2008 on Free Zones and Enterprises in

[52] Viewed at: http://www.edbm.gov.mg.
[53] Decree No. 2003-938 of 9 September 2003. This decree was repealed by Decree No. 2007-396 of 7 May 2007 which incorporated the activities of the GUIDE in the EDBM.
[54] Order No. 18638/05 of 1 December 2005.
[55] For example: http://www.tana-cciaa.org/download.php?cat=invest&file=dd529608eaab.pdf.
[56] General Tax Code (CGI).

Madagascar, which applies to enterprises that export at least 95% of their production.[57] In March 2015, seven years after the promulgation of this law, there was – for the first time – a draft decree on its implementation.[58] Such a decree would help bring clarity to operations under this regime, where abuses are currently rife; it appears that in 2015, several hundred enterprises that were not exporting were operating under the regime, on the basis of false documentation.

2.70. The crisis prompted a sharp drop in the number of ZEFs operating in Madagascar from 2008. A majority of these (foreign-owned) enterprises had been set up to serve the US garment market, which was closed to them when the AGOA preferences were halted in 2009 (Section 2.2.4). With the resumption of the AGOA, apparently there are already 13 new, eligible companies.

2.71. The conditions for ZEF eligibility are: firstly – in principle – the sale abroad of goods or services originating in Madagascar. Eligible enterprises may sell on the local market a maximum of 5% of annual production actually exported (Article 7), or they may sell directly to other ZEFs. The second condition is to be engaged in one of the categories of activity specified by the Law: industrial processing enterprises are engaged in manufacturing[59]; intensive basic production enterprises are active in agriculture, livestock farming and the exploitation of fisheries resources; for services enterprises, eligibility is confined to the following activities: film and video production; software design and development; computer data processing; technical testing and analysis; product certification; telemarketing and telecommunications; and banking operations. Applications for approval are evaluated in an interministerial file. The EDBM is responsible for issuing approvals.

2.72. Unlike the ordinary law regime, the ZEF regime offers significant tax benefits (Table 2.3) which seriously distort the conditions of competition between local enterprises and ZEFs; the fact that these benefits are additional to the following advantages explains the high number of fraud cases:

- freedom to borrow abroad as well as in local currency;
- freedom to pay all export earnings and payroll income into foreign banks abroad;
- free access to foreign exchange locally (for payments to suppliers, remittance of dividends, etc.), subject to availability;
- freedom to transfer available funds at the end of a contract or on closing down, provided that debts incurred in Madagascar have been settled in full;
- no administrative authorization required for the sale of shares, or of a business, between non-residents;
- exemption from the income tax on payments or transfers abroad (formerly flat-rate transfer tax);
- freedom to enter into subcontracting arrangements with companies under the ordinary law regime;
- exemption from the 0.5% tax on capital formation; and
- freedom to sell fully or partially depreciated plant and equipment.

[57] Law No. 2007-037 of 14 January 2008 on free zones and enterprises in Madagascar, viewed at: http://www.edbm.gov.mg.

[58] Draft Decree implementing Law No. 2007-037 of 14 January 2008 on free zones and enterprises in Madagascar.

[59] The industrial processing enterprises eligible under the Law are defined by the decree as manufacturing industries, or as "manufacturing" under the United Nations International Standard Industrial Classification (ISIC).

Table 2.3 Fiscal regulations under the ZEF regime, December 2014

Eligibility	Fiscal provisions
Enterprises	
Corporate income tax (IR)[a]	
- Industrial processing enterprise	Exempt for 5 years, thereafter liable to IR at 10%
- Intensive basic production enterprise	Exempt for 5 years, thereafter liable to IR at 10%
- Services enterprise	Exempt for 2 years, thereafter liable to IR at 10%
Persons	
Taxes on distributed dividends	10% without grace period
Taxes on payroll income	Maximum of 35% of the tax base (for expatriates)
Goods	
Customs duty	Exempt
Value added tax	General principle: all VAT payments to be the subject of automatic reimbursement
Export duties and taxes	Exempt
Excise duty	Exempt

a In 2014, the normal IR rate was 20%.

Source: Malagasy authorities.

2.73. Moreover, the ZEF legislation offers flexibility in the application of labour laws; in particular, it permits night work by women. ZEFs are free to determine how many expatriate specialists they employ. This is a significant advantage in practice, as it can take up to a year to obtain work permits for skilled workers and this has an obvious impact on the competitiveness of enterprises requiring skilled staff. Expatriate staff also receive a professional resident visa, valid for the duration of their employment contract.

2.3.3 Business environment

2.74. In 2015, improving the business environment is a government priority. In order to promote sustainable growth and job creation, notably through investment, the Government must work to enhance the operating conditions of enterprises, particularly the micro, small and medium-sized agribusinesses that account for the bulk of economic activity. Madagascar is showing mixed results under the World Bank's Doing Business indicators (Table 2.4). Although there has been little improvement in its ranking since the previous review, significant progress has been made regarding the cost and number of days needed to start a business, which is probably a reflection of the EDBM's endeavours. Where starting a business is concerned, Madagascar is in an enviable position compared with neighbouring countries. As is shown by Table 2.4, trading across borders is another area that has seen major improvements, especially in terms of the time required and the number of procedures, reflecting recent efforts by the Customs (Section 3.1.2).

2.75. On the other hand, one of the main problems facing investors is access to credit, and here there has been a significant deterioration; obtaining loans is often cited as the biggest obstacle to production and trade. The second obstacle to starting a business is the transfer of title, which remains very expensive; Madagascar is poorly ranked for granting construction permits and registering property (Section 2.3.6). Thirdly, access to electricity remains particularly problematic because of mismanagement of the sector (Section 4.5.3).

2.3.4 Protection of foreign investment

2.76. There are a number of agreements that include measures for the protection of foreign investment in Madagascar. The 11 bilateral agreements on investment promotion and protection signed by Madagascar, nine of which are in force, are available on the UNCTAD website; agreements ratified since the previous review include an agreement with Switzerland which was ratified in 2014.[60] These agreements generally provide for national treatment and most-favoured-nation treatment (on a reciprocal basis) for investors from other parties; compensation for expropriation; freedom to transfer funds earned from investment activities; and dispute settlement.

[60] Law No. 2014-029 authorizing the ratification of the Agreement concluded on 19 December 2008 between the Government of the Republic of Madagascar and the Swiss Confederation on the reciprocal protection and promotion of investment, viewed at: http://www.admin.ch/opc/fr/federal-gazette/2009/769.pdf.

Table 2.4 Operating conditions of enterprises in Madagascar and in neighbouring countries, 2007 and 2014

	Madagascar		Mauritius		Mozambique		South Africa	
	2007	2014	2007	2014	2007	2014	2007	2014
Ease of doing business (rank[a])	149	148	32	20	140	139	29	41
Starting a business								
- Rank[a]	110	29	30	19	153	95	57	64
- Cost[b]	35.0	12.9	8.0	3.6	85.7	18.7	6.9	0.3
- Number of days	21	8	46	6	113	13	35	19
Trading across borders								
Rank[a]	131	115	21	12	141	131	67	106
Number of documents to export	9	5	4	4	7	7	7	5
Time to export (days)	49	22	13	10	28	21	25	16
Cost to export[c]	1,182	1,195	683	675	1,055	1,100	1,087	1,705
Number of documents to import	11	9	6	5	9	9	7	6
Time to import (days)	48	21	13	10	36	25	35	21
Cost to import[c]	1,282	1,555	683	710	1,185	1,600	1,195	1,980
Getting credit (rank)	159	180	83	42	83	130	33	28
Registering property								
- Rank	162	155	156	65	105	152	69	99
- Number of procedures	6	6	6	4	8	8	7	7
- Cost[d]	11.6	10.3	15.8	10.6	10.4	7.7	9.0	6.1

a The 2007 and 2014 rankings are based on 175 and 189 countries and economies, respectively.
b As a percentage of per capita income.
c In US$ per container.
d As a percentage of the value of the property.

Source: World Bank (2006) and (2014), Doing Business, viewed at: http://www.doingbusiness.org/reports/global-reports/doing-business-2014.

2.77. On the latter point, Madagascar offers foreign investors a choice between referral to a national arbitration body or court, and arbitration by the International Centre for Settlement of Investment Disputes (ICSID) at which, in 2013, a case concerning Madagascar was registered for the first time since 1982.[61] This was also the first case involving a dispute between a private investor and the State. A Mauritian private enterprise filed a case with ICSID against the State of Madagascar, invoking the investment protection agreement between the two countries.[62]

2.78. Madagascar's membership, since 1989, of the Multilateral Investment Guarantee Agency (MIGA) offers investors the possibility of guarantees against non-commercial risks. In 2014, there were eight projects guaranteed with MIGA.[63] Cover against political risk is also available to investors, through the African Trade Insurance Agency (ATI). The Cotonou ACP-EU Agreement provides for the protection of European investments in the ACP countries (Articles 260-262); this protection is also provided for in the Economic Partnership Agreement (Section 2.2.3).

2.3.5 Measures applied to foreign suppliers

2.79. A 1962 Law on Immigration Control, amended in 1995[64], applies to all foreign nationals wishing to engage in a "professional activity"; it therefore has the potential to affect market access for foreign investors, including traders wishing to conduct import-export activities.

2.80. The Law divides such foreigners into two categories – employee and self-employed, and identifies three classes of professional activity: (1) Farming; (2) Industry and crafts;

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[61] ICSID 2014 Annual Report, viewed at: https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID_AR14_FRE.pdf.

[62] UNCTAD (2014).

[63] Viewed at: http://www.miga.org/projects/advsearchresults.cfm?srch=s&hctry=137c&hcountrycode=MG.

[64] Law No. 62-006 of 6 June 1962 on the organization and control of immigration, amended by Law No. 95-020 of 27 November 1995and its Implementing Decree No. 97-1154 of 19 September 1997, viewed at: http://www.droit-afrique.com/images/textes/Madagascar/Madagascar%20-%20Code%20du%20travail.pdf.

and (3) Commerce. Foreigners may be barred from certain professions (which currently are not clearly specified), or may require an authorization granted by order of the President in order to engage in them.

2.81. Moreover, foreigners cannot take up employment without authorization from the relevant ministry, and must hold a CIPENS card stating the class of profession (one class only) in which they are permitted to work. The usefulness of the CIPENS card is debatable – it contains information which is already available elsewhere, notably in the taxpayer identification record and the Commercial Register, and makes the investment and import-export process unnecessarily burdensome; it should therefore be reviewed. In March 2015, however, the possibility of making a charge for the card and reducing its validity period was being considered.

2.3.6 Land reform

2.82. The land problem is currently one of the main challenges to investment in Madagascar. In 2005 the Government initiated a wide-ranging reform of land legislation which is still ongoing, and has already led to significant progress with the registration of property (Box 2.1). The reform resulted in a Law[65] which introduced, in particular, a National Land Ownership Programme (PNF) aimed at enabling Malagasy citizens to obtain secure land tenure.[66] The Law has, *inter alia*, created new property rights, including that of private ownership of untitled land, thus offering users the choice, for securing their property rights, between the traditional procedure based on registration and a certification procedure. A network of 500 land offices is operational.

Box 2.1 Land reform and foreign investment in agriculture

In 2005 the Malagasy Government, aware of the importance of land both as property and as a production factor, was one of the first in Africa to enact genuine land reform. New laws were passed, defining in particular land statuses and the legal regime of private ownership of untitled land (PPNT). Land offices were established in the communes to facilitate land certification. Land policy implementation is carried out by the Ministry of State in charge of land, in particular through the National Land Ownership Programme and the Land Reform Coordination Unit. A Land Observatory has been set up to produce studies on the follow-up to the reform, initiate discussions about the results and advise policy-makers. In particular, a national land inventory is being drawn up and will be used as a reference tool by all stakeholders.

This means that since 2005, land which is untitled but occupied no longer belongs to the State; instead there is a presumption of PPNT. Moreover, the land reform has given the communes new powers: the local land offices can formalize users' property rights to PPNT plots and issue individual or collective certificates. Thus, two types of legal entities (State property services and communes) are responsible for land administration, and there are two possible means of formalizing ownership, that is, titling and certification, the latter approach being considerably less costly.

As a result of this reform the State, through its property services, may not, in principle, assign land unless it is part of the State's private domain, which has been significantly reduced in size since the reform and now consists of land to which the State holds title, and land which is untitled and unoccupied. It may not assign land belonging to private persons whose ownership rights have been recognized by title (PPT), or land held as PPNT. Moreover, foreign investors (like national entrepreneurs or enterprises, where large areas of land are concerned) may not obtain title to land. The State must hold title to the land, which it then leases to investors for a period of 30 to 99 years.

Nevertheless, the Government did initiate the assignment of large areas of land to investors, including foreigners, wishing to engage in agricultural production. At the end of 2008, civil unrest was exacerbated by press reports of the Daewoo company's plans to take a 99-year lease on 1.3 million hectares of arable land, to grow corn and oil palms. In March 2009, following violent protests and the fall of the Government, the agreement with Daewoo was rescinded; but there were another 50 or so agricultural investment projects waiting in the wings.

These events showed that the legal recognition of rights does not guarantee their effective protection. Technical difficulties associated with the extent of the land make it challenging to comply with land legislation. Often, the land tenure documents are not up to date. Also, a failure to inform and consult rights holders during field visits, a lack of familiarity with the new land laws and a desire in certain quarters to see agricultural projects develop can often mean that investors' requests for access to land are favourably received at the outset, without a proper cost-benefit analysis and without considering the views of all the affected parties.

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[65] Law No. 2005-019 of 17 October 2005 determining the principles governing land statuses in Madagascar, viewed at: http://www.maep.gov.mg/lois_fonciere.htm.

[66] For further details, see the State portal: http://www.foncier.gov.mg; and the Land Observatory portal: http://www.observatoire-foncier.mg.

Since 2008, around 150,000 hectares have been taken up by foreign direct investment, primarily for the production of biofuels (especially Jatropha oil). Most of this production is for export. Information on agro-industry projects is not published at present. The Observatory plans to publish an inventory of such projects on a dedicated website. The EDBM is responsible for welcoming investors, including in the agricultural sector (Section 4.1).

The period from 2005 to 2014 saw land requests submitted for a total of more than 3 million hectares, a substantial area when compared to the 2 million hectares currently under cultivation by some 2.5 million family farms. Currently, the number of projects under way or in the pipeline in the agricultural sector has fallen to around a dozen, focusing on the production of Jatropha-based biofuels and, to a lesser extent, cereals and oilseeds. Between 2005 and 2014, around 60,000 hectares were leased out in the agricultural sector, but less than 4,000 hectares were actually put to productive use.

When a land registration or lease request is made by an investor, the State's property services require that a multi-stage process be conducted to ensure that the land concerned is neither titled or certificated to private individuals, nor occupied. In 2009 and 2010 there were two ministerial circulars requiring investors to obtain a series of formal approvals in order to gain access to land (approvals granted by an interministerial committee for areas in excess of 250 hectares, and in the Council of Ministers for those in excess of 2,500 hectares).

The certificates are still too recent and too few in number to allow their impact on the land market to be evaluated. According to the Land Observatory, there is no mechanical link between a legal deed of property and access to loans. Few households are able to obtain loans, although many would like to. Moreover, small farmers and microfinance institutions share strong misgivings about the use of property deeds, much preferring physical collateral (bicycles, zebus, sacks of rice, etc.), that is, assets which are not worth as much but are easier to resell if the loan is not repaid (risk of social backlash, and of there being few buyers for an indebted owner's land).

Source: Law No. 2005-019 of 17 October 2005 determining the principles governing land statuses.
Law No. 2006-031 of 24 November 2006 establishing the legal regime of private ownership of untitled land, and its Implementing Decree No. 2007-1109 of 18 December 2007.
Law No. 2008-014 establishing the legal regime of land owned privately by the State and by territorial authorities, and its Implementing Decree No. 2010-233. Instructions for dealing with requests for large areas of land. Circular No. 321-10/MATD/SG/GDSF of 25 October 2010.
Andrianirina Ratsialonana R., and P. Burnod (2012), "*Entre le légal et le légitime: état des lieux de la gouvernance foncière à Madagascar*", Antananarivo, Landscope, Notes by the Madagascar Land Observatory.
Burnod P., R. Andrianirina Ratsialonana, and A. Teyssier (2013), "*Processus d'acquisition foncière à grande échelle à Madagascar: quelles régulations sur le terrain?*", Cahiers Agricultures, 22 (1).

2.83. It would be sensible to broaden this reform to encompass a review of the conditions of access to real estate by foreigners; the current regulations could be examined and be published on the Internet, which is not the case at present. Although the purchase of real estate by foreigners is prohibited (foreigners have access only to titled, state-owned land, such access being by means of 18 to 99-year leases)[67], many laws and regulations contain references to the "acquisition" of land by foreigners.[68] This has created a grey area, with certain companies changing nationality or using nominees in order to circumvent the law. Overall, the administration of the property register is frequently described as archaic. Land disputes are common and constitute a serious disincentive to foreign investment, especially in the key area of tourism.

[67] Law No. 2007-036 (of 14 January 2008 on Investment in Madagascar) states, in Article 19.2, that "Under no circumstances shall such authorization constitute a title deed for the property concerned; it is simply the document which allows the parties to conduct the necessary legal formalities for the transfer of real estate.". Moreover, Article 18.b of the same law reaffirms that "Foreign natural or legal persons cannot have direct access to land ...".

[68] Examples include Law No. 62-006 of 6 June 1962 on the organization and control of immigration, amended by Law No. 95-020 of 27 November 1995; Law No. 96-016 of 13 August 1996, and Law No. 2003-028 of 27 August 2003.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Measures directly affecting imports

3.1. Madagascar has been striving constantly since 2005 to improve its customs services. Substantial changes to economic procedures were introduced under the Customs Code in 2006, in particular with the incorporation of provisions of the Revised Kyoto Convention (RKC) on the simplification and harmonization of customs procedures. Amongst other things, the inward and outward processing procedures were integrated and the industrial warehouse procedure was abolished. Further changes have been made through successive finance laws, with provisions being formulated to offer much greater clarity or to improve compliance with the RKC.

3.2. Much progress has been made following the establishment and use of the TradeNet Electronic Single Window by GasyNet. In July 2014, the law on cybercrime was adopted (Table 2.1) and the dematerialization of customs clearance procedures decreed.[1] The MIDAC (Ministries, Departments and Control Agencies) System, an integral part of TradeNet, now allows several of the numerous control institutions that must approve imports to transmit their authorizations electronically to the Customs.

3.3. All the texts are in principle available online on the Customs website, which also contains recent statistics.[2] Since 2011, the Customs Administration has been gradually introducing an Observatory of Customs Clearance Time (ODD) across five offices. It brings together all bodies and institutions involved in the customs clearance process, and aims to identify any bottlenecks occurring in the clearance process as well as the nature and causes of them, and to suggest solutions.

3.1.1 Registration

3.4. As stated in Section 2, practising as a trader in Madagascar is still subject to at least two formalities that could be streamlined to good advantage: registration in the National Commercial and Companies Register[3] and obtaining a tax identification number (NIF) from the tax administration. These two systems are interconnected electronically. Lack of an NIF or the existence of any irregularity pertaining to it will result in the assessment of the tax on intermittent income (IRI) at a rate of 5%, which amounts to an additional charge on imports (Section 3.1.4.4 below). For example, all personal imports of vehicles, whether or not for professional purposes, give rise to payment of the IRI.

3.5. The requirement that foreigners hold a professional identity card for self-employed foreigners (CIPENS) to be able to practise commercial professions creates differences between Malagasy and foreign nationals (Section 2.3.5). Besides, customs procedures can only be carried out by approved customs clearing agents (Section 3.2.2 below).

3.6. Since 2007, exporters have been required to fill out the cargo tracking note (BSC) in advance if the value of the shipment dispatched to Madagascar is higher than or equal to the equivalent of €100 f.o.b., including personal effects and non-commercial relocations.[4]

3.7. To do this, the exporter (to Madagascar) must set up a BSC account by supplying a number of documents, which are listed on the BSC website, including an excerpt from the Commercial Register to be obtained in his country.[5] Unlike other countries, however, the cost of the BSC is incorporated in the charges levied by GasyNet (see below).

3.8. The BSC largely duplicates the main elements of the import declaration (see below). The documents required for the BSC are the detailed final invoice, the contract of sale, the bill of lading for maritime shipments, and the customs export declaration, which enables more

[1] Decree of the Ministry of Finance and Budget on the dematerialization of customs clearance procedures.
[2] Viewed at: http://www.douanes.gov.mg.
[3] Laws No. 99-018 of 2 August 1999 and No. 99-025 of 19 August 1999.
[4] Decision No. 01-MFB/SG/DGD of 23 March 2007.
[5] Viewed at: http://www.bscmg.sgs.com.

effective tracking of goods. According to the Customs, the BSC has greatly reduced customs clearance times.

3.1.2 Customs procedures

3.1.2.1 Customs clearing agents

3.9. The customs formalities relating to commercial imports, more specifically to the detailed declaration, may be performed only by approved customs clearing agents.[6] Any operator with the appropriate training and the necessary financial standing may seek approval for a specific customs clearance office. A permanent bond of MGA 20 million (roughly US$6,600) per office is required to practise the profession. However, the Customs Administration also approves any genuine consignee or consignor of goods intending to make detailed customs declarations for their own account *("Transit-maison"* [own-company transit]).[7] In 2014, 168 customs clearing agents were approved, as were 267 *transits-maison*.

3.1.2.2 Electronic single window

3.10. It has been possible since 2007 to complete much of the customs clearance formalities (for imports or exports) through TradeNet, an electronic single window set up under a framework agreement between the Government and GasyNet.[8] GasyNet's capital is 70%-owned by a private foreign company (SGS) and 30% state-owned.

3.11. GasyNet's charges (PGN) are fixed by regulation at 0.5% of the c.i.f. value of the goods imported (or exported, see below) or at flat-rate levels for goods with an f.o.b. value of less than the MGA equivalent of €25,000.[9] The authorities argue that the GasyNet services (and the related charges) also cover services relating to the BSC, to scanners, the TradeNet electronic single window (including the MIDAC, which is a TradeNet module, see below), the various development costs and software licenses, interconnection charges (customs offices, banks, GasyNet and some other players in the procedure), charges relating to the hosting of the system (TradeNet and ASYCUDA), the storage and securing of data, maintenance, training, user assistance and support, etc.

3.12. GasyNet's charges also include a flat-rate retrocession of roughly US$16 million annually for the benefit of the Customs Administration for additional work and capacity building, which GasyNet pays to the Treasury.

3.13. GasyNet nonetheless accords companies operating under the Free Zones and Enterprises regime (ZEFs) a more favourable scale of charges for its services: €100 per container (20- or 40-foot equivalent) or €50 per container if the containers are grouped; for air shipments, the charge is €50. The prices of the same services therefore differ between ZEFs and companies operating under the ordinary law regime. It would benefit the economy as a whole if all companies, including those operating under the ordinary law regime, could access the same services at the same lower price accorded to ZEFs.

3.1.2.3 Import documentation

3.14. Three different documents must be generated for each import operation, beginning with the BSC (Section 3.1.1). The second document is the registration of the manifest with ASYCUDA++ (summary declaration). The third is the detailed declaration in the form of a single administrative document (DAU), the dematerialization of which has been under way since mid-2014.

3.15. Amongst the trade facilitation measures, the Customs Code authorizes – and the Customs Administration strongly encourages – the ship's agent or the aircraft captain to file the cargo manifest in advance with the customs office, as of 10 days before the arrival of the vessel,

[6] Order No. 16 146/08 of 21 September 2007.

[7] Online information from the Malagasy Customs, viewed at: http://www.douanes.gov.mg/?page_id59.

[8] Order No. 8426/2007 MFB/SG/DGD of 4 June 2007.

[9] Articles 89-97 of the Customs Code and Order No. 8426/2007 of 4 June 2007. The sums are: €10 for an f.o.b. value of less than €1,000 (i.e. at least 1%); €25 for an f.o.b. value of between €1,000 and €2,500; €75 for an f.o.b. value of between €2,500 and €10,000; and €145 for an f.o.b. value of between €10,000 and €25,000.

for the purposes of the summary declaration. According to the Customs, few companies make use of this possibility, and this considerably slows down the import process: in 2013, only 16% of manifest filings took place before the arrival of vessels, of which almost half (46%) took place the day before arrival.[10] The aim of the ODD is to bring together all stakeholders (port authorities, shipping companies, customs, transporters, GasyNet, bank, etc.) initially to detect sticking points and then to seek appropriate solutions.

3.16. Import licences and permits are required for petroleum products and lubricants (Malagasy Hydrocarbons Board (OMH), Section 4.5.2), products of plant origin, products of animal origin, food products (radioactivity and "fitness for consumption" tests) and for medicines; (Section 3.3.1.5), telecommunications equipment (Malagasy Telecommunications Studies and Regulation Board (OMERT), Section 4.9), and for regulated measuring instruments. Madagascar has made considerable headway in simplifying the transmission of these documents, including via the MIDAC module, which is an electronic platform that enables the parties involved in imports (importers, freight forwarders, control agencies, etc.) to submit online to the Customs any trade-related documentation and permit application for the purposes of processing and validation. The decisions issued can be consulted online and are immediately applicable for customs clearance.

3.17. The authorities aim to connect to the MIDAC Module entities that are not yet linked up with the customs clearance single window, including the Central Bank of Madagascar (BCM) and the Treasury, which record payments made by operators. The Ministry responsible for mining issues permits for all mining-related exports. The Ministry of Agriculture issues a permit for all agricultural products, seeds and live plants introduced or exported to Madagascar, the Ministry of Livestock for all live animals and animal products, the Ministry responsible for the environment for all exports of forestry products, and for all imports of used tires and used batteries.

3.18. According to the OECD[11], lack of coordination among border agencies is one of the main factors in border delays and overall border costs. As discussed in Section 3.3.1 (on technical standards and regulations), many documents and procedures are still required for products to be made available for consumption. The future national trade facilitation committee could play a crucial role in this regard. Amongst recent coordination efforts, the Customs has again been made responsible for collecting the IRI and excise duty since 2015.

3.1.2.4 Customs valuation and inspection

3.19. Madagascar ceased having a goods import inspection and verification programme in 2007. The BSC (see above) in part plays that role, and according to the Customs, facilitates its task of import inspection and verification.

3.20. The rules laid down in the WTO Customs Valuation Agreement are embodied in the Customs Code (2014).[12] However, until March 2015 the Code maintained a provision whereby "officially established minimum values may be retained on a limited and transitional basis." Until then, Madagascar had applied minimum values to some goods in order to secure tax revenue (Table 3.1); different minimum values were set depending on the country of origin (in particular China, Egypt, India and Turkey). According to a Customs Note dated 25 February 2015, the use of these values ceased as of 3 March 2015.

[10] Rapport ODD 2013, viewed at: http://www.douanes.gov.mg.
[11] See OECD Indicators on trade facilitation – Madagascar.
[12] Section IV, Chapter V of the Customs Code (2014 Edition).

Table 3.1 Goods subject to a minimum import value, 2014

(US$)

Description of product	HS Code	Minimum value
Milk, condensed, sweetened	04.04	22.2/Ctn
Wheat flour	11.01	468/MT
Soya-bean and sunflower oil	15.07/15.12	947/MT
Palm oil / coconut oil	15.11/15.13	877/1,393/MT
Sugar	17.01	514/MT
Edible pasta	19.02	738/MT
Cement	25.23	89/MT
Lubricants	27.10	1.48 kg.
Laundry soap in the form of bars	34.01	0.78 kg.
Detergent powders	34.02	0.63 kg.
New pneumatic tyres	40.11	35,000/Ctn 40-foot
A4 Paper	48.02/48.10	899/MT
Toilet paper	48.18	0.85 kg.
Wholesale bulk fabrics, packaged in bales	52.08-12; 52.09-12; 53.09; 54.07-08; 55.12-16	1.20 kg.
Blankets	63.01	1.75 kg.
Worn clothes and other worn articles in bales	63.09	0.75 kg.
Sandals	64.03/64.05	0.37/pair
Tiles	69.07/69.08	0.25 kg.
Hot-rolled steel in coils (HRC)	72.08	588/MT
Steel plates	72.08-12	581/MT
Cold-rolled steel in coils (CRC)	72.09	681/MT
Galvanized steel (HDG)	72.10	726/MT
Reinforcing steel bars	72.14	556/MT
Steel rods	73.04	568/MT
Nails	73.17	626/MT
Zinc-carbon batteries	85.06	0.17/DOZ
Used spare parts	87.08	1 kg.
Baby diapers	96.19	0.07/each

Note: Ctn = container; MT = metric tonne; DOZ = dozen.

Source: Malagasy Customs.

3.21. The goods in this list are classified as "sensitive products", being the "main sources of customs revenue"; false declarations of value are the most numerous for these goods. GasyNet calculates minimum values based on the "ValiTrade" system marketed by the SGS, taking into account the official international market prices of goods, a market study, domestic market prices, previous transactions and similar transactions.

3.22. Moreover, Madagascar maintains a reservation concerning the order of the methods to be used in the event of rejection of the transaction value.[13] According to the authorities, if the declared value is rejected, the Customs proposes an alternative value in keeping with the methods stipulated in the Agreement. If the importer does not accept this proposed value, the parties begin arbitration. The Customs has expressed interest in a technical assistance seminar on the subject.

3.1.2.5 Risk management and the use of scanners

3.23. On the basis of the BSC, the Customs targets goods or shipments even before the submission of the DAU. On registration of the declaration, a selection system assigns a channel to the declaration. The blue channel exists for companies benefitting from the Accelerated Customs Clearance Procedure (PAD).[14] It allows for the automatic assessment of duties and taxes following the registration of the DAU and the immediate release of the goods following statutory verification of the payment of duties and taxes. This channel is available to importers deemed reliable by the Customs. About 100 companies, or a quarter of annual declarations, currently benefit from an accelerated clearance procedure, which also enables them to withdraw their goods immediately on arrival, once the duties and taxes are paid.

[13] If the value declared by the importer is rejected, the WTO Agreement provides for the use of one of the following methods: transaction value of identical goods (Article 2); transaction value of similar goods (Article 3); deductive value (Article 5); constructed value (Article 6); fallback method (Article 7). These valuation methods must be used in the order listed, but Article 4 of the Agreement states that the importer may request the order of application of Articles 5 and 6 to be reversed. Madagascar has reserved the right to do so (WTO document WT/Let/112 of 30 September 1996). Madagascar also noted that paragraph 2 of Article 5 of the Agreement would be applied whether or not the importer so requested.

[14] Decision No. 23MFB/SG/DGD of 8 November 2011.

3.24. Half the declarations are processed via the yellow channel, which is dedicated to goods whose transaction is deemed to entail a medium level of risk. In this case the verification is solely to ensure the correctness of the form and content of both the declaration and as its attachments (invoice, waybill, import or export permits). The remaining quarter of declarations are assigned to the red channel, and the importer is automatically informed that the goods are being retained for inspection, scanning and an actual visit. The main customs offices are now equipped with scanners used only for red channels. The GasyNet service includes the costs associated with scanning operations.

3.1.3 Dispute settlement and appeals procedures

3.25. All decisions of the Malagasy Government can in principle be appealed before a competent administrative court (see Section 2.1 on legal uncertainty, however). The Customs Code provides for an independent appeals body for operators, the Conciliation and Customs Appraisal Commission (CCED). In the course of the clearance procedure, the declarant may challenge, before the Commission, the Customs Administration's decisions concerning the tariff classification, origin and value of the declared goods.[15] In the second instance, the declarant may appeal the decision of the CCED to the competent court. According to the Customs, the most frequent disputes are about value.

3.26. In the event of a dispute, the agent that identified the infringement and his superiors share 25% of the proceeds with the other agents who participated in the handling of the file (prosecution, recovery, etc.) up to its final settlement.[16] According to the Customs, this measure motivates the agents and encourages them to identify infringements rather than be bribed. Provisions of this kind create a conflict of interests between trade facilitation and the desire to multiply the number of dispute cases in order to generate personal income.

3.1.4 Levies at the border

3.27. Madagascar has a simple import tax structure, with the customs tariff being the only duty levied exclusively on imports. Yet several levies are still being collected at the Malagasy border at importation and to a lesser extent at exportation, in particular through internal taxes (Section 3.1.4.4 below) and fees, dues or other charges assessed when goods arrive at ports (Section 4.7.1).

3.28. The rates of the tariff and other duties are modified each year by the Finance Law. Since 2008, customs duty modifications have been mostly downward and have affected mainly inputs for agricultural production (Section 4.1.1.1).[17] Besides, the payment of petroleum taxes has been partly deferred since 2011, on the one hand as a State guarantee of the payment of government subsidies granted to distributors of oil products, and on the other, of the payment of JIRAMA electricity company debts to distributors (Section 4.5.2).

3.29. Between 2008 and 2014, customs revenues have accordingly declined in proportion to the value of imports, to less than 5% of the latter. Internal taxes collected on imports, including 20% VAT, have also fallen. Total taxes levied on imports, which were more than 30% of their value in 2012, have fallen to 23%. Yet these taxes continue to occupy a disproportionate place in the government budget, a fact that is thwarting attempts to eliminate international trade taxes: these levies at the border account for 52.5% of tax revenue. (Table 3.2).

[15] Article 111 of Customs Code (2014 Edition).

[16] Decision No. 02 MFB/SG/DGD of 20 January 2010 laying down the rules for distributing the proceeds of customs fines and confiscations.

[17] Accordingly in 2012 there were cuts in the rate of customs duty on some commodities (meslin for making flour: customs duty cut from 5% to 0%; additive for the manufacture of motor oil: customs duty cut from 10% to 5%). In 2013, duties and taxes were waived on imports of a range of appliances and equipment powered by renewable energy; duties were reduced on some raw materials and inputs to enable local industries to remain competitive; the harmonization of the customs duty rate for parts and accessories at 10%; the waiving of customs duty on agricultural machinery; exemption from payment of customs duty on vitamins not put up for retail sale and on some inputs for the production of farm feeds; the application of the Florence Agreement by exempting books, booklets, newspapers and printed periodical publications from customs duty.

Table 3.2 Taxation of imports, by category, 2008, 2010-2014

(MGA billion and %)

	2008	2010	2011	2012	2013	2014[a]
Import duties only						
Customs duty (DD)	220	172	210	220	220	243
Tax on petroleum products (imported)	100	90	87	80	80	86
Total import levies	**320**	**262**	**297**	**300**	**300**	**303**
% of imports[b]	6.4%	5.9%	5.6%	6.1%	5.3%	4.9%
Internal taxes on imports						
VAT on petroleum products	204	182	224	223	358	280
VAT on imports of other products	483	385	477	522	515	605
Excise duty	348	437	457	444	435	236
Tax on intermittent income (IRI)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Total import levies	**1,035**	**1,004**	**1,158**	**1,189**	**1,308**	**1,121**
% of imports[b]	20.7%	22.6%	21.8%	24.2%	23.1%	18.1%
Total levies at the border	**1,355**	**1,266**	**1,455**	**1,617**	**1,608**	**1,469**
% of imports[b]	27.1%	28.5%	27.4%	30.3%	28.4%	23.0%
Total government revenue	**1,940**	**2,049**	**1,949**	**2,095**	**2,253**	**2,800**
% of current government revenue	70.1%	61.8%	74.7%	77.2%	71.3%	52.5%

n.a. Not available.

a Estimates.
b Imports released for consumption only.

Source: Customs, Directorate-General of Taxation (DGI).

3.1.4.1 Applied MFN tariff

3.30. The 2015 Malagasy most-favoured-nation (MFN) tariff comprises 6,512 eight-digit lines from the 2012 version of the Harmonized Commodity Description and Coding System (HS). The tax base for the MFN tariff is c.i.f. value. Most rates are *ad valorem;* the rates are either 0%, 5%, 10%, or 20%. Overall, the simple average of all applied rates fell to 12.2% in 2015; it was 13% in 2008 (Table 3.3); the average is 14.4% on agricultural products (WTO definition), and 11.8% on the non-agricultural products (excluding petroleum products).

3.31. Almost 43% of tariff lines are subject to a 20% customs duty. The sectors most protected from external competition include beverages, fisheries products and textiles (Chart 3.1): such a level of tariff protection does not encourage efforts to make these products competitive for export. Similarly, agrifood products account for a large share of consumer spending, especially in low-income brackets, and high taxation adds to their cost. They are also prominent in spending on agro-industry inputs, with the same consequence of pushing up costs.

3.32. The tariff still shows negative escalation from raw materials (average protection level of 12.3%) to semi-finished products (average of 10.3%), with agricultural raw materials being more protected from outside competition than Madagascar's semi-finished exports. Many producers complain that this tariff structure drives up their production costs because imported inputs are taxed more heavily than the products they sell. (Section 4.6.2). Recent cuts in customs duties on agro-industrial inputs show that the authorities are aware of this problem. This tariff structure perpetuates the need for duty and tax concessions to investors, including under the ZEF regime (Section 3.2.3).

Table 3.3 Breakdown of MFN rates, 2008 and 2015

	2008	2015	Bound rates of duty[a]
1. Bound tariff lines (% of total lines)	29.1	30.3	30.3
2. Simple average applied MFN rate	13.0	12.2	27.5
Agricultural products (WTO definition)	14.4	14.4	30.0
Non-agricultural products (WTO definition)	12.7	11.8	25.1
Agriculture, hunting, forestry and fishing (ISIC 1)	13.9	14.1	30.0
Mining and quarrying (ISIC 2)	7.1	7.0	unbound
Manufacturing (ISIC 3)	13.0	12.2	26.9
3. Duty-free tariff lines (% of all tariff lines)	2.0	5.5	0.1
4. Simple average rate (dutiable lines)	13.2	12.9	27.5
5. Non-*ad valorem* tariffs (% of all tariff lines)	0.3	0.3	0.0
6. Non-*ad valorem* tariffs with no AVEs (% of all lines)	0.3	0.1	0.0
7. Tariff quotas (% of all tariff lines)	0.0	0.0	0.0

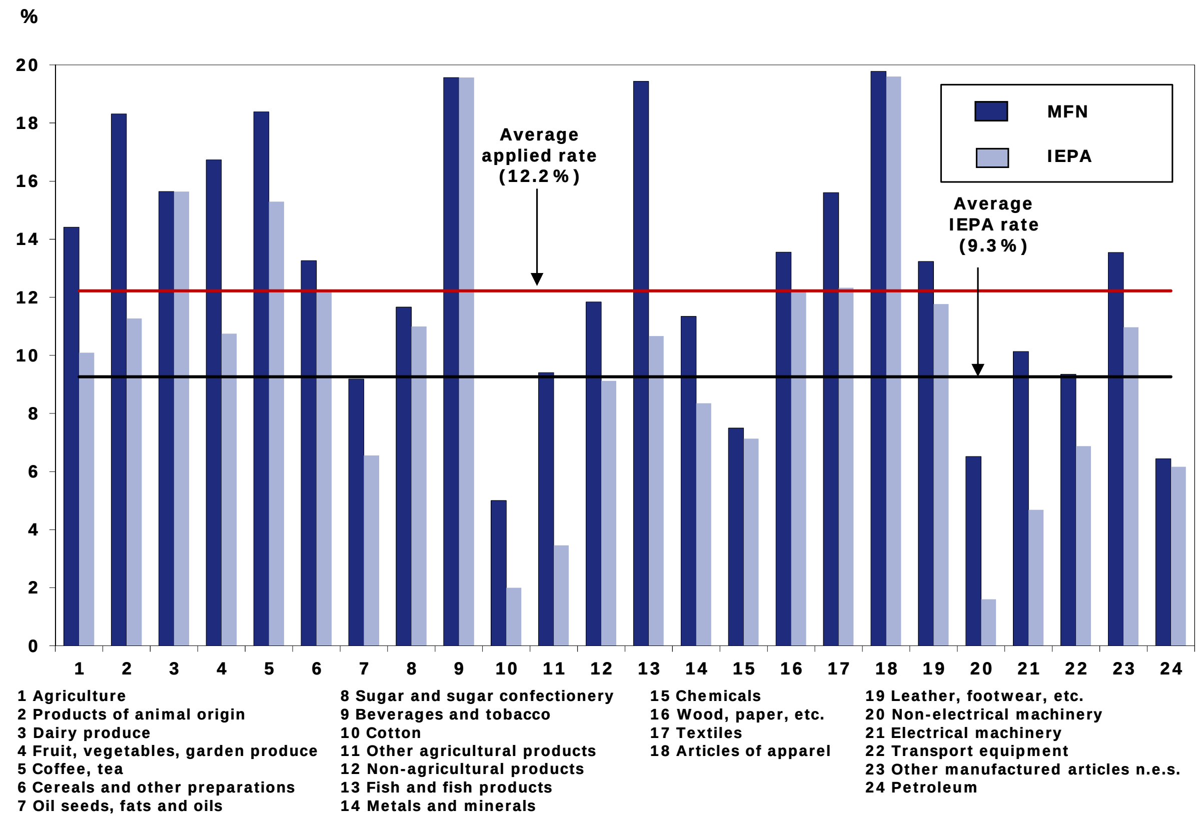
	2008	2015	Bound rates of duty[a]
8. Domestic tariff peaks (% of all tariff lines)[b]	0.0	0.0	0.0
9. International tariff peaks (% of all tariff lines)[c]	42.5	42.7	27.8
10. Overall standard deviation of applied rates	6.4	7.1	5.8
11. "Nuisance" applied rates (% of all tariff lines)[d]	0.0	0.1	0.0

a The final bound rates are based on the 2014 Customs Tariff in the 2012 HS nomenclature.
b Domestic tariff peaks are duties exceeding three times the overall simple average applied rate.
c International tariff peaks are duties exceeding 15%.
d Nuisance duties are rates that are not 0 but less than or equal to 2%.

Note: The 2015 tariff consists of 6,511 tariff lines (eight-digit, in accordance with the HS12 nomenclature). The 2008 tariff consists of 6,362 tariff lines (eight-digit, in accordance with the HS07 nomenclature).

Source: WTO Secretariat calculations based on data provided by the authorities; and WTO Consolidated Tariff Schedules (CTS) database.

Chart 3.1 Applied MFN and IEPA tariff rates, by product group (WTO), 2015



Note: Interim Economic Partnership Agreement (IEPA).

Source: WTO Secretariat calculations based on data provided by the authorities, and WTO CTS database.

3.33. The 19 lines corresponding to petroleum and gas products are the only non-*ad valorem* lines, and this reduces transparency and increases administrative costs. These products are characterized by a broad range of trade measures including: temporary suspension (since 2011) of part of the tax on petroleum products (TPP, which replaces the customs duty on these products) to help keep prices low; administrative pricing, the grant of a preferential exchange rate to oil companies; and direct subsidies to oil companies to enable them to compress their selling prices. The authorities are aware of the urgent need to review these measures.

3.34. Moreover, the TPP *ad valorem* equivalents furnished by the authorities are particularly high for premium gasoline (HS 27101212): the 21.2% *ad valorem* equivalent rate warrants examination given the strategic importance of this product to the Malagasy economy. Yet, the State considers it as a luxury product compared to diesel fuel (Table 3.4).

Table 3.4 Estimated non-*ad valorem* duties

Tariff line	Product description	Specific duties 2015	*Ad valorem* equivalent 2014 (%)
27101211	- Aviation fuel	MGA 105/litre	2.6
27101212	- Premium gasoline with a 95 octane rating and over	MGA 390/litre	21.2
27101213	- Regular gasoline with an octane rating of at least 90	MGA 390/litre	0.1[a]
27101214	Spirit-type jet fuel	MGA 157/litre	n.a.
27101215	- White spirit	MGA 37/litre	1.3
27101219	- Other	MGA 37/litre	2.2
27101921	- Kerosene	MGA 10/litre	0.5
27101922	- Blended fuels	MGA 37/litre	n.a.
27101923	- Kerosene-type jet fuel	MGA 10/litre	0.5
27101929	- Other	MGA 37/litre	0
27101931	- Diesel fuel	MGA 120/litre	6.3
27101932	- Fuel oil	MGA 20/litre	1.3
27111100	- - Natural gas	MGA 12/kg. net	n.a.
27111200	- - Propane	MGA 12/kg. net	0.1
27111300	- - Butane	MGA 15/kg. net	0.4
27111400	- - Ethylene, propylene, butylene and butadiene	MGA 12/kg. net	n.a.
27111900	- - Other	MGA 12/kg. net	n.a.
27112100	- - Natural gas	MGA 12/kg. net	n.a.
27112900	- - Other	MGA 12/kg. net	n.a.

n.a. Not available.

a 2013.

Source: Information provided by the authorities.

3.1.4.2 Bindings

3.35. Altogether 30.3% of Madagascar's tariff lines is currently bound.[18] This percentage encompasses all lines relating to agricultural products (as defined in Annex I to the WTO Agreement on Agriculture) that have been bound by Madagascar at the ceiling rate of 30%. In contrast, only certain non-agricultural products corresponding to 502 tariff lines, or 11.2% of the total, have also been bound at the rate of 30%; these are chemicals (HS Chapters 28 and 29). The other products are not bound.

3.36. Some of these tariff concessions predate the Uruguay Round, going back to the time when Madagascar was a French colony. Indeed, when acceding to the GATT in September 1963, Madagascar had opted, in virtue of GATT Article XXVI:5(c), to inherit concessions made by France while it was a French colony.[19] Whereas the old concessions regarding agricultural products were subsequently renegotiated under the Uruguay Round and therefore no longer apply, the old concessions pertaining to non-agricultural products still apply; altogether 361 tariff lines were bound before the Uruguay Round, at rates of 0, 5, 10, 15 and 30%. For 52 tariff lines covered by the old concessions (Table 3.5), the tariffs currently applied by Madagascar are higher than the bound rates.

[18] CTS File of Madagascar, WTO Tariff Analysis Online (TAO), https://tao.wto.org. This application is available to the public. Users may register with their email address. Select the option " Download Tariffs", then "DataExport". Select the bound duties (CTS) and the country on the dropdown menu. Madagascar's CTS File in HS 2002 can be downloaded in xml or mdb format. The most recent CTS File for Madagascar is in HS 2002. The changes in the HS 2007 were approved during the multilateral review of July 2014 (G/MA/TAR/RS/362). Madagascar has meanwhile adopted the HS 2012 classification, and the share of bound lines in the 2013 applied tariff has moved from 29.1% to 30.3%, according to Secretariat estimates.

[19] Viewed at: http://sul-derivatives.stanford.edu/derivative?CSNID=90100039&mediaType=application/pdf.

Table 3.5 Tariff lines with applied MFN tariffs higher than the bound rates, 2015

No.	Tariff line	Description	Applied MFN tariff	Bound rate
1	27101212	- - - Premium gasoline with a 95 octane rating and over	EAD 21.2 (MGA 390/litre)	5
2	27101931	- - - - Diesel fuel	EAD 6.3 (MGA 120/litre)	5
3	27101933	- - - - Lubricating oils and lubricants	20	5
4	27101939	- - - - Other	20	5
5	27102000	- - Petroleum oils or bituminous mineral oils	20	5
	3210	Other paints and varnishes; pigments		
6	32100090	- - - Other	20	15
	3406	Candles, tapers and the like		
7	34060010	- - - - Hand-made	20	15
8	34060020	- - - - Other	20	15
9	34060090	- - - Other	20	15
	4407	Wood sawn or chipped lengthwise, of a thickness exceeding 6mm		
	440710	- - Coniferous		
10	44071010	---Pinewood	5	0
11	44071090	---Other	5	0
	441520	- Pallets, box pallets and other load boards		
12	44152010	- - - Hand-made	20	0
13	44152090	- - - Other	20	0
14	53109010	- - - Woven fabrics of jute	20	15
15	53109020	- - - Paka fabrics (Urena)	20	15
16	53109090	- - - Other	20	15
17	63012000	- Blankets (excluding electric) of wool or animal hair	20	10
18	63013000	- Blankets (excluding electric) of cotton	20	10
	630510	- Of jute or other textile bast fibres of heading 53.03		
		- - - Of woven fabrics of jute		
19	63051011	- - - - New	20	15
20	63051012	- - - - Used	20	15
		- - - Of paka fabrics (Urena)		
21	63051021	- - - - New	20	15
22	63051022	- - - - Used	20	15
		- - - In fabrics of other textile bast fibres		
23	63051031	- - - - New	20	15
24	63051032	- - - - Used	20	15
	64031	- Sport footwear		
25	64031990	- - - Other	20	15
	64039	- Other footwear		
26	64039900	- - Other	20	15
	640510	- - With uppers of leather or composition leather		
27	64051010	- - - Hand-made	20	15
28	64051090	- - - Other	20	15
29	64059010	- - - Hand-made	20	15
30	64059090	- - - Other	20	15
31	72104100	- - Corrugated	20	15
		- - Sets of assorted articles		
32	82111010	- - - Hand-made	20	10
33	82111090	- - - Other	20	10
		- - Table knives having fixed blades		
34	82119110	- - - Hand-made	20	10
35	82119190	- - - Other	20	10
		- - -Other knives having fixed blades		
36	82119210	- - - Hand-made	20	10
37	82119290	- - - Other	20	10
		- - Knives having other than fixed blades, including pruning knives		
38	82119310	- - - Hand-made	20	10
39	82119390	- - - Other	20	10
		- - Blades		
40	82119410	- - - Hand-made	20	10
41	82119490	- - - Other	20	10
		- - Handles of base metal		
42	82119510	- - - Hand-made	20	10
43	82119590	- - - Other	20	10
44	82121000	- Razors	20	10
45	82122000	- Safety razor blades, including razor blade blanks in strips	20	10
46	82129000	- Other parts	20	10
	8213	Scissors, tailors' shears and similar shears, and blades therefor		
47	82130010	- - - Hand-made	20	10
48	82130090	- - - Other	20	10
	8214	Other articles of cutlery		

No.	Tariff line	Description	Applied MFN tariff	Bound rate
49	82141000	- Paper knives, letter openers, erasing knives, pencil sharpeners and blades therefor	20	10
50	82142000	- Manicure or pedicure sets and instruments	20	10
51	82149000	- Other	20	10
52	84231000	- Personal weighing machines, including baby scales; household scales	20	10

Source: WTO Secretariat calculations based on data provided by the authorities, and WTO CTS database.

3.37. For lines that were the subject of a tariff commitment during the Uruguay Round, Madagascar has bound "other duties and taxes" at the ceiling rate of 250%, for all agricultural products as well as for chemicals (HS Chapters 28 and 29). In contrast, no other duties and taxes were envisioned for the 361 tariff lines that had been bound prior to the Uruguay Round; this is tantamount to a zero binding for these lines.

3.1.4.3 Tariff preferences and rules of origin

3.38. As stated in Section 2.2, Madagascar grants duty-free entry for all products originating in the IOC, COMESA, and the SADC with the exception of one product category (E) (determined by each member country), which is excluded from preferential treatment (Table 3.6). Moreover, since 1 January 2014, products originating in the European Union imported by Madagascar have been accorded preferential treatment (Chart 3.1) in keeping with a tariff reduction timetable.

3.39. Madagascar has not introduced any rules of origin for non-preferential purposes. Instead, four different systems of preferential rules of origin have been created for the purpose of administering the tariff preferences granted to products originating in the roughly 50 countries members of preferential trade agreements to which Madagascar is party. There have recently been many calls for the harmonization of preferential rules of origin, insisting on the fact that the observance of rules of origin involves additional costs to enterprises, possibly as much as 6% of the value of a product, and that in general, the usefulness of a free trade agreement depends largely on the simplicity of its rules of origin.

3.40. The IOC rules of origin are the following: either the products are wholly obtained in the IOC; or they have undergone sufficient processing or working there (value-added in the IOC of more than 35% of the ex-factory price of the product, or percentage of imported raw materials not exceeding 60% of this value). Nevertheless, products originating in Réunion are currently treated in the IEPA framework, and exporters from other IOC countries have the choice of following COMESA rules of origin.

3.41. COMESA origin may be conferred on products shipped directly from one Member State to another if those products are: (1) wholly obtained in the COMESA Member State[20]; or wholly or partially manufactured in the Member State from materials imported from outside the Member States, or of indeterminate origin, in accordance with a manufacturing process that involves a substantial transformation. The latter is defined by: (2) a c.i.f. value of the imported materials not exceeding 60% of the total cost of the materials used in the production of the goods; or (3) an ex-factory value-added resulting from the production process that accounts for at least 35% of the ex-factory cost of the goods (value-added is defined as the difference between the ex-factory cost of the finished product and the c.i.f. value of material inputs imported from outside the COMESA subregion) or 25% for goods on a list drawn up by the COMESA Council as being of particular importance for the economic development of Member States; or (4) if they result from processing that leads to a change of tariff heading.

[20] For example, minerals extracted from the soil or seabed and products of agriculture, fishing or hunting, or manufactured wholly from these products, without imported inputs.

Table 3.6 Madagascar's list of excluded products in the SADC framework

HS Code	Description	Category	Customs duty
17.01	**Cane or beet sugar, and chemically pure saccharose, in solid form**		
1701.11 90	- - - Other	E	20%
1701.12 90	- - - Other	E	20%
1701.91 00	- - Containing added flavouring or colouring	E	20%
1701.99 90	- - - Other	E	20%
17.02	**Other sugars, including lactose, maltose, glucose and fructose**		
1702.11 00	- - Containing by weight 99% or more lactose	E	10%
1702.19 00	- - Other	E	10%
1702.20 00	- Maple sugar and maple syrup	E	10%
1702.30 90	- - - Other	E	10%
1702.40 90	- - - Other	E	10%
1702.50 90	- - - Other	E	10%
1702.60 90	- - - Other	E	10%
1702.90 00	- Other, including sugar	E	10%
17.03	**Molasses resulting from the extraction or refining of sugar**		
1703.10 00	- Cane molasses	E	10%
1703.90 00	- Other	E	10%
27.10	**Petroleum oils and oils obtained from bituminous minerals, other than crude**		
2710.11 11	- - - Aviation fuel	E	105/L
2710.11 12	- - - Premium gasoline with a 95 octane rating and over	E	390/L
2710.11 13	- - - Regular gasoline with an octane rating of at least 90	E	390/L
2710.11 14	- - - Spirit-type jet fuel	E	157/L
2710.11 15	- - - White spirit	E	37/L
2710.11 19	- - - Other	E	37/L
2710.19 21	- - - - Kerosene	E	10/L
2710.19 22	- - - - Blended fuels	E	37/L
2710.19 23	- - - - Kerosene-type jet fuel	E	10/L
2710.19 29	- - - - Other	E	37/L
2710.19 31	- - - - Diesel fuel	E	120/L
2710.19 32	- - - - Fuel oil	E	20/L
2710.19 33	- - - - Lubricating oils and lubricants	E	20%
2710.19 34	- - - - Oils used in lubricating oils and lubricants	E	5%
2710.19 39	- - - - Other	E	20%
2710.91 00	- - Containing polychlorinated or polybrominated biphenyls, or terphenyls	E	5%
2710.99 00	- - Other	E	5%
27.11	**Petroleum gases and other gaseous hydrocarbons**		
2711.11 00	- - Natural gas	E	12/Kg
2711.12 00	- - Propane	E	12/Kg
2711.13 00	- - Butanes	E	15/Kg
2711.14 00	- - Ethylene, propylene, butylene and butadiene	E	12/Kg
2711.19 00	- - Other	E	12/Kg
2711.21 00	- - Natural gas	E	12/Kg
2711.29 00	- - Other	E	12/Kg

Source: Protocol on trade in the SADC.

3.42. According to Annex I to the SADC Trade Protocol on rules of origin, the basic requirements for goods to be regarded as "originating" are as follows: the product must have been wholly obtained in one of the Parties[21]; or the non-originating materials incorporated in the product must have undergone "sufficient working or processing" in accordance with the conditions set out in Appendix I of Annex I, which lists specific product-by-product criteria[22]; or the value of all non-originating materials must not exceed 10% of the ex-works price of the good.

3.43. The IEPA offers a fourth set of rules of origin and of certification procedures and obligations, contained in Protocol 1 thereto.[23] It lists the general requirements for a good to be considered as originating in the European Union or in the Eastern and Southern Africa Group (AfOA). Despite

[21] Article 4 specifies the type of goods that can be regarded as being wholly produced in Member States. It gives a list of the products in this category and establishes the criteria that a vessel must satisfy for it to be regarded as forming part of the territory of a Member State.

[22] WTO document WT/REG176/4 of 12 March 2007.

[23] Annex 2 to Protocol 1 to the Agreement, viewed at: http://eur-lex.europa.eu/resource.html?uri=cellar:75184c8b-f721-4002-87c8-e301d4adef11.0002.01/DOC_2&format=PDF.

their complexity, these new rules make it possible to use more raw materials not originating in the AfOA, in particular in the textiles and clothing industry, and this could facilitate Malagasy exports (Section 4.6).

3.1.4.4 Internal import taxes

3.1.4.4.1 Tax on intermittent income (IRI)

3.44. According to the General Tax Code (Article 01.01.05), any sale, including importation, of goods by persons with no NIF registration gives rise to the assessment of the IRI at a rate of 5% of the c.i.f. value of the goods sold. According to the Customs, in 2014 this tax was levied on 2.1% of the value of imports, but 18% of customs transactions. In addition to its cost in terms of cash and administration, this tax is not refunded when the importer finally obtains an NIF, and is not tax-deductible. This levy should be reviewed.

3.1.4.4.2 Value-added tax (VAT)

3.45. Madagascar applies VAT. The standard rate was reduced from 20% to 18% in 2005, then restored to 20% in 2008. Legislation regarding VAT in 2014 is available on the DGI website.[24] According to the authorities, VAT is levied in the same manner on goods for home consumption, irrespective of their origin, whether imported or not. The tax base for imports is the customs value plus duty and other taxes where applicable (apart from VAT itself), whereas that for local goods is the sale price plus other taxes, where applicable.

3.1.4.4.3 Excise duty and other levies

3.46. Excise duty is levied on many products to generate tax revenues or to discourage the consumption of certain products considered as harmful. The rates are as follows:

- beer: MGA 250/litre;
- wine: from 50% to 200%;
- other alcoholic beverages: from 50% to 250% for the *ad valorem* tariff and from MGA 75/litre to MGA 1,450/litre for the specific rate;
- cigarettes and other tobacco: 50% to 325%;
- imported second-hand motor vehicles: 10%; and
- mobile telephone services: 7%.

3.47. Perfumes and cosmetics were being taxed at the time of the previous review, but this is no longer the case because, according to the authorities, the receipts were negligible. Cigarette lighters were temporarily subject to excise duty between 2010 and 2014. The other taxes that were being levied on sugar, wheat and meslin flour, and chemical matches have been eliminated since the 2008 Finance Law. In 2014, all imported motor vehicles were subject to a 10% excise duty.

3.48. The tax base for locally manufactured products is the price charged to third parties at the place of production, whereas that for imports is the c.i.f. customs value plus duty (but not VAT). The differences between excise duties applied to imported and local products have been eliminated for the most part. The only remaining ones are described in the Table 3.7.

[24] Viewed at: http://www.impots.mg.

Table 3.7 Differences in excise duty on local and imported products, 2014

(%, unless otherwise indicated)

Products	Local products	Imported products
Second-hand motor vehicles	Exempt	10
Spirits obtained by distilling grape wine or grape marc (HS 22 08 20)	MGA 430/litre	230
Whiskies (HS 22 08 30)	MGA 1,450/litre	250
Rum and tafia (HS 22 08 40)	MGA 75/litre	230
Gin and Geneva, vodka, and other spirits (HS 22 08 50)	MGA 430/litre	230
Vodka (HS 22 08 60)	MGA 430/litre	230
Liqueurs (HS 22 08 70)	MGA 430/litre	230
Other (HS 22 08 90)	MGA 430/litre	230

Source: General Tax Code 2014, viewed at: http://www.impots.mg/cgi0809.php.

3.1.4.5 Duty and tax exemptions and concessions

3.49. Most of the machinery and equipment as well as certain inputs used in agricultural production are exempt from customs duty and VAT. Moreover, some staple goods such as rice and kerosene, whether imported or produced locally, are also exempt from customs duty and VAT.[25] These exemptions are also stipulated in the Customs Tariff.

3.50. In value terms, some two-thirds of the revenue shortfall recorded owing to exemption from customs duty and VAT on imports concern companies whose activities are governed by the Law on Large-Scale Mining Investment, the Establishment Agreement between the Malagasy State and the company QMM, or the Petroleum Code (Sections 4.5 and 4.6). The second item is that of concessions granted on a discretionary basis by the Council of Ministers, representing 14% of foregone revenue.

3.1.5 Prohibitions, quantitative restrictions and licensing

3.51. The main legislation on prohibition and other import restrictions dates from 1992, and has been notified to the WTO.[26] It sets out the items subject to prohibition, quantitative restrictions and other controls, for reasons of security, morals, etc. In particular, Madagascar applies prohibitions and licensing under multilateral agreements to which it is party, including those on the environment (e.g. plastic bags since February 2015). The Customs website contains the updated list of them. The few measures apparently in place to protect local industry from competition from imported products include restrictions on imports of diamonds, gemstones, gold and platinum jewellery, vanillin, as well as leaf tobacco (Section 4.1.2.5).

3.1.6 Contingency measures

3.52. Madagascar does not have any contingency measure legislation and has not communicated with the WTO Secretariat on the subject. However, an entity called the National Authority for Trade Remedies was set up in 2014 (Table 2.1).

3.2 Measures directly affecting exports

3.53. In-depth review of the export regime is a priority. Most of the export legislation dates back to 1988 and 1992.[27] The burgeoning number of documentary and procedural requirements over the years, each for a fee, has made exporting goods from Madagascar into an uphill struggle. This in part explains why exports accounted for just 18% of GDP in 2013, and for 12% when mining products are excluded.

[25] For example, day-old chicks, some other live animals, seed, staple grains, rice, medicinal products; pharmaceutical articles, equipment for medical use, contact lenses, spectacle lenses, and corrective lenses and propane gas; agricultural inputs (fertilizer, insecticides, fungicides, herbicides); newsprint, newspapers, magazines, books, brochures and printed matter.

[26] Decree No. 92-424 of 3 April 1992 regulating merchandise imports and exports. WTO documents G/LIC/N/3/MDG/1 of 9 September 2002, G/LIC/N/3/MDG/2 of 21 June 2005, and G/LIC/N/1/MDG/3 of 23 September 2014.

[27] Ordinance No. 88-015 of 1 September 1988 relating to export policy, Decree No. 88-327 of 1 September 1988 establishing implementation procedures for Ordinance No. 88-015.

3.54. Apart from the main problems affecting export production, which include difficulties relating to goods transport (Section 4.7) and access to energy (Section 4.5.3), as well as lending rates close to 25% (Section 4.10), numerous tax, foreign exchange and administrative hurdles - of which the main ones are listed below – could be usefully reviewed so as to facilitate the export process. A reform in which all regulations affecting exports are reviewed for their effect on the competitiveness of export companies would undoubtedly help eliminate a good deal of overlapping, duplication, outdated regulations and other obstacles to exports while observing the legislation in place.

3.55. These problems in part explain the range of duty and tax concessions and other financial benefits offered under the ZEF regime (Section 2.3.2) or under the large-scale mining investment regime, the provisions of which attempt to respond to the many problems confronting producers and exporters.

3.2.1 Export prohibitions and other restrictions

3.56. Export prohibitions arise from the main legislation governing export controls, which dates back to 1992.[28] It is forbidden to export archaeological or historical objects or certain species of fauna and flora covered in Appendices I and II of the CITES Convention, including medicinal plants. Rice exports are "suspended".[29] Sugar exports were suspended between 2011 and 2012 (Section 4.6.2.1). Export quotas for crabs were introduced in 2014 (Section 4.3.2). According to the authorities, exports of scrap metal and of aluminium and copper waste and scrap have been prohibited in order to discourage the theft of cabling and rails. Madagascar has also prohibited all exports of rough and semi-finished wood since July 2007.[30] Nevertheless, illegal exports of rosewood and palisander had still not been effectively stopped in October 2014. The customs computer system could include products subject to prohibition. There were in fact measures in place in 2015 (concerning rice, for example), of which the Customs had not been informed and which it was therefore not enforcing.

3.2.2 Export procedures

3.2.2.1 Reimbursement of VAT credits

3.57. One of the main problems mentioned by exporting companies in 2014 was the non-reimbursement of VAT credits. Exports benefit from the zero-rate VAT regime, which in principle gives entitlement to the refund, within 60 days, of duties and taxes levied on the inputs used to produce them, the latter being subject to VAT. In practice, however, most large companies (including foreign companies operating under the ZEF regime) complain of never recovering their VAT credits owing to budget problems. According to the authorities, the solution whereby these reimbursements would be deducted from amounts subsequently owed in the form of corporate income tax is not acceptable, as VAT credits cannot be allocated for the settlement of charges of a different nature.

3.2.2.2 Exchange rate regime

3.58. The second problem most often mentioned in 2014-2015 was the difficulty of obtaining foreign currency in a timely manner in order to import the inputs needed for export production. The private sector reported delays and ever more complications with their foreign currency applications in 2015.

3.59. On the export side, the foreign exchange regime, which does not apply to ZEFs, requires the repatriation of foreign assets, which must be domiciled with banks or other authorized intermediaries.[31] The document to which this gives rise, the foreign currency repatriation commitment and declaration (EDRD), could be replaced by the simple submission of the original invoice to the bank, which would help reduce red tape. The foreign currency must still be

[28] Decree No. 92-424 of 3 April 1992.
[29] Decree No. 2011-122 of 7 March 2011.
[30] Interministerial Order No. 10885/2007 of 3 May 2007.
[31] Circular No. 005 of 30 June 1994. Online information (on the exchange rate regime) from the BCM, viewed at: http://www.banque-centrale.mg.

repatriated within a period of 90 days, however. By contrast, ZEFs are not subject to the banking domiciliation requirement.

3.60. Until August 2014, exporters operating under the ordinary law regime could nonetheless keep their export earnings in foreign currency accounts held with local banks. This to some extent protects them from the risk of depreciation of the national currency, and guarantees them access to foreign currency up to the amount of their deposits. A requirement to surrender 10% of the value of export receipts in foreign exchange was nevertheless introduced in August 2014 (Section 1.2); it does not affect ZEFs.

3.61. Another advantage of ZEFs compared to companies working under the ordinary law regime is the possibility of holding export receipts in foreign banks, and total freedom of transfer abroad (of dividends, profits, wages and salaries, licence fees, royalties and other fees, technical assistance fees, and income from movable or immovable property). In practice, the ZEFs are free to maintain foreign currency accounts in foreign banks abroad and to pay their employees' salaries there, thus enjoying a degree of flexibility not available to other companies.

3.2.2.3 Export documentation and controls

3.62. Under the Customs Code (2014), goods being exported must be the subject of a detailed export declaration. The Customs justifies this obligation as necessary for customs control purposes, for verifying the conformity of goods with respect to prohibition rules; for indicating the customs regime assigned to goods, for providing the basis for invoices domiciled under the rules governing the foreign currency repatriation requirement, and for statistical purposes.

3.63. This operation calls for the submission of extensive paperwork, which it is planned to dematerialize: the commercial invoice, for example, must be prepared in five copies and in foreign currency, and after being physically domiciled with a local bank (see above), must first be stamped by the line ministries concerned with the export product should it require authorization (forestry and mining products, handicraft (certified as hand-made), and environment-related products (CITES)). This measure is applied to determine whether the goods declared correspond with the invoice and those mentioned in the authorization; but it considerably slows down and increases the cost of the export process, as in practice it requires at least one physical visit to these ministries.

3.64. According to the authorities, there has been some simplification in respect of the numerous other documents required from exporters – the business tax payment card was eliminated in 2008 and the statistical identification card has reportedly been abolished. The website of the International Trade Board of Madagascar (ITBM) has not yet been updated accordingly.[32] The following three documents, each of which must be renewed for a fee and by means of administrative procedures, could usefully be harmonized:

- the tax card containing the NIF by which to identify the taxpayer and ascertain the taxpayer's tax situation;
- registration in the Commercial Register; and
- the professional identity card for self-employed foreigners (CIPENS, Section 2.3.5).

3.65. The Quality and Packaging Division (SQC) in the Ministry responsible for trade issues a certificate of inspection of packaging and origin (CCCO) for the exportation of pre-packaged food products and agricultural products of plant origin.[33] Currently, the only mandatory export production controls covering mainly vanilla and coffee, spices, fruit and vegetables, examine the commercial quality of products, in particular their physical and chemical quality and packaging, based on existing technical regulations; they do not address SPS aspects, however. CCCO applications are already possible online via MIDAC, but the cost is high (0.5% of the f.o.b. value of the invoice).

3.66. One prerequisite for obtaining the CCCO for plant products is first obtaining a phytosanitary certificate, issued free of cost by the Ministry of Agriculture's Plant Protection Directorate (DPV). It is not yet linked up with the MIDAC, which would speed up the export process. Moreover, to

[32] Viewed at: http://www.itbm.mg/index.php/informations/faq.
[33] Decree No. 2006-681 of 12 September 2006 regulating the inspection of packaging.

carry out SPS controls more effectively, the authorities have expressed the need for one or several laboratories, as testing for contaminants (e.g. aflatoxins, pesticides) is not yet being done in Madagascar. Laboratories of this kind would make it possible to test for residues and better ensure that Madagascar's agricultural exports meet international standards. The difficulty of fulfilling these standards is a major constraint on exporters (Section 3.3.1).

3.67. To obtain the CCCO for animal products, sanitary certificates must be issued by the official veterinarians at export inspection posts, being responsible for monitoring and controlling approved establishments/vessels/warehouses and the only authority empowered to sign the certificates. In some cases these certificates are free of cost (for example, for fisheries products), in others, they are costly: export permits and health certificates for animal products (honey, meat, etc.) cost 2% of the f.o.b price of the exported goods, which raises the cost by that amount. The veterinary service could be rapidly linked up with MIDAC so that certificates are no longer issued manually.

3.68. Other bodies currently require exporters to pay for quality tests. Dedicated control bodies for wood and mining products issue quality certificates, which may cost up to 4% of the f.o.b. value of the exported products.

3.69. Hence, there is considerable scope for streamlining in the area of documentary and physical control for export purposes. Physical inspections should be conducted at single locations by multi-disciplinary and interministerial teams in order to save on resources and avoid duplication. Furthermore, fees should be calculated on the basis of the value of the service provided and not in proportion to the value of the exports.

3.2.2.4 Export taxes

3.70. According to the authorities, Madagascar does not levy export taxes. Nevertheless, the above-mentioned charges (CCCO, certificates, permits) and the entire range of levies, in several cases collected exclusively on exports and in proportion to their value, are de facto export taxes. These taxes are described in Section 4 in relation to gold and mining products, wood, essential oils and other forestry products, crocodile skins and other wildlife products.

3.71. GasyNet's charges (Section 3.1.2.2) are 0.5% of the c.i.f. value of the exports, which not only makes them less competitive on export markets, but also runs counter to the principle of proportionality of the charge to the value of the service provided, which itself does not vary depending on the value of the goods. Second, as it does for imports, (Section 3.1.2), GasyNet charges the ZEFs a more favourable rate for exports, which is a potential source of distortion, administrative complications and/or could encourage fraud. Finally, GasyNet levies a third flat rate specifically for the Ambatovy and QMM mining companies.

3.2.3 Free Zones and Enterprises (ZEF) regime

3.72. Any regulatory reform of the export regime should also address the privileges available to ZEFs (described in Section 2.3.2), with a view to extending them to the entire economy so as to increase the overall offer. The scale on which these benefits are being fraudulently claimed - by several hundred companies in March 2015 - would seem to support this.[34]

3.73. Indeed, there were over 500 approved ZEFs in 2015, though less than 150 of them were operating, with under 53,000 employees. The numbers have fallen sharply since 2006, when there were 202 free-zone enterprises in operation, with almost 116,000 employees in total. Exports under this regime in 2014 amounted to MGA 1,600 billion (about US$500 million) or one-seventh of Madagascar's total exports, which consist mainly of textiles and clothing, followed by shrimps and crustaceans, and agro-industrial products. This notwithstanding, several new ZEFs were established in 2015 in the textiles and other subsectors producing mattresses, soaps and building products.

[34] According to a study by International Labour Office (BIT), these investors do not really intend to launch any entrepreneurial activity; the sole purpose of the application for authorization is to be able to import goods free of duty (ILO, 2011).

3.74. Madagascar had notified this ZEF regime to the WTO in 2001 under the Agreement on Trade-Related Investment Measures (TRIMS)[35], as it is – in principle – a special scheme under which attractive tax, customs, financial and labour benefits are accorded to enterprises that export 95% of their output. One of the aims of the legislation on ZEFs was to promote and develop private investment in production in Madagascar. Many observers are of the view that without this regime, which accounts for the bulk of processed goods and services exports, a good portion of the foreign direct investment in Madagascar would not have materialized.

3.75. This suggests the need to review and harmonize the tax system, as current internal tax rates are generally described as very high and cited as the reason why many operators remain in the informal sector.

3.76. Sales by ZEFs in the national customs territory (up to 5% of their real annual production) are subject to MFN import duties and taxes. ZEFs may supply one another. In practice, the goal of integrating the production system is hardly being attained. Three-quarters of the inputs purchased by the ZEFs originate abroad, whilst the corresponding figure is 51% for companies under ordinary law and 53% for the totality of exporting companies (see also Section 4.6.2.2 concerning textiles). Generally speaking, the existence of two production regimes side-by-side accentuates the dualism within the economy in that it hampers integration between export sectors and sectors supplying the domestic economy: high customs duties make local inputs expensive and discourage exporters operating under the ZEF regime from using them, and this in turn even further increases the imported input content of exports.

3.77. One of the main advantages of ZEFs over companies working under the ordinary law regime is the absence of currency exchange restrictions (Section 3.2.3). The ZEF regime has been credited for the export performance of some sectors, for example made-up clothing for the United States market (Section 4.6.2.2) and agricultural subcontracting for the production of vegetables for export. The available benefits contribute to the aim of enhancing business competitiveness, but this concerns only export companies, whilst domestic companies or those that have not obtained approval are to some extent left to fend for themselves. The domestic value-added generated by the ZEF system would probably be higher if the entire economy could share in the gains that it provides.

3.3 Measures affecting production and trade

3.3.1 Standards and technical regulations, including sanitary and phytosanitary standards and regulations

3.78. It was necessary in March 2015 to draw up an inventory of all standards and technical regulations in force in Madagascar, more particularly those affecting imports and exports, and to publish them officially on the Internet. This effort should be extended to all products potentially affecting human and animal health, safety, etc., such as foodstuffs, para-pharmaceuticals, tobacco products, cosmetics, products harmful to the environment, medical equipment, etc.

3.79. Such an inventory would pave the way for the introduction, to the extent possible, of common authorization procedures for these products, and this would eliminate the current overlapping of functions mainly as regards the import and export of agrifood products. Such streamlining would boost trade without lessening the protection of domestic and foreign consumers - quite the contrary.

3.80. Apart from the tests carried out by the line ministries concerned (agriculture, livestock, forestry and fisheries), all food products or perishable items (including additives and sweetening matter) are also subject to two other procedures requiring two different laboratory tests.

3.81. A review should be made of national quality control bodies (standardization, certification, inspection, testing, metrology) in order to separate regulatory power more clearly from national certification bodies or those responsible for enforcing standards, and to better circumscribe their respective roles. It is not infrequent today for mandatory standards to be promulgated by some regulatory bodies with no involvement of the Madagascar Bureau of Standards. The review

[35] WTO document G/TRIMS/N/2/Rev.8 of 19 July 2001.

of regulations would, amongst other things, enable all regulatory bodies to work hand-in-hand and to rely on the relevant standards when adopting technical regulations.

3.82. Besides, an effort should be made to create or strengthen internal coordination committees and other mechanisms – Madagascar has no National TBT Committee (technical barriers to trade), for example – in order to properly determine problems or risks associated with a given situation and decide whether government intervention is needed and the type of measure required, as appropriate.

3.83. There is no national accreditation body and no Malagasy entity is currently a member of the International Laboratory Accreditation Cooperation (ILAC).[36] Madagascar nonetheless cooperates with foreign accreditation bodies, in particular the French Accreditation Committee (COFRAC), for the accreditation of official services and/or laboratories, *inter alia*, so as to ensure that Malagasy products meet the international standards set by some importing countries.

3.3.1.1 Sanitary and phytosanitary (SPS) measures

3.84. Madagascar is a member of the three standard-setting bodies expressly referred to in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), namely the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention. According to the authorities, the measures taken in this regard are based on the international standards developed by these three bodies.

3.85. Twelve SPS measures have been notified to the WTO Secretariat since 2007, whereas none had been communicated previously. In particular, Madagascar notified measures taken following cases of white spot disease in shrimps and other crustaceans, and to combat bee varroasis.[37] No specific SPS-related trade concern has been reported by the WTO in connection with Madagascar.

3.86. In March 2010, Madagascar designated a new SPS notification authority, the Rural Development Policy Unit. One of the tasks of the SPS Enquiry Point could be to post the relevant Malagasy legislation online on a dedicated website. Table 3.8 contains a list of the main relevant documents. In 2012, the Ministry responsible for livestock and fisheries also endeavoured to draw up an inventory of all regulations on sanitary measures in force for imports; this effort should be extended to all products that could potentially affect human and animal health.[38]

Table 3.8 SPS legislation relating to production and international trade, 2014

Legislation and regulations
Decree of 24 September 1927 on the repression of fraud in the sale of goods and of falsifications of foodstuffs and agricultural products
Law No. 86-017 ratifying Ordinance No. 86-013 of 17 September 1986 on phytosanitary legislation in Madagascar
Decree No. 92-284 of 26 February 1992 regulating veterinary pharmacies
Decree No. 92-285 of 26 February 1992 on animal health policy in Madagascar
Decree No. 92-424 regulating merchandise imports and exports
Decree No. 92-473 regulating agro-pharmaceutical products
Decree No. 93-844 of 16 November 1993 on hygiene and quality of food and products of animal origin
Order No. 2122/95 of 4 May 1995 on the functioning of the National Commission for the Examination of Applications for Marketing Authorization (AMM) for veterinary drugs in the territory of the Republic of Madagascar
Order No. 7707/97 of 29 August 1997 prohibiting the use of certain veterinary drugs and products
Decree No. 97-1109 of 4 September 1997 on the approval of the various establishments engaged in the slaughter of animals and the preservation, preparation, processing and transport of meat, offal, and foodstuffs of animal origin for human consumption

[36] Online information from International Laboratory Accreditation Cooperation (ILAC), viewed at: http://ilac.org.

[37] OIE animal health information, viewed at: http://www.oie.int/wahis_2/public/wahid.php/Countryinformation/Countryreports. Action taken includes: (i) Order No. 33423/2010 of 13 October 2010 laying down the health requirements for crustaceans and byproducts, and (ii) Order No. 33424/2010 designating the Official laboratory for the epidemio-surveillance of aquatic diseases in Madagascar; and (iii) preventive measures adopted in 2013 under Order No. 7006/2013 laying down the import requirements for crustacean feed. In keeping with OIE guidelines, action was taken in 2012 under Decree No. 2012-559 of 22 May 2012 to combat white spot disease in shrimps introduced into an aquaculture farm. Steps were also taken under Decree No. 3669/2010 of 1 March 2010 to combat bee varroasis, and notified to the WTO.

[38] Ministry of Livestock (2012).

Legislation and regulations
Order No. 7706/2000 11 July 2000 establishing the coding system of the national marketing authorization number (National AMM) for drugs and biological products for veterinary use in Madagascar
Decree No. 2000-975 of 13 December 2000 prohibiting the importation of animal meal and of any food containing it, for use as animal feed
Decree No. 2004-040°of 20 January 2004 authorizing the importation of female bovine animals into Madagascar
Decree No. 2004-041 of 20 January 2004 establishing the regime applicable to the importation and exportation of animals, products and foods of animal origin, and grain and fodder for use as animal feed
Order No. 2088/2005 of 24 March 2005 on controls at importation of female bovine animals into Madagascar
Decree No. 2005-375 establishing the Fisheries Health Authority
Law No. 2006-030 of 24 November 2006 on livestock-breeding in Madagascar
Order No. 4196/06 prohibiting the importation, sale and use of some pesticide active ingredients in agriculture
Order No. 2908/2007 laying down specific hygiene rules for fisheries products for export
Order No. 2910/2007 on the hygiene of foodstuffs of animal origin specific to fisheries products for export
Order No. 6235/2009 laying down the official microbiological criteria and sampling plan applicable to fisheries and aquaculture products for human consumption intended for export
Decree No. 2010-1009 regulating the production, control, certification and marketing of seed
Law No. 2011-002 containing the Health Code
Interministerial Order No. 45555/2011 prohibiting the importation, distribution, sale, use and production of some pesticide active ingredients in agriculture and of industrial chemicals
Interministerial Order No. 28482/2011 on sanitary control measures for certain substances and residues in plants and plant products for human consumption intended for export
Order No. 29179/2011 of 7 October 2011 designating the authority responsible for the phytosanitary inspection and certification of plants and plant products for human consumption intended for export
Order No. 6814/2013-MSANP regulating food supplements
Decree No. 2013-260 of 9 April 2013 on the organization and operation of the Food Safety and Quality Monitoring Agency (ACSSQDA).

Source: Malagasy authorities.

3.87. Since 2005, the task of the Food Safety and Quality Monitoring Agency (ACSSQDA) has been to ensure that food consumed, distributed, marketed or produced in Madagascar complies with the safety standards. It has a network of seven food control laboratories and delivers certificates of "fitness for consumption" or conformity for every batch of foodstuffs produced or imported, before it is put on the market.[39] The ACSSQDA also conducts analyses and inspections of establishments. The Agency's organization and functioning have been undergirded by the adoption of the new Health Code in 2011 and by Decree No. 2013-260, which introduced changes in that regard, *inter alia:* the inclusion in its Board of Directors of three new members from the three ministerial departments concerned (agriculture, livestock and fisheries) and the addition of food quality analysis and control and legal affairs divisions to its structure, and the adoption of new provisions covering detected cases of fraud.

3.88. An Interministerial Task Force was set up in 2013 with EU support in order to buttress Madagascar's food safety system and review the draft Food Law drawn up in 2008 with the support of the FAO.[40] The Task Force brings together the competent health authorities, the Madagascar Bureau of Standards (BNM), the National Codex Alimentarius Committee (in existence since 2005), the Standards and Quality Division in the Ministry responsible for trade, official testing laboratories, and representatives of the agrifood sector, the Chamber of Commerce and Industry and of agricultural producers' organizations.

3.89. SPS control measures for products imported into Madagascar are the responsibility of a number of entities that report to several ministries (agriculture, trade, livestock, higher education with responsibility for nuclear science and technology, fisheries and health), and this suggests that there is scope for streamlining to facilitate trade. More specifically:

- The Plant Quarantine Division (SQV) in the Ministry of Agriculture controls the importation of live plants, seed and parts of live plants, as well as plant products, soil and growing media, and packaging of plant material. It issues the phytosanitary permit required for importation.

- The Directorate of Veterinary Services (DSV) in the Ministry of Livestock controls the importation of terrestrial and aquatic animal products (in collaboration with the Ministry responsible for fisheries resources) and genetic materials of animal and plant

[39] Statement of the reasons for the new 2011 Health Code, viewed at: http://fmcmada.info/AVRIL2012/codesante.pdf.
[40] Interministerial Order No. 14293 of 3 July 2013. The programme is called EDES.

origin and veterinary inputs for use in livestock farming. It approves importing companies, authorizes the opening of points of sale for veterinary drugs and some avian veterinary vaccines, and delivers health clearances.

- A Committee for the approval of agro-pharmaceutical products bringing together different ministerial departments and private entities is tasked with approving all imported phytosanitary products irrespective of their origin. After the requisite tests, the Committee authorizes import for the purposes of marketing the product concerned. The approved products are listed in an official catalogue that is updated annually.

- The Madagascar Medicinal Product Agency (see below) is responsible for registering, inspecting and controlling the quality of drugs for use in human (but not veterinary) medicine, and for drug testing and control, as well as cosmetics containing therapeutic substances.

- The ACSSQDA verifies the quality of all food or perishable products, but not of cosmetics and food supplements.

- The National Institute of Nuclear Science and Technology (INSTN) verifies that all imported products are free of radioactive contamination. If the outcome of the analysis is satisfactory, the Ministry responsible for trade issues a certificate of non-contamination by radioactivity.

3.90. When imported goods arrive, they must be accompanied by certificates (sanitary and/or phytosanitary) issued by the competent authorities in their country of origin. Before the goods arrive, the importer is required to inform the relevant services in the Ministry responsible for agriculture and/or livestock. Upon arrival of the goods, the border inspection posts first check the documents specifying the content of the import permits issued previously.

3.91. The taking of samples for analysis depends on the degree of risk posed by the imported product. Foodstuffs imported by supermarkets and/or big companies by sea are generally transferred to the capital for customs clearance. In such cases the containers are unpacked by a team comprising the head of the regional veterinary service, an ACSSQDA representative and a trade inspector. Apart from the documentary verification done by the veterinarian, two samples are taken per imported batch for the following purposes: (i) the first is used for microbiological and/or physico-chemical analyses by the ACSSQDA laboratory; (ii) the second sample is tested by the INSTN laboratory for non-contamination by radioactivity.

3.92. Some products must also be quarantined for a period stipulated in the current regulations. If import requirements are not met, the border inspection posts may opt for different measures depending on the cases at hand, i.e. the rejection and/or the destruction of the goods if there is a major risk, or consignment to ports and airports pending completion of the required documentation, in the event of minor risk.

3.93. For foodstuffs of plant origin, control at the border is performed by agents attached to the Ministry responsible for trade. The documents are first checked, and two samples are then taken per imported batch for testing and analysis as described above. If the outcome of the checks is satisfactory, the border control posts issue a visa or a release order and the goods proceed to a second stage of control by Customs. Minutes of the unpacking procedure will be drawn up by the team assigned that responsibility and a copy forwarded to the DSV for their records.

3.94. The fact that foodstuffs or perishable items require the taking of at least two samples involving as many entities and departments would suggest that there is room for streamlining without detracting from the quality of the controls. The streamlining of these procedures would be much helped by the creation, at the main ports and airports, of infrastructure and equipment shared by all inspection bodies and adapted to sanitary and phytosanitary inspections, quality control and certification. The authorities stress that this would require substantial multi-year financial support. Currently, in the event of an SPS alert, the relevant ministries take control measures, which are not communicated electronically to the Customs, but instead by internal mail, and this can be very time-consuming.

3.95. Following the outbreak of foot-and-mouth disease in Europe, Madagascar banned the importation of all live animals and meat and non-sterilized meat products as of the year 2000, without specifying any origin.[41] Some months later a new order specifically prohibited such imports from South Africa as well.[42] Although the measures regarding South Africa were relaxed somewhat in 2005, no text seems to have abolished these prohibitions for the other countries. Authorization to import processed food products from South Africa was decided by the Malagasy veterinary authorities on 13 May 2014 in the wake of the decision taken by the OIE on the matter. The authorities have indicated that regulatory measures have been taken to authorize imports of animals or products of animal origin from certain EU countries that were affected by foot-and-mouth disease but which have now been officially declared disease-free by the OIE.

3.96. The Plant Health Division (SSV) was set up in 2011 within the Plant Protection Directorate to ensure that exported plant products meet the health requirements of importing countries, and more specifically of the European market, which is the main destination for Madagascar's agricultural exports. This new unit was to become operational in 2015, thanks to support from the EDES programme (see below). Under the regulations in place, it is expected to carry out the health inspection and certification of food products of plant origin destined for export.

3.97. Some companies established in Madagascar and producing food products of animal origin have set up the Hazard Analysis and Critical Control Points (HACCP) system internally.[43] The available information indicates that it is taking a very long time for the competent authorities (DSV or the Fisheries Health Authority (ASH)) to validate the HACCP system set up by agrifood companies. Moreover, the cost of setting up the HACCP system appears to be prohibitive to SMEs and effectively excludes them from international markets. Some establishments working on food products of plant origin are also being requested by their importing clients to install the HACCP system.

3.98. To safeguard access to the EU market, Madagascar has had the benefit of European Union support under the following three programmes: in 2009-2010, the Better Training for Safer Food in Africa Programme, which was aimed at drawing up a frame of reference for harmonizing the system of inspection of agrifood industries in Africa; in 2011, the Pesticides Initiative Programme assisted private-sector exporters of fresh fruit and vegetables; and since 2013, the EDES Programme has been targeting the competent authorities, private enterprises and organizations of producers of all agricultural, livestock and fisheries products. EU-funded regional support programmes are also available for building the capacities of the authorities responsible for SPS matters. These include the Reinforcing Veterinary Governance programme, and the Regional Programme for Plant Protection (PRPV) for the countries members of the Indian Ocean Commission.

3.99. Through the ASH, Madagascar signed a Memorandum of Understanding with China in 2013 laying out the sanitary conditions for access for its fisheries and aquaculture products.

3.100. Projects under the Standards and Trade Development Facility (STDF) aim to ensure that local products better meet the international standards for food exports, as well as to improve the dissemination of information about these standards. Accordingly, in 2008 Madagascar benefited from a US$20,000 grant to aid its dried beans subsector in meeting international SPS standards.

3.3.1.2 Measures incumbent on the Quality and Packaging Division

3.101. According to the TBT Information Management System[44], Madagascar has not made any notification to the WTO regarding its standardization regime or its accreditation and certification procedures. The National Enquiry Point notified in connection with standardization was the Standardization and Regulation Division of the Standardization and Quality Directorate in the

[41] Interministerial Order No. 3168/2000 banning imports of live animals and products and foodstuffs of animal origin.

[42] Order No. 11.565/2000 prohibiting the importation of all live animals and meat and meat products from South Africa.

[43] The HACCP, a systematic and preventive method of food safety control, has been used by many countries since the 1960s. It is recommended by the Codex Alimentarius Commission, the United Nations body responsible for international food safety standards.

[44] Viewed at: http://tbtims.wto.org/Default.aspx?Lang=2.

Ministry responsible for trade. However, as this unit no longer exists, it is the Quality and Packaging Division (SQC) that performs this function even though there has been no official notification to the WTO. No specific TBT-related concerns have been raised by WTO Members in regard to Madagascar.

3.102. Law No. 97-024 of 14 August 1997 still governs the national system of standardization and certification of goods and services.[45] Under this Law, voluntary standards may be made mandatory by decree. The Law makes no mention of imports. No Malagasy standardization body has adopted the Code of Good Practice for the Preparation, Adoption and Application of Standards.[46] The authorities have requested WTO technical assistance for setting up a TBT Committee, for training agents in TBT matters, adopting good regulatory, procedural and notification practices, and adopting the Code.

3.103. The SQC in the Ministry responsible for trade is tasked with preparing, reviewing and disseminating technical regulations (mandatory standards) governing pre-packaged foods and agricultural products of plant origin. It may write a standard or a part of a standard into a technical regulation, depending on the needs of consumers, domestic industry and importers or exporters. This unit also acts as the Codex Alimentarius contact point. According to the SQC, regulations are drawn up by technical committees comprising all the players concerned with the product to be regulated, including representatives of consumers, manufacturers, exporters, importers or distributors. If necessary, laboratories or research bodies are brought on board. At March 2015, the only mandatory standards concerned:

- soaps and detergents: Interministerial Order No. 28520/2011 of 30 September 2011;
- the labelling of pre-packaged foods: Order No. 1075/2012 of 24 January 2012 (adoption of the Codex standard);
- the labelling of fortified foods: Order No. 1075/2012 of 24 January 2012;
- the Malagasy standard for green coffee for marketing: Decree No. 85-129 of 3 May 1985;
- the Malagasy standard on vanilla: Interministerial Order No. 4911/99 of 12 May 1999; and
- the technical regulation on cloves (in preparation).

3.104. In 2013, the Ministry of Trade and Consumer Affairs consulted stakeholders with a view to updating the technical regulations pertaining to rice, maize, onions, dried beans (including Cape peas) and groundnuts. The aim was to update and harmonize the technical regulations on these products in order to stimulate trade in the Indian Ocean regional market.

3.105. The SQC is also responsible for labelling, packing and packaging. As stated above (section on SPS), although the SQC does not undertake either registrations or inspections of imported products and importers, it is present at exportation when the quality and packaging of some export goods are being controlled (Section 3.2.2.3).

3.3.1.3 Measures under the responsibility of the Madagascar Bureau of Standards

3.106. The Madagascar Bureau of Standards (BNM) was established in 1997 and began operating in 2002 under the technical supervision of the Ministry in charge of industry. It is responsible for the overall management and coordination of standardization issues, including testing, certification and inspection, and the quality assurance of goods and services for the domestic market, and of imports and exports.[47] BNM budget receipts consist of contributions from member enterprises and corporations, loans and grants, government subsidies, and revenue from the various services provided (sales of standards, certification and product approvals). It had been planned to publish the national list of established standards on an official website in 2015. Madagascar has established voluntary standards for construction materials, road safety and urban public transport. A decree on the approval of construction materials was drawn up in 2012, and according to the authorities, this approval was to become operational in the spring of 2015.

[45] Viewed at: http://www.edbm.gov.mg.
[46] Viewed at: https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.
[47] Decree No. 2008-703 determining the status and organization of the BNM.

3.107. In accordance with the agenda set by its governing board, the BNM develops a preliminary draft standard. It sets up a technical committee for consultation on the chosen criteria. The standards drawn up are either definitive or experimental. The technical committees comprise experts or specialists and representatives of various units of the ministerial departments and public institutions concerned, the private sector (different categories of operator), academic and research institutions, testing laboratories, and consumers' associations concerned by and interested in the standards to be studied. The Malagasy national standard is developed on the basis of the international principles and international standards and principles laid out in the SPS and TBT Agreements. The BNM maintains a directory of some 60 national standards mainly covering food products.

3.108. Madagascar is moving ahead with the harmonization of regional standards and the adoption of international standards (International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC) and the CODEX). These documents may serve the technical committees as source documents.

3.109. The BNM is a correspondent member of the ISO and as such does not take an active part in the technical and policy-making work of that organization, but benefits from the outcomes of its activities. The BNM has also been affiliated with the IEC since 2005. Madagascar does not participate in the IECEE CB Scheme.[48] The establishment of the BNM National "IEC" Committee was planned for 2015.

3.110. The BNM represents Madagascar at the ISO but has never notified the ISO of its annual work programme. The BNM has announced in connection with this report that these notifications have now been given priority, with a view to improving the operation of the Bureau both nationally and internationally. However, the formulation of a national standardization policy, which has not been done since Madagascar joined the ISO, would first be decided on in the context of preparing the national standardization strategy.

3.111. Madagascar participates in the COMESA Programme on standardization, quality assurance, metrology and testing. This programme aims to harmonize standards and quality assurance programmes within COMESA.

3.112. A decree providing for the introduction of certification was published in September 2014 and in 2015 certification was being put in place by the BNM. Work was under way to identify auditors and train new ones, and product certification was to begin in 2015.

3.3.1.4 Responsibilities of the Legal Metrology Division

3.113. The use of the metric system is compulsory in Madagascar. The Legal Metrology Division in the Ministry of Trade and Consumer Affairs is responsible for metrology and inspection. Among its domestic activities, it randomly inspects fuel-measuring instruments to ensure their accuracy. It also represents Madagascar at the International Organization of Legal Metrology and has stated its wish to become an associate member of the International Bureau of Weights and Measures.

3.3.1.5 Products regulated by the Madagascar Medicinal Products Agency

3.114. Madagascar imports almost all the medicines and health products consumed in the country. Chemical substances intended for use in public health, as well as cosmetics containing therapeutic substances require a marketing authorization (AMM) issued by the National Registration Commission.[49] The Madagascar Medicinal Products Agency was created in 1998[50] and is responsible for registering, inspecting and controlling the quality of medicines and for testing and control. Its website contains the list of registered products.[51] There were some 2,600 registered products at the end of 2014. Medicines classified as "medium and low-turnover" (only specialties included in the official publications "Vidal" (France) and "Doroz" (Switzerland)),

[48] IEC System of Conformity Assessment Schemes for Electro-technical Equipment and Components (IECEE), viewed at: http://www.iecee.org.

[49] The costs of these procedures are fixed by Interministerial Order No. 24364/2004 of 10 January 2005.

[50] Decree No. 98-086 of 27 January 1998, as amended by Decree No. 2004-086 of 27 January 2004.

[51] Viewed at: http://www.agmed.mg.

which pharmaceutical laboratories are reluctant to register given their low import volume, may be imported but are not registered by the Agency.

3.115. Parapharmaceuticals and medical consumables do not require marketing authorization, nor do cosmetics and personal hygiene products not containing therapeutic substances. It could not be determined which body is responsible for testing and assuring the quality of the latter products before their release for consumption.

3.116. The manufacturing laboratory must file an application, the examination of which costs €200 per product for new marketing authorization applications and €140 to €300 for renewals. The application must state, *inter alia*, the name and address of the manufacturing laboratories holding the marketing authorization in the country of manufacture, the wholesale price excluding tax (PGHT) in foreign currency, the product distribution and supply channel recommended by the laboratory of origin and the method of distribution envisaged (pharmacy, hospital, etc.). The relevant documentation must be attached for any product prequalified by the WHO. For specialties in which the molecule is still protected by a patent, the applicant must submit a dossier to the Malagasy Industrial Property Office (OMAPI) (Section 3.3.6) and deliver to the Agency the receipt attesting to the deposit. Examination of the dossier takes an average of four months.

3.117. Under the new import procedures in place since 2010, only pharmaceutical wholesalers are authorized to import. There are 36 such companies in all of Madagascar, all of them Malagasy companies in which 51% of the shares must belong to the pharmacist in charge. The latter must be Malagasy and must hold a licence issued by the Ministry of Health authorizing them to distribute nationwide.

3.118. To register a product, foreign manufacturers wishing to sell to Madagascar generally turn to a wholesaler to obtain the marketing authorization, which is granted for a period of five years. For the purposes of testing, the Medicines Quality Control Laboratory creates a file for each product and delivers a certificate of analysis. Any batch may undergo a post-marketing test, whether upon notification or after pharmaceutical inspection.

3.119. Medicines and health products are distributed either through the public health care system or through private pharmacies. The public health care system and private non-profit institutions are supplied with essential generic medicines (in accordance with a national list) exclusively by the central procurement agency, SALAMA. SALAMA is the country's chief supplier of generic medicines and materials (syringes, compresses, etc.). It purchases its products by international competitive bidding under an exclusivity agreement with the State that runs until 2016.[52] The cost of medicines is not legislated; under a private agreement, wholesalers receive a profit margin of 20% of the PGHT before sale to pharmacies. The pharmacies' margin on sales to patients is 35% of the price of importation (by the SALAMA or by private wholesalers), and 40% in rural areas.

3.120. At the end of 2013 the Madagascar Medical Review reported frequent shortages of medicines.[53] Under the procedures of the Fund for Non-Stop Supply of Essential Medicines (FANONE), basic health centres are financed entirely by means of a 3% deduction from the 35% sale price increase accorded for medicines. It is therefore the buyers of medicines at public health institutions that finance the health sector's social protection network. Users of private medical facilities (and people not purchasing medicines) therefore do not contribute to the Fund.

3.3.1.6 Measures incumbent on the National Environment Board

3.121. Sustainable natural resource management has been a stated priority of every Malagasy Government since 1999, given the need to preserve the country's exceptional terrestrial, riparian, marine and coastal biodiversity.[54]

[52] Viewed at: http://www.salama.mg.
[53] Viewed at: http://madarevues.recherches.gov.mg/IMG/pdf/RMM10-02a.pdf.
[54] See in particular Law No. 99-021 of 19 August 1999 on industrial pollution management and control policy, and Decree No. 99-954 of 15 December 1999, as amended by Decree No. 2004-167 of 3 February 2004 on environmental compliance of investment (MECIE).

3.122. Environmental protection falls under the Ministry of the Environment, Ecology and Forests (MEEF). Unfortunately, a lack of resources is considerably hampering officials in attaining the goals set by the Ministry, namely: increasing the areas under protection in order to conserve and enhance the biodiversity (Section 4.4); slowing down the degradation of natural resources; developing the environmental reflex at all levels; and strengthening forestry and environmental governance.

3.123. The most acute international trade-related problems are illegal logging and exportation, especially of rosewood and ebony wood, and illegal exports of animal products such as crocodile skins. The Government's current priorities include registering rosewood and ebony wood in CITES Appendix II, and halting illegal felling and exports. In August 2014, the Government also announced the decision by CITES to lift the moratorium imposed in 2010 on exports of crocodile products from Madagascar, as it was impossible to trace the origin (wild or not) of the animals slaughtered.

3.124. Since 2004, all investment projects requiring public works authorization have been subject to an in-depth environmental impact study and an environmental management plan or a precise environmental commitment programme, which must be evaluated so as to ensure compatibility with the environment.[55] The National Environment Board is tasked with examining the dossiers.

3.125. Since 2007, regulations intended to protect the ozone layer have been in place for the importation, sale, resale and use of refrigerants, refrigeration equipment and halons. Customs duty was waived in 2010 on equipment for the generation of renewable energies. This was followed in 2011 by a VAT waiver for wind- and water-powered generators. In October 2014 the Government announced a ban on the production and marketing of plastic bags effective 1 May 2015, imports of such bags being banned as of February 2015.

3.3.2 Incentives

3.126. Madagascar's notifications to the WTO indicate that it grants no aid or subsidy that might be inconsistent with its obligations under the Agreement on Subsidies and Countervailing Measures or under the GATT 1994.[56] Appreciable tax and foreign exchange privileges are nevertheless accorded to companies declaring that they export the bulk of their output (Section 2.3.2), as well as to large-scale mining investment projects. Tax rebates are granted to oil companies in order to keep their prices low. Public services such as electricity (Section 4.5.3) water, air and rail transport services (Section 4.7) and postal services receive government support.

3.3.3 Competition and price control regime

3.127. Owing in part to its insularity and to low domestic demand, the Malagasy economy lacks competitiveness. The sectors in which abuses – chiefly price abuses – are most often reported include petroleum products, beverages, telecommunications services and construction materials. For example, one cement company (Holcim SA, foreign-owned capital) controls two-thirds of Madagascar's domestic cement market, in competition with another foreign company (Lafarge). The customs duty on cement ranges from 5% to 10% depending on the product. Cement imports have been zero-rated in the past, that is to say exempt from all customs and fiscal duties and taxes, but that tax relief was not followed by a price reduction, owing perhaps to the absence of competition in this market.[57] There are frequent cement shortages on local markets. Trade policy in this subsector and ways and means of encouraging competition in this market should be looked into.

[55] Decree No. 99-954 of 15 December 1999, as amended by Decree No. 2004-167 of 3 February 2004 on environmental compliance of investment (MECIE).

[56] WTO documents G/SCM/N/95/MDG, G/SCM/N/95/MDG/Suppl.1, G/SCM/N/186/MDG, G/SCM/N/202/MDG, G/SCM/N/220/MDG and G/SCM/N/253/MDG; viewed at:
https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=R:/G/SCM/N186MDG.pdf.
https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=R:/G/SCM/N202MDG.pdf.
https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=R:/G/SCM/N220MDG.pdf.

[57] Viewed at: http://www.cream.mg/pub/detaxation.pdf.

3.128. A legislative framework for competition has existed since 2005 and also provides for a Competition Council[58], the statute of which was adopted by decree in April 2014 but was still awaiting implementation in October 2014. In principle, the Council is to hold decision-making power that extends to collective practices, in other words the operation of cartels and abuse of dominant position. Its remit would also cover mergers, which are subject to prior examination and which may be approved, prohibited or approved subject to conditions. Matters may be referred to it by the Minister responsible for trade, companies, parliamentary commissions, local authorities, trade unions, approved consumer organizations, as well as chambers of commerce, industry and agriculture, or it may act on its own initiative. It would be empowered to issue injunctions, impose fines and accept undertakings on the part of companies. Lastly, it would have broad advisory powers and could be consulted by the Government on any competition-related draft text.

3.129. In sectors or zones where price competition is limited, more specifically owing to a prevailing monopoly situation or to chronic supply problems, the Government may move to restrict general price freedom by decree or following consultation with bodies representing private operators. The Government may likewise adopt temporary measures lasting up to six months to counter excessive price rises or declines, by reason of a crisis situation, exceptional circumstances, a disaster or a clearly abnormal market situation in a given sector. These are the provisions that have been invoked since 2008 in order to administer the pump prices of petroleum products (Section 4.5.2).[59]

3.130. Madagascar also monitors the prices of staple products, which currently include rice, edible oil, cement, flour, bread and sugar. To combat famine the Government bought some of these products from private companies in October 2010 for resale at lower prices on the market.[60] But no other such intervention has occurred since then. The Competition and Market Regulation Directorate in the Ministry responsible for trade reports to the Government in the event of sharp market price fluctuations for these products, particularly during tiding-over periods.

3.3.4 State-trading, state-owned enterprises and privatization

3.131. Madagascar has not notified the WTO regarding its state trading enterprises within the meaning of Article XVII of the GATT, namely governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their procurement or sales the level or direction of imports or exports. Table 3.9 lists companies with State participation that are operating internationally.

[58] Law No. 2005-020 of 17 October 2005.

[59] Decree No. 2013-882 of 23 December 2013 renews the administration of pump prices from 1 January to 30 June 2014, invoking the Law on Competition.

[60] *Jeune Afrique*, 20 October 2010, viewed at: http://www.jeuneafrique.com/actu/20101020T182416Z20101020T182358Z.

Table 3.9 Some companies with State participation operating as of 31 December 2014

Company	Activity	Equity capital (MGA million)	State share (%)	Comments
Agriculture, fisheries, livestock				
Malts et orges de Madagascar	Barley growing	3,867	4.76	
Pêcheries de Nossi-Be	Deep-sea fishing	2,162	23.01	Exports
Société malgache de pêcherie	Fishing and aquaculture	1,066	1.00	Exports
Société sambava voanio	Coconut plantation	3,190	79.41	
Société théicole de Madagascar	Tea plantation	87	100.00	
Building and public works				
ARO immobilier (AROIMMO)	Property development	1,000	n.a.	
Société d'équipement immobilier (SEIMAD)	Construction and management	272	97.99	
Société nationale de participation	Equity participation	3,400	56.77	
Société sino–malgache de BTP	Public works	400	30.50	
Communications				
Société anonyme Telecom malagasy	Telephony	41,156	32.00	
Energy				
Jiro sy Rano Malagasy (JIRAMA)	Production and distribution of electricity and water	52,000	100.00	
Industry				
Brasserie STAR	Aerated beverages	4,290	11.21	
Cotona Real Estate (formerly COTONA)	Textiles	25,874	44.71	
Société pour le développement du machinisme agricole (SIDEMA)	Industrial equipment	16	72.96	
Société d'étude, de construction, de réparation navale (SECREN)	Shipbuilding	400	37.50	
Société Siramamin'Analaiva (SIRANALA) (lease-management contract with the Chinese company SUCOCOMA)	Sugar cane plantation and processing	100	65.00	
Société Siramamy Malagasy (SIRAMA) (lease-management contract with the Chinese company SUCOCOMA)	Sugar cane plantation and processing	1,875	74.40	
Compagnie nosybéenne industrie agricole (CNIA)	Plantation, processing and local sale of cocoa and coffee	76.5	100	
Filature et tissage de Madagascar (FITIM)	Spinning and weaving of paka	6.44	37.44	
Centre malgache de la canne et du sucre (CMCS)	Production of sugar and related products			
Mines and drilling				
Kraomita Malagasy (KRAOMA)	Chrome extraction	3,326	97.17	Exports
Société marbre et granit de Madagascar (MAGRAMA)	Extraction of marble and granite	629	1.12	Exports
QMM	Exportation of ilmenite and zircon	n.a.	20.00	Exports
Petroleum products				
Galana distribution pétrolière	Distribution	15,209	10.07	Imports
Galana raffinerie terminal (GRT)	Refining	6,000	10.00	Imports
Jovenna International Holding	Distribution	12,889	6.12	Imports
Logistique pétrolière (LPSA)	Storage	19,889	31.00	Imports
Madagascar Oil Company	Production and distribution	1,044	5.00	Imports
Société malgache des pétroles Vivo Energy	Distribution	3,600	20.00	Imports
Total Madagasikara	Distribution	14,956	20.56	Imports
Financial services				
Assurances réassurances omnibranches (ARO)	Insurance	7,013	73.36	
BFV-Société générale (BFV–SG)	Banking	14,000	28.50	
BNI–Madagascar	Banking	10,800	32.58	
BOA–Madagascar	Banking	45,510	9.37	
Caisse d'épargne de Madagascar (CEM)	Savings	5,460	100.00	
Compagnie d'assurances et de réassurances Ny Havana (NY HAVANA)	Insurance	7,704	47.61	
Fonds de garantie malgache (FDGM)	Banking	2,000	49.00	
Fonds de portage et de privatisation	Equity participation	20	100.00	
Société de gestion et de recouvrement	Collection	1,200	100.00	
Société nationale de participation	Equity participation	3,400	56.77	
Port and airport services				
Aéroports de Madagascar (ADEMA)	Air terminal management	6,110	64.12	
GASYNET	Port services	10	30.00	
Société de manutention des marchandises conventionnelles (SMMC)	Management and cargo handling	2,311	100.00	
Société du Port à gestion autonome de Antsiranana (SPAAN)	Autonomous port management	n.a.		
Société du Port à gestion autonome de Mahajanga (SPAM)	Autonomous port management	n.a.		
Société du Port à gestion autonome de Toamasina (SPAT)	Autonomous port management	2,800	100.00	
Société du Port à gestion autonome de Toliary (SPATO)	Autonomous port management	n.a.		

Company	Activity	Equity capital (MGA million)	State share (%)	Comments
Tourism				
Madagascar Airtours (MAT)	Travel agency	271	16.73	
National Tourism Development (NTD) (formerly CCM)	Management of Andilana Beach	11	98.18	
(Société d'études immobilières et d'exploitation hôtelière – "ZAHA MOTEL" (SEIXEHO-ZAHAMOTEL)	Management of ZAHA hotels	36	50.78	
Société malgache d'hôtellerie (SMH)	Hotel Carlton	680	46.58	
Transport				
Air Madagascar (AIRMAD)	Air transport	33,885	89.56	
Madarail (formerly RNCFM)	Rail transport	5,000	25.00	
Other				
FANALAMANGA	Logging	7,849	99.99	
Institut médical de Madagascar (IMM)	Medical imaging	500	34.00	

n.a. Not available.

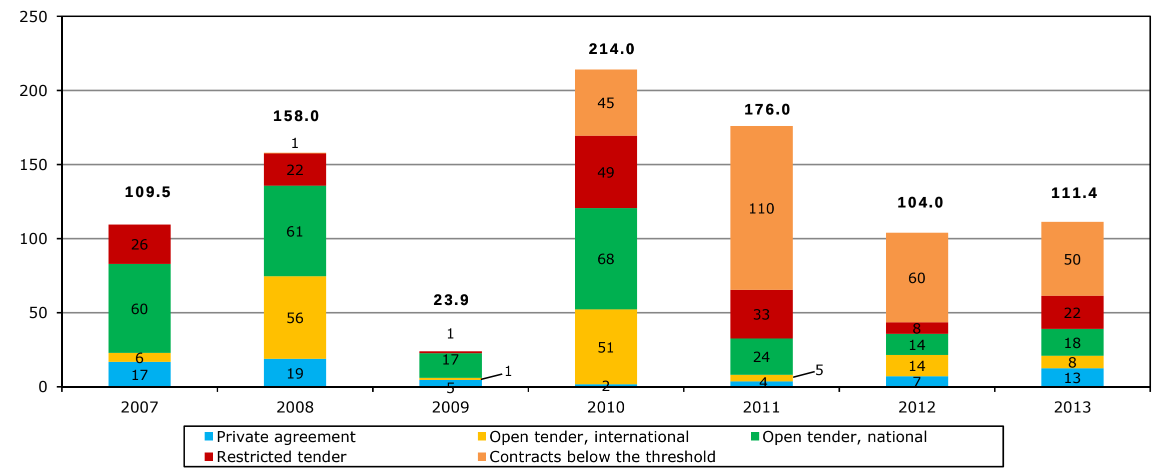
Source: Malagasy authorities.

3.3.5 Government procurement

3.132. Government procurement volumes fell sharply in 2009, probably owing to the political crisis (Chart 3.2). Foreign sources of supply accounted for a mere 0.6% of total government procurement in 2013. Madagascar is neither a member nor an observer of the Plurilateral Agreement on Government Procurement concluded under WTO auspices. The authorities have nevertheless made significant efforts to be transparent by publishing on the Internet an automated government procurement management system in Madagascar.

Chart 3.2 Trend in government procurement volumes, 2007-2013

US$ million



Note: "Contracts below the threshold" include consultation by public posting, and consultation with three providers.

Source: Government Procurement Regulatory Authority (ARMP).

3.133. Madagascar's Government Procurement Code dates back to 2004 and was drawn up with the technical assistance of the World Bank.[61] The Code is intended to "ensure that government procurement is efficient and that public funds are properly used".[62] It applies to procurement by the Government and public institutions, local authorities and their public institutions; any public or private entity whose resources are derived from public funds; and any enterprise in which the State has a majority holding. However, many state-owned enterprises still have their own contract award procedures. Contracts financed from external resources are also subject to the Code, unless otherwise specified in the clauses of the financing agreements concerned.

[61] Law No. 2004-009 of 26 July 2004.
[62] Article 4, Law No. 2004-009 of 26 July 2004.

3.134. The Government Procurement Regulatory Authority (ARMP) has existed since 2005.[63] Its exhaustive website is regularly updated and contains lists of laws and regulations in force.[64] The ARMP plans to update the Government Procurement Code under a 2014-2018 five-year strategy, in particular to clear up ambiguities detected during its implementation, take account of other countries' good practices (e.g. framework agreements), give consideration to future possibilities of regional procurement (e.g. within COMESA), and professionalize the work of those involved in government procurement.

3.135. The ARMP is made up of two entities established in 2006, the Committee for Regulation and Appeals concerning the Award of Public Contracts and the National Government Procurement Commission (CNM). Within each Ministry or other entity covered by the Code, a Tender Commission (CAO) chaired by the person responsible for government procurement is tasked with ensuring compliance with the Code. The CAO is responsible for examining bidders and assessing their bids, while the person responsible signs the contract. Anyone involved in the award and execution of a government procurement contract is subject to the code of good conduct drawn up in 2006[65], and must undertake in writing to fulfil all obligations arising from it.

3.136. The thresholds for application of the Code are defined by regulation (Table 3.10); beyond these thresholds, contracts are, in principle, subject to the tender procedure. A call for tenders may be open (with or without pre-qualification) or restricted. Tendering is said to be restricted when bids may be submitted only by the candidates (at least three) that the person responsible for government procurement has decided to consult. It may be open nationally or internationally, or a contract may be awarded by private agreement. Recourse to private agreement requires the prior approval of the CNM; 13% of contracts were awarded in this way in 2013.

Table 3.10 Thresholds for the award of government procurement contracts through calls for tender, 2015

(MGA)

Contracting authority	Road works			Supplies (million)	Provision of services/ intellectual services (million)
	Construction/ rehabilitation	Maintenance (million)	Other (million)		
State and ex-category[a] urban communes and their public institutions (EP)	1 billion 4 billion	200 750	140 300	80 200	25 90
Regions, urban communes of categories 1 and 2[a] and their public institutions	500 million 2 billion	100 350	75 150	50 120	20 80
Rural communes and their public institutions	250 million 1 billion	50 200	35 80	20 50	6 25
State-owned companies and Industrial and Commercial Public Institutions (EPIC)	1 billion	200	140	80	25

Note: MGA 3,000 is equivalent to about US$1.

a The urban communes of categories 1 and 2 are the six provincial capital urban communes and the urban communes of Antsirabe, Nosy-Be and Sainte Marie. The other urban communes are ex-category.

Source: Order No. 13 838/2008/MEFB of 18 June 2008, and ARMP, viewed at: http://www.armp.mg.

3.137. The principle is to select the lowest bid deemed technically acceptable, but national enterprises may be accorded a price advantage of 10% at most. In principle, tender notices are published in advance in a specialized government journal and in at least one daily newspaper with a wide circulation.[66] The only journal dedicated to government procurement is the Government Procurement Journal, the official newspaper of the ARMP. The ARMP undertakes subsequent verification in the case of some large contracts.[67]

[63] Decree No. 2005-215 of 3 May 2005. The information on the ARMP was viewed at: http://www.armp.mg.

[64] See, for example, the User's Guide, viewed at: http://www.armp.mg/files/GUIDE-UTILISATEUR-SUR-LA-PASSATION-DE-MARCHE.pdf [26 December 2007].

[65] Decree No. 2006-343 of 30 May 2006.

[66] Publication online is also offered by the ARMP at: http://www.armp.mg/avis_g_n_raux.

[67] Order No. 11179/2006/MEFB of 29 June 2006, as amended.

3.138. Below these thresholds, contracts above a certain minimum amount[68] must be subject to consultation either by public posting or after restricted consultation on pricing; this latter procedure in principle also requires at least three suppliers or companies, but this system is now being reviewed as it is not working properly: the first supplier contacted often undertakes to find two other bidders, whose tenders will not be competitive.

3.3.6 Protection of intellectual property rights

3.3.6.1 Overview

3.139. There has been no substantial revision of Madagascar's intellectual property system since the country's first review in 2001. It still consists of one regime specifically aimed at protecting industrial property[69] and another covering copyright and related rights.[70] The authorities point out that the efforts already mentioned in the first review are being pursued in order to bring national legislation into conformity with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), as they apply to LDCs (including Madagascar). At the end of 2014, a draft reform of Madagascar's legislative framework for industrial property was being examined by the Commission for the Reform of Business Law, which comes under the Ministry of Justice.

3.140. Madagascar has been a member of the World Intellectual Property Organization (WIPO) since 22 December 1989. In 1963, the country acceded to the Paris Convention for the Protection of Industrial Property and in 1972 to the Stockholm Act; in 1966 it acceded to the Berne Convention for the Protection of Literary and Artistic Works (Brussels Act), and in 1978 to the Patent Cooperation Treaty (PCT). Madagascar signed the Patent Law Treaty in 2000, and in 2007 it ratified the Protocol relating to the Madrid Arrangement for the International Registration of Marks. In 2014 Madagascar ratified the following three conventions:

- the Rome convention on related rights or neighbouring rights;
- the WIPO Copyright Treaty (WCT); and
- the WIPO Performances and Phonograms Treaty (WPPT).[71]

3.141. In 2013 Madagascar informed the Council for TRIPS of its individual needs for technical and financial cooperation under the TRIPS Council Decision of 29 November 2005, which states that "with a view to facilitating targeted technical and financial cooperation programmes, all the LDC Members will provide to the Council for TRIPS, preferably by 1 January 2008, as much information as possible on their individual priority needs for technical and financial cooperation in order to assist them taking steps necessary to implement the TRIPS Agreement".[72]

3.3.6.2 Industrial property

3.142. Industrial property is administered in Madagascar by the Malagasy Industrial Property Office (OMAPI), whose mission and functions, including the issuance of industrial property titles, are laid down in its 1992 statute.[73] Four titles are envisaged, namely, patents, trademark registrations, industrial design registrations, and trade name registrations, accompanied in each case by a term of protection and penalties in the event of infringement of protected rights. Pharmaceutical and veterinary products, cosmetics and foodstuffs are not patentable[74], contrary to the provisions of the TRIPS Agreement. Pharmaceutical processes, however, may be patented.

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[68] For construction, rehabilitation or maintenance works, the minimum amount as of which consultation is compulsory is MGA 40 million (about US$13,300). For supplies, it is MGA 15 million and MGA 10 million for services and intellectual services.

[69] Ordinance No. 89-019 of 31 July 1989 and Decree No. 92-993 of 2 December 1992.

[70] Law No. 94-036 of 9 December 1994.

[71] For the texts of the related laws, see Table 2.1.

[72] Document IP/C/W/584 of 22 February 2013 and document IP/C/40 of 30 November 2005.

[73] Decree No. 92-994 of 2 December 1992.

[74] Article 8, Ordinance No. 89-019 of 31 July 1989.

3.143. Obtaining (or renewing) an industrial property title requires an application to be made out on a form available from the OMAPI, in accordance with an established scale of fees.[75] Upon receipt of the application, the OMAPI initiates the procedure, registers the application and examines it. The industrial property titles issued are published in the Official Industrial Property Gazette (GOPI).[76]

3.144. The figures produced by the OMAPI reveal a clear increase in the number of applications filed and titles issued (Table 3.11). For example, the number of applications filed by residents for trademarks and service marks was 4,195 between 2007 and 2013 (an annual average of 685), compared to 2,191 between 2001 and 2006 (an annual average of 365). The number of non-residents having applied for or obtained a patent is also higher than that for residents.

Table 3.11 Applications filed and industrial property titles issued, 2001-2006 and 2007-2013

	Applications filed		Titles issued	
	Residents	Non-residents	Residents	Non-residents
2001-2006				
Patents	55	159	29	171
Trademarks for products and services	2,191	2,135	2,064	2,366
Industrial designs	1,450	97	1,233	78
Trade names	261	13	380	4
2007-2013				
Patents	46	350	23	245
Trademarks for products and services	4,195	7,189	4,250	6,145
Industrial designs	2,192	42	2,150	43
Trade names	258	17	283	20

Source: OMAPI.[77]

3.145. Since 2007, the OMAPI has received some 400 patent applications (80% from non-residents under the PCT, and the rest from residents) and has issued 268 patents (Table 3.11). Patent protection is granted for a term of 15 years; this term of protection is less than the 20 years stipulated in the TRIPS Agreement, but the authorities point out that an "additional 5-year term of protection may be granted on request, provided that the national interest so requires and local working is serious and satisfactory". Furthermore, the current reform aims to increase patent protection from 15 to 20 years. Protection of trademarks and trade names is granted for 10 years and may be renewed for further 10-year periods, while industrial designs are protected for 5 years, twice renewable.

3.3.6.3 Copyright and related rights

3.146. Literary and artistic property is administered in Madagascar by the Malagasy Copyright Office (OMDA)[78], whose tasks include the protection, defence and management of copyright and related rights. Software is protected for 25 years after its creation (contrary to the provisions of the TRIPS Agreement, which call for a 50-year term of protection), the droit de suite (resale royalties) lasts 70 years, the rights of performers are protected for 50 years after fixation, and the rights of audiovisual communication companies for 20 years.

3.147. The OMDA collects royalties for the use or exploitation of literary and artistic works and, after deducting management costs, distributes them to the entitled parties (including foreigners). For radio stations, restaurants and hotels, OMDA agents propose lump-sum payments in the absence of systematic monitoring of the works broadcast. The OMDA has almost 7,000 members and had registered 87,172 works to the beginning of March 2015.

3.3.6.4 Protection of industrial property rights

3.148. In the event of infringement of industrial property rights, the rights holder may, under an order issued by the president of the competent court, proceed with the designation and detailed

[75] Information on the regime, the texts of the laws, the procedures, forms and taxes was viewed on the OMAPI website at: http://www.omapi.mg.
[76] Viewed at: http://www.omapi.mg/gazette-officielle.html.
[77] Viewed at: http://www.omapi.mg/index.php?article54/statistiques.
[78] Decree No. 98-434 of 16 June 1998.

description, with or without seizure, of the allegedly counterfeit objects. The penalties for violation of industrial property rights are six months to three years' imprisonment and/or a fine of MGA 100,000 to 2 million, plus damages. In the event of a repeat offence, the criminal penalty incurred is doubled.

3.149. The OMAPI also undertakes information and awareness-raising activities for economic operators. The products most likely to be counterfeited in Madagascar are clothing, perfumery articles, and film and music CDs and DVDs. Article 29 of the Customs Code (2007) describes prohibited products as those bearing a trademark identical to the registered trademark. They may be seized at the border. The authorities have explained, however, that the OMAPI does not have the status of a rights-enforcement body and may not therefore undertake either prosecution or punishment. Hence, the Office is not empowered to intervene in the market and seize imported counterfeit goods that have made it past the customs. A platform was nonetheless set up in 2013 to enhance the protection of industrial property rights and their users. This platform comprises the OMAPI, the customs administration, the department of justice, the economic police, the chamber of solicitors, and representatives of the private sector.

3.150. The OMDA also participates in the seizure of counterfeit products. Since 2006, seizures have been possible without a prior complaint from authors or their successors in title, by judicial police officers, customs enforcement officers, tax centres and the Ministry responsible for trade, and by sworn OMDA agents.[79] An Anti-piracy Brigade (BAP) was established in 2012 to assist the OMDA in this area, and the two bodies work hand-in-hand in the struggle.[80] The BAP has been operating since 2013, in which year 44,556 CDs, DVDs and VCDs of domestic and foreign origin were seized; the figure was around 26,000 by 31 July 2014.

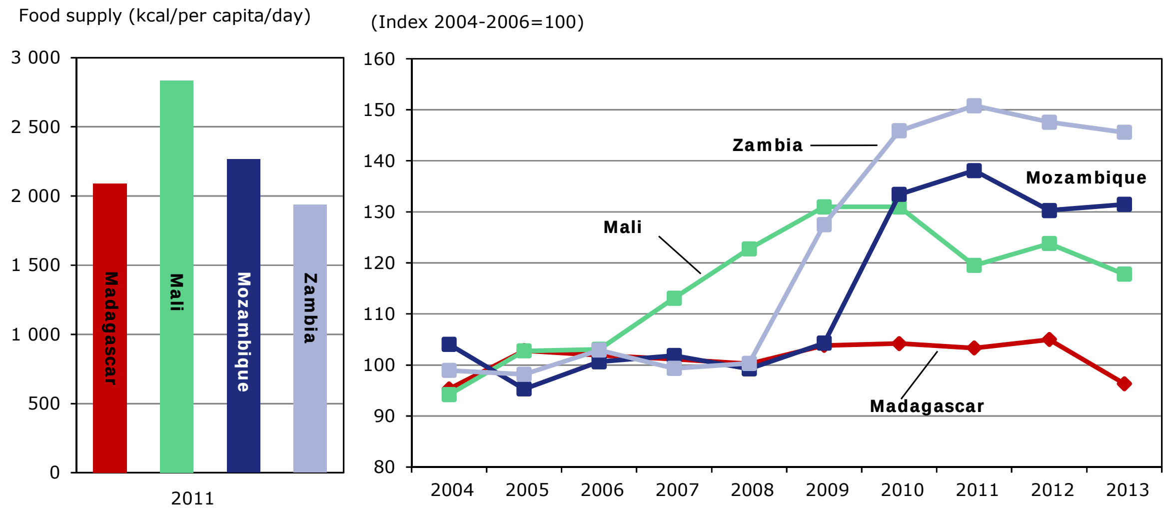
[79] Interministerial Order No. 12226/2006 of 17 July 2006.
[80] Decree No. 2012-135 of 31 January 2012.

4 TRADE POLICIES BY SECTOR

4.1 Agriculture

4.1. Madagascar's agriculture has been through difficult years since 2010 with virtually zero growth and a sharp decline in 2013. The rice and maize harvests were destroyed by swarms of locusts, a cyclone, floods and drought. The anti-locust campaign is mainly conducted under the aegis of the FAO and in 2014 the most comprehensive campaign for the past 15 years was waged.[1] According to the FAO, over 30% of Madagascar's population is under-nourished, especially in rural areas (Chart 4.1). Unlike many other African LDCs, particularly in the region, Madagascar has appeared unable over the past decade to adopt the means needed to bring about a real increase in food production.

Chart 4.1 Net food production per capita, 2004-2013



Source: Online information from FAOSTAT (FAO), viewed at: http://faostat3.fao.org/home/E.

4.2. Madagascar nonetheless has vast agricultural potential: according to the FAO, there are 3.5 million hectares of potentially arable land (out of 58 million hectares), but only just over 2 million are cultivated, by 2.5 million farmers. The average area of each farm is therefore very small. Only 40% of gross agricultural production is marketed. The rural population is generally very poor and mainly produces for its own consumption.

4.3. As can be seen from Table 4.1, with the exception of cassava and sugar cane, whose expansion is essentially attributable to foreign direct investment (FDI), agricultural production has stagnated since the previous review of Madagascar in 2008. The reason for the sharp drop in production of paddy rice in 2013 was primarily climatic conditions.

4.4. Several industrial crops such as groundnuts, sugar cane, cotton and tobacco provide the raw materials for local agro-industries producing edible oil, sugar, cotton lint and cigarettes. The major export crops include cloves and vanilla, of which Madagascar is the world's leading exporter, as well as pepper, coffee, cocoa and lychees (Table 4.2). Madagascar has also developed an important sector exporting essential oils and medicinal plants (Section 4.4).

[1] After five years of inactivity, the swarms had multiplied to such an extent that they constituted an invasion. Online information from the FAO, viewed at: http://www.fao.org/emergencies/ressources/documents/ressources-detail/fr/c/264223. See also *Jeune Afrique*: "Madagascar: une pluie de pesticides pour lutter contre l'invasion de criquets", 13 May 2014.

Table 4.1 Production of food, industrial and cash crops, 2007-2013

('000 tonnes)

Product / Year	2007	2008	2009	2010	2011	2012	2013
Paddy rice	3,596	3,914	4,540	4,738	4,300	4,551	3,611
Rice equivalent	2,373	2,583	2,997	3,127	2,838	3,003	2,383
Dried maize kernels	453	547	474	412	429	450	479
Dried beans	80	80	82	82	80	82	83
Cape peas	17	17	17	15	17	18	18
Fresh cassava	2,994	3,022	3,048	3,009	3,495	3,550	3,780
Sweet potatoes	895	903	911	919	1,106	1,200	1,300
Potatoes	216	220	224	226	200	210	230
Groundnuts	60	60	60	60	65	65	67
Sugar cane	157	145	570	694	644	702	842
Tobacco	2	2	2	3	3	3	3
Unroasted coffee	58	60	57	40	39	42	60
Cloves	14	17	16	10	20	18	19
Cocoa beans	6	6	7	8	9	10	10
Green vanilla	6	5	5	4	4	5	5

Source: Agricultural statistics services of the Ministry of Agriculture.

Table 4.2.Principal agricultural exports, 2007-2014

(US$ million and %)

HS	2007	2008	2009	2010	2011	2012	2013	2014	Memo 2013
	(US$ million, unless otherwise indicated)								(% of total[a])
HS 0907 Cloves	38.1	30.1	48.4	31.7	172.8	167.7	102.8	109.0	*5.6*
HS 0306 Crustaceans	135.9	116.9	82.6	66.0	101.3	65.6	93.9	99.2	*5.1*
HS 1604 Preserved fish	43.0	32.4	23.0	37.5	43.6	37.7	50.0	49.5	*2.7*
HS 0905 Vanilla	56.7	50.1	44.2	17.6	38.9	10.2	44.0	114.0	*2.4*
HS 1701 Sugar	3.7	6.9	19.0	14.1	14.9	13.1	35.2	11.4	*1.9*
HS 0713 Dried leguminous vegetables, shelled	8.0	9.9	6.2	8.8	20.3	22.4	31.0	37.4	*1.7*
HS 2005 Other preserved vegetables	6.5	9.0	10.1	12.5	12.7	13.3	20.1	18.4	*1.1*
HS 0901 Coffee	17.6	14.8	2.6	11.2	6.7	5.3	19.7	15.6	*1.1*
HS 1801 Cocoa beans, whole or broken	19.8	16.3	14.8	11.1	16.9	8.8	16.6	19.6	*0.9*
HS 0812 Lychees and other fruit	17.9	13.7	12.4	11.2	10.0	10.6	13.9	12.2	*0.8*
HS 1302 Vegetable saps and extracts	3.2	2.1	5.9	6.1	5.6	4.5	10.8	5.1	*0.6*
HS 0904 Pepper; pimentos	5.1	3.6	4.0	5.2	8.2	6.1	8.0	11.3	*0.4*
HS 1202 Groundnuts, not cooked	0.6	0.9	0.3	0.6	1.3	5.5	5.8	5.8	*0.3*
HS 0307 Molluscs	5.4	5.1	5.3	5.2	6.5	4.4	5.5	5.2	*0.3*
HS 2208 Undenatured ethyl alcohol	1.4	1.4	1.0	1.0	2.5	3.3	5.4	6.7	*0.3*
Sub-total	363.0	313.4	279.8	239.8	462.4	378.6	462.8	520.4	*25.2*
HS 01-24	390.3	338.6	301.6	267.6	493.6	408.1	497.3	563.0	*27.1*
(% of total[a])	*29.1*	*20.3*	*27.5*	*24.7*	*33.5*	*33.3*	*27.1*	25.6	N/A
Memo									
Agriculture, except fisheries products	199.8	178.9	185.9	153.4	334.8	295.7	339.4	402.2	*18.5*
(% of total[a])	*14.9*	*10.7*	*17.0*	*14.2*	*22.8*	*24.1*	*18.5*	*18.3*	N/A
Fisheries products	190.5	159.7	115.7	114.3	158.8	112.5	157.8	160.8	*8.6*
(% of total[a])	*14.2*	*9.6*	*10.6*	*10.6*	*10.8*	*9.2*	*8.6*	7.3	N/A

N/A Not applicable.

a All products.

Note: Agricultural products are in the HS classification (HS 01-24), including fisheries products. The principal products are identified in order of the value of 2013 data exceeding US$5 million.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

4.5. There has been a substantial increase in imports of most food products since the previous review in 2008; the largest imports of agricultural products include rice, especially after the poor harvest in 2013, wheat flour and palm oil (US$50 million each), and raw and refined sugar (close to US$100 million) (Table 4.3). The sizeable imports of fresh fish are mainly intended for the fish-preserving factories.

Table 4.3 Principal agricultural imports, 2007-2014

(US$ million and %)

HS	2007	2008	2009	2010	2011	2012	2013	2014	Memo 2013
HS 1006 Rice	61.4	74.0	47.2	53.5	92.9	85.9	175.6	152.1	*5.7*
HS 1701 Sugar	40.4	47.9	54.2	50.1	85.7	57.5	66.8	69.1	*2.2*
HS 1101 Wheat or meslin flour	12.2	2.8	21.1	39.8	50.3	48.6	55.1	50.2	*1.8*
HS 0303 Frozen fish	55.1	23.5	16.8	24.7	37.7	31.1	54.8	30.6	*1.8*
HS 1511 Palm oil and its fractions	10.1	15.0	38.4	18.1	47.7	23.3	34.5	30.0	*1.1*
HS 2309 Animal feed	33.2	26.9	25.0	22.5	31.5	20.4	24.7	19.0	*0.8*
HS 1902 Pasta	8.4	9.9	9.4	13.4	20.3	19.1	21.8	27.0	*0.7*
HS 1507 Soya-bean oil and its fractions	34.5	51.3	21.6	21.1	20.0	19.2	18.0	22.4	*0.6*
HS 1001 Wheat and meslin	25.5	46.8	7.8	0.0	8.0	6.2	12.2	15.1	*0.4*
HS 1107 Malt	6.0	9.9	11.8	9.1	13.7	8.6	11.0	9.1	*0.4*
HS 2207 Undenatured ethyl alcohol ≥80% vol.	5.6	5.8	5.7	5.6	7.5	7.3	8.9	12.2	*0.3*
HS 2208 Undenatured ethyl alcohol <80% vol.	1.9	2.3	1.7	3.2	6.2	6.1	6.1	7.3	*0.2*
HS 0402 Milk and cream, sweetened	7.1	11.2	3.8	5.4	8.9	7.6	5.9	7.2	*0.2*
HS 2301 Flours, meals and pellets	0.6	0.6	0.2	1.1	2.0	2.8	5.5	3.5	*0.2*
Sub-total	301.9	327.9	264.8	267.6	432.5	343.5	500.8	455.0	*16.2*
HS 01-24	359.6	406.2	335.8	347.8	530.8	417.9	576.2	535.3	*18.7*
(% of total[a])	*14.7*	*10.5*	*10.6*	*13.7*	*17.9*	*15.7*	*18.7*	*16.2*	*N/A*

N/A Not applicable.

a All products.

Note: Agricultural products are in the HS classification (HS 01-24), including fisheries products. The principal products are identified in order of the value exceeding US$5 million in 2013.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

4.1.1 Agricultural policy

4.6. In September 2009, the Ministry of Agriculture, Livestock and Fisheries (MAEP) split into three ministries: the Ministry of Agriculture (MA), the Ministry of Livestock (ME) and the Ministry of Fisheries (MP).

4.7. Since 2011, the principal agricultural support programme has been the Sectoral Agriculture, Livestock and Fisheries Programme (PSAEP), with back-up from COMESA, aligned on the African Union's Comprehensive Africa Agriculture Development Programme (CAADP/NEPAD).[2] The objectives of this new Programme are similar to those defined in the Poverty Reduction Strategy Paper of 2003 and repeated in the National Rural Development Programme (PNDR) adopted in 2005. They are numerous, but so far the authorities have not mobilized the resources needed to achieve them. The current objectives are to expand the units producing goods and exploiting resources and to place them on a permanent basis; to raise productivity and competitiveness sustainably; to contribute towards food and nutritional security and to lessen the risks for the most vulnerable; to develop access to domestic and export markets; to ensure better governance of institutions; and to build the capacity of stakeholders.

4.8. In March 2015, Madagascar notified the WTO that no agricultural export subsidies had been paid out over the period 2013-2014; Madagascar also notified total domestic support for agriculture amounting to US$47,000, comprising food aid and the supply of various services to producers in order to increase agricultural production and train producers.

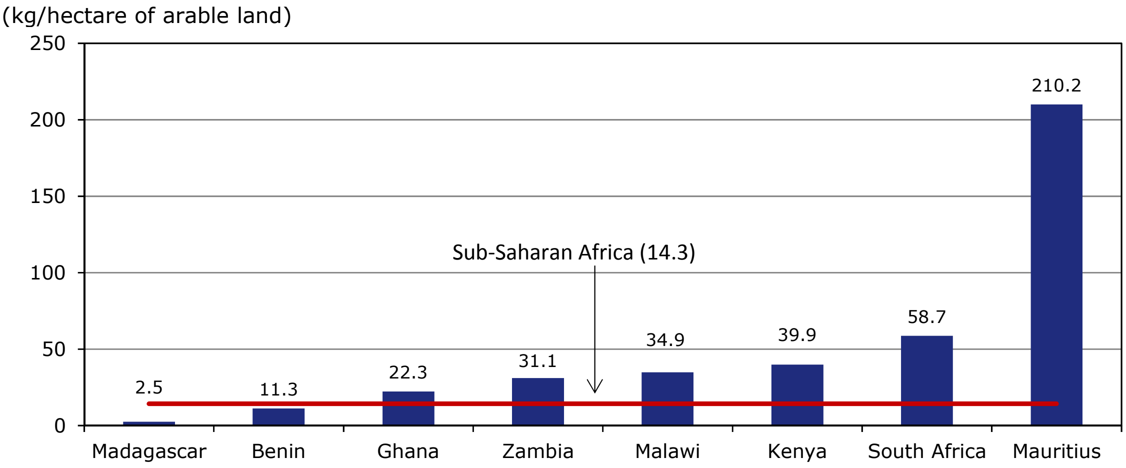
4.1.1.1 Inputs

4.9. Overall, since 2008, increasing agricultural production does not appear to have benefited from the measures needed if it is really to succeed. Among the major problems is the limited use of fertilizer (Chart 4.2). Rice yields, for example, could be 6-7 tonnes/hectare using local improved seeds and even up to 13 tonnes using hybrid seeds (a combination of fertilizer and improved seed), as compared to the current average of 2 to 3 tonnes. In 2014, however, the Government

[2] For further details, see online information from NEPAD, viewed at: http://www.nepad.org.

stated that rice-growing would thenceforward receive support to help farmers to acquire improved seeds and fertilizers in particular. The Government also indicated that it supported diversification to soya and sorghum.

Chart 4.2 Fertilizer use, 2010-2012



Note: Simple average over three years.

Source: World Bank, World Development Indicators, viewed at: http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicators.

4.10. A National Fertilizer Strategy was published in 2006.[3] The Madagascar Action Plan (MAP) envisaged the creation of agri-business centres to facilitate access to inputs and to store them, financed by USAID's Millennium Challenge Account. When financing for the project halted with the onset of the political crisis in 2009, its activities could no longer continue. The Strategy had also recommended introducing specific fertilizer credit; this would facilitate the supplier credit given by fertilizer distributors through a partnership between them and microfinance institutions. It would increase the amount of credit granted to finance fertilizer and at the same time lower its cost, which is a major obstacle to increasing the volumes marketed.

4.11. The private sector is exclusively responsible at present for importing and distributing inputs. The market appears to be competitive. It comprises importers-wholesalers, each one being the sole representative of a multinational company. There are no regulations governing the import of fertilizer into Madagascar. Prices are fixed by the private sector without any State involvement. For the 2014-2015 rice-growing season, however, the Government financed some of the fertilizer for small producers; the supply is entirely free of charge for the most vulnerable; for those whose production is solely for own consumption the subsidy is 20%; while for producers able to keep back some of their production for sale, the rate is 50%.

4.12. Innovative efforts have been made to produce fertilizer by making use of guano deposits.[4] The fertilizer meets European and American standards for organic products. Its cost is less than one third that of chemical fertilizer. Organic fertilizer's share of total fertilizer use is around 15%. Moreover, one of the byproducts of the Ambatovy mining project is a fertilizer, ammonium sulphate, of which it is hoped to sell 210,000 tonnes a year.

4.13. Expanding agricultural production in general, and food crops in particular, means the supply of large quantities of seed. In 2014, however, only small quantities of improved seeds were used and, as a result, yields were also low. The main constraints are the small volumes produced. After special tests had been carried out by the MA, in September 2014, 100 tonnes of hybrid rice seeds were imported from China; and 60 tonnes of certified seeds were distributed to 2,400 producers by the MA through the National Agronomic Research Centre (FOFIFA), created in 1974. The

[3] MAEP, *Lettre de présentation de la Stratégie nationale sur les engrais (SNE)*, viewed at: http://www.maep.gov.mg/Lettre%20%20SNE.pdf

[4] Guano (from the Quechua "wanu", excrement of sea birds and bats) is a nitrate-rich organic fertilizer exported to over 40 countries since 2008, including Europe and the United States.

FOFIFA produces seeds which are then multiplied at seed multiplying centres (state-owned) by seed producers' groups or private operators. The cost of the seed is determined according to its quality and the market price. FIFAMANOR, a semi-public structure, produces foundation seed for potatoes, sweet potatoes and wheat, for sale to farmers at a subsidized price. The National Official Seed and Seedling Control Agency (ANCOS) was set up in 2013.

4.1.1.2 Trade and tax measures

4.14. In 2010, tariffs were lowered in order to boost agricultural production. Pedal pumps became exempt from customs duty to encourage development of the agricultural sector. The rate of duty on certain inputs, raw materials, machines, materials and equipment was set at 5%. The rate was harmonized at 10% for components and accessories of HS 72.02. The tariff on these articles and products could advantageously be zero-rated in order to promote agricultural production.

4.15. Since 2008, tax exemption measures have been introduced, then abolished and subsequently reinstated, which is not conducive to investment; in 2014, agricultural firms were subject to an ordinary law tax regime, but the 2015 Finance Law provides for income tax exemption for newly created agricultural firms for the first two financial years.

4.16. The marketing of agricultural products is governed by a Decree of 1965 on the collection of agricultural, livestock and fisheries products, which specifies that only collectors approved by the Government on a purely personal basis and possessing a professional card may collect agricultural, livestock or fisheries products, either as itinerant traders or at fixed facilities, against payment, either on their account or on behalf of someone else. All agricultural producers, fishermen and foresters must sell to the collectors. The aim of this requirement is to stimulate efficient collection and transport to wholesalers.[5] Exporting firms must be approved as collectors. According to some observers, the compulsory collection system needs to be reviewed because it mainly favours intermediaries and, because of inadequate means of communication and transport, farmers can find themselves at their mercy.

4.1.1.3 Land reform and investment

4.17. Land tenure security for Malagasy citizens has been a development priority since 2005, with the aim in particular of increasing agricultural production (Section 2.3.6). At the same time, since 2008 successive governments have advocated foreign investment and regional chiefs have been asked to identify zones for agricultural investment in order to group investors together.

4.18. The criteria for assigning land to foreigners have changed from year to year since 2008. According to the Land Observatory, a clear division of responsibilities among the various government services and local authorities is needed so that all the local stakeholders involved can express their views on projects in advance and so avoid disputes that could potentially constitute a disincentive to investment. The measures currently in place do not yet ensure equitable sharing of the benefits derived from the entry of investors.

4.1.2 Policy by subsector

4.1.2.1 Rice, cassava and maize

4.19. Annual consumption of rice at 120-140 kg/per capita is one of the highest in the world; production is extremely uneven (Chart 4.3) and does not cover domestic demand. Rice imports rose from less than US$50 million to over US$152 million between 2009 and 2014 (Table 4.3); even though the volume imported is low compared to domestic production, it supplies one third of the market on average. Since 2005, the import of rice in any state (seed, paddy, husked, etc.) has benefited from a zero tariff and exemption from VAT.[6] Any change in the price of rice or in supplies has far-reaching consequences for food security and household incomes. This is why the Rice

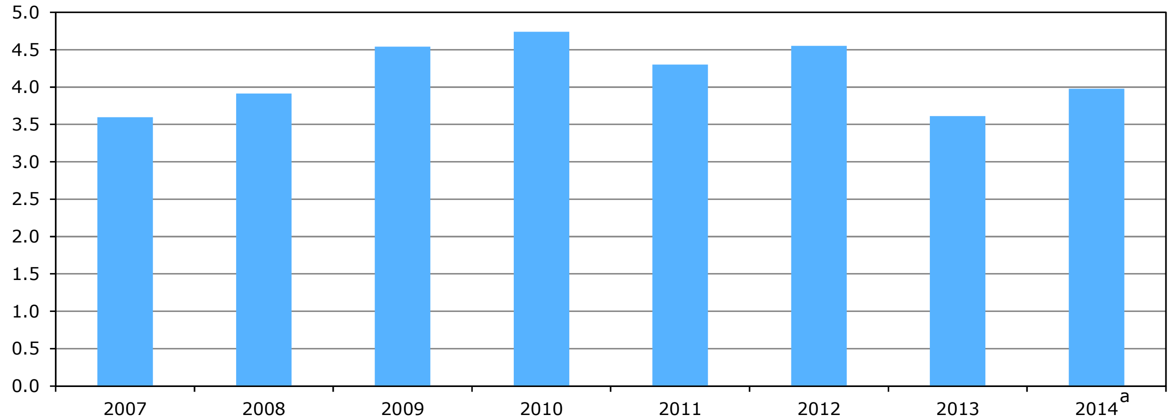
[5] Decree No. 65-046 of 10 February 1965 on the collection of agricultural, livestock and fisheries products listed in ministerial or provincial orders. Order No. 5912-MPCA/93 of 17 November 1993 on obligations relating to the collection of local products throughout national territory, viewed at: http://madadoc.irenala.edu.mg/10964_Ralisoa%20Noroseheno.pdf.

[6] Law No. 2005-015 of 26 July 2005 made imports of rice exempt from customs duty.

Observatory was set up to monitor price and production trends; its surveys are published each week. Since 2011, the export of rice has been "suspended" under a decree.[7]

Chart 4.3 Rice production, 2007-2014

(million tonnes)



a Estimates.

Source: Information provided by the authorities.

4.20. As mentioned above, collectors alone are authorized to collect agricultural products such as rice from farmers and then sell them to wholesalers; the purpose of this role is to prevent the proliferation of intermediaries and to place their activities on a formal basis. It was not possible to find out whether this mechanism is viewed as efficient as it currently operates or whether it will last.

4.21. Other food crops such as maize and cassava are also produced, mostly for own consumption and rarely traded internationally. In 2008, Madagascar adopted the policy development letter for the cassava subsector, with support from ASARECA[8], an African network bringing together a number of East African countries to draw up national policies and standards for cassava and its byproducts.

4.1.2.2 Cloves

4.22. Madagascar is one of the world's three largest producers and exporters of cloves and recorded spectacular growth in exports following soaring global prices in 2011 (Table 4.2).[9] Annual turnout is uneven, however, ranging from 6,000 tonnes during the rest cycle of clove trees or when they have been affected by cyclones, to 19,000 tonnes when there is a good harvest. Since 2011, cloves and clove essence together have been one of the agricultural products yielding the most export revenue. The clove-growing area is estimated at 40,000 hectares. Cloves, their essential oils and leaves, which can be distilled from Madagascar's clove trees, are reputed to contain a strong concentration of eugenol.

4.23. Currently, only 10% of production is extracted locally in the form of essence. Custom duty on all clove products, whether or not processed, is 20%. In November 2012, the Association of Clove Exporters of Madagascar was set up with the aim of reorganizing, standardizing and upgrading the subsector in collaboration with the Government. Exports of cloves are subject to a quality standard, whose observance is monitored by the analytical laboratory of the Ministry responsible for trade.

[7] Decree No. 2011-122 of 7 March 2011.
[8] Association for Strengthening Agricultural Research in Eastern and Central Africa, viewed at: http://www.asareca.org.
[9] Antananarivo University (2012).

4.1.2.3 Vanilla

4.24. Madagascar is the world's leading exporter of vanilla (around 67% of total global tonnage) and in 2014 exports reportedly amounted to US$114 million (Table 4.2). Vanilla production is estimated to cover 65,000 hectares, particularly in the east of Madagascar.

4.25. Since 2001, the professions of vanilla planter and processor have been regulated, with a new order issued in December 2013 to reorganize the subsector and enhance the professional skills of those involved from the production to the export stage.[10] A platform for consultation among the various actors in the vanilla subsector has existed since 2007. It is responsible for distributing professional cards to planters and processors, determining the dates of the harvest and the start of the season, and monitoring green vanilla markets. The National Association of Vanilla Exporters is composed of around 240 small groups and over 15,000 planters. Exports of vanilla are subject to a quality standard, whose observance is monitored by the analytical laboratory of the Ministry responsible for trade.

4.26. Although previously vanilla was always exported raw and vanillin was extracted in the importing countries, in recent years local firms have started to extract and export natural vanillin, which is strongly protected against imports. It cannot be imported into Madagascar without prior authorization from the Ministry responsible for trade. The maximum tariff of 20% applies, as well as VAT of 20%.

4.1.2.4 Seed cotton

4.27. In 2014, a draft text regulating the cotton subsector was being prepared. Four operators were ready to invest in factories in the south-west of the country, giving more support to cotton-growers. The factories supply the seed, fertilizer and phytosanitary products on credit, as well as the equipment. Nevertheless, cotton-growers frequently finance their acquisition of materials themselves with the help of microfinance, although this source of financing is often described as insufficient.

4.28. Once it has been produced, seed cotton is stored and then collected by private collectors-carriers who are selected following an invitation to bid from the factories According to the press, floor prices determined by a regional order in the south-west of Madagascar are in fact more like ceiling prices and this is likely to discourage production.[11] VAT must be paid on seed cotton, together with customs duty of 5%. Production and trade in products of seed cotton ginning, cotton spinning, knitting and weaving and clothing are described in the section on manufactures (Section 4.6.2.2).

4.29. Since the early 2000s, HELVETAS Swiss Intercooperation has been producing cotton that meets organic standards and fair trade principles in Madagascar.[12] In view of its expertise, in 2008 industrialists in Madagascar's textiles subsector sought support from HELVETAS to launch the production of organic cotton in Madagascar so as to take advantage of the entire value chain on the spot. The project encompasses sustainable production of organic cotton, its certification and promotion among potential buyers.

4.1.2.5 Tobacco

4.30. Around 29,000 tobacco planters have been recorded. Since 1969, the Malagasy Tobacco Board (OFMATA) has had a monopoly on tobacco production in Madagascar. It supports producers, fixes a floor price for buying tobacco and provides inputs on credit. It ensures the supply of tobacco leaves to the two factories manufacturing cigarettes and chewing tobacco. It is estimated that domestic production amounted to around 3,000 tonnes in 2006. OFMATA also has a monopoly on the import of tobacco; it may import varieties that are not produced locally in order to manufacture cigarettes. Imported cigarettes are subject to the maximum tariff protection of 20%,

[10] Decree No. 2001/234 of 24 March 2001. Interministerial Order No. 35 255-2013 of 8 December 2013 regulating the general conditions for marketing vanilla in Madagascar.
[11] Viewed at: http://www.edbm.gov.mg/fr/Actualites/Actualites/Filiere-coton-des-operateurs-contre-la-fixation-de-prix.
[12] Helvetas Swiss Intercooperation, viewed at: http://madagascar.helvetas.org/fr/activites_madagascar/projects_a_madagascar/projet_promotion_biocoton_dans_le_sud_ouest_de_madagascar.

as well as 20% VAT, and excise duty of 325% which has been harmonized for local and imported products. In 2014-2015, however, the revised Finance Law introduced reduced duty for cigarettes which incorporated at least 70% of locally produced tobacco.

4.1.2.6 Lychees and other horticultural products

4.31. Madagascar has managed to create horticultural subsectors specializing in export. Among these, lychees are currently one of the leading export-earning agricultural products. Domestic production is estimated to be around 100,000 tonnes, one quarter of which is exported. Lychees are a seasonal crop and most of the harvest is sold on the domestic market or exported between November and January. They are mostly exported fresh or sulphured, but for some years efforts have been made to export processed lychees (pulp, juice, etc.). Fresh fruit is exported by air and processed products by sea. The largest market for Madagascar's lychees is France, where it competes with lychees produced in South Africa and Mauritius. New markets in Europe have been developed in recent years (Germany, Netherlands, Russian Federation).

4.32. Since 2006 there has been a platform to encourage regular consultation between the subsector's stakeholders (producers, collectors, carriers and exporters) and the State. A new regulatory text has governed the organization of the subsector since 2013. An optional export standard applies to lychees.

4.33. The production of vetiver has developed in Madagascar since 2008, with support from The Vetiver Network International, which encourages worldwide use of the Vetiver System for a sustainable environment, especially in the effort to combat soil erosion. Bemasoandro Plantation produces vetiver and vetiver essential oil found in 90% of the perfumes sold in the world. Annual trade in vetiver amounts to 250 tonnes.[13]

4.1.2.7 Cocoa

4.34. Madagascar's cocoa is reputed to be one of the best in the world because of exceptional local conditions and old varieties. The majority is produced under ECOCERT labels (organic and fair trade). Production has risen, but remains below 10,000 tonnes, and exports have fluctuated considerably since 2008. Exports of chocolate and cocoa paste have increased, but still do not exceed US$1 million. There is 5% customs duty on cocoa beans, whether or not processed.

4.2 Livestock and animal products

4.35. Madagascar has enormous livestock-breeding potential because of its vast open spaces, and its situation as an island, sheltering it from certain major epidemics, means that its animal health status is particularly favourable.[14] Because of the wide open spaces and the lack of any developed agro-industrial structure, livestock farming is extensive.

4.36. Almost half of the farms recorded in 2010 bred zebus, the most common draught animal and also the most sought after for export. Meat from Malagasy zebus has an international reputation and cattle on the hoof are exported to neighbouring countries. Until 1997, three industrial abattoirs had been approved for export of a total of 7,000 tonnes to the European market under the ACP Protocol on meat. In 1997, however, following the emergence of anthrax among zebus, all the Malagasy facilities making meat products were removed from the list of approved facilities for imports by the European Union, which caused the dismantling of the subsector.

4.37. With increased demand for meat in the neighbouring islands and in Asia, revival of the bovine meat subsector has become a priority and a policy to develop the zebu component was adopted in 2012. Since 2012, requests for financing from technical and financial partners, and calls for private investment, have been launched by the ME. Foreign investors have in fact already launched some projects while others are still under consideration. Two abattoirs have been built by Chinese companies in the past two years and export bovine meat to the Asian market. A partnership project with the region of Mayotte is under way in order to establish an abattoir in the

[13] Viewed at: http://www.vetiver-madagascar.mg.
[14] Viewed at: http://www.fao.org/docrep/v1650t/v1650T0j.htm.

southern part of the island to export bovine meat to this French department, in accordance with European standards.

4.38. The Livestock Fund, created by law in 2006, finally started to operate in 2012; its resources enable the Ministry of Livestock to provide breeders with support to finance the purchase of medicines, and to compensate breeders in the event of an epidemic, etc. The Fund is financed by fees payable on the sale of certain products for veterinary use, on the sale of animal feed, and also by taxes on export of the subsector's products, which is likely to penalize exports.[15] The cost of obtaining an import or export permit for live animals ranges from 2% to 5% of the f.o.b. or c.i.f. price and for food of animal origin it is 2% of the f.o.b. or c.i.f. price.

4.39. In addition to these high taxes, between 2002 and 2011 the export of live cattle was banned, and then authorized once again up to 2012, when it was banned once more. According to the authorities, this is to combat the cattle rustling which is prevalent in the extensive production zones.[16]

4.40. Meat- and bone-meal for animal feed and any feed containing it are prohibited. The import of meat from Europe is also banned (Section 3.3.1.1). All the regulatory texts concerning the livestock subsector were compiled in 2012.[17]

4.41. Imports of dairy cows that are not prohibited are subject to customs duty of 20%, unless this has been suspended, as was the case under the Finance Law for 2011. This lack of predictability in trade policy is prejudicial to decision-making at industrial level. Furthermore, tariffs of up to 20% on most products do not encourage investment in dairy industries (cheese, yoghurt) because of the relatively high cost of agricultural raw materials caused by this strong tariff protection. For example, the milk produced (around 50 million litres) covers around half the volume consumed so powdered milk has to be imported and is subject to 20% customs duty, plus VAT. Manufacturers of dairy produce pay these high rates of duty on their inputs, which cannot but undermine the competitiveness of their products.[18]

4.42. With an abundance of plants for honey bees, with typically exotic aromas, the bee-keeping subsector plays an important role in Madagascar's economy. In addition to the income it provides for small producers, it makes a key contribution to protecting the environment against mass deforestation and bush fires. Madagascar had long exported honey to Europe, but export was suspended in the 1980s because the honey did not meet SPS standards.

4.43. In October 2011[19], Madagascar was once again authorized to export to the European market. According to the authorities, potential sales amount to 50,000 tonnes, over €100 million each year (Section 4.2), but Madagascar has not been able to take full advantage because of the varroasis epidemic in 2010. The ME, in conjunction with operators belonging to the National Federation of Malagasy Beekeepers, is seeking financial support to enable the revival of exports of honey in sufficient quantities. Exports currently go to markets in Mauritius, Switzerland and France. Most of the products exported are certified organic or bear the "fair trade" label. Honey production will also depend on the Government's ability to protect forests, the feeding source for bees.

4.44. Foie gras has also made the reputation of Madagascar's gastronomy for around 30 years and is sold under the label "Foie gras de Madagascar". Ducks are bred by small producers who

[15] Order concerning resources for the Livestock Fund trade account, viewed at: http://www.elevage.gov.mg/wp-content/uploads/2012/07/Fonds-de-lElevage-Ressources-du-Compte-de-Commerce.pdf.

[16] Interministerial Order No. 20.834/2012 of 1 August 2012 repealing Interministerial Order No. 19533/2011 of 20 June 2011 temporarily lifting the ban on exporting cattle on the hoof.

[17] Interministerial Order No. 3168/2001 of 16 March 2001 banning the import of live animals and foodstuffs of animal origin (coming from Europe). ME (2012).

[18] Viewed at: http://www.inter-reseaux.org/IMG/pdf/GDS58-p26-p27-p28_Rova.pdf.

[19] In February 2011, the EU's Directorate-General for Health and Food Safety approved the plan for monitoring chemical residues in Madagascar's honey. In July 2011, the ban on importing products of animal origin from Madagascar was lifted. Since 14 October 2011, Madagascar has been authorized to export honey to the European market, viewed at: http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32011D0395&from=FR. List of establishments approved to export to the EU, viewed at: http://ec.europa.eu/food/international/trade/third_en.htm.

receive technical and sanitary support from the Government. In addition to small-scale processing, two firms process foie gras industrially in accordance with international health requirements. Currently, most of the foie gras and its byproducts are consumed on the domestic market; exports go to Mauritius. According to the authorities, measures have been taken since 2013 by the veterinary administration and those involved in the subsector in order to revive the export of foie gras to other markets.

4.3 Fisheries and aquaculture

4.3.1 Overview

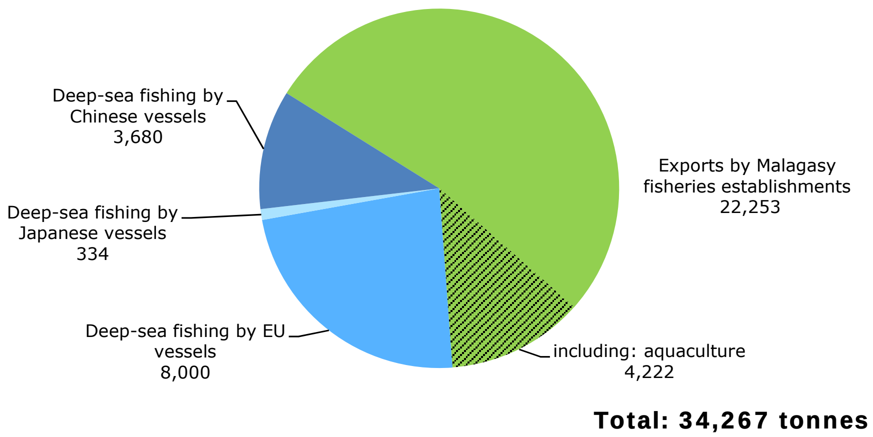
4.45. With a coastline extending for 5,600 km, an exclusive economic zone covering 1,140,000 km^2 (the 14th largest in the world), and numerous rivers, lakes and mangrove swamps, Madagascar has impressive fisheries and aquaculture potential. In 2013, production was 129,000 tonnes and the subsector accounted for 14% of the GDP.

4.46. Several fishing agreements covering Madagascar's waters have been signed with foreign partners and there is large-scale fishing by foreign vessels. Chart 4.4 shows the scale of the various fishing activities; in 2013, total exports of fisheries products by Malagasy fishing and aquaculture companies, whose capital is mostly foreign-owned, amounted to some 22,250 tonnes, of which 4,200 tonnes from aquaculture. To this must be added deep-sea fishing by foreign vessels under bilateral agreements, whose total tonnage in 2013 was said to be around 12,000 tonnes.

4.47. According to recent studies, confirmed by the statistics available (Chart 4.5), total catches are in fact 40% above the volumes recorded officially[20], and in general the Ministry of Fisheries Resources and Fishing (MRHP) only appears to exert control over fishing in Madagascar's waters in theory.

Chart 4.4 Principal exports of fisheries products, 2013

(Tonnes)

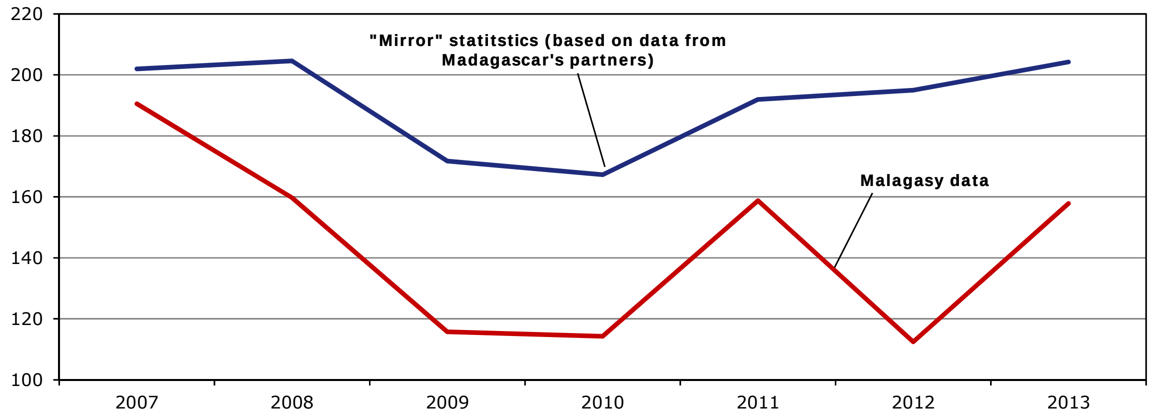


Source: Information provided by the authorities.

[20] Le Manach F. (2012). See also *Le Monde* of 6 July 2012.

Chart 4.5 Exports of fisheries products from Madagascar and imports from partner countries, 2007-2013

(US$ million)



Note: WTO definition for fisheries products.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database

4.3.2 Production by Malagasy companies

4.48. Overall, the trend in exports of fisheries products by Malagasy companies between 2007 and 2013 was negative (Table 4.4). Shrimp aquaculture production, in particular, which accounts for a large part of production in this subsector, fell sharply following detection of white spot disease in shrimps. The production of canned tuna also showed a steep decline.

4.49. On the other hand, crab exports increased substantially, particularly to China, raising concerns within the Government as to the sustainability of this activity. Since 2014, exploitation of mangrove crabs has been subject to new regulations limiting total annual catches to 5,000 tonnes and the total volume exported to 4,250 tonnes. The legislative framework for fishing dates back to 1993 and that on aquaculture to 2001 (Table 4.5).

Table 4.4 Exports of fisheries and aquaculture products, 2007 and 2013

Product	2007	2013		
	Tonnes	Tonnes	Volume (%)	Value (%)
Canned tuna	11,686	7,976	36	26
Farmed shrimps	7,586	4,212	19	33
Wild shrimps	4,908	3,461	16	17
Fish	1,137	2,404	11	10
Crabs	987	1,966	9	7
Octopus	1,266	1,430	6	3
Trepang	294	397	2	1
Spiny lobsters	285	238	1	2
Squid	67	55	0	0
Wild eels	0	53	0	0
Shark fins	38	33	0	0
Farmed eels	0	10	0	0
Glass eels	5	7	0	0
Fish bladders	4	5	0	0
Bichiques	0	2	0	0
Slipper lobsters	1	1	0	0
Total	28,280	22,253	100	100

Source: Fisheries Health Authority (ASH), Rapport d'activités, 2013; and information provided by the authorities.

Table 4.5 Aquaculture and fisheries legislation

Legislation	
General legislation	
Ordinance 93-022 of 04.05.1993	Regulating fisheries and aquaculture
Aquaculture	
Law No. 2001.020.0.20 of 12.12.2001	Development of responsible and sustainable shrimp farming
Order No. 16646/2008 of 19.08.2008	Regulating the practice of cage culture and installation in fresh and brackish waters
Order No. 3588/2013 of 22.02.2013	Administrative and technical measures for granting authorizations to farm seaweed at village level
Order No. 3591 of 22.02.2013	Administrative and technical measures for granting authorizations for establishments farming holothuria scabra
Fisheries	
Decree No. 94.112 of 13.02.1994	General organization of sea fishing
Decree No. 97.1455 of 18.12.1997	General organization of the collection of marine fisheries products
Decree No. 97.1456 of 18.12.1997	Regulating fishing in continental and brackish waters within the State's public domain
Decree No. 2000.415 of 16.06.2000	Defining the criteria for engaging in coastal shrimp fishing
Decree No. 2009.049 of 12.01.2009	Organization of fishing and the collection of fisheries products in continental and brackish waters within the State's public domain
Decree No. 2004.169 of 03.02.2004	Regulating fishing for holothuria scabra
Order No. 0525 of 05.02.1975	Defining the regime for mother ships for shrimp fishing and vessels for collecting shrimps
Order No. 060.2005 of 17.01.2005	Regulating fishing for octopus
Order No. 163.76 of 21.10.2005	Method of exploitation of mangrove crabs *(scylla serrata)*
Order No. 16825/2008 of 28.08.2008	Ban on transporting crayfish of the species *procamburus* throughout the territory of the Republic of Madagascar
Decree No. 169.53/2008 of 04.09.2008	Determining the rules applicable to the headrope of nets used by vessels for industrial and small-scale coastal shrimp fishing
Order No. 2054/2009 of 06.02.2009	Determining the rules applicable to the marking of fishing gear for coastal shrimp fishing
Order No. 32.101/14 of 24.10.2014	Regulating the exploitation of Madagascar's mangrove crabs
Order No. 32.102/14 of 24.10.2014	Export of Madagascar's mangrove crabs

Source: MRHP, viewed at: http://www.peche.gov.mg.

4.50. Exports of fisheries products mostly go to the Chinese and European markets; Madagascar's sanitary standards have been determined in order to meet the requirements of these markets, together with strict regulation of fisheries establishments (Section 3.3.1). Following a favourable audit in June 2012[21], a new list of Malagasy establishments authorized to export fisheries products to the European Union was published in August 2014.[22]

4.51. The MHRP issues fishing licences to companies which request them, in line with a protocol signed between the Ministry and the company. Every vessel must hold a fishing licence and pay a fee the amount of which varies depending on the category of vessel and the target catch (tuna, shrimps, crustaceans, fish, etc.). For fisheries products, the MRHP issues free of charge to operators which have paid their fees certificates of conformity from the regional directorates involved in export and sanitary certificates issued by the ASH in the region concerned. The products are not subject to any quality test: according to the ASH, strict application of the sanitary quality management system by the operators and the various official controls carried out by ASH officials suffice to guarantee the sanitary quality of the products processed in facilities approved for export and to be able to certify them.

4.52. Fisheries products are collected from traditional fishermen by several thousand licensed collectors, who distribute or export them. The profession of collector is regulated (Table 4.5). Collectors may be foreign nationals.

4.3.3 Deep-sea fishing

4.53. With the exception of the fishing restrictions indicated above, the authorities have no policy on maximum catches per species; the measures appear to be decided on an ad hoc basis when stocks are running out and closed seasons may be announced to protect stocks (octopus, spiny lobster, shrimps). Deep-sea fishing in Madagascar's waters, in particular, is not subject to maximum tonnages for catches. It is in principle governed by protocols of agreement. Such agreements have been signed with the European Union, Japan and with foreign private companies. The agreements are not available on an official website and it proved impossible to obtain them.

[21] Audit report on control systems for fishery products intended for export to the European Union, viewed at: http://ec.europa.eu/food/fvo/act-getPDF.cfm?PDF-ID=9872.

[22] Viewed at: https://webgate.ec.europa.eu/sanco/traces/output/MG/FFP_MG_en.pdf.

4.54. The 2007 fisheries agreement with the European Union was renewed for the period 2013-2014, and then for the period 2015-2018. In addition to tuna, for which the terms of the agreement do not stipulate any limits on catches, there is a maximum annual volume of 250 tonnes of sharks under the agreement. The agreement also specifies the maximum number of fishing vessels, namely, 40 freezer tuna seiners and 54 surface longliners for the period 2015-2018.

4.55. Moreover, the revenue under this agreement appears to be low in comparison with the value of the products exported. The new agreement provides for fees payable by shipowners amounting to €60/tonne for the first two years of the new protocol and €70/tonne for the last two years. In addition, an annual financial contribution is paid to the Malagasy Government by the EU Commission. For the period 2015-2018, the amount remains unchanged: €6.1 million for four years, i.e. €1,525,000 per annum. For reference tonnage of 15,000 tonnes (which is not a maximum because it may be exceeded subject to a fine of €65/tonne), this counterpart contribution corresponds to €203/tonne. The fee paid by European shipowners, however, is only €35/tonne caught.[23] The selling price of tuna on the global market at the end of 2014 was around €1,000 to €1,800/tonne, depending on the species.[24]

4.56. The fisheries protocol of agreement between Japan and Madagascar, signed in 2012 for a period of three years, is not available either. It appears to allow 20 Japanese surface longliners (compared to 44 in the previous agreement) to fish in Madagascar's waters. There is no maximum catch. Fees are set at US$2,000 to US$4,500/vessel per month, plus duty of US$1,000 per entry into the exclusive economic zone (EEZ). According to the authorities, only one Japanese vessel caught 344 tonnes in 2013, giving a figure of €16/tonne.

4.57. Lastly, the other operators, including those from China, fish under agreements between private companies and the MPRH. It did not prove possible to view these agreements or to know how many there are.

4.58. Imports in the fisheries subsector are subject to relatively strong tariff protection of 18.8%, well above the overall average of 13%. These high customs duties raise the cost of processing. Partly for this reason, investment in aquaculture and canning is often made under the free-zone regime.

4.3.4 Conservation and sustainable management of fisheries resources

4.59. In view of the foregoing, reform appears necessary if the declared objectives of the MRHP for the conservation and sustainable management of fisheries resources are to be reached. To achieve this, it is essential to reinforce the fisheries control systems; to monitor more closely and provide more information on fishing and aquaculture, as well as more transparency in fisheries agreements. The system for managing fishing rights also needs to be upgraded so as to avoid the sudden depletion of fisheries resources that has affected other countries in the past.

4.60. Another of the Government's declared priorities is to improve operation of the institutions. Currently, around half-a-dozen institutions are responsible for defending the subsector's interests, although none of them has sufficient resources to achieve its objectives. These include the Malagasy Fisheries and Aquaculture Agency, created in June 2005, which is responsible for collecting fees and for financing, monitoring and evaluating the programmes of Malagasy public institutions, research institutions and organizations working towards sustainable development of fisheries and aquaculture. Further support structures include the Fisheries Monitoring Centre, the Fisheries and Aquaculture Economic Observatory, the Aquaculture Development Centre, the Fisheries Research and Development Centre and the Fisheries and Aquaculture Development Unit. It would appear that there is considerable leeway for streamlining these entities.

[23] European Union, *Main Issues of the Sustainable Fisheries Partnership Agreement*, viewed at: http://ec.europa.eu/fisheries/cfp/international/agreements/madagascar/index_en.htm.
[24] Online information from The Fish Site, viewed at: http://www.thefishsite.com/reports/?id=3913.

4.4 Forestry

4.61. Madagascar's forests harbour exceptional fauna and flora and are one of the main pillars of eco-tourism, exploitation of timber and fauna, and the country's pharmacopeia. Forest cover decreased from 9.7 million hectares in 2000 to 9.2 million in 2010, partly because of unauthorized felling and illegal export of protected tropical woods such as rosewood and palisander. Despite reforestation efforts, total forest cover is shrinking. According to the FAO, forests still cover some 22% of Madagascar's territory. Around 24% of the forested area was classified as "primary" forest in 2015.[25]

4.62. In general, the value of timber exports and of their products has dropped sharply since 2008, offset in part by the increase in the value of exports of essential oils and medicinal plants. The decline in exports of palisander wood is the result of the ban on exporting precious woods unless they have been worked. In 2013, despite considerable potential, only some US$7 million was earned from exporting forestry products (0.5% of it came from levies on exports).

4.63. The Ministry of the Environment, Ecology and Forests (MEEF)[26] has indicated in connection with this report that one of its current goals is to "restructure" the precious woods subsector, in collaboration with the public and private bodies concerned and civil society, whether national or international. In September 2014, measures were announced to halt the illegal felling and export of precious woods.

4.64. The authorities have also announced as an objective the setting up of eight priority Koloala sites. Koloala is a response to the desire to strike a balance between the need to protect the biological and ecological heritage of Madagascar's forest system, guaranteed by the system of protected areas, and how to satisfy the ever-growing population's need for wood and energy, which must be provided sustainably. The following measures have been taken:

- adoption of Decree No. 2013/785 of 22 October 2013 laying down the terms for delegating forest management, including the protected areas, to public or private organizations;

- updating of all actors involved in the subsector; training and building traceability capabilities for forest agents;

- inclusion of rosewood and ebony in Appendix II to the CITES in March 2013; and submission of an action plan for the rosewood subsector to the CITES Standing Committee in Geneva in July 2014. Madagascar has decided on a moratorium on the sale of rosewood until 2015.

4.65. Although Madagascar's regulatory framework for forestry has not evolved since the first trade policy review in 2001[27], since September 2014 the Ministry responsible for forests has been drawing up a new forestry policy in partnership with the FAO, in accordance with the REDD process.[28] Moreover, the Protected Areas System, introduced in 2003 for ecological reasons, has been expanded from 1.7 to 6 million hectares. The aim is to turn 17% of national territory into protected areas by including the marine area.

4.66. Commercial forestry policy is implemented by the MEEF's Directorate of Forest Resources Development, through forestry commissions on which are represented forestry operators and NGOs working to protect the environment. The main forestry authorization is an agreement on forest exploitation, which is accompanied by specifications and development, management and operating plans. The specifications define the general and specific technical clauses as well as each party's obligations. Operating permits are issued annually.

[25] FAO (2015).
[26] The Ministry has a website: http://www.ecologie.gov.mg.
[27] Law No. 97/017 of 8 August 1997 and Decree No. 98/781 of 16 September 1998 determining the general criteria for implementation of this Law. See also Decree No. 98/782 of 16 September 1998.
[28] United Nations Collaborative Initiative on Reducing Emissions from Deforestation and Forest Degradation (REDD) in developing countries, viewed at: http://www.un-redd.org.

4.67. Signatories to such agreements undertake to pay timber royalties (Table 4.6). All the operators pay a levy on collection, defined at regional level, which varies from region to region. Exporters, including free-zone exporters, also pay an export levy. These levies are paid into the National Forestry Fund, whose aim is sustainable exploitation of this subsector.

4.68. Before they can leave the forest, any resources exploited must in principle bear the regulatory marks prescribed in the specifications. Export of unprocessed forestry products from natural forests has been prohibited since 2006, especially precious woods such as palisander, ebony and rosewood.[29] As a result of these bans, only pinewood (grown on plantations) may be exported, in semi-processed form. Since precious woods were included in Appendix II to the CITES, the system for their exploitation and marketing has been subject to a quota fixed by the CITES. By March 2015, Madagascar had not been given any quota for precious woods.

4.69. The taxes imposed solely on exports are unlikely to encourage export or processing, even on a small scale. According to national observers, exports of essential oils are highly taxed. Exporters of crocodile skins and byproducts are also taxed. Two % goes to the account of the CITES permanent secretariat in Madagascar for its operations.[30]

Table 4.6 Forestry taxes on exports, 2015

Type of tax	Products affected	Amount
Tax on entry to forest stations	Service (fee for visiting stations)	Variable
Tax on unlawful transactions	Confiscated forestry products (offence)	Defined in tender
Operating permit fee	Wood forestry products	Floor price per m^3 calculated on the basis of the value of the saleable timber
Collection tax	Non-wood forestry products (raffia, medicinal plants, etc.)	7% of the value determined on the basis of a floor price fixed by region
		(% of the f.o.b. value)
Export tax	Processed wood, handicrafts	1.5
	Charcoal	1.5
	Essential oils derived from forestry products	2.0
	Semi-processed or rough wood	4.0
	Live natural fauna and flora products and products of their direct exploitation (for example, orchids, frogs, chameleons)	5.0
	Semi-processed natural products from breeding centres (crocodiles)	2.5
	Products from horticultural centres and bred in captivity	2.0

Source: Order No. 25 608/2014 of 8 August 2014 determining the forestry taxes for commercial hunting permits and authorizations to collect and export fauna and flora products, as well as their exploitation, and samples for scientific purposes; Ordinance No. 60-128 of 3 October 1960 determining the procedure applicable to repression of offences against forestry legislation pertaining to hunting, fishing and nature protection.

4.5 Energy and mining products

4.70. In late 2014, the Government was reforming the mining and energy sector, as well as the public authorities responsible for its regulation, on the basis of the new mining and petroleum policy published in August 2014. This policy refers in particular to the need to redefine the respective roles of the mining regulation authorities. The Office of the President's Ministry responsible for petroleum resources (MPRP) defines hydrocarbons policy (upstream) and energy policy in general.31 Under its supervision, the National Mines and Strategic Industries Board (OMNIS) directs the national mining sector, including hydrocarbons, centralizes and sells geological information showing onshore and offshore mining potential.[32] The Malagasy Board

[29] Interministerial Order No. 16030/2006 of 14 September 2006 and Interministerial Order No. 10885/2007 of 3 May 2007.

[30] Viewed at: http://www.cites.org/sites/default/files/fra/com/sc/62/Inf/F62i-15.pdf.

[31] The Ministry has a website: http://www.mprs.gov.mg/?page_id=119.

[32] Viewed at: http://www.omnis.mg/fr/accueil-fr.

(OMH) is in charge of hydrocarbons control, supervision and regulation.[33] Approval of licences and other authorizations, especially authorizations to export mining products, is the responsibility of another Ministry, namely the Ministry responsible for energy, but it proved impossible to obtain more detailed information. Its main task appears to be to regulate the electricity subsector. The division of responsibilities between these two Ministries is unclear.

4.71. Since 1988, the World Bank has given Madagascar support to develop sustainable and transparent management of its mining sector. The legislative texts on mining are available on the MPRP website, except for the regulations on exporting, which need to be clarified.

4.72. The Malagasy Government became a candidate for the Extractive Industries Transparency Initiative (EITI) in 2008 and all its large mining companies have been listed since 2007. Madagascar was accepted as an EITI candidate country in February 2008, and then suspended in October 2011. The National Committee nonetheless continued to implement the EITI standard and benefited from supervisory missions from EITI's international secretariat. Madagascar's suspension was lifted on 6 June 2014.

4.73. In accordance with Madagascar's environmental policy (Section 3.3.1), all investments in prospecting and mining exploration are subject to an environmental impact assessment under the responsibility of the Ministry in charge of the environment. It did not prove possible to find out whether the Government was considering setting up sovereign mining funds to manage this new-found mining wealth.

4.5.1 Upstream petroleum activities

4.74. In 2013, Madagascar started to extract crude oil, after oil companies substantially increased their investment in prospection and exploitation of oil fields following the escalation in global oil prices from 2003 onwards. The first crude oil was produced in the west of the country, in Tsimiroro. The well has 1.7 billion barrels of heavy oil and could therefore, in the long term, be exploited commercially if prospects appear satisfactory, taking into account the volume of production, oil prices and the cost of production.[34]

4.75. In August 2014, the Government announced a review of the legal framework, notably to adapt it to offshore activities. The regulatory framework for petroleum activities dates back to 1996-1997 and essentially focuses on drilling the soil or subsoil.[35] Three types of mining permit (exploration, exploitation and transport)[36] govern prospecting, exploration and exploitation of liquid or gaseous hydrocarbons, which are owned by the State, as well as activities (and facilities) relating to the storage, transport and processing of hydrocarbons on national territory. In 2014, the model production-sharing contract was revised in order to allow the promotion of offshore blocs.[37]

4.76. OMNIS may propose two types of operating contract to oil companies: association in a joint venture or production-sharing. In the former, the mining rights may be held by the associates while in a production-sharing contract they are held by OMNIS. By the end of 2014, 23 exploration mining rights had been granted.

4.77. Oil companies holding operating rights have to pay various taxes negotiated for each of the production agreements: a fixed levy[38], a 20% direct tax on hydrocarbons (IDH), based on the net profits earned by the companies from all their exploration and operational activities, as well as from transport of their products within Madagascar (the IDH gives exemption from income tax and the tax on investment income); in addition, payments have to be made for the surface lease. The State may also earn income from its participation in joint ventures.

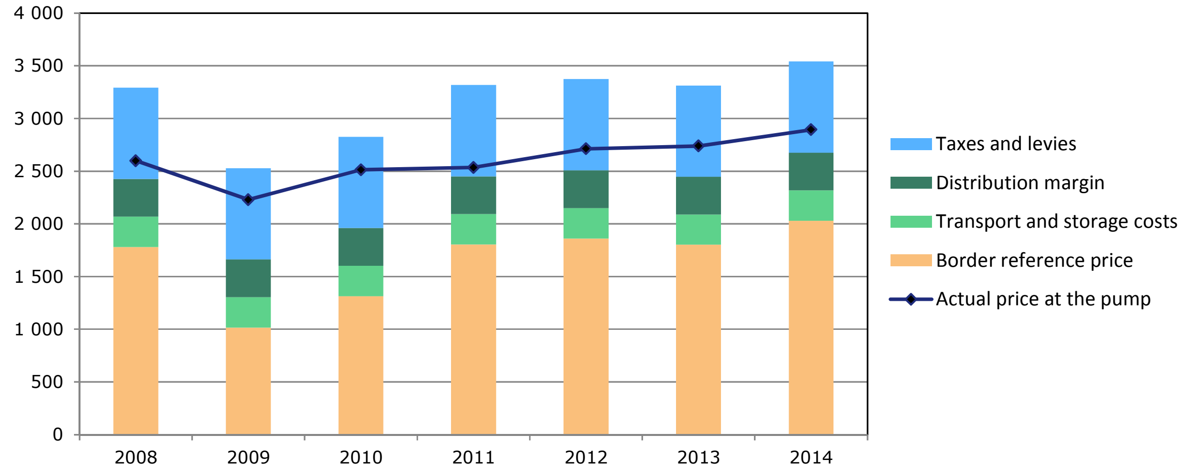
[33] Viewed at: http://www.omnis.mg/fr.
[34] Viewed at: http://www.mprs.gov.mg/?p=155.
[35] Law No. 96-18 of 4 September 1996.
[36] Decree No. 97-740 of 23 June 1997.
[37] This new model contract can be viewed on the OMNIS website: http://www.omnis.mg/fr/download-contracts-models-fr.
[38] These levies are determined in the Finance Law: for crude oil they are 8% to 20% depending on the volume of production; for natural gas they are 5 to 10% depending on the volume of production (CGI, Articles 01.01.26 *et seq.*).

4.5.2 Downstream petroleum activities

4.78. The downstream petroleum subsector makes a sizeable contribution to the economy. In 2013, with a volume of 817,000 m^3 and at a cost of US$670 million, petroleum products accounted for 20% of Madagascar's total imports. Petroleum earnings have represented one third of national customs revenue.[39] The State has intervened in many areas such as fixing prices, suspending duties and taxes payable, or giving a favourable exchange rate for imports of petroleum products. In addition, according to the report of the Directorate-General of Hydrocarbons for 2013, lack of competition in importing petroleum products is a major problem, especially because of the large margins on their transport and distribution (Chart 4.6).

Chart 4.6 Structure of diesel fuel prices, 2008-2014

(MGA/L)



Source: WTO Secretariat estimates based on data from the OMH.

4.79. Madagascar's only refinery, at Toamasina, has ceased operating and only its storage capacity is utilized. The terminal at Toamasina is the entry point for imported refined products. Petroleum products are carried by boat to the other ports solely by one enterprise, the Malagasy company Logistique Pétrolière (LPSA, see Table 4.7) under an agreement with the Ministry responsible for energy. It alone has access to the infrastructure for receiving petroleum products, which are then distributed by lorry or tank car.

Table 4.7 Terms for granting various petroleum licences

Types of licence	Fee (US$)	Validity years)	Licences in force
Import of hydrocarbons	80,000	7	Galana, Jovenna, Mocoh Gas, Shell, Total
Import of gas	80,000	7	Galana, Total, Vitogaz
Import of lubricants	50,000	5	>15
Import of base oil and inputs	80,000	7	Mocoh Gas
Refining or other processing	600,000	20	GRT
Road transport	80,000	5	Total, Jovenna, Galana, Shell, LPSA
Gas transport	140,000	15	Galana, LPSA, Mocoh Gas, Total, Vitogaz
Maritime transport of hydrocarbons	180,000	15	LPSA
Rail transport of hydrocarbons	180,000	15	LPSA
Pipeline transport of hydrocarbons	180,000	15	7 units
Storage of hydrocarbons	240,000	10	GRT, LPSA, Mocoh Gas
Offshore storage of hydrocarbons	240,000	10	GRT
Storage of gas	100,000	10	LPSA, Total, Vitogaz
Distribution of fuels	360,000	7	Total, Jovenna, Galana, Shell
Distribution of products for aviation	240,0000	7	Total, Jovenna
Distribution of gas	100,000	7	Galana, Mocoh Gas, Shell, Total, Vitogaz
Export of hydrocarbons	80,000	7	Galana, Jovenna, Shell, Total, Vitogaz
Blending	100,000	10	Mocoh Gas
Export of base oil, its inputs and lubricants	80,000	7	Mocoh Gas

Note: The licence, renewal and transfer fee are expressed in United States dollars and paid in the ariary equivalent.

[39] Viewed at: http://www.mprs.gov.mg/wp-content/uploads/2014/10/Politique-Nationale-Mini%C3%A8re-et-P%C3%A9troli%C3%A8re.pdf.

4.80. The legislation currently in force, available on the OMH website, dates back to 1999 and was amended in 2004, 2009 and 2012.[40] The OMH grants import licences to eligible operators which so request (Table 4.7). Any person wishing to engage in distribution must undertake to build a network with at least one point of sale to the public in each of the districts identified by the OMH for a period of four years and must constantly have available sufficient quantities of each of the products marketed in each of the districts identified by the OMH. It is the OMH's role to verify that the products imported or marketed and the petroleum facilities comply with the standards in force and to monitor supplies of fuel throughout Madagascar.

4.81. Control of prices at the pump began in 2008 and signalled the end of the policy set out in the Competition Law (Section 3.3.3). The price of products and the margins have since been determined by a committee composed of representatives of the Ministry responsible for trade, the Ministry of Finance, the OMH, and holders of import licences. The prices are subject to an equalization scheme throughout the country, which applies to any person holding an import or distribution licence.[41] A new price adjustment mechanism was introduced in January 2013 and comprises a new table of rates which serves as a reference for determining the price of gasoline, diesel fuel and kerosene; this table is updated monthly by the OMH. The Hydrocarbons Fund was established to finance the price disparities.

4.82. Prices do not vary between one distribution company and another and thus there is no price competition among service stations. In October 2014, the price at the pump was MGA 3,640 (approximately US$1.5) for premium gasoline and MGA 2,940 (US$1.2) for diesel fuel. It is also the responsibility of the OMH to monitor prices and margins so as to exert pressure on the subsector's operators if margins are excessive, although it has few coercive means at its disposal in the event of abuse.

4.83. According to the statistics available, the price at the pump for diesel fuel has risen slightly since 2009 (see Chart 4.6), but has still not reached international levels including tax. In this connection, the drop in global prices in 2014 arrived fortuitously to help the Government to arrive at the "true price level".

4.84. The tax on petroleum products (TPP) is imposed on imports of petroleum products instead of customs duty. The tax is high on certain products, but the Government may suspend it temporarily in order to offset the high cost of the products. Payment of the 40% petroleum tax has therefore been deferred since 2011 as a guarantee on the part of the State for payment of the State subsidies given to distributors of petroleum products on the one hand and payment of JIRAMA's debts (Section 4.5.3) owed to distributors on the other. This reportedly represents considerable amounts foregone in terms of tax revenue. According to the Customs, in 2015 the TPP is to be reinstated on imports of petroleum products.

4.85. There are also a number of special levies on fuel imports in order to finance, *inter alia*, the upkeep of roads (Section 4.7.2), but they have not been used for this purpose in recent years, the result being deterioration of the infrastructure. Until September 2013, the Central Bank granted a preferential exchange rate for imports of petroleum products in order to lower the price to the consumer (Section 1.2). This subsidy was squeezing Madagascar's foreign exchange reserves and has been abolished.

4.86. The Government has identified four priorities for its new mining and petroleum policy:

- To standardize specifications for petroleum products in each category (diesel fuel, gasoline, lubricants, fuel oil); to propose new standards for less polluting fuels that are less hazardous to health; and to promote biofuels such as ethanol and biodiesel.

- To establish a mechanism to follow up global fuel prices in order to guard against price hikes and abusive distribution margins.

[40] Decree No. 2004-669 implementing Law No. 99-010 of 17 April 1999 governing downstream petroleum activities, amended and supplemented by Law No. 2004-003 on liberalization of the downstream petroleum subsector, as amended and supplemented by Decrees No. 2009-1104 of 19 August 2009 and No. 2012-755 of 7 August 2012, viewed at: http://www.omh.mg/codes/textes_reglementaires.php.

[41] Decree No. 2013-882 of 23 December 2013 renewed the control of prices at the pump from 1 January to 30 June 2014, citing the Competition Law.

- To allow direct import of petroleum products by the State in parallel with private firms. The Government is considering buying a tanker to transport these products and introducing a public guarantee fund to finance such imports.

- To lower costs by upgrading transport infrastructure. Bridges are sometimes so dilapidated that it is dangerous for lorries delivering gas or other petroleum products to use them. This problem led to shortages of gas bottles in service stations in April-May 2014.[42]

4.5.3 Electricity

4.87. One of the priorities already identified in Madagascar's previous review in 2008 was to restructure the historical operator JIRAMA and upgrade the country's electricity supply. The situation has not improved since then. Madagascar's per capita electricity consumption is less than one-tenth of average African consumption (Table 4.8).

Table 4.8 Electricity production, trade and consumption

(kWh million and kWh/per capita)

Country	Year	Production	Imports	Exports	Consumption Total	Consumption Per capita
South Africa	2008	258,291	10,572	14,168	254,695	5,067
	2009	249,557	12,295	14,052	247,800	4,869
	2010	259,601	12,193	14,668	257,126	4,997
	2011	262.538	11,890	14,964	259,464	4,995
Mozambique	2008	15,127	8,207	11,212	12,122	533
	2009	16,963	8,340	12,700	12,603	539
	2010	16,666	8,533	12,075	13,124	548
	2011	16,830	8,570	11,954	13,446	547
Mauritius	2008	2,557	n.a.	n.a.	2,557	2,091
	2009	2,577	n.a.	n.a.	2,577	2,100
	2010	2,690	n.a.	n.a.	2,690	2,185
	2011	2,731			2,731	2,211
Sri Lanka	2008	10,003	n.a.	n.a.	10,003	489
	2009	9,987	n.a.	n.a.	9,987	485
	2010	10,801	n.a.	n.a.	10,801	520
	2011	11,600	n.a.	n.a.	11,600	554
Africa	2008	631,142	34,740	29,951	635,931	649
	2009	633,466	37,763	32,740	638,488	635
	2010	677,459	38,621	34,113	681,967	662
	2011	700,157	38,850	33,462	705,546	668
Madagascar	2008	1,104	n.a.	n.a.	852	44
	2009	1,103	n.a.	n.a.	791	40
	2010	1,190	n.a.	n.a.	850	41
	2011	1,268	n.a.	n.a.	883	42
	2012	1,350	n.a.	n.a.	930	43
	2013	1,423	n.a.	n.a.	955	43

n.a. Not available.

Source: United Nations, Department of Economic and Social Affairs, *Energy Statistics Yearbook, 2010 and 2011*; and information provided by the authorities.

4.88. According to the authorities, around 15% of the population has access to electricity, 54% in urban areas and 4% in rural areas. This proportion has decreased since 2008 as a result of population growth. Increasing the generation of electricity remains an essential criterion for the country's industrial development. Several economic operators would be interested in entering the energy sector because demand is far from being satisfied and Madagascar has vast renewable energy potential, provided that a clear and transparent commercial policy is adopted.

4.89. The electric power available in Madagascar (around 357 MW) is also well below installed capacity (545 MW), mostly because of the shortcomings of the thermal power stations belonging to JIRAMA, which is under the authority of the Ministry of Energy and is still awaiting

[42] *L'Express de Madagascar*, viewed at: http://www.lexpressmada.com/blog/actualites/economie/penurie-de-gaz-dans-les-stations-9732.

reorganization. In addition to its inefficient management[43], and even though JIRAMA pays international market prices for fuel (gasoil and fuel oil), in other words more than the (subsidized) price at the pump, its rates are capped and do not allow it to cover costs (Table 4.9), while it would appear that many users do not pay for their electricity.

Table 4.9 Trend in electricity prices, 2008-2015

		October 2008	May 2009	Since July 2012
Long usage	Flat rate (MGA/kWh)	32,750	30,520	34,488
	Energy (MGA/kWh)	144	140	158[a]
	Standing charge (MGA/month)	132,800	125,000	141,250
Short usage	Flat rate (MGA/kWh)	32,750	30,520	34,488
	Energy (MGA/kWh)	196	190	215
	Standing charge (MGA/month)	132,800	125,000	141,250

a Around US$0.5/kWh.

Source: JIRAMA, Tariff zone 1, medium voltage, industrial use.

4.90. State subsidies to JIRAMA, which it needs in order to lease generators, pay for its fuel and buy electricity from private producers, amounted to MGA 161 billion (US$73.2 million) in 2013, or some 0.7% of Madagascar's annual GDP, and were higher in 2014.

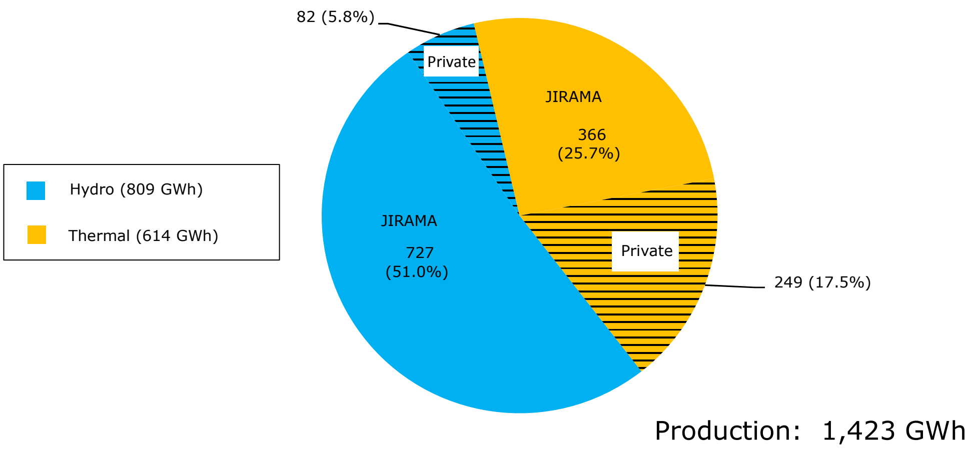
4.91. This situation has led to massive use of diesel-powered stations in order to meet growing demand. Furthermore, the investment needed has essentially been provided by the private sector in the form of leasing of generators, which is far from being the most cost-effective solution for the subsector.

4.5.3.1 Production

4.92. Chart 4.7 gives a breakdown of production of various types of energy and of producers. It shows that, despite liberalization of production in 1998, these activities have attracted few private investors.

Chart 4.7 Structure of electricity production, 2013

(GWh (% of total))



Source: Information provided by the authorities.

4.93. The Government views the exploitation of renewable energy as an important way of developing the energy sector. According to estimates, Madagascar has 7 gigawatts of hydropower potential, of which only 3 to 5% are being used. The 2013 Finance Law declared that tax exemption for alternative and renewable energy infrastructure would continue.

[43] In 2014, JIRAMA was the subject of a Detailed Note by the World Bank. See World Bank (2014).

4.5.3.2 Transport, distribution and charging

4.94. After the reform of the electricity subsector in 1998, production, transport and distribution were partly liberalized.[44] They can be supplied by any Malagasy or foreign natural or legal person under private or public law. An extension of the concession contract between the State and JIRAMA was, however, concluded without specifying any expiry date. JIRAMA's network has been severely damaged and has sustained huge losses. In addition to JIRAMA, there are around 40 producers of electricity for own consumption, plus some 20 private producers that may only sell to JIRAMA but at freely negotiated prices, which has entailed huge losses for JIRAMA. The selling price to individuals (households, companies, etc.) is determined by the Electricity Regulation Board (ORE). The latest price list dates back to July 2012.

4.95. Where it is present, JIRAMA is also the only distribution company. In rural areas, which lie outside JIRAMA's perimeter, producers may sell directly to consumers at prices fixed by the ORE, which differ from one operator to another. Large-scale development of hydroelectric generation would imply reforming the tariff policy and effectively opening up the distribution network to competition, as well as establishing mechanisms that afford greater security for private investors.

4.96. According to the authorities, the energy policy being drafted will define the mechanisms to provide security for foreign investment. The Government's current projects focus mainly on renewable energy and rural electrification. A national electricity plan is being drawn up, whose objectives are to increase the level of access to electricity for Madagascar's population, guarantee electricity supplies and gradually lower the cost of electricity.

4.5.4 Water

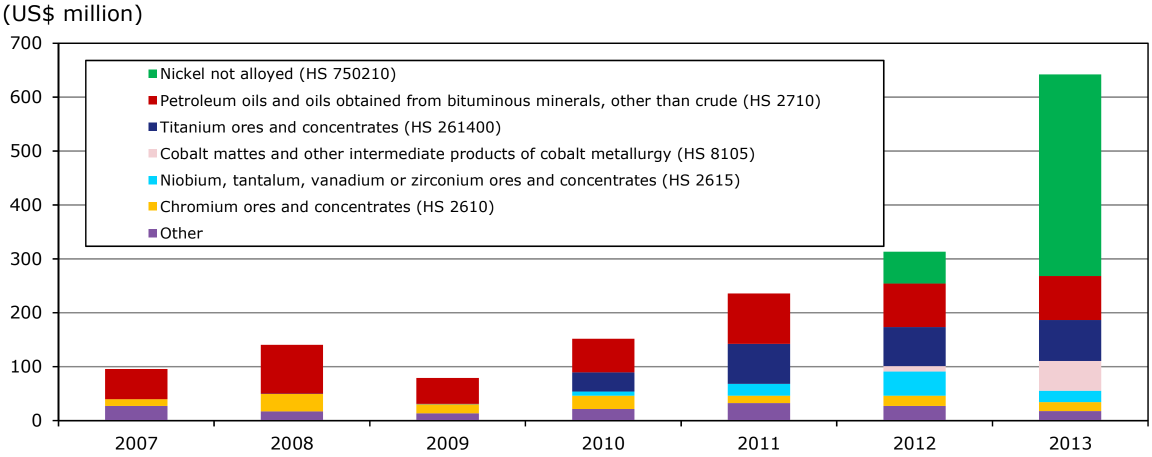
4.97. A decade ago, the Government, with the support of external partners, decided to open up the water subsector to private enterprises which could work alongside JIRAMA. The National Water and Sanitation Authority (ANDEA) was set up and the regulatory texts for implementing the Water Code were adopted in 2003, but the regulatory body has still not been established. JIRAMA still holds a ten-year concession for producing, transporting and distributing water. In 2013, 46% of the population had access to drinking water in the zones supplied by JIRAMA. JIRAMA's total production amounted to 108 million m^3 in 2013, less than in 2006, of which 60% was being supplied to residents of Antananarivo and 40% to the six other large cities in the country. JIRAMA determines the price of water. Outside JIRAMA's perimeter, water supplies are managed collectively.

4.5.5 Other mining activities

4.98. Non-petroleum mining attracts the most FDI and has done so since Madagascar's first review in 2001. More than 35 extractive industries are operating in the country and are involved in either prospecting or production.[45] Of the latter, the two major mining projects – QIT Madagascar Minerals (QMM) and Ambatovy – have completed their installation. With these two projects, earnings from mining exports have increased sixfold since 2007 (Chart 4.8) and are now the island's main export earners.

[44] Law No. 98-032 of 20 January 1999 and its Implementing Decree No. 2001-173 of 28 February 2001.
[45] EITI (2013).

Chart 4.8 Exports of principal minerals, 2007-2013



Note: The principal products have been identified by value according to 2013 data. Exports of aviation fuel/diesel fuel (HS 2710) are sales of (imported) fuel to foreign airlines/cruise ships.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

4.99. Mining of nickel and cobalt at the Ambatovy mine represents the most substantial FDI ever made in Madagascar, and one of the largest in Africa. The authorities are anticipating refined nickel becoming the leading export, amounting to over US$800 million per year for 60,000 tonnes of nickel that is 99.8% pure, equivalent to 3% of global production. Reserves are estimated to be 125 million tonnes, to be mined over 29 years. The ore is sent by pipeline to the refinery in Toamasina. In addition, 5,600 tonnes of pure cobalt could be mined annually. Ammonium sulphate, a fertilizer by-product, could be commercialized. Ambatovy is the result of a partnership among four foreign private firms.[46]

4.100. QMM is 80% owned by Rio Tinto and 20% by the Malagasy State; it is developing an operation to extract heavy mineral sands near Fort Dauphin in the south-east of Madagascar.[47] The main operational activities are the extraction of sand from a depth of 20 metres; mechanical separation of heavy minerals from the sand, which must be returned to the mine for subsequent rehabilitation; the separation of ilmenite and zircon from the other heavy metals using magnetic and electrostatic processes; and the export of ilmenite and zircon.

4.101. Madagascar also produces high-grade (48 to 49%) chromite in two mines operated exclusively by the state-owned company Kraomita Malagasy (KRAOMA), which also has the monopoly on marketing Madagascar's chrome. As such, it should in principle be notified to the WTO Working Party on State-Trading Enterprises. In 2013, KRAOMA exported 47,200 tonnes of chrome concentrate and 38,222 tonnes of bedrock chrome, much less than the 116,290 mentioned in 2006, because the mines were becoming exhausted. Several foreign private companies produce graphite. Exports go mostly to Germany and the United States and reportedly amounted to 5,000 tonnes in 2013.

4.102. The 2005 Mining Code[48] governs prospecting, exploration, exploitation, ownership, possession, transport, processing and marketing of mineral substances found in the soil or subsoil, with the exception of hydrocarbons, which are the subject of separate regulatory frameworks (see Section 4.5.2 above). The Code, which is being revised in 2015, specifies that these substances are owned by the State. Prospecting may be freely undertaken within Madagascar, except in protected zones, zones temporarily classified as reserved areas, and areas covered by mining permits or by an exclusive area reservation authorization (AERP).

[46] Viewed at: http://www.ambatovy.com/docs/?lang=fr&p=110#sthash.DBk8BL8y.dpuf.
[47] Viewed at: http://www.riotintomadagascar.com/english/aboutQMM.asp.
[48] Law No. 99-022 of 19 August 1999 and its Implementing Decree No. 2000-170 of 15 March 2000, viewed on the Droit-Afrique website: http://www.droit-afrique.com/images/textes/Madagascar/Madagascar - Code minier Decret.pdf.

4.103. An AERP is valid for three months and is not renewable; it gives the exclusive right to prospect and then, where applicable, to apply for a mining permit with a view to exploration and/or exploitation in the area concerned. There are three types of mining permit: an R permit (for prospecting and exploration), valid for five years and renewable twice for three years; an E permit (for exploitation or production), valid for 40 years and renewable for several further 20-year periods (and which is subject to environmental impact requirements (Section 3.3.1.6)); and a PRE permit, exclusively for small-scale operators for prospecting, exploration and exploitation, valid for eight years, renewable for one or more four-year periods (see next Section).

4.104. Royalties are payable on the selling price of the products extracted and these are in principle intended for local development; the earnings from the 2% mining royalty (1% in the case of the Ambatovy mine) are in principle divided between the autonomous provinces, the regions, the communes (70% overall) and the Central Government (30%).[49] This allocation rule is not currently being applied because of difficulties in tracking the product through the stages from extraction to processing and then sale, especially when extraction takes place on several sites, and all the revenue goes into the State's general budget. This leads to a considerable gap between the expectations of the population and what they actually receive.

4.105. Furthermore, a special Law on Large-Scale Mining Investment (LGIM) was adopted in 2001 precisely to encourage such investment.[50] The eligibility threshold is MGA 50 billion (around US$20 million). This special regime gives the right to a series of fiscal and customs incentives for the duration of the original mining permit, for example the company and its subcontractors pay a reduced rate of income tax of 10% if the company exports all its production, and the right to import the materials and equipment covered by the investment project without paying VAT. Investors may also freely convert into foreign currency and transfer the sums needed for their current operations and, subject to authorization, transfer capital. According to the Customs, the exemptions from duty and taxes granted to mining companies account for the largest amount of customs revenue foregone. These companies may import all the goods and equipment needed for their investment free of all customs duties and internal taxes, including the materials, equipment and tools to be used for the project. This can result in abuse.

4.5.6 Precious stones and metals

4.106. Madagascar also produces and exports gold and precious, semi-precious and ornamental stones. Production is almost entirely on a small scale and virtually all is exported in the rough state, particularly to the United Arab Emirates. Informal networks dominate the subsector, making it difficult to evaluate its contribution to the economy.[51] It would appear that even those holding permits almost never reveal the true results of their activities. As indicated in a recent World Bank study, the informal nature of the activity and smuggling remain major challenges.[52] According to trading partners which import (in fact, the United Arab Emirates), exports of gold from Madagascar exceed US$200 million (Chart 4.9), which is a substantial loss of revenue in terms of fiscal earnings for the State.

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[49] Law No. 2005-021 of 27 July 2005.

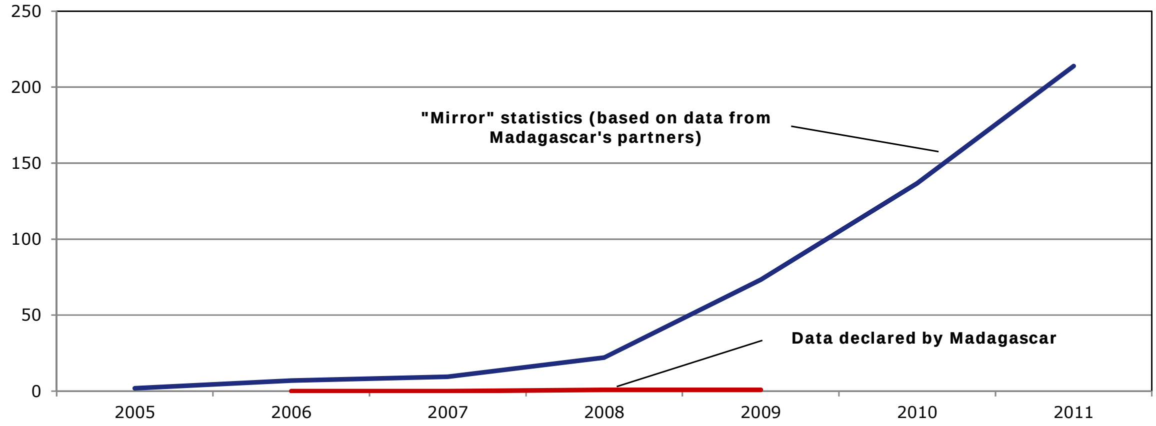
[50] Law No. 2001-031 of 8 October 2002 establishing a special regime for large-scale investment in Madagascar's mining sector (LGIM), as amended by Law No. 2005-022 of 17 October 2005, viewed at: http://eiti-madagascar.org/loi-sur-les-grands-investissements-miniers-lgim-2005.

[51] Ministry responsible for mining and petroleum (2015).

[52] World Bank (2014), pp. 149-150.

Chart 4.9 Gold exports, 2005-2011

(US$ million)



Note: Gold under SITC (Rev.3) Code 971.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

4.107. In 2014, it was therefore decided to reorganize the gold subsector (upstream to downstream), including a legal and organizational framework to provide greater certainty for investment, the objective being to achieve industrial-grade production and develop small-scale production.[53] The current regulations on gold panning in the Mining Code and in a Decree from 1995 determining the gold regime could be greatly simplified.[54] The same is true of the trade in precious stones and metals.

4.108. Firstly, the export of gold was regularly banned, as in June 2012, the aim being (unsuccessfully) to ensure that the raw material was available to jewellers. Then export was occasionally authorized again by means of an order, creating a climate of uncertainty in the subsector. At the end of 2014, exports were prohibited, which gives great encouragement to smuggling.

4.109. Secondly, the levies imposed by administrative authorities are high, which is a disincentive to using legal channels. The Gold Agency, a state-owned company created by the 1995 texts and under the supervision of the Ministry responsible for mining, had still not been set up by the end of the first quarter of 2015. The Agency was supposed to be in charge of registering persons wishing to obtain a gold collector's card, for which they have to pay a large sum (over US$100). According to the law, gold offices should be the only bodies authorized to export gold, but in 2015 there did not appear to be many such establishments.

4.110. A levy and mining drawback (2% in all) apply to exports of gold and other precious stones, which is yet another disincentive to using the formal export networks. An additional 0.2% of the export value is also levied, with a minimum of MGA 100,000 (around US$33), not forgetting the "GasyNet" charge of 0.5% (Section 3.2.2.4).

4.111. For all precious metals and precious and fine stones, an export authorization has to be sought from the Central Directorate of the Mining Administration, through the one-stop window (for mining). In addition, transporting these products within Madagascar requires a permit, which has to be attached to the customs export declaration. These documents represent a cost in time and money and could usefully be streamlined.

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[53] Mining policy, viewed at: http://www.mprs.gov.mg/wp-content/uploads/2014/10/Politique-Nationale-Mini%C3%A8re-et-P%C3%A9troli%C3%A8re.pdf.

[54] Decree No. 95-325 of 3 May 1995 determining the gold regime, viewed at: http://jwf-legal2.fr.gd/D-e2-crets-388.htm.

4.6 Manufacturing

4.112. Madagascar's manufacturing sector has the advantage of exceptional raw materials provided by its flora, fauna, water and socio-cultural heritage, which are unique in the world. This is why the country's main industry, i.e. agro-industry, manufactures not only basic foods but also high-quality products eagerly sought after as exports, for example, vanillin, honey, foie gras, cocoa paste and guano. Madagascar has managed to develop major manufacturing activities in processing fruit, vegetables and, above all, fisheries products, and to gain access to the European Union market, where some Malagasy companies are authorized to market their products. Considering the overall economic situation, however, the authorities were of the view that the informal sector accounted for close to 90% of value added in 2015.

4.113. Madagascar also has a vertically integrated textiles subsector, encompassing cotton-growing, including organic cotton, cotton weaving, and making up clothing for export. Woodworking and marquetry are also of outstanding quality, which partly explains the major share of handicrafts in national value added, with a sizeable export trade. Among the most sought after products on export markets are stones, sculpture, furniture and marquetry articles, essential tree oils, crocodile skins, leather articles, household textiles, upholstery and basketry.

4.114. Madagascar's exports of handicrafts amounted to close to US$16 million in 2013, according to the Malagasy National Handicrafts Centre (CENAM). Some 10% of the labour force works in the handicrafts subsector, which is thus an important source of earnings. Only 15% of the two million Malagasy artisans, however, are listed by the Directorate-General of Handicrafts as professionals who export their products. The reason for this could be, *inter alia*, the taxes on exports of handicrafts. Handicrafts are estimated to contribute between 8.5% and 12% of GDP.

4.115. At US$665 million in 2014, Madagascar's total exports of manufactures were around half those in 2008. This poor performance partly reflects the end of the preferences granted to Malagasy companies making textile articles under the AGOA, following the suspension of Madagascar's Constitution in 2009 (Section 2.1). Many companies in the secondary sector have shut down.

4.6.1 Overview of trade policy

4.116. In 2014, the prime objective of the Ministry responsible for industry was to increase domestic supplies of agro-industrial products, particularly by developing local raw materials, in order to increase food security and provide the population with jobs. For this review, the Ministry drew up a list of the sectors in which Malagasy industry has a competitive advantage and to which the authorities hope to attract FDI; first of all, agro-industry, including fertilizers; textiles and clothing, and leather; essential oils; and electronics assembly and renewable energy production (Section 4.5.3).

4.117. The Industrial Policy Letter, published in 2008 as an outcome of the cooperation programme with the United Nations Industrial Development Organization (UNIDO), already focused on the systemic problems hampering industrial performance, which are exogenous (Table 4.10) and delay and raise the cost of manufacturing processes.

4.118. Partly to mitigate some of these problems, Madagascar has maintained and gradually developed the benefits given to companies operating under the Free Zones and Enterprises (ZEF) regime (Section 2.3.2). Despite the dualism that this regime entails between companies producing for the domestic market and those having acquired ZEF status, the latter consider the granting of the relevant benefits to be a prerequisite for investing in Madagascar. The Government's current emphasis on increasing domestic supplies, however, provides the opportunity to envisage extending the ZEF benefits to the rest of the domestic economy.

Table 4.10 Obstacles to the performance of industrial enterprises

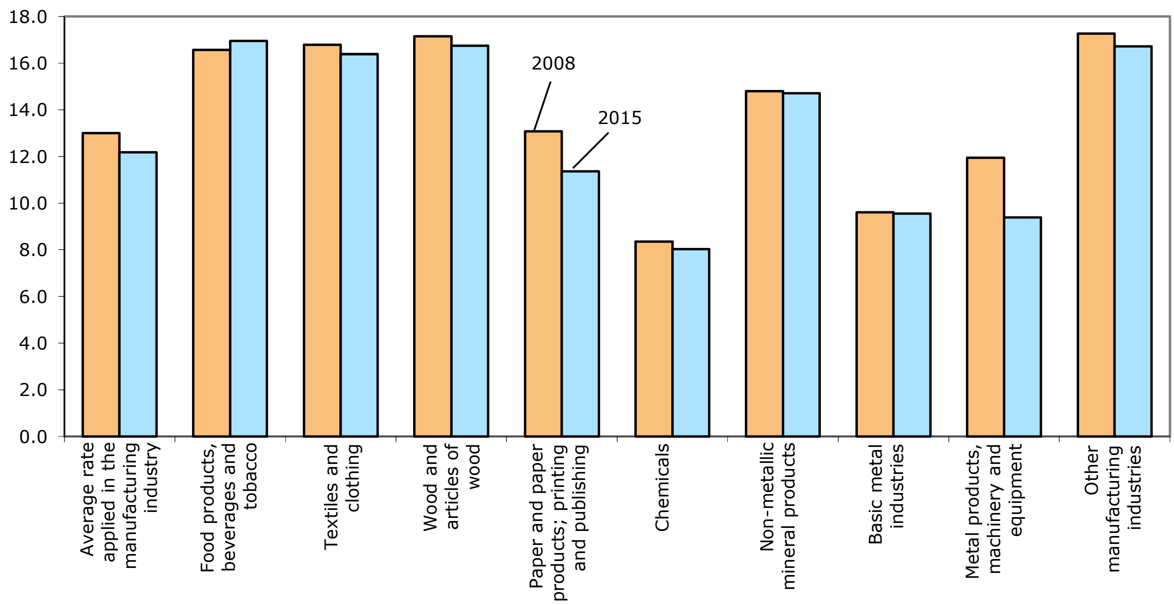
Problems most often cited (section of the report)	Effects	Measure identified
Section 2		
Political conflicts, constitutional crises	Loss of support from external partners (for example, AGOA)	Ensure constitutional stability
Lack of governance	Corruption, abuse of the legal system	Institutionalize whistle blowers, strengthen the courts
Excessive, complicated and less than transparent taxation	Large informal sector, tax loopholes, tax fraud	Reform of taxation and tax inspectors
Section 3		
Lack of competition	Excessive prices, restrictive practices (petroleum products, telecommunications, beverages, building materials)	Promote competition, combat abuses effectively
Failure to respect quality standards	Poor product development	Adopt international standards, accreditation, certification
Section 4		
Expensive and unreliable energy	High costs, insufficient production	Regulatory reform to encourage investment in energy
Inadequate transport services	High costs, delays, products lost or damaged	Investment in transport infrastructure (roads, bridges, oil pipelines)
High cost and lack of access to credit	Investment financing inaccessible to SMEs	Promote the granting of loans for local investment by SMEs

Source: WTO Secretariat.

4.119. MFN customs duties on imported manufactures remain high and have not fallen since the previous review (Chart 4.10). This does not incite companies to be competitive. For example, in biscuit production, which depends on imports for 98% of the value of production, customs duties and taxes are higher on the inputs than on the finished product. Consequently, the price of finished products is 20% higher than imported products, especially from COMESA countries.

Chart 4.10 Customs duties by manufacturing industry, 2008 and 2015

(%)



Note: The product groups are defined in the two-digit ISIC.

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

4.6.2 Specific industries

4.6.2.1 Sugar industry

4.120. Up until 2009, sugar under tariff heading 1701 originating in Madagascar benefited from guaranteed access to the European Union market free of community customs duty[55], for a fixed quota of 10,760 tonnes a year at a guaranteed community price above the global price, pursuant to Protocol 3 on sugar (Cotonou Agreement).[56] Since 1 October 2009, restrictions on the volumes exported have been lifted for ACP countries that have signed EPAs with the European Union, including Madagascar. The guaranteed access volumes have also been abolished and customs duties still do not apply irrespective of the volume exported by Madagascar.[57]

4.121. In order to confront increased competition, from 2006 onwards Madagascar adopted a national strategy to adapt the sugar subsector, with assistance from the European Union, in order to revive industrial production of sugar and ensure the country's self-sufficiency by 2014, while at the same time developing its export markets.[58] In 2008, the Malagasy Sugar Cane Centre (CMCS) was created to promote the sugar cane agro-industry. Some of the measures taken to boost the subsector include rehabilitation of hydro-agricultural infrastructure, supplying planters with inputs and conducting studies on the subsector.

4.122. Sugar production has responded well to these efforts (Table 4.11) and exports even more so.[59] In 2013, sugar exports amounted to almost US$30 million (83% going to the EU), more than four times higher than the US$7 million in 2007. There was also a large volume of imports (worth almost US$67 million in 2013), mostly from Thailand and Brazil. The authorities have also indicated that customs controls revealed that large imports of rice (at zero duty) were in fact sugar.

Table 4.11 Production, import and export of sugar, 2009-2013

(tonnes)

Activity	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
Production	54,005	70,878	69,447	75,848	98,004
Import	127,270	91,857	107,628	103,492	111,502
Quantity available	181,275	162,735	177,075	179,340	209,506
Domestic consumption	154,518	133,335	155,831	139,340	143,115
Export	26,756	29,400	21,244	40,000	66,391

Source: CMCS.

4.123. Recovery in this subsector is also largely attributable to the private management of three of Madagascar's industrial sugar refineries by the Chinese company COMPLAINT. The other two sugar refineries (Brickaville, 15,000 tonnes, and Nosy Be, 16,000 tonnes) await buyers.

4.124. Since 2008, the regulations on the sugar trade have continued to be modified:

- The "sugar levy" paid to the CMCS for its operations rose from MGA 6 to 10/kg. It applies to all sugar sold in Madagascar and since September 2014 has applied to both domestically produced and imported sugar at the same rate.
- Customs duty decreased, from 20% in 2009 to 5% over the period 2010-2014, then rose to 10% in 2015. Sugar is not covered by the liberalization commitments made by Madagascar under the EPA and the SADC.
- The minimum value for imports was abolished in March 2015 (Section 3.1.2).

[55] This MFN duty is €34/100 kg for raw cane sugar for refining and €42/kg for refined sugar.
[56] WTO document WT/TPR/S/177/Rev.1 of 15 May 2007.
[57] The EPA nevertheless provides for safeguard mechanisms (Section 2.2.3).
[58] Viewed at: http://www.agriculture.gov.mg/communication/wp-content/uploads/sites/2/2014/06/STRATEGIE_-SUCRE.pdf.
[59] See in particular *Mesures d'accompagnement du protocole sucre en faveur des paysans producteurs de canne à sucre de Madagascar – Allocation 2012*, viewed at: http://ec.europa.eu/europeaid/documents/aap/2012/af_aap_2012_sugar_mdg.pdf.

- A ban on exports was introduced in 2011, then lifted in 2012 when domestic supply problems were deemed to have been resolved.

4.125. Madagascar also benefits from a zero-duty tariff quota of 7,258 tonnes of brown sugar annually for the United States, but it is underutilized.

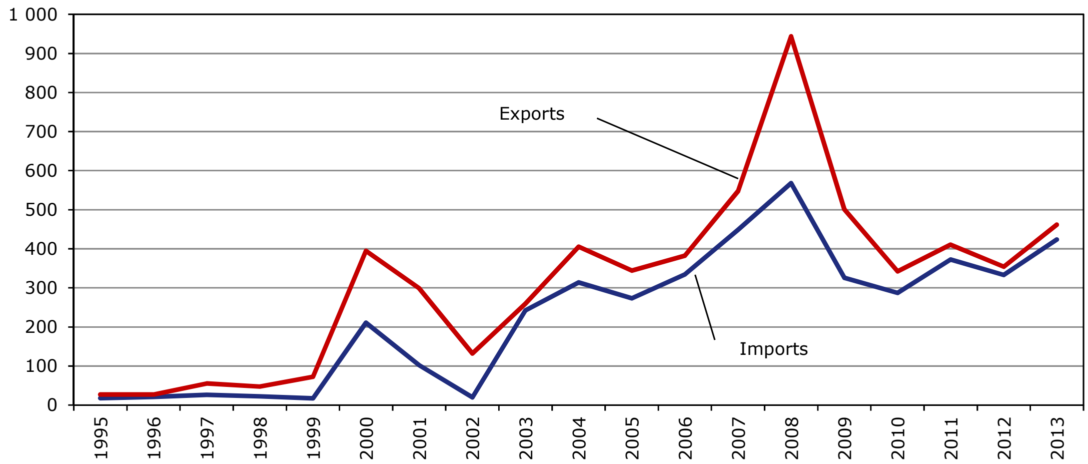
4.6.2.2 Textiles and clothing

4.126. Madagascar has the assets to cover all stages of the textiles and clothing production chain, from growing natural fibres to manufacturing finished garments. It could cease limiting itself to making up clothing provided that the cotton subsector is satisfactorily integrated in the textiles and clothing industry. Currently, foreign companies produce a large share of Madagascar's cotton lint and have become some of the principal buyers of seed cotton grown on the island (Section 4.1.2.4). Imported cotton thread and fabric are subject to the maximum tariff protection of 20%, which makes them more expensive and hinders the subsector's integration in the economy (Sections 2.3.2 and 3.2.4).

4.127. The clothing industry grew strongly in the 2000s, mainly making clothing of HS headings 6110, 6214 and 6203 using imported textiles (Chart 4.11), which is then exported to the United States under the AGOA tariff preferences. These are conditional upon respect for constitutional rights in beneficiary countries and the Malagasy industry was badly hit by their suspension in 2009. Madagascar has once again been benefiting from AGOA preferences since October 2014, including the special AGOA provision on incorporating fabrics from third countries ("third fabric provision").

Chart 4.11 Trade in textiles and clothing, 1995-2013

(US$ million)



Note: Textiles and clothing according to the WTO definition.

Source: WTO Secretariat calculations, based on data from the UNSD Comtrade database.

4.128. The clothing industry should also benefit from implementation of the IEPA with the EU (Section 2.2.3), which involves streamlined rules of origin compared to the rules of origin existing under the previous trade agreements, particularly as a result of the adoption of the rule of simple processing for cotton articles originating in Madagascar, which constitutes an undeniable advantage for clothing firms.

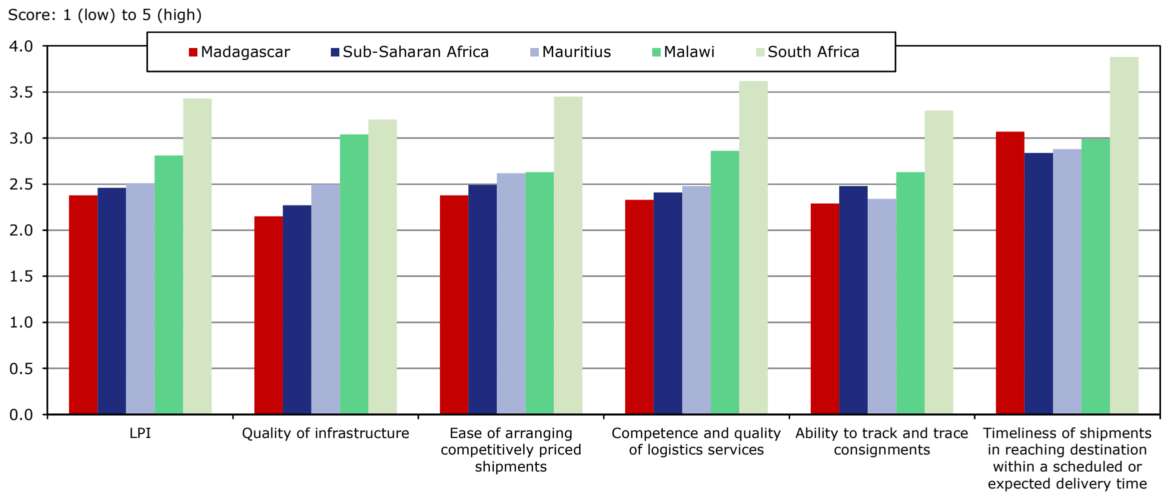
4.7 Transport services

4.129. Madagascar is a large exporter of transport services, amounting to over US$400 million in 2012, corresponding to almost 10% of its total exports of goods and services and essentially reflecting spending by tourists travelling to Madagascar with the airline Air Madagascar. As regards imports, expenditure was close to US$600 million in 2012, or 15% of total imports of goods and services, mainly a reflection of freight costs for goods imports.

4.130. Although Madagascar did not make any specific commitments on transport under the GATS[60], the sector is essentially open to foreign presence, which often dominates. The current transport policy has not changed since 2000: the aim is still to attract private investment, including foreign investment, in public-private partnerships with the Malagasy State. As underlined by the Ministry responsible for transport in 2013 in its sectoral transport policy, it is now essential to invest in rehabilitating the road and rail infrastructure because this is one of the principal conditions that will allow Madagascar's foreign trade to take off and, consequently, the country's economic development.[61]

4.131. Even though the current policy still plans to privatize operational activities, with the Government maintaining a strategic planning, regulation and coordination role, several companies listed in the privatization programme in 1997 are still in the State's portfolio, including the airline Air Madagascar (in which the State's share is 80%); the Malagasy National Railway Network (RNCFM); Madagascar Airports; and the Finance Company for the Development of Transport and Tourism (SOFITRANS).[62] The Government has not defined its programme for the privatization of these bodies. The delays in the sector's development have certainly been one of the reasons for the poor performance in the Logistics Performance Index, measured by the World Bank between 2007 and 2014 (Chart 4.12). Yet the performance of the logistics sector is a key factor in the competitiveness of exports.

Chart 4.12 Logistics performance index, 2014



Source: World Bank, viewed at: http://lpi.worldbank.org.

4.132. Indeed, very few transport reform and rehabilitation projects have been implemented since the major container port was put out to concession in 2005. The two major challenges facing the authorities in developing an efficient transport system conducive to sustainable growth are to guarantee the independence of the regulatory authorities and to improve their coordination. The Transport Ministry's total investment and operating budget for 2015, however, was not more than the equivalent of US$12 million.

4.7.1 Water transport and port services

4.7.1.1 Maritime and river transport

4.133. Three shipping companies run container ships to the island (CMA-CGM, Mediterranean Shipping Company and SAFMARINE (Maersk)). The list is not available on any official website. According to the authorities, the three companies charge very similar rates, which implies lack of competition.

[60] WTO document GATS/SC/51 of 15 April 1994. See the I-TIP integrated database: http://i-tip.wto.org/services/(S(o2wbbwdggzwf3jpvzq1guszw))/default.aspx.

[61] The Ministry has a website: http://www.transport.gov.mg/blog/2013/02/13/politique-sectorielle.

[62] Decree No. 97-584 containing the first list for the programme on State withdrawal from enterprises or from participation, viewed at: http://www.mefb.gov.mg/images/files/STP/decret_584_97.pdf.

4.134. These companies go to Madagascar as part of their regional "feeder" services in the Indian Ocean, with Mauritius as their main hub.

4.135. There is no national fleet providing international transport, for either cargo or passengers. National cabotage, "bornage" (i.e. domestic transport limited geographically to around the ship's home port) and internal waterway transport are reserved for Malagasy flag vessels, except in the event of exemptions granted by the maritime administrative authority. These exemptions are almost systematically granted to the three shipping companies mentioned above for container traffic. Bulk transport (cotton, raffia) are reserved for national carriers.

4.7.1.2 Port services

4.136. Madagascar's two major ports are both far from the capital: Toamasina, the largest port, is on the east coast, 380 km away from the capital, while Mahajanga, on the west coast, is 570 km away. In 2005, the container terminal at Toamasina Port was modernized by the foreign private operator Madagascar International Container Terminal Services Ltd. (MICTSL)[63], after the Toamasina Autonomous Port Company (SPAT)[64], the manager of the port, gave it a concession for 20 years. According to the World Bank, this has resulted in large gains in productivity per ship, particularly in terms of punctuality (Chart 4.12). The other ports, with the exception of Ehoala, come under the Port, Maritime and River Agency (APMF), established in 2004 (Table 4.12).[65]

4.137. The new private mineral ore port (Ehoala) is a deep-water port (15.75 metres at berth) and is managed by a private company. It was built in 2007 as part of the Rio Tinto QMM ilmenite extraction project (Section 4.5.5). It was jointly financed by the Rio Tinto Group and the Malagasy State under the Integrated Growth Poles Project (IGPP) financed by the World Bank. The port facilities enable mineral ore extracted from the QMM mines to be exported while at the same time helping to end the isolation of the Anosy region. It is privately managed under a global concession regime.

4.138. Investors are still being sought to manage the ports of Antsiranana-Nosy Be, Mahajanga and Toliara. The management of each of these ports is to be handed over to a public limited company in whose capital the State, the autonomous provinces and their components would hold the majority, with private operators being invited to take a maximum 20% share. The actual creation of these autonomously managed ports is awaiting the adoption of a new Code and its implementing decrees. The 2000 Maritime Code is still in force, although since 2008 it is being revised in order to reflect the State's new approach to private management of transport infrastructure (a draft Maritime Code is available on the APMF's website).[66]

Table 4.12 Indicators for Madagascar's principal ports, 2013

	Toamasina	Antsiranana	Mahajanga	Toliara	Ehoala
Ships docking					
Ocean-going ships	402	35	52	0	38
Domestic cabotage	11	130	643	2	22
Regional feeders (Comoros, Mauritius, Réunion, Seychelles, Mayotte, Mozambique, Kenya)	36	113	77	1	26
Bornage	1 143	0	297	0	0
Tonnes unloaded	3,697,280	152,216	184,905	5,101	73,976
Containers unloaded (TEU)	86,246	4,359	6,795	131	3,781
Passengers disembarked	n.a.	n.a.	1,899	0	8,957
Warehouses	53,000 m^2	6,274 m^2	20,000 m^2	8,945 m^2	n.a.
Aprons	870,000 m^2	6,602 m^2	16,935 m^2	23,500 m^2	n.a.
Management					
Port owner	State	State	State	State	State
Regulatory authority	SPAT	APMF	APMF	APMF	APMF
Port management	SPAT	APMF	APMF	APMF	Ehoala Port SA
Container terminal management	Madagascar International Container Terminal (MICTSL)	APMF	APMF	APMF	Ehoala Port SA

63 Viewed at: http://www.ictsi.com/operations.aspx?p_id=3&category_id=72&operation_id=136&id=193.
64 Viewed at: http://www.port-toamasina.com.
65 Viewed at: http://www.apmf.mg/#nogo1.
66 Law No. 99-028 of 3 February 2000, viewed at: http://www.apmf.mg/pdf/code2000.pdf.

	Toamasina	Antsiranana	Mahajanga	Toliara	Ehoala
Container handling	ICTSI	COMADIE	COMAMA SEMS	SEMS COMATO	Strang Ehoala Port Logistics (SEPL)
Bulk handling	SMMC	COMADIE SGTPSM	COMAMA SEMS	COMATO SEMS	SEPL
ISPS certification	2013	n.a.	n.a.	n.a.	2010

n.a. Not available.

Source: WTO Secretariat, on the basis of information provided by the authorities.

4.139. The APMF is self-financed through payment of services provided to port and maritime transport users, but concession fees are paid by port operators directly into the State's general budget. A new Decree determines the principal port charges.[67] In ports managed by the APMF that have not been put out on a global management and operating concession, the charges include:

- port dues for ships, goods and passengers;
- berthing dues;
- charges for temporary occupation of aprons;
- government fees and operating charges owed by concessionaires or permit holders; and
- handling fees owed by certain categories of ship.

4.140. "Merchant shipping" dues also payable to the APMF include:

- fees for the issuing and renewal of maritime documents which the APMF is authorized to issue on behalf of the State such as: deeds, certificates diplomas, patents, permits and attestations;
- safety inspection fees; and
- ship registration fees.

4.141. The assessment bases and rates for these dues and fees are fixed by decree, the tariffs by interministerial order or in the specifications for global concessions.

4.142. The International Ship and Port Facility Security Code (ISPS Code) is in force in the ports of Toamasina and Ehoala. Bringing all the international ports up to standard is a declared priority, as is the implementation of international conventions on monitoring the risks of marine pollution.

4.7.2 Road transport

4.143. The fact that the only route linking the capital (Antananarivo) to the main port (Toamasina) has just one lane each way, goes over three passes and through two national parks, with an average speed of around 40 km/h for the 380-km trip, meaning that lorries take an average of over 24 hours because of the numerous potholes or landslides, shows the extent of the land transport constraints and their likely impact on trade, including international trade. In general, road transport infrastructure is under-developed and in a very poor state of repair so large increases in the investment and operating budgets are needed in order to facilitate trade.

4.144. The authorities have also indicated that the bus station infrastructure is inadequate, the ageing fleet of vehicles is not conducive to optimum road safety, and heavy lorries that do not meet the requisite standards and carry excessive loads degrade the roads and engineering works. The poor state of the infrastructure is a major obstacle to Madagascar's economic development, and that of its agricultural, mining and tourism sectors in particular.

4.145. Projects to rehabilitate the road infrastructure are financed by the development partners and (in principle) by a contribution from the Road Maintenance Fund, which was supposed to be replenished by a fee of around 4.5% of the price at the pump in 2014.

[67] Decree No. 2012-391 providing for the restructuring of the Port, Maritime and River Agency (APMF), laying down its statutes and financing modalities, and establishing the Port, Maritime and River Transport Council and the Maritime Support and Operations Centre.

4.146. The regulatory framework for land transport (railways and roads) dates back to 2004.[68] According to this legislation, any company under Malagasy law, even those with foreign capital, may freely set up to offer road transport services. In March 2015, ten years later, the implementing decrees for this law had not yet been approved. The tasks of regulation, granting of concessions and management have been delegated to the Land Transport Agency[69], which issues driving licences, vehicle registration cards and permits to operate transport vehicles, and also approves road carriers. The authorities have pointed out that the subsector suffers from lack of professional organization and poor service.

4.7.3 Rail transport

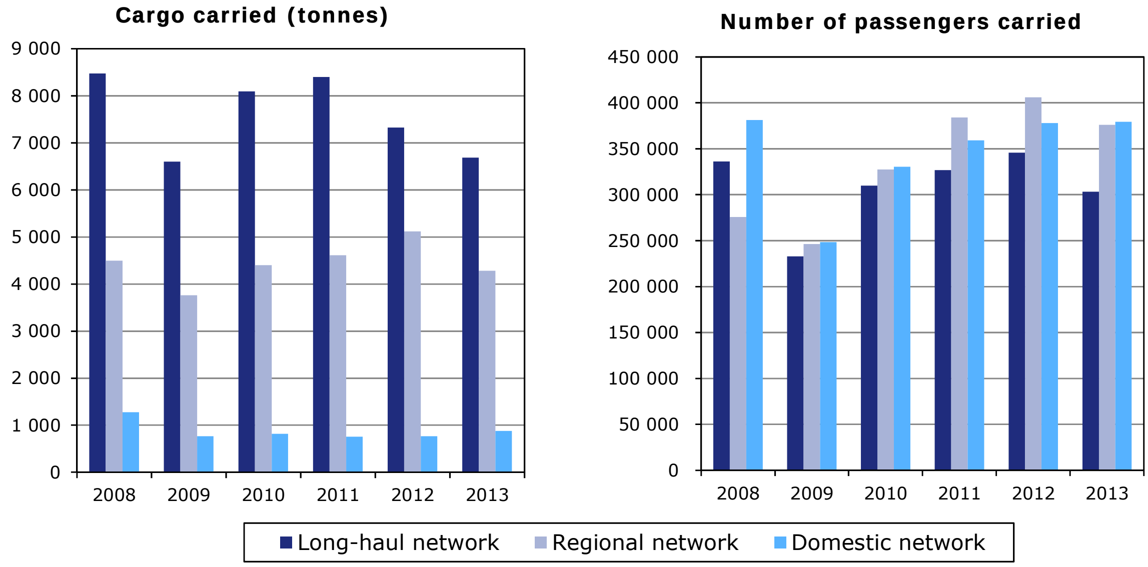
4.147. The Government is currently seeking investors capable of upgrading Madagascar's rail network and making it profitable. Rail infrastructure is in a poor state, with metric gauge tracks and outdated rolling stock, which caused derailments in 2014. According to information received in connection with this report, carrying freight by rail between the principal port at Toamasina and the capital takes at least a week.

4.148. At present the network is divided into two: since 2004, the 750-km long northern route has been operated by Madarail under a 25-year concession.[70] Madarail is a privately owned company with foreign capital in which the State has a 25% share; it has three segments, including one track from the port at Toamasina to the capital Antananarivo. The company had promised substantial investment (US$37.5 million over five years) to modernize the rail track and keep up with demand, especially from mining companies, under the Fourth Adaptable Program Loan (APL4) project financed by the World Bank's International Development Association (IDA). Because of the political situation in 2009, this investment never materialized. In the south, the RNCFM is still owned by the State but, generally speaking, the trains are not operational.

4.7.4 Air transport and airport services

4.149. The development of air traffic has been badly hit by the impact of the series of political crises that have affected Madagascar since 1990, the latest in 2009 (Chart 4.13). In 2014, only 1.6 million passengers travelled by air. Besides having an effect on international arrivals, these crises have caused serious losses of purchasing power for the population, depriving it still further of access to air transport services. Recently, air traffic has suffered from the economic downturn in Europe, which has reduced demand for tourism, and has also felt the effects of the regulatory measures taken against certain aircraft belonging to Air Madagascar.

Chart 4.13 Civil aviation in Madagascar, 2008-2013



Source: Madagascar Civil Aviation (ACM).

[68] Law No. 2004-053 of 28 January 2005.
[69] Decree No. 2006-279 of 25 April 2006.
[70] Madarail has a website: http://www.madarail.mg.

4.150. Yet Madagascar's geography (mountains in the centre of the country and dense plant cover in the east) and the large size of the island mean that air transport plays a key role. Performance in this subsector has considerable repercussions on other subsectors of Madagascar's economy, the foremost being tourism.

4.7.4.1 Regulation of air transport

4.151. The ACM is responsible for regulation, the granting of operating licences and any other documents needed by air carriers (including service suppliers at airports and airfields) and for managing safety standards.[71] It compiles the national air transport regulations.[72]

4.152. Since the enactment of the Civil Aviation Code in 2004, the State has opened up domestic air transport to competition from companies under Malagasy law.[73] The Code was replaced by a new one in 2012, and supplemented by a decree in 2014 laying down the economic rules for air transport.[74] Despite this opening up, no new company has invested in providing domestic flights. As cabotage is not allowed, Air Madagascar has been the only airline to provide regular domestic flights since 1996, even though its domestic monopoly has been abolished.[75] Around a dozen small national private companies fly domestic routes for passengers on demand. In 2014, Air Madagascar provided around 90% of domestic flights; the State holds 89% of its capital. In 2011, Air Madagascar was on the brink of bankruptcy, but was recapitalized by the State in 2012.[76] Furthermore, since April 2011, some of Air Madagascar's fleet has been banned from flying in European air space.[77]

4.153. The ACM negotiates Madagascar's international air transport agreements, including frequencies, destinations and tariffs. Since 2008, most of these agreements have provided for multiple destinations. Madagascar applies the Decision relating to the implementation of the Yamoussoukro Declaration of 2000 concerning the liberalization of access to air transport markets in Africa. Among the 38 bilateral agreements signed by Madagascar are an open-skies agreement with the United States in 2004. It has also negotiated agreements with unlimited frequency with several partners, including Namibia, Chad, Cameroon, the United Arab Emirates, Kenya, Thailand and Ethiopia.

4.154. Because of the strategic importance of air transport for Madagascar's economy and tourism in particular and in view of the relatively high prices charged by airlines, the authorities could encourage or systematize the updating of Madagascar's international air agreements, including those not being implemented, in order to liberalize the clauses on tariffs or capacity, which should help to bring down prices. The market for unscheduled flights (e.g. charters), on the other hand, is wholly open to competition with freedom to determine tariffs and capacity.

4.155. Domestic air transport needs to be further liberalized in order to increase the supply and quality of domestic routes. As mentioned above, only Air Madagascar provides scheduled domestic services and its service is criticized. The authorities are not currently considering authorizing, for example, consecutive cabotage (eighth-freedom rights), which would enable foreign companies to offer domestic services.

4.7.4.2 Airports

4.156. Madagascar has 57 airports open to public air traffic, of which 12 have been managed since 1991 by the state-owned enterprise Aéroports de Madagascar (ADEMA). The international airports at Ivato (Antananarivo) and Nosy-Be can take wide-bodied aircraft, while the other

[71] Decree No. 99-821 of 20 October 1999.

[72] Summary of Madagascar's national regulations, viewed at: http://acmweb.acm.mg/dreg/0-SOMMAIRE DES TEXTES REGLEMENTAIRES/SOMMAIRE DES REGLEMENTS NATIONAUX DE MADAGASCAR 29 07.pdf .

[73] Law No. 2004-027 of 9 September 2004, viewed at: http://www.justice.gov.mg/wp-content/uplLoads/textes/1TEXTES NATIONAUX/DROIT PUBLIC/Transports/Transport aerien/L2004-027.pdf.

[74] Law No. 2012-011 of 13 August 2012 repealing Law No. 2004-027 of 9 September 2004, and Decree No. 2014-1106 on economic regulation of air transport operations, viewed at: http://www.acm.mg/IMG/pdf/decret_2014_1106_reg_economique.pdf.

[75] Privatization Law No. 96-011 of 13 August 1996, amended by Law No. 98-014 of 17 November 1998.

[76] Viewed at: http://lanation.mg/archive.php?id=3052.

[77] European Commission (2014).

six airports can receive domestic flights (Antsiranana, Mahajanga, Sainte-Marie, Toamasina, Toliara and Tolagnaro). All the airports are owned by the State. Twenty-eight airfields are managed by private operators and sixteen offer no assistance; two of them comply with the standards set by the Ministry responsible for transport.

4.157. In addition to management, the 1991 concession contract covers the airports' ground, works, buildings, facilities, equipment, materials and services. The Malagasy State holds 64% of the company's registered capital.[78] ADEMA determines the rates for its services, including airport fees, subject to approval by the Ministry responsible for transport. It is also included in the list of companies due for privatization.[79] Most of its revenue comes from aviation fees, which account for 85% of its overall turnover and whose rates are determined in a decision by the ACM after consulting users. The following services are provided by service suppliers holding monopolies:

- supply and distribution of aviation fuel: Total Aviation;
- ground handling and assistance: Air Madagascar[80];
- control of air navigation safety at three airports (Ivato, Toamasina and Mahajanga): Agency for Air Navigation Safety in Africa and Madagascar (ASECNA). ADEMA provides this service at the other nine airports.

4.8 Tourism

4.158. Madagascar's spectacular land and marine natural resources make it a prime tourist destination for a wide range of travel interests, and tourism is a key sector of the economy. In 2013, travel (i.e. tourism and other travel) accounted for US$600 million of export earnings (Chart 1.6), or 13% of total exports of goods and services. Tourism's estimated total contribution to Madagascar's GDP was 16% in 2013 and the total number of jobs in the sector represented 12% of total employment, including both direct and indirect employment.[81] Around 80% of tourism revenue comes from travellers from the euro zone, most of them from France or Italy. Overall, tourism is open to competition, including from abroad, despite Madagascar's lack of commitments in this sector under the GATS.[82]

4.159. Tourist arrivals, either by air or on cruise ships, fell drastically after 2008 (Chart 4.14). Forecasts from the Ministry in charge of tourism (MT) aimed for 250,000 tourists in 2014. By comparison, the Madagascar Action Plan (MAP) of 2007 had a target of 500,000 international arrivals annually, and earnings of US$750 million in 2012. The inadequacy of the statistics on tourism hampers planning and decision-making.

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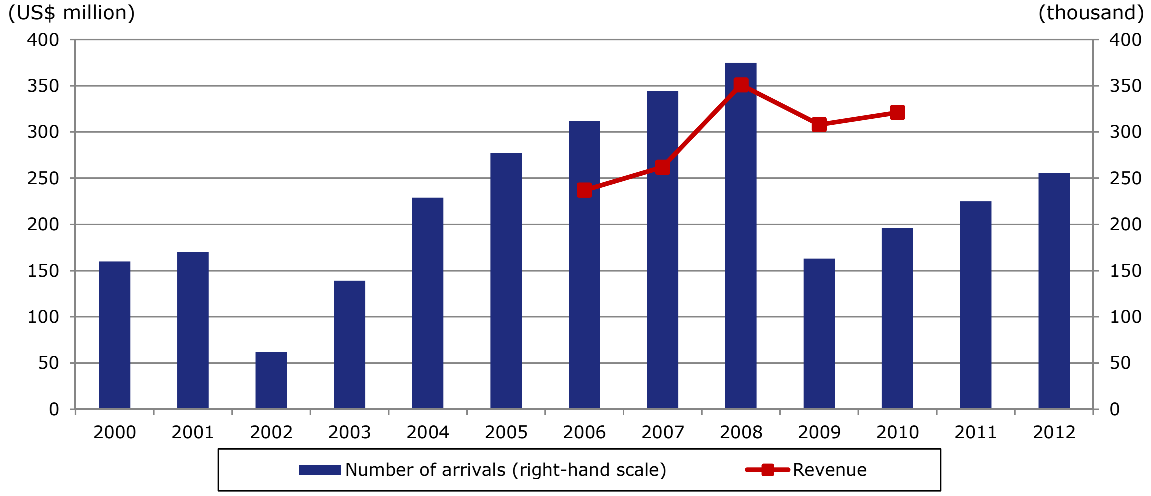
[78] French Development Agency (AFD) (2012).
[79] Viewed at: http://www.adema.mg.
[80] Decree No. 2013-027 of 15 January 2013 regulating airfields in Madagascar, Title 10, sets out the conditions for providing these services.
[81] World Travel & Tourism Council, p. 6 [18 June 2014].
[82] I-TIP database, viewed at: http://i-tip.wto.org/services/(S(wxl23e4pa2sdtg12cxvg2a0m))/SearchResultGats.aspx.

Chart 4.14 Tourism: number of arrivals and earnings, 2000-2012



Note: Spending in Madagascar by international travellers.

Source: World Bank, World Development Indicators; and World Tourism Organization, Compendium of tourism statistics, 2012, 2013 and 2014 editions.

4.160. Madagascar's hotel infrastructure has developed considerably since 2008 (Table 4.13), a reflection of the efforts made since 2003. In 2003, tourism was placed at the heart of the World Bank's IGPP. A master plan for tourism in Madagascar was adopted in 2003, targeting the need for sustainable management of the sector. In order to promote the development of eco-tourism, 23 tourism reserves have been established. Subsequently, the MAP further increased the importance of developing the tourism sector in Madagascar.[83] Partly as a result of these efforts, the average length of a tourist's stay in Madagascar rose from 21 to 23 days. Despite these initiatives, the political crisis in 2009 did not spare the sector, which saw a definite downturn in activities.

4.161. Following a slight recovery, tourism was hit once again by security and air transport problems in 2013. After this transitional period, the MT adopted a new development strategy in July 2014 to revive the sector. The lack of luxury hotels and the shortage of hotels that can accommodate large groups of tourists are currently cited as obstacles to growth in this sector. A new IGPP project aimed at developing tourism was adopted by the World Bank in 2014.[84]

Table 4.13 Number of hotels and travel agencies, 2008 and 2011-2014

	2008	2011	2012	2013	2014	Growth 2008-2014 (%)
Hotels	1,292	1,693	2 010	2,251	2,325	80
Hotel rooms	14,493	19,112	20,520	22,263	22,888	58
Travel agencies/Suppliers of tourism services	861	1,019	1,280	1,356	1,378	60

Source: Ministry responsible for tourism.

4.162. The MT drafts and implements tourism policy.[85] The Ministry was reorganized in January 2015; its website functions reasonably well and is regularly updated.[86] The MT decides on the classification of hotels and restaurants, with the assistance of the Regional Directorate of

[83] World Bank (2013), p.14.
[84] World Bank, viewed at: http://www.worldbank.org/projects/P113971?lang=en.
[85] Website of the Ministry responsible for tourism: http://www.tourisme.gov.mg.
[86] Decree No. 2011-726 of 6 December 2011, determining the responsibilities of the Minister responsible for tourism and the general organization of the Ministry, viewed at: http://www.madagascar-services.biz/wp-content/uploads/2013/02/Décret-N°-2011-726-du-06-décembre-2011.pdf.

Tourism where the establishment is situated.[87] The MT oversees and supervises several institutions and organizations in which the State participates:

- The National Institute of Tourism and Hospitality (INTH) is an independent government institution which dates back to 1991. It offers training programmes in hotel management and sustainable tourism.

- The Madagascar National Tourism Board (ONTM) was set up in 2003 to promote Madagascar as a destination. It groups together 22 regional tourism boards belonging to the private sector, eight professional associations, the airline Air Madagascar, the INTH and the Ministry responsible for tourism. In 2013, 46% of its income came from subsidies from various technical and financial partners, and 54% from the tourism permit.

- National Tourism Development was created in October 2009. The Malagasy State holds 99% of its capital and Air Madagascar 1%. The bulk of its financial resources come from the rental paid by the Andilana Beach hotel in Nosy Be and, in general, from the funds made available by the State for financial partnerships in tourism projects. The creation, purchase or take-over of the management of hotels and contributing to any activities that help to develop tourism in Madagascar are among its priority tasks.

- The Malagasy Hotel Company (SMH) is a company whose assets belong to the State, which has a holding in the company, and it is run by Hotel Carlton.

- ZAHAMOTEL is a state-owned company with two operating units. The Majunga complex is operated by SOFITRANS and that at Ihosy is not operating.

4.163. In addition, Madagascar National Parks is a government auxiliary responsible for promoting the policy for managing biodiversity and implementing the strategy for the conservation and development of the 52 protected areas.[88]

4.164. The private sector associations belonging to the ONTM comprise the following: the Federation of Hotel and Restaurant Owners of Madagascar (FHORM) (1991), 350 members, the national umbrella organization[89]; the Association of Professional Tour Operators of Madagascar (TOP) (1991)[90]; the Association of Travel Agencies of Madagascar (1981), around 40 local travel agencies; the National Federation of Tourist Guides (1999), 140 local and national guides; and the Madagascar Association of Tourism Operators (GO TO Madagascar), set up in 2002 by a group of companies in the sector.

4.165. There have been no major changes to the regulatory framework for tourism since the first review of Madagascar in 2001. The principal legal texts are available on the MT's website. Law No. 95-017 of 25 August 1995, the Tourism Code[91], does not specify any requirements as to nationality or residence in order to engage in activities in this sector, although a prior authorization from the Ministry must be obtained. Tourism operators must preferably employ Malagasy nationals of equal capability.[92] The Malagasy nationality requirement for guides is not laid down in the order regulating the profession, although it is specified that national guides must collaborate with a local

[87] See Article 67 of Decree No. 2001-02 revising Decree No. 96-773 of 3 December 1996 on standards for tourism companies, establishments and operators, as well as the rules for applying them.

[88] See for example: http://www.parcs-madagascar.com/madagascar-national-parks_en.php?Navigation=34.

[89] Viewed at: http://www.hotels-restaurants-madagascar.com.

[90] Viewed at: http://www.top-madagascar.com/article.php?id=11&lang=fr.

[91] Viewed at: http://www.madagascar-services.biz/wp-content/uploads/2013/02/Loi-N°-95-017-du-25-août-1995-Code-du-Tourisme.pdf.

[92] Ministerial Order No. 4912-2001-MINTOUR of 19 April 2001 determining the composition of applications for authorization to open travel companies and offer tourism services, as well as the professional capability of personnel. Viewed at: http://www.madagascar-services.biz/wp-content/uploads/2013/02/Arrêté-ministeriel-N°-4912-2001-MINTOUR-du-19-avril-2001-obtention_licence_EVPT.pdf.

guide whenever they are working in a particular locality.[93] Madagascar has been a member of the World Tourism Organization (UNWTO) since 1975.

4.166. In 2014, tourism was one of the "key sectors for short-term recovery".[94] In the opinion of both the private sector and the Government, several challenges will be decisive for the success of this recovery. One of the problems most frequently mentioned is limited, costly and unreliable air transport. As regards domestic air transport, Air Madagascar is repeatedly cited as an obstacle to development of the sector (Section 4.7.4). At the international level, Madagascar only has four direct weekly flights to Europe (France and Italy) and two others to Thailand and China. At the regional level, there are direct flights to South Africa, Réunion, Mauritius, Kenya, Comoros, Mayotte and Seychelles. Madagascar is ranked as one of the least accessible countries globally according to the World Bank Index.[95]

4.167. The second problem concerns access to the land needed for real estate projects. In order to facilitate access to property by foreign investors, in the previous review it was mentioned that land was bought by the MT and would then be the subject of an international tender[96], but this policy has not been implemented (Section 2.3.6). The property situation of investors is often not regularized. Most of the time, operators only have a deed of sale, although the texts in force also require the possession of a building permit, which operators are not always able to provide.

4.168. Thirdly, in practice, only 30% of promoters appear to receive bank loans. In addition, interest rates are generally too high for medium- and long-term loans (Chart 1.3).

4.169. Lastly, taxation on tourism investment is not clearly defined. In 2014, investment in tourism was subject to ordinary law and not to the free-zone regime, although tax incentives were introduced in 2013, such as reduced tax for investment, equal to 50% of the investment made (Article 01.01.14 of the General Tax Code (CGI)).[97] This measure is justified in the context of the Government's economic recovery programme, under which tourism is one of the key sectors. For stamp duty and similar charges, Article 02.05.06 of the CGI fixes the amount of each visa for foreigners; Article 02.8.15 of the CGI specifies that the purchase of buildings for the tourism industry benefits from a reduction of half the sales tax.

4.170. In addition, the procedures for granting the licences required by tourism companies are frequently described as problematic and could be simplified, especially through closer interministerial coordination (Section 2.3).[98]

4.9 Telecommunications and postal services

4.9.1 Telecommunications services

4.171. Madagascar's telecommunications market has a turnover of around US$250 million, with some 9 million clients, the number of which was trending downwards in 2013 (Table 4.14). Telma SA, the historical operator, is the only one with a licence for fixed telephony. Its capital belongs to the State (32%) and private companies (68%). The mobile telephony market is shared by Telma Mobile, which had 19% of the total number of subscribers in 2013, Airtel, a foreign company (34% of subscribers); and Orange Madagascar (47%), also owned by a foreign group. The sector's average growth has been around 9% per annum since 2008. There is little competition in the market and prices are high. This could change following the publication in 2014 of the decrees implementing Law No. 2005-023 governing the sector, the aim of which is to encourage competition while at the same time lowering costs, thereby obliging operators to share high-speed infrastructure.

[93] Order No. 31752-/2010/MTA regulating the profession of guide and the classification of guides. Viewed at: http://www.madagascar-services.biz/wp-content/uploads/2013/02/Arrêté-N°-31752-2010-MTA-du-19-Août-2010.pdf.
[94] Government of Madagascar (2013).
[95] World Bank (2013), p. 9.
[96] Viewed at: http://www.tourisme.gov.mg.
[97] The Annex to Decision No. 05 MFN/SG/DGI/DELF of 26 December 2013 sets out the terms of eligibility and the list of materials for this reduced tax.
[98] The procedure for obtaining an authorization to open and the contents of each application were viewed on the Ministry's website: http://www.tourisme.gov.mg/?page%20id=35.

Table 4.14 Telecommunications statistics, 2008-2013

	2008	2009	2010	2011	2012	2013
Fixed telephony statistics						
Telephone lines	164,851	186,150	142,065	236,863	242,963	245,603
Telephone lines (per 100 persons)	0.83	0.91	0.67	1.09	1.09	1.09
Mobile telephony statistics						
Mobile telephony subscribers	4,835,239	6,283,799	7,711,721	8,665,156	8,778,600	8,461,120
Mobile telephony subscribers (per 100 persons)	24.27	30.66	36.58	40.04	39.38	36.13
Internet statistics						
High-speed fixed Internet subscribers	3,488	4,558	5,359	6,852	8,667	13,911
High-speed fixed Internet subscribers (per 100 persons)	0.02	0.02	0.03	0.03	0.04	0.06
Internet users (per 100 persons)	1.65	1.63	1.70	1.90	2.05	2.20
Secure Internet servers	4.00	8.00	10.00	11.00	12.00	15.00
Secure Internet servers (per 1 million persons)	0.20	0.39	0.47	0.51	0.54	0.65
Note						
Investment in telecommunications with private participation (US$ million)	162.2	83.0	132.0	124.4	87.8	n.a.
Imports of ICT goods (% of total goods imports)	3.82	3.58	3.13	2.56	2.38	n.a.

n.a. Not available.

Source: World Bank, *World Development Indicators.*

4.172. The Internet market in Madagascar has made enormous strides since 2012, thanks to the authorization given to mobile telephony operators to transmit data, although the rate of penetration remains fairly poor because of the population's low purchasing power. Since 2009, Telma has invested in installing optical fibre infrastructure (backbone), extending for 6,000 km in 2014, compared to 4,000 km in 2008, with a view to developing fixed high-speed and telephony services. In October 2014, Telma SA was also the only Malagasy operator taking part in the EASSy (East African Submarine Cable System), linking Madagascar to the global submarine fibre-optic network launched in 2003 and put into operation in 2010.

4.173. The Ministry responsible for telecommunications is the Ministry of Postal and Telecommunications Services and New Technology. The Malagasy Telecommunications Studies and Regulation Board (OMERT), set up in 1997, is the regulatory authority for the subsector and as such must ensure that there is effective fair and sustainable competition.

4.174. The regulatory framework was overhauled in 2005[99], following the privatization of Telma in 2004, but the Law had no implementing decree. In October 2014, three implementing decrees were adopted in order, *inter alia*, to boost competition in the subsector, notably by allowing operators to expand their activities to all the services they wished to provide.[100] The decrees are Nos 2014-1650, 1651 and 1652, all of 21 October 2014. The texts define the procedures and measures to be applied by OMERT to regulate the telecommunications subsector; contain the regulations for telecommunications networks and services; and define regulation of the subsector. Licences are granted by means of competitive bidding, which may be organized by OMERT, by the Ministry responsible for telecommunications or at the request of an applicant. Decree No. 1650 specifies the cost of obtaining the various licences.

4.175. Rates are fixed freely by the operators and are subject to OMERT's approval; the same applies to interconnection rates, but only if there is disagreement among the operators. OMERT monitors application of the decree concerning the methods for containing rates. Decree No. 2014-1651 defines in particular the obligations of universal service, coverage, quality of service and confidentiality for all licence holders. OMERT evaluates the quality of the service, receives the opinions of users and envisages remedial action when necessary. In this connection, the Communications Infrastructure Project for Madagascar (PICOM) is intended to make good the gaps in the universal service by lowering the cost of access to high-speed telecommunications

[99] Law No. 2005-023 of 17 October 2006.
[100] The decrees can be viewed on OMERT's website: http://www.omert.mg.

services, extending the geographical coverage of the services, and introducing high-speed telecommunications infrastructure in Madagascar's isolated zones and remote regions.[101]

4.176. The licence fees determined in Decree No. 2014-1651 are paid to OMERT for the Telecommunications and ICT Development Fund.[102] The licence fee amounts to 2% of turnover for operators subject to the licensing regime (1% for those subject to the declaration or free regimes). The amount of the contributions to the Fund is set at 2% of turnover for all operators. The Fund's annual resources amounted to the equivalent of US$5 million in 2012-2013. The Minister responsible for telecommunications alone assumes the tasks of administration, direction and related control.[103]

4.177. The third Decree (No. 1652) defines the terms for managing the international cables serving Madagascar and the national broadband telecommunications network (the "backbone"). The intention of this new series of rules is to impose telecommunications infrastructure-sharing so as to lower costs and protect the environment. This could in future lower Internet connection costs, which are still relatively high in Madagascar and do not allow competitive development of high value-added services.

4.9.2 Postal services

4.178. The public postal operator, Paositra Malagasy (PAOMA), is responsible for managing postal services.[104] It has financial autonomy under the technical supervision of the Ministry responsible for telecommunications. It may set up branches, join with local or foreign partners and participate in companies or organizations whose objective is related or complementary to the responsibilities given to it by law.

4.179. PAOMA has the monopoly of reserved postal services (letters and packages weighing less than 2 kg and postal accounts) and proposes various financial services including postal savings accounts to around 500,000 savers. It currently has a network comprising 250 post offices and rural postal agencies. PAOMA has been a full member of the Universal Postal Union since 2 November 1968 and became a member of the Pan African Postal Union in 1980. It did not prove possible to ascertain the operating conditions for express delivery services.

4.10 Financial services

4.180. Banking is the backbone of financial activities in Madagascar. Although the country did not undertake any commitments on financial services under the GATS in 1994, the latter are open to foreign presence and foreign companies entirely dominate Madagascar's highly concentrated banking subsector, with three foreign banks sharing two thirds of the market. Foreign investors are beginning to enter the microfinance subsector. There is also a strong foreign and Government presence in the insurance subsector.

4.10.1 Banking and microfinance services

4.181. The Malagasy banking sector consists of 11 banks, all of them foreign owned. Despite the crisis and the squeezing of both public and private foreign capital flows that ensued, the banking subsector as a whole has not reported losses since 2008. Nevertheless, only a very limited percentage of the population has access to bank credit (less than 5% in 2008 according to the World Bank). Insufficient credit availability has a negative impact on the economy as a whole, particularly on agriculture, but also on export sectors such as tourism (Section 4.8).[105]

[101] Viewed at: http://www.mtpc.gov.mg/index.php/picom.

[102] The Fund is governed by Decree No. 2006-16 of 22 August 2006, as amended by Decree No. 2007-031 of 30 January 2007.

[103] Viewed at: http://www.omert.org/wp-content/uploads/2014/04/RAPPORT-définitif-CFDT-2012-OMERT.pdf.

[104] Law No. 93/001 of 28 January 1994, on institutional reform of the telecommunications sector and Paositra, viewed at: http://www.mtpc.gov.mg/index.php/paoma.

[105] *Financial Times*, "Bank Lending at Root of UK's Economic Puzzles", 5 August 2014.

4.182. The authorities are aware that easier access to credit could rapidly boost economic growth[106] and have introduced several measures to facilitate access to microfinance. A national microfinance strategy was established over the period 2008-2012, with the objective of improving the legislative and institutional framework and expanding its geographical coverage. The microfinance sector has developed strongly and in 2014 a microfinance institution for the first time obtained a banking licence.

4.183. As indicated in the previous review, regulations specific to microfinance institutions have been in force since 2005.[107] The microfinance services subsector continued to expand over the period 2008-2014, from 25 to 31 approved credit establishments. A World Bank programme is under way to help micro, small and medium-sized enterprises and households to gain access to sustainable financial services.[108] Commercial banking in Madagascar is subject to the national banking regulations, the main legislation being the 1996 Banking Law[109], under the supervision of the Banking and Financial Supervisory Commission (CSBF).[110] The criteria for access to banking are the same for all credit establishments, whether foreign- or Malagasy-owned. Credit establishments whose head office is abroad are only authorized to open credit establishments that are fully funded pursuant to the Banking Law, or information, liaison or representation offices, which must receive approval from the CSBF.

4.184. In order to set up any of these establishments, the rule of representativeness requires the following minimum capital, which has not changed for a number of years: MGA 3 billion (US$1.2 million) for specialized banks and financial institutions; MGA 1 billion for financial establishments; and MGA 300 to 700 million for microfinance institutions. These are extremely modest amounts and, according to the CSBF, are being reviewed. In addition, this rule of representativeness in respect of minimum capital has not always been observed, particularly by some microfinance institutions.[111]

4.185. The CSBF also controls the criteria for operating credit establishments, monitors the stability of their financial situations and ensures respect for the profession's rules of ethics. Control is also exercised over microfinance institutions which accept deposits from the public. In an instruction dating from 2009, the minimum amount of mandatory reserves for credit establishments was set at 15% of their deposits. In addition, the minimum solvency ratio of own funds to assets and off-balance-sheet commitments is 8% and was not respected either in the case of two banks in 2011.

4.186. The authorities' declared objective is to improve prudential supervision of the banking subsector and to reinforce the BCM's audit and control functions. According to the CFSB, the prudential rules are not always respected by the banks, despite its warnings. Two establishments saw their financial situation deteriorate following an increasing number of defaults, while the measures recommended by the CSFB to try to remedy the situation were not followed in full. The Industrial and Commercial Bank of Madagascar (BICM) closed in 2014. Among its largest depositors was the National Social Security Fund.

4.10.2 Insurance services

4.187. Madagascar's insurance market is small, with the equivalent of US$50 million in premiums (Table 4.15). Five insurance firms have been approved, but the market is dominated by the Insurance and Reinsurance Company for All Branches (ARO); the State owns 75% of ARO's capital, as well as 48% of the Malagasy Insurance and Reinsurance Company (NY HAVANA). The political crisis led to either short-time working or to a reduction in activities, but not to the definitive closing of the insurance companies. The main types of insurance policy are for vehicles,

[106] See in particular WTO (2014).
[107] Law No. 2005-016 of 27 July 2005.
[108] Viewed at: http://documents.worldbank.org/curated/en/2014/07/19892433/madagascar-acgf-madagascar-financial-services-project-p109607-implementation-status-results-report-sequence-13.
[109] Law No. 95-030 of 22 February 1996 on the activities and control of credit establishments, viewed at: http://www.banque-centrale.mg/index.php?id=m4_4_1_8.
[110] Instruction No. 002/97/CSBF of 2 June 1997 (banks and financial establishments) and Instructions Nos 002/2007, 003/2007, 004/2007 and 005/2007 of 11 May 2007 (microfinance institutions).
[111] IMF (2014a).

various risks and life insurance (30%, 30% and 24% of total premiums, respectively).[112]

Table 4.15 Premiums received by insurance companies, 2008-2013

	2008	2009	2010	2011	2012	2013	Growth 2008-2013 (% / year)
ARO	57,319	55,655	61,291	66,535	73,452	83,790	9.2
NY HAVANA	27,760	23,845	25,544	27,219	29,437	31,815	2.9
MAMA	8,216	9,062	9,678	10,423	11,814	13,786	13.6
ALLIANZ	6,611	6,986	8,002	8,843	11,191	11,836	15.8
SAHAM (ex COLINA)	3,259	5,173	6,690	7,732	8,826	10,727	45.8
Total	96,554	100,721	111,205	120,752	134,720	151,954	9.5

Source: Le magazine du syndicat des industries de Madagascar – Expansion Madagascar, September/October 2011, No. 11, p. 8. Viewed at: http://madagascar-services.biz/wp-content/uploads/2011/10/Expansion-Madagascar-N%C2%B011-SIM-Partie1.pdf.

4.10.2.1 Regulation

4.188. The Insurance Code dates back to 1999 and the regulatory framework for insurance services has not changed since the previous review in 2008. The legal texts are available on the website of the Economic Development Board of Madagascar (EDBM).[113] The authority responsible for overseeing the insurance subsector is the Financial Operations Directorate and its insurance department in the Ministry responsible for finance; this department has provided little information in connection with this report. The institutional framework also comprises an Insurance Council, an information body at the service of the Minister, which grants approval and settles disputes, and a Committee of Insurance Companies in Madagascar (CEAM), which represents the private sector within the Government.

4.189. The requirements for establishing a company are the same for foreign and Malagasy insurers. Persons wishing to offer insurance services must be set up as public limited companies and comply with corporate law. They must obtain approval for each branch of activity – property-casualty, life, and capitalization – but the same company may offer services in all branches.[114] The minimum capital required to set up an insurance company offering personal insurance is MGA 100 million; MGA 600 million for an insurance company offering property-casualty insurance; and MGA 1 billion for life insurance and capitalization services. Approval for each branch is given by the Minister responsible for finance after the request has been reviewed.

4.190. A company established in Madagascar may not cover risks outside the country. Likewise, risks in Madagascar may not be covered by non-resident companies; residents may not take out direct insurance abroad to cover a risk situated in Madagascar. In practice, however, most insurance is reinsured abroad.

4.191. The only compulsory insurance is civil liability for owners of motor vehicles. The policy on premiums is free but is monitored by the Ministry responsible for finance in order to ensure that the premiums are reasonable and take into account relevant factors, including the company's solvency and prudential standards.

4.192. Insurance and reinsurance companies are authorized to conduct banking operations and to take deposits from the public.[115] Any insurance agreement with a Malagasy or foreign company is subject to an annual tax of 4.5%, except for annuity contracts (5%), maritime, river or air navigation risks (4%), fire insurance (7% for the goods used for industrial, commercial, agricultural, handicrafts, tourism or transport activities; 20% for others), and life and similar insurance (3%).

[112] Central Bank of Madagascar, BCM (2012).
[113] Law No. 99-013 of 2 August 1999 containing the Insurance Code applicable to Madagascar and its four implementing decrees, viewed at: http://www.edbm.gov.mg/fr/Textes-reglementaires/Assurances.
[114] Decree No. 2001-1120 on State control and the institutional framework for the insurance subsector, viewed at: http://www.mefb.gov.mg/images/files/assurances/ar_1120_01_controle.pdf.
[115] Banking Law, Article 10, viewed at: http://www.banque-centrale.mg/index.php?id=m4_4_1_8.

4.11 Professional and business services

4.193. Trade in professional and business services is based to a large extent on the movement of natural persons. Overseas, Malagasy suppliers of professional services are affected by rules which limit their movement in countries where they seek to offer their services (mode 4 according to the GATS terminology). In Madagascar, the entry of foreign professionals is governed by a law of 1962, amended in 1995 (Section 2.3.5).

4.194. Madagascar did not undertake any commitment on professional services in the WTO. The professions regulated in Madagascar are listed in Table 4.16. They are usually protected against foreign competition. Professionals wishing to practise must obtain an authorization to exercise their profession or accreditation from the relevant professional associations. Each professional association draws up its own rules, regulations and standards for practising the profession in question. Although it is not always necessary to be a Malagasy national in order to join a professional association, most of the texts contain nationality requirements.

Table 4.16 Information on some regulated professions in Madagascar, 2014

Activity/Law (National association)	Market access
Accountant Association of Accountants and Financial Experts http://www.oecfm.org Law No. 92-047 of 5/11/1992, supplemented by Law No. 96-019 of 4/09/1996 and Law No. 2001-023 of 2/01/2002 on organization of the profession of accountant and financial expert and reorganization of the Association grouping the members of this profession.	Any external accountancy-related service may be exercised only by professionals listed in Register A of the Association of Accountants and Financial Experts. Professionals who meet the required conditions but may not be included in the members' Register because they are employees are listed in an attachment entitled Register B. Honorary accountants and financial experts appear in Register C. (Number of accountants and financial experts listed in Register A in 2014: 123; in Register B: 22; and in Register C: 0). Exercise of the profession of accountant or auditor is exclusively reserved to persons of Malagasy nationality or foreigners residing in Madagascar and listed in Register A of the Association.
Engineer Madagascar Association of Engineers http://www.ingenieurmadagascar.org/oim Law No. 95-024 of 6/09/1995 on organization of the profession of engineer and creation of the Madagascar Association of Engineers (OIM). Decree No. 96-1023 of 8/10/1996 determining the Code of Ethics for Malagasy engineers. Decree No. 96-1024 of 8/10/1996 determining the number, eligibility criteria and methods for electing the OIM National Council, pursuant to Law No. 95-024 of 6/09/1995.	n.a.
Solicitor National Chamber of Solicitors Law No. 2007-026 of 12/12/2007 containing the Statutes for the profession of solicitor in Madagascar (O.J. No. 3 181 of 14/04/08, p. 3492)	Must be of Malagasy nationality or a national of a State granting reciprocity to Malagasy nationals. The status of solicitor is conferred by a decree adopted in the Government Council.
Lawyer Malagasy Bar Association http://barreaudemadagascar.org Law No. 2001-006 of 9/04/2003 organizing the profession of lawyer (O.J. No. 2849 du 11/08/2003, p. 2112)	Mandatory registration in the Association's Register. Certificate of completion of three years' training required. Must have held Malagasy citizenship for more than five years). A lawyer registered with a foreign bar having a reciprocity agreement may only represent the parties and plead subject to an authorization from the Minister of Justice. He/she does not require such an authorization if he/she pleads together with a lawyer from the Madagascar bar.
Bailiff Law No. 2005-034 containing the Statutes for bailiffs and auctioneers	One of the eligibility criteria is Malagasy citizenship at the time of the competition.
Veterinary surgeon	n.a.
Physician/Acupuncturist/Odontologist-stomatologist National Medical Association Register of the Association of Odontologists-Stomatologists Law No. 2011-002 containing the Health Code	Malagasy nationality required.
Dental surgeon http://www.univ-mahajanga.mg	n.a.
Nurses and midwives Union of nurses and midwives	Registration with the Union authorizes the profession. Only Malagasy nationals may belong to the Union. There is no long-term exercise of the profession by foreigners, although this does occur in connection with missions or projects.
Pharmacist National Association of Pharmacists	Registration with the Association authorizes the profession. Only Malagasy nationals or citizens of countries with a reciprocity agreement with Madagascar may belong to the Association. Currently, there is no formal agreement in this area.

Activity/Law (National association)	Market access
Architect Association of Malagasy Architects Ordinance No. 93-018 of 25/04/1993 http://www.oam-madagascar.com	Exercise of the profession of architect requires listing in the Association's Register. Any architect exercising outside Madagascar must be associated with a Malagasy architect listed in the Association's Register if he/she is involved in a local project.

n.a. Not available.

Source: WTO Secretariat, on the basis of information provided by the Malagasy authorities.

4.195. In 2008, Madagascar was the subject of a Report on the Observance of Standards and Codes (ROSC) of the World Bank, focusing on accounting and auditing services. This analysis of compliance with international accounting standards evaluates the robustness of accounting infrastructure, the quality of which, in turn, has an impact on foreign direct investment and hence the country's economic performance.[116] The Malagasy authorities subsequently reviewed the implementation of the Madagascar ROSC project. A plan of action was drawn up in December 2010, with the following specific objectives, but was not carried out owing to lack of financing: regular updating of the country's accounting standards in line with international accounting standards; adoption of the International Standards on Auditing (ISA) as national standards and updating of the latter on a regular basis; building up the capacity of the National Accountancy Council (CSC), the Association of Malagasy Accountants and Financial Experts (OECFM) and accountancy training institutions; and adoption of the standards by professional accountants and company directors.

[116] World Bank (2008).

REFERENCES

French Development Agency (AFD) (2007), *La Concession des aéroports de Madagascar*, Document de travail No. 43. Viewed at: http://www.afd.fr/webdav/site/afd/shared/PUBLICATIONS/RECHERCHE/Scientifiques/Documents-de-travail/043-document-travail.pdf.

African Development Bank (AfDB) (2004), *Madagascar – Projet de renforcement institutionnel visant la bonne gouvernance (PRIBG)*. Viewed at: http://www.afdb.org.

Central Bank of Madagascar (BCM) (2012), *Note de conjoncture économique*, December.

World Bank (2008), *Rapport sur le respect des normes et codes (RRNC/ROSC) – Comptabilité et audit – Madagascar, Projet de rapport final*, June. Viewed at: http://www.worldbank.org/ifa/rosc_aa_mdg_fre.pdf.

World Bank (2013), *Madagascar Tourism Sector Review*. Viewed at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/10/24/000442464_20131024135509/Rendered/PDF/820250WP0P12800Box0379855B00PUBLIC0.pdf [18 June 2014].

World Bank (2014), *Opportunités et défis pour une croissance inclusive et résiliente, Recueil de notes de politique pour Madagascar*.

International Labour Organization (ILO) (2011), International Trade Union Confederation, *Madagascar - Zones franches, droits des travailleurs et stratégies syndicales*. Viewed at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_183550.pdf.

International Trade Centre (ITC) (2014), *Madagascar: Perspectives des entreprises - Série de l'ITC sur les mesures non-tarifaires*. Viewed at: http://www.intracen.org/NTMs-madagascar-pdf.

United Nations Conference on Trade and Development (UNCTAD) (2014), *Recent Developments in Investor-State Dispute Settlement*, Note No. 1, April. Viewed at: http://unctad.org/en/publicationslibrary/webdiaepcb2014d3_en.pdf.

European Commission (2014), *Annex B: List of air carriers of which operations are subject to operational restrictions within the EU*. Viewed at: http://ec.europa.eu/transport/modes/air/safety/air-ban/doc/list_en.pdf.

Extractive Industries Transparency Initiative (EITI) (2013), *Rapport de réconciliation des paiements effectués par les industries extractives à l'État malagasy et des recettes perçues par l'État – Exercice 2011*. Viewed at: http://eiti-madagascar.org/wp-content/uploads/2014/06/Extrait_n2_presentation_compagnies_extractives.pdf.

Food and Agriculture Organization of the United Nations (FAO) (2015), *Rapport national sur l'évaluation des ressources forestières mondiales*, Rome.

International Monetary Fund (IMF) (2014a), *Request for Disbursement under the Rapid Credit Facility; Staff Report; Press Release; and Statement by the Executive Director for the Republic of Madagascar*. Viewed at: http://www.imf.org/external/french/pubs/ft/scr/2014/cr14181f.pdf.

IMF (2014b), *Exchange Arrangements and Exchange Restrictions*. Viewed at: http://www.elibrary-areaer.imf.org/Areaer/Pages/Reports.aspx.

Government of Madagascar (2013), *Document de référence pour une stratégie de développement intérimaire – Madagascar, 2013-2014.*

National Institute of Statistics (INSTAT) (2012), *Étude sur les investissements directs étrangers à Madagascar*, December.

Le Manach, F. (2012), *Unreported fishing, hungry people and political turmoil: the recipe for a food security crisis in Madagascar*, *Marine Policy*. Viewed at: http://ac.els-cdn.com.

Ministry responsible for mining and petroleum (2015), *La réalité de la ruée dans le secteur minier, source de problèmes sociaux importants: 7 000 à 8 000 exploitants environ vivant dans 650 à 700 tentes (lasy) ont été recensés*, 24 February. Viewed at: http://www.mprs.gov.mg/?p=416.

Ministry of Livestock (2012), *Textes normatifs régissant le secteur éqlevage*, updated in August.

World Trade Organization (WTO) (2014), *Trade Policy Review: Ghana*, Geneva.

University of Antananarivo (2012), *Évolution historique et état des lieux de la filière girofle à Madagascar*, June. Viewed at: http://afs4food.cirad.fr/content/download/4421/33648/version/2/file/Ranoarisoa_historique_filiere_girofle_2012.pdf.

Deputy Prime Minister's Office responsible for the Economy and Industry (2013), *Rapport économique et financier 2012-2013*, Antananarivo.

World Travel & Tourism Council, *Travel and Tourism Economic Impact – 2014 – Madagascar*. Viewed at: http://www.wttc.org/site_media/uploads/downloads/madagascar2014.pdf [18 June 2014].

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