

**Comparison of South Africa's Automotive Investment Scheme to
similar trade, export and investment financial assistance (incentives)
regimes of Nigeria and Kenya**

By Melinda Cser

(CSRMEL001)

**Internal supervisor: Assoc. Prof. Tracy Gutuza, Commercial Law
Department, UCT**

**External Supervisor: Shibishi Maruatona, General Counsel, Ford
Motor Company**

Research dissertation/ research paper presented for the approval of Senate in fulfilment of part of the requirements for the LLM by coursework and dissertation in International Trade Law (CML 5674W) in approved courses and a minor dissertation/ research paper. The other part of the requirement for this qualification was the completion of a programme of courses.

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Word Count: 26325

**This research has been funded by the National Research Foundation
Innovation Master's Non-SA Scholarship**

2015

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ABBREVIATIONS:

AIS: Automotive Investment Scheme

APDP: Automotive Production and Development Programme

AVA: Associated Vehicle Assemblers Ltd.

CBU: completely built unit/vehicle

CKD: completely knocked-down vehicle

CM: component manufacturers, deemed component manufacturers, tooling companies

DTI: Department of Trade and Industry, Republic of South Africa

EPZ: Export Processing Zone

FAQ: Frequently Asked Questions of the NAIDP

IDAD: Incentive Development and Administration Division, DTI

IEC: Import-Export Complementation

IRCC: Import Rebate Credit Certificates

ITAC: International Trade Administration Commission, Republic of South Africa

KVM: Kenya Vehicle Manufacturers Ltd.

MHCV-AIS: Medium and Heavy Commercial Vehicle Automotive Investment Scheme

MIDP: Motor Industry Development Program

NAC: Nigerian National Automotive Council

NAIDP: Nigerian Automotive Industry Development Programme

NAP: Nigerian National Automotive Policy

NAACAM: National Association of Automotive Component and Allied Manufacturers

NIP: Kenya National Industrialization Policy

NIRP: Nigerian Industrial Revolution Plan

OEM: original equipment manufacturers

OECD: Organization for Economic Cooperation and Development

OICA: International Organization of Motor Vehicle Manufacturers

P-AIS: People Carrier Automotive Investment Scheme

PAA: Productive Asset Allowance

PI: Production Incentive

PFMA: Public Finance Management Act No. 1 of 1999 of the Republic of South Africa

R&D: research and development

SACU: South African Customs Union

SARS: South African Revenue Services

SKD: semi-knocked down vehicle

VAA: Vehicle Assembly Allowance

WTO: World Trade Organization

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1 INTRODUCTION

The Automotive Investment Scheme (AIS) is a South African government investment incentive offered within South Africa's Automotive Production and Development Programme (APDP).¹ The policy reason for the AIS is the growth and development of the automotive sector through investment in the production of new and/or replacement models and components.² It is intended that the incentives will encourage investments that will increase plant production volumes, sustain employment and/or strengthen the automotive value chain.³

The AIS is managed by the Department of Trade and Industry of the Republic of South Africa, (DTI) and offers three different types of non-taxable cash grants to investors. These grants are subject to terms and conditions outlined in the AIS Guidelines. The AIS is a complex construction and the nature of its objectives, the cash grant element and the type of requirements imposed resemble automotive policies of developed countries in Europe.⁴

The overall aim of the research is to analyse whether the manner in which the AIS incentives seek to achieve the above objectives, and the objectives themselves are aligned and furthermore to indicate the potential weaknesses of the AIS. The analysis of the weaknesses will focus in particular on potential inconsistencies amongst the provisions of the AIS or

¹ APDP Regulation, available at <http://www.itac.org.za/upload/APDP%20Regulations.pdf>

² Objectives. AIS Summary, available at

² Objectives. AIS Summary, available at http://www.thedti.gov.za/financial_assistance/financial_incentive.jsp?id=37&subthemeid=26

³ Ibid.

⁴ State aid in the automotive sector: an overview, Competition Policy Brief, Issue 12 | July 2014, paragraph 1 page 1, available at http://ec.europa.eu/competition/publications/cpb/2014/012_en.pdf

amongst the provisions of the AIS and the provisions of its sub-components, the People Carrier Automotive Investment Scheme (P-AIS) and the Medium and Heavy Commercial Vehicle Automotive Investment Scheme (MHCV-AIS). The research will also review whether the economic benefit criteria of the AIS to be fulfilled by applicants are sufficiently detailed or the possible lack of details creates uncertainty with the interpretation and implementation. Lastly, the paper will review the transparency elements of the AIS. To obtain answers to these questions, the AIS will be analysed and compared against the policies and/or legislation of Nigeria and Kenya, where applicable, to determine whether the policies of these two countries could inform the AIS in achieving its objectives. It is therefore necessary to consider the Nigerian and Kenyan policies to determine whether the policies of these countries have the same objectives as the AIS and whether any lessons can be learnt from their structures.

The national automotive policy of Nigeria is construed in a very different way to the South African AIS. The Nigerian policy operates largely on the basis of tariff and tax rebates and other “soft” benefits and does not provide cash grants to investors.⁵ The Nigerian National Automotive Policy (NAP) was adopted by the Nigerian National Automotive Council (NAC) in 1993, and it formulated the long-term goals and objectives to develop the auto sector.⁶ In June 2014 the NAC adopted the Nigerian Automotive Industry

⁵ NAP, the official website of the Nigerian Automotive Council available at http://www.nac.org.ng/industries_policy.php

⁶ Ibid.

Development Programme (NAIDP).⁷ This programme is a collection of all the elements of the Nigerian legislation that can be utilized by investors in the auto sector and also contains concrete tariff regulations to encourage vehicle assembly operations in Nigeria.⁸

While South Africa and Nigeria have specific automotive policies, Kenya does not have an automotive industry specific policy but in 2013 the Kenyan government adopted the Kenyan National Industrialisation Policy (NIP).⁹ The policy's mission is, inter alia, 'to enhance a sustained growth of the industrial sector'¹⁰ and serves as a guide to the development of the manufacturing industry including the automotive sector.

The research will be executed in five chapters. Chapter two will cover the policy reasons for the introduction of automotive (and manufacturing related) policies in South Africa, Nigeria and Kenya. The background to and justification of the intervention by South Africa and Nigeria in the automotive industry, and by Kenya, in the industries in general will be discussed. Chapter three will provide an overview of the policies and, where applicable, the relevant legislation in the three countries that deal with the automotive industry. It shall be noted that the intention of this paper is not to undertake an overview of all the relevant South African legislation dealing with similar tax, customs duties or investment protection to investors in the automotive sector solely because such legislation is currently one of the key pillars of the

⁷ NAIDP 2014, available at http://www.nac.org.ng/AUTO_POLICY_INFO_DOC.pdf

⁸ Ibid.

⁹ NIP, Draft Five, Drafting Review Committee, November 2010, available at <http://www.industrialization.go.ke/index.php/downloads/102-policies>

¹⁰ NIP opt cit (n9) Chapter I (Introduction), Section 1.4 The Mission, Page 4

Nigerian and Kenyan policies.¹¹ Therefore, the focus will be on comparing the structure, objectives and operation of the policies of Nigeria and Kenya where it is comparable with the AIS (or the APDP). The fourth chapter will deal with the investment specific incentives and benefits provided in the three countries, in particular in relation to cash grants and their availability (or not) for investors. In relation to Nigeria and Kenya the legislation and policies having similar objectives or structure will be discussed. For South Africa the achievements of the AIS will also be analysed briefly to understand how it has performed against its objectives up until 2015. Chapter five will discuss the institutions and government agencies which are responsible for handling funding applications, negotiating funding/investment agreements, and approving and monitoring investment projects related to the automotive industry. The final chapter shall conclude on the findings, and highlight the potential weaknesses of the AIS by providing proposals for improvement based on the lessons learnt from Kenya and/or Nigeria, if possible.

¹¹ NAIDP opt cit (n7) and NIP opt cit (n9)

2 DO WE NEED THE POLICY AND WHY?

This chapter will consider the potential reasons why the three countries have decided to introduce automotive (and manufacturing related) policies. It will firstly review the question from an economic policy perspective: why do economies tend to keep the automotive industry in the focus of their national economic growth. Secondly, it will describe the reasons and/or historical background that lead to and also “justified” the intervention in the automotive industry by South Africa and Nigeria, and, to the industries in general in Kenya.

2.1 Is the automotive industry a key sector for economies?

The 2014 global auto industry data of the International Organisation of Motor vehicle Manufacturers (OICA) indicate that in 2014 approximately 67 million passenger cars and about 22 million commercial vehicles were produced globally.¹² The data also indicate that it generated approximately 1.9 trillion Euros in turnover, 84 billion Euros in investment and around 433 billion Euros in public revenue.¹³ Furthermore, the data also show that the global automotive industry created about 8.4 million jobs around the world.¹⁴ The OICA report states that the number of jobs created

‘represents over 5 percentage of the world’s total manufacturing employment. It is estimated that each direct auto job supports at least another 5 indirect jobs in the community, resulting in more than 50 million jobs owed to the automotive industry globally (...) in related (...)

¹² Production statistics, OICA, available at <http://www.oica.net/category/production-statistics/>

¹³ Facts and Figures, OICA opt cit (n12)

¹⁴ Auto jobs, OICA opt cit (n12)

industries, including steel, iron, aluminium, glass, plastics, carpeting, textiles, computer chips, rubber and more'.¹⁵

In 2014 South Africa produced over 560,000 motor vehicles overall generating about 20 billion Euros in turnover, 277 million Euros in investment and 3.4 million Euros in public revenues.¹⁶ Furthermore, the South African auto industry counted for 112,300 jobs.¹⁷ Last but not least the auto manufacturing output accounted for 15% of the country's GDP.¹⁸ According to the Minister of Trade and Industry, Rob Davies

'given that automotive and components manufacturing comprises 30% of our industrial sector, with strong linkages to other manufacturing sub-sectors, the impact of such investment on our domestic economy is significant'.¹⁹

These data clearly show that an industry representing one-fifth of the country's GDP should be recognized and treated with express attention because its impact on other industries and the economy as a whole can contribute to a country's rise and fall.

The relevant data that is available for Kenya for 2014 reveals that the number of locally produced motor vehicles was 9,246 units, the number of sold motor vehicles was 95,116 units, the percentage of locally produced motor vehicles compared to the number of sold motor vehicles was 9.7%, and

¹⁵ Economic contributions, OICA opt cit (n12)

¹⁶ Production Statistics, OICA opt cit (n12)

¹⁷ Auto jobs, OICA opt cit (n12)

¹⁸ Automotive Export Manual 2014 of the Automotive Industry Export Council of South Africa, Page 6, available at www.aiec.so.za

¹⁹ 'South Africa's automotive industry at a glance' *Business Partners*, 27 September 2014 available at <http://www.businesspartners.co.za/knowledge-hub/manufacturing-fund/posts/south-africas-automotive-industry-glance-3247/>

the year-on-year percentage growth of national sales dropped from 23.3% in 2013 to 16.1% in 2014.²⁰

For Nigeria the available and relevant figures are as follows: the number of sold motor vehicles in 2014 was 59,592 units and the year-on-year percentage growth of national sales was 6.2% from 2012 to 2013 and 15.7% from 2013 to 2014.²¹ Furthermore, the Aid for Trade at a Glance 2013: Connecting to Value Chains, a research published by the OECD, records that in 2006 the passenger cars counted for 4% of the Top 5 import products of all merchandise imports in Nigeria while this number grew to 9% in 2010 due to the fall of the Nigerian local auto assembly.²²

Based on the year-on-year growth in the national sales of motor vehicles in Kenya and Nigeria, and the GDP contribution of the automotive industry of South Africa it can be assumed with high certainty that the auto industry is an important sector for development in the three countries examined as one of drivers of their economies.

2.2 Is the state intervention needed and justified?

Considering the relationship between African countries and the automotive industry, in fact the manufacturing sector in general, from a broader perspective, the following attributes are usually perceived: poor business environment, challenges of the legal environment (over-regulation,

²⁰ Kenya Autos Report Q2 2015, Business Monitor International available at www.bmiresearch.com

²¹ Nigeria Autos Report Q2 2015, Business Monitor International available at www.bmiresearch.com

²² OECD/WTO (2013), "Aid, Trade and Development Indicators for Nigeria" ", in Aid for Trade at a Glance 2013: Connecting to Value Chains, WTO and OECD Publishing, available at http://dx.doi.org/10.1787/aid_glance-2013-65-en

lack of transparency, lack of effective/enforcement), frequent political and economic threats, increasing tax burden, availability of technology and the challenges due to the speed of global technological change,²³ the low level of local research & development availability, safety of transportation and the related costs, electricity and piped gas costs and availability, unskilled local labour and the cost of up-skilling of such labour (education and training cost), costs of installing and maintaining of local manufacturing facilities, facility amortization, as well as, financing costs²⁴.

The above factors are largely blamed for the high costs of entering into the market in African countries, the low level of productivity and competitiveness of these countries. These in turn account for low level of foreign direct investment flowing into the automotive sector.²⁵ This regrettably also results in another disadvantage to African countries, namely the reluctance of large multinational firms' to include African countries into their global value chain.²⁶ The importance of countries' ability to access the global value chains is a factor in determining the success of the given industry.

According to Hoekman:

'The advantage of this is that by locating activities and tasks in different countries according to their comparative advantages, the total costs of production can be reduced. (...) The global value chain allows poor countries to engage in manufacturing for the global market, because firms can locate labour-intensive and low-skill tasks in those

²³ Automotive CEOs globally are more optimistic about the economy this year – although they see other threats on the horizon, says PwC study, 17th Annual Global CEO Survey' available at <http://www.pwc.co.za/en/press-room/auto-news.jhtml>

²⁴ NAACAM's response to APDP Key Strategic Issues raised by the automotive industry stakeholders (NAACAM, NAAMSA, NUMSA & The dti), June 19, 2014, Slide 6, available at <http://www.naacam.co.za/page.aspx?ID=1724>

²⁵ Ibid.

²⁶ B. Hoekman 'Adding Value', (2013) December *Finance & Development* 22 at 22 available at <http://www.imf.org/external/pubs/ft/fandd/2013/12/pdf/hoekman.pdf>

economies. Although the share of the value of a product that is added by the processing activities in a low-income country will generally be small, the employment and income that are created can generate significant benefits. Over time, as countries increase their engagement in such trade, they may be able to increase the share of total value that is generated locally.²⁷

From the perspective of motor vehicle production, global value chain means that the different stages in the production of motor vehicles are located in different facilities, which also often are located in different countries.²⁸ The global value chain also usually drives technological progress (infusing the local R&D), improvement of level of quality of services, efficiency in management and transportation, as well as, the increase of level of investment in related industries such as textile, aluminium, rubber, carpeting, computer chips and the like.²⁹

Despite developed economies of the European Union not suffering from or having the factors such as poor business environment and the like indicated above affecting their industries, they often employ incentive schemes to protect or grow their automotive industries. Between 2007 and 2014 the European Commission approved regional investment aids in the amount of EUR 441 million for 12 notifications regarding investment schemes of Member States reaching the threshold requiring approval by the European Commission, which is just less than half of the total notified volume (20 notifications were filed in total but the remaining eight did only require a

²⁷ Ibid.

²⁸ Ibid.

²⁹ Investment And Technology Policies For Competitiveness: Review of successful country experiences, United Nations Conference on Trade and Development, Technology for Development Series, United Nations New York and Geneva, 2003, page 4-5, available at http://unctad.org/en/Docs/iteipc20032_en.pdf

notification having been below the approval threshold).³⁰ Furthermore, during the same time period, the European Commission has been informed of 44 cases in the car sector, where Member States granted a total aid amount of EUR 862 million for large investment projects (i.e. investment projects with eligible expenditure exceeding EUR 50 million) of a total value of almost EUR 7 billion.³¹ Considering how crucial it is for developed European Union countries to incentivize their automotive industry, efficient government intervention into the African automotive industry is not only advantageous but necessary to overcome the above defined challenges and to become competitive suppliers of the global auto industry.

Having looked into the reasons, which generally motivate government intervention, the country-specific circumstances of the development and protection of the (automotive) industries in South Africa, Nigeria and Kenya will be considered.

2.3 South Africa

From 1995 to 2012 the Motor Industry Development Program (MIDP) was in force.³² This was primarily a tariff-rebate scheme for auto manufacturers and it operated as an “off-set” system in that participating entities would be able to receive import duty rebates on completely built units

³⁰ State aid in the automotive sector: an overview opt cit (n4) paragraph 3 page 2

³¹ Ibid.

³² The Motor Industry Development Programme 1995-2012: What have we learned? By Justin Barnes and Anthony Black at the International Conference on Manufacturing-led Growth for Employment and Equality, May 2013, Johannesburg, Page 3, available at http://www.tips.org.za/files/the_midp_-_15_april_2014_barnes_and_black.pdf

(CBUs) and components subject to certain conditions.³³ In 2013 South Africa introduced a new policy, the APDP, as a result of a comprehensive review of the MIDP by the government and the industry stakeholders.³⁴

One of the reasons of the introduction of the APDP and in particular the AIS, was to increase the local value addition in local production³⁵, which eventually should also increase the local content of the final automotive products with the help of the AIS grants.³⁶ According to the SATS 1286:2011 regulation, the local content of a product is the tender price less the value of imported content, expressed as a percentage.³⁷ In other words, it is a percentage of the components (including raw material) of a product, which was obtained by the producer domestically, meaning that the sub-component or the raw material that was used to produce the final product was also produced or at least assembled domestically. The MIDP helped the original equipment manufacturers (OEMs) (i) to secure products already produced at their vehicle assembly plants primarily in Gauteng Province and Eastern Cape Province, and (ii) to attract local production of products that could be exported from South Africa.³⁸ Nonetheless, the level of local content of the motor vehicles assembled in the country remained relatively low, the average local

³³ Ibid.

³⁴ APDP Regulation opt cit (n1)

³⁵ E. Bronkhorst, M. Stiglingh, J. Steyn 'The Automotive Production And Development Programme: An Analysis Of The Opinions Of South African Stakeholders' (2013) Number 5 29 *The Journal of Applied Business Research* 1281 at 1289

³⁶ Modeling South Africa's Incentives Under The Motor Industry Development Programme By Martin Kaggwa, Phd (Technology Management), At The Faculty Of Engineering, Built Environment And Information Technology University Of Pretoria 2008, Page 17-18, available at <http://repository.up.ac.za/bitstream/handle/2263/23825/Complete.pdf?sequence=7>

³⁷ Guidance Document for the Calculation of Local Content, the DTI, available at https://www.thedti.gov.za/industrial_development/docs/ip/guideline.pdf

³⁸ Kaggwa opt cit (n37), Page 17-18

content percentage being approximately 35%.³⁹ One of the reasons for this could be the abolishment of the local content requirement for the auto industry by the MIDP⁴⁰, and the parallel decrease of import duties relative to automotive products (including components).⁴¹

It has to be noted here that, although there were many factors outside the MIDP mentioned earlier that had an impact on the structure of the South African automotive sector, during the era of the MIDP the new vehicle market went through a fundamental structural change. In 1995 at the introduction of the MIDP the percentage of locally produced passenger cars using domestic supply chain for components was 96%, whereby this number fell to 25% by 2013 meaning that the local producers using the low import tariffs provided by the MIDP supplied their products predominantly from imported sources.⁴² On the other hand, as foreseen by the policy, the MIDP made significant changes to the export of locally produced motor vehicles which resulted in a progress of the nearly 16,000 units produced in 1995 growing to over 276,000 by 2013⁴³.

³⁹ M.J. Naude & J.A. Badenhorst-Weiss 'Supply chain management problems at South African automotive component manufacturers' (2011) No 1 15 *Southern African Business Review*, 70 at 71, available at http://www.unisa.ac.za/contents/faculties/service_dept/docs/SABVIEW_15_1_chap%204.pdf

⁴⁰ A. Black & S. Mitchell 'Policy in the South African motor industry: Goals, Incentives and Outcome', TIPS 2002 Annual Forum, Page 6, available at www.tips.org.za/files/561.pdf

⁴¹ J. Barnes and A. Black opt cit (n32) page 7

⁴² Study on the retention and creation of employment in the South African automotive manufacturing industry by BSC Africa, 14 August 2014, available at <http://5751ec3e9a4feab575962e78e006250d.cdn.ilink247.com/ClientFiles/naacam/Naacam/Company/Documents/20140814%20FRIDGE.pdf>, Page 65-66

⁴³ Study on the retention and creation of employment in the South African automotive manufacturing industry by BSC Africa (opt cit n42), page 68

The AIS broadened the scope of the incentive scheme in the MIDP, namely the productive asset allowance (PAA).⁴⁴ The PAA was an import duty rebate equalling to 20% of the investment into manufacturing equipment spread across five years, and it was only applicable to OEMs manufacturing light motor vehicles in South Africa.⁴⁵ As described in the next chapter in more detail, the AIS does not only focus on light motor vehicle OEMs but on medium and heavy commercial vehicle, as well as, on people-carrier motor vehicle OEMs.⁴⁶ Furthermore, the AIS is no longer a rebate but three different types of non-taxable cash grants at a level of up to 30% for OEMs and 35% for component manufacturers (including deemed component manufacturers and tooling companies (CMs) of the value of the investment spread over three years, which is certainly more attractive to investors.

The auto industry is a high-technology industry that relies on continuous Research & Development (R&D) and innovation. This requires amongst others highly skilled professionals, adequate infrastructure and financing. When it comes to R&D in the automotive industry, as Bronkhorst, Stiglingh and Steyn correctly state,

‘one must keep in mind that the integration of original equipment manufacturers into the operations of their global parent companies leaves them with little leverage on where research and development takes place. This decision is taken by the global parent companies and may be impacted by their strategies, which may include investment in other countries with more favourable automotive incentives. The investments under the MIDP were largely investment in facilities (plants, machinery and tooling) and the overall investment in the support infrastructure for the period from 1997 to 2009 was app. 10% or less of

⁴⁴ J. Barnes and A. Black op cit (n32), Page 8

⁴⁵ E. Bronkhorst, M. Stiglingh, J. Steyn op cit (n36) ‘1281 at 1285

⁴⁶ Please see the eligible enterprises under clause 6 of the AIS Guidelines, clause 6 of the P-AIS Guidelines and under clause 7 of the MHCV-AIS Guidelines.

total expenditure. “In addition, the biggest portion of investment in support infrastructure could be attributed to technical fees paid to foreign experts, and not local research and development” (Kaggwa *et al.*, 2007, p. 686; NAAMSA, 2007, p. 17; NAAMSA, 2009).⁴⁷

Therefore, policy intervention by offering grants for R&D activities is important. As opposed to the PAA that had no R&D element, the AIS incentivizes investors with 5% additional grant in case of investing into R&D activities in South Africa. As per the AIS Guidelines, besides maintaining a certain level of employment, the applicant must fulfil at least two of the seven economic benefit requirements of which one relates to R&D.⁴⁸

Another important reason for the introduction of the new policy is the link indicated earlier that as

‘the auto industry became the leading manufacturing sector in the country’s economy, other industries, due to their strong linkages with the automotive industry, have also benefited from the growth in the automotive sector.’⁴⁹

This bond between the automotive sector and the above named other industries practically mean that any changes in the automotive sector carries a potential impact on these support industries. Therefore, improving the benefits for the automotive sector can create growth potential for the supporting sectors too.

The weakening currency, the recent interest rate hikes, the increasingly slow economic growth and the pressurized household income has added

⁴⁷ E. Bronkhorst, M. Stiglingh, J. Steyn opt cit (n35) 1281 at 1291-1292

⁴⁸ Page 8, AIS Guidelines, available at http://www.thedti.gov.za/financial_assistance/financial_incentive.jsp?id=37&subthemeid=26

⁴⁹ Automotive Export Manual 2014 opt cit (n18), Page 14

substantial challenges to the auto industry in the recent years.⁵⁰ This has led to a moderate increase in the local sales of motor vehicles and also discouraged global manufacturers from investing in manufacturing in the country.⁵¹ To stop this negative trend required a reformed intervention by the state.

Last, but not least the question whether the MIDP was compliant with the regulations of the World Trade Organisation (WTO) probably played the most important role in the history of the revision of the MIDP and the introduction of the APDP.⁵² The MIDP had an instrument called the Import-Export Complementation (IEC) scheme, which was created to facilitate an expansion in domestic production by supporting the export of locally produced products. Under the IEC the applicants received Import rebate credit certificates (IRCCs) that were calculated based on the local content of exports and could be used to reduce the import tariff liability.⁵³ This instrument was likely to be considered a subsidy in accordance with the WTO Agreement Article 1.1 (a) (1) (ii) of the Agreement on Subsidies and Countervailing measures (“Agreement”).⁵⁴ As stated by Bronkhorst, Stiglingh and Steyn

‘Under the IEC scheme credits were granted according to the value of exports in the automotive industry. Although benefits under the IEC

⁵⁰ ‘Automotive CEOs globally are more optimistic about the economy this year – although they see other threats on the horizon’ opt cit (n23)

⁵¹ Ibid.

⁵² E. Bronkhorst, M. Stiglingh, J. Steyn opt cit (n35) 1281 at 1285

⁵³ Ibid.

⁵⁴ “there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where: (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);” WTO official website available at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

scheme could be obtained only upon importation, the granting of the IRCCs were dependent upon the export performance of the industry.⁵⁵

According to Article 3.1 (a) of the Agreement, the following subsidies are prohibited: ‘subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance’.⁵⁶ For this reason, the export performance requirement of the IEC scheme could have possibly been classified as a prohibited subsidy in terms of the Agreement.

The above (possible) non-compliance with the WTO requirements came to light in 2004 when General Motors’ Australian subsidiary, Holden, switched from buying leather trim from an Australian company to a South African supplier, prompting the company that lost the contract, to lodge a complaint with Australia’s government.⁵⁷ The Australian government then threatened to bring the MIDP before the WTO and the two countries started to negotiate a settlement (the export benefits to automotive leather suppliers to Australia was abolished) in order to avoid a formal dispute that could have resulted in South Africa having to withdraw the entire policy.⁵⁸ Besides the settlement, the South African government also announced the formal review of the MIDP.⁵⁹

2.4 Nigeria

In 1993 as a result of the cooperation between the Government and the relevant stakeholders of the industry the Act 84, on the National

⁵⁵ E. Bronkhorst, M. Stiglingh, J. Steyn opt cit (n35) 1281 at 1287

⁵⁶ WTO official website available at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

⁵⁷ MIDP under threat, *CAR magazine*, 31/01/2005 available at <http://www.carmag.co.za/news/midp-under-threat/>

⁵⁸ Ibid.

⁵⁹ Ibid.

Automotive Council was enacted which established the NAC and made it responsible for establishing and implementing the NAP.⁶⁰ The NAP does not contain concrete instruments but only objectives that the NAC should achieve, one of which is the introduction of appropriate fiscal policy and monetary incentives.⁶¹ Because of the reasons to be highlighted below, the NAC was only started to fulfil its role as a guardian of the auto industry when the Nigerian Government issued the Nigerian Industrial Revolution Plan (NIRP) in February 2014, which contains the NAIDP as one of its key sectoral plans.⁶²

To understand the reason for the Nigerian government intervened by means of policy requires a discussion of the genesis of the Nigerian automotive industry. Private companies established assembly plants in the 1960's and started the industry. In the 1970's, acknowledging the importance of the industry, the government stepped in by setting up two passenger car and four light and heavy commercial vehicle assembly plants which made the industry the fastest growing manufacturing sector in the country.⁶³ Nonetheless, due to reasons discussed below, from the year 2000 the local production started to slow down and fell by 50% between 2007 and 2010.⁶⁴

⁶⁰ National Automotive Council Act, available at <http://lawnigeria.com/LawsoftheFederation/NATIONAL-AUTOMOTIVE-COUNCIL-ACT.html>

⁶¹ NAP opt cit (n5)

⁶² NAIDP opt cit (n7)

⁶³ O. Chamberlain & Prof. E.C. Ede 'History of Automobile Past and Present Challenges Facing Automobile Production in Nigeria' (2013) 2, Issue 4 (Jul. – Aug.) *IOSR-JRME* 11 at 15, available at http://www.academia.edu/5309844/History_of_Automobile_Past_and_Present_Challenges_Facing_Automobile_Production_in_Nigeria

⁶⁴ "Peugeot Automobile Nigeria Limited having a statistic production of 264 cars per day in the 1980's has fallen to 22 cars per day as at 2011 (Abati 2009).", O. Chamberlain & Prof. E.C. Ede opt cit (n63) 11 at 13

Moreover, there was absolutely no local production of motor vehicles reported between 2011 and 2013.⁶⁵

Besides the global economic crisis in 2009 the following contributed to the collapse of the Nigerian auto industry:

- Low patronage by government: Previous Nigerian governments believed that the engine of the economy was oil and thus there was no need to invest in any other industry such as the automotive industry requiring highly skilled workforce;⁶⁶
- Very low capacity utilisation: the Nigerian automotive industry has a capacity to produce inter alia 108,000 cars and 56,000 commercial vehicles annually. Capacity utilisation in vehicle manufacturing is below 10% and about 40% in components parts manufacturing;⁶⁷
- Poor perception of locally made goods: Nigeria shares the fate of many other developing countries where people have no or very little trust in locally developed and made products and they rather purchase used but imported motor vehicles (currently Nigeria imports app. 100,000 vehicles);⁶⁸

⁶⁵ O. Chamberlain & Prof. E.C. Ede opt cit (n63) 11 at 15

⁶⁶ The Problems of the Automotive Industry in Nigeria, The National Automotive Council of Nigeria available at http://www.nac.org.ng/industries_problems.php

⁶⁷ Ibid.

⁶⁸ Ibid.

- High cost operating environment: The cost of purchasing fuel to maintain the operations is extremely expensive due to the lack of constant electricity supply;⁶⁹
- Insufficient government support: the Nigerian government introduced a policy in 1994 making it mandatory for the governmental bodies at all levels to purchase only locally built vehicles, yet in practice this never happened and only import motor vehicles were purchased;⁷⁰
- Absence of low cost, long term funding: the government has not put in place a funding scheme that would provide affordable financing for automobile manufacturers;⁷¹
- Weak and deteriorating infrastructure;⁷²
- Inconsistent tariff policy.⁷³

The NIRP has determined that the automotive industry is one of the key pillars of the Nigerian economy and thus the NADP is part of the policy framework.⁷⁴ The NAIDP will be analysed in the next chapter in more detail.

2.5 Kenya

The automotive assembly industry in Kenya started in 1970's when Kenya Vehicle Manufacturers Ltd (KVM) and Associated Vehicles Assemblers

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ NIRP – Release 1.0 (January 2014), 3.3 NIRP Sectoral Priorities, Page 26, available at <http://www.nepza.gov.ng/downloads/NIRP.pdf>

Ltd (AVA) assembled the first cars in Kenya.⁷⁵ The growth in local assembly kept increasing until the early 1990's when significant increase in the importation of used cars started to create big competition to local assemblers.⁷⁶ This increase of used car importation was caused by inconsistent tariff policies, the high cost of production and Kenya generally having a low-income population.⁷⁷ Besides the problem of used car importation, the Kenyan auto industry has suffered from other challenges such as foreign exchange restrictions, trade dumping and counterfeit parts, low level of industrial development, lack of affordable funding, vehicle inspection standards, traffic and road safety issues and equipment.⁷⁸ In 2015 there are four vehicle assembly plants (KVM, AVA, GM East Africa Ltd, TVS Motors Kenya Ltd), which concentrate on the assembly of pick-ups and heavy commercial vehicles because the demand for motor vehicles is dictated by the growing agricultural sector of Kenya (35% of motor vehicles sold were pick-ups and 26.8% heavy commercial vehicles in 2012).⁷⁹ Nonetheless, primarily because the import of used cars (especially from Japan and the UAE) still accounts for about 70% of the market, most of the local plants are performing way under their capacity. For instance KVM in 2013 produced only 10% of their capacity and AVA about 20%.⁸⁰ The Kenyan automotive sector,

⁷⁵ Brief History of the Kenya Motor Industry Association, available at <http://www.kmi.co.ke/about-us/brief-history>

⁷⁶ Automotive industry, Kenya, PWC available at <http://www.pwc.com/ke/en/industries/automotive.jhtml>

⁷⁷ Ibid.

⁷⁸ Brief History of the Kenya Motor Industry Association opt cit (n75)

⁷⁹ Automotive Sector in Kenya, Open To Export, February 2013, available at <http://opentoexport.com/article/automotive-sector-in-kenya/>

⁸⁰ Victor Juma 'More than half of new cars assembled in Kenya on lower taxes' Business Daily, January 2, 2013, available at <http://www.businessdailyafrica.com/Corporate->

therefore, can be described as an industry that is primarily driven by retail and distribution with the local assembly to be rebuilt.⁸¹ The Kenya Motor Industry Association, formed in 1989, has addressed many of the above named issues with the Kenyan government but unfortunately it still has not been able to convince the government to create a sector specific policy.

According to the UN Economic Commission for Africa

‘historically, the Kenyan government efforts to spur industrialization through the import substitution policy and structural adjustment programs did not lead to significant industrial development.’⁸²

Kenya’s industrial policy today is contained in the NIP 2011–2015 in which the automotive industry was identified as a priority sector for the industrial growth.⁸³ The government is however yet to come to a stage where detailed policies are worked out for each priority sector within the manufacturing sector.

Chapter I (Introduction), Section 1.0 Background of the NIP, reads as follows:

‘The (*manufacturing*) sector, despite its potential, has not been dynamic enough to function as "an engine for growth" for the Kenyan economy as has been the case of newly emerging economies. (...) The sector is mainly agro-based⁸⁴ and characterized by relatively low value addition, employment, capacity utilization and export volumes partly due to weak linkages to other sectors. (...) The performance of the

News/More-than-half-of-new-cars-assembled-in-Kenya-on-lower-taxes/-/539550/1656332/-/ola90j/-/index.html

⁸¹ Automotive industry, Kenya, PWC opt cit (76)

⁸² TOWARDS AN INSTITUTIONALIZED INDUSTRIAL POLICY FRAMEWORK, Economic Report on Africa 2014 Dynamic Industrial Policy in Africa: Innovative Institutions, Effective Processes and Flexible Mechanisms, UN Economic Commission for Africa available at <http://lgdata.s3-website-us-east-1.amazonaws.com/docs/4105/1066849/Kenya.pdf>

⁸³ NIP opt cit (n9) Chapter 4 (Priority Sectors), Section 4.4 Automotive and Auto Parts, Page 25

⁸⁴ Several reports show that about half of all jobs in Kenya are still in the agricultural sector and another big portion of the jobs is in the textile industry.

manufacturing sector has been affected by low capital injection, use of obsolete technologies and high costs of doing business. The factors that have contributed to the high cost of doing business include the poor state of physical infrastructure, limited access to finance, limited R&D, poor institutional framework, and inadequate managerial, technical and entrepreneurial skills. The high cost of doing business has also contributed to the limited local and FDI (*foreign direct investment*) in the country and the high outflow of investment to the neighbouring countries.⁸⁵

The currently available benefits investors can utilize in the different sectors are embedded in a variety of legislation, which will be analysed in greater detail in the next chapter.

The above discussion has shown that the reasons for intervention in the automotive industry of the examined three countries are very similar even though the level of maturity and the type of challenges faced by the three auto sectors are different. The three countries have therefore approached the growth (or rebuilding) of their automotive industry in different ways. Nevertheless, there is no doubt about the need for state intervention.

⁸⁵ NIP opt cit (n9) Chapter I (Introduction), Section 1.0 Background, Page 8

3 OVERVIEW OF THE AUTOMOTIVE POLICIES OF SOUTH AFRICA, KENYA AND NIGERIA

As clarified earlier the subject of this dissertation is not a detailed analysis of the APDP but an analysis of the AIS compared to the policies of Nigeria and Kenya. Nonetheless since neither Kenya, nor Nigeria have such a sophisticated automotive policy as South Africa created with the APDP, in order to create a ground for comparison of the objectives and benefits of the AIS with the objectives and benefits of similar investment related Nigerian and Kenyan policies and legislation, the structure and the key pillars of the APDP shall be discussed at least on high level. This chapter will therefore discuss the APDP and the automotive industry related policies and legislative instruments of Nigeria and Kenya from a general perspective with the aim of giving an overview of how the respective policies and legislation operate.

3.1 South Africa: The APDP

The APDP has been issued by the Minister of Economic Development on 15 February 2013⁸⁶ on the basis of Section 59 of the International Trade Administration Act No. 71 of 2002 which empowers the Minister to issue regulations implementing the objective of the aforementioned Act that is to promote the employment and investment in South Africa and SACU⁸⁷.

The APDP's key objective is

⁸⁶ Gazette No. 36147, 15 February 2013, Vol. 572 No. 9908, available at <file:///Volumes/Media%20HD/Users/melindacser/Downloads/APDP%20regulation%202013.pdf>

⁸⁷ Government Gazette No. 24287, 22 January 2003, Vol. 451, available at <http://www.mylexisnexis.co.za.ezproxy.uct.ac.za/Index.aspx>

‘creating an environment that will enable registered light motor vehicle manufacturers to significantly grow production volumes and component manufacturers to significantly grow value addition, leading to the creation of additional employment opportunities across the automotive value chain.’⁸⁸

To be precise the APDP’s main goal is to increase the local production volume to 1.2 million vehicles per annum by 2020, thus to assist with growing the South African automotive components industry too.⁸⁹ It also aims to achieve a better balance between export and domestic sales, to grow employment, value-added related investment to increase local content and to certainly grow public revenue.⁹⁰

The APDP has four policy instruments: three are related to the import tariff of motor vehicles and components whilst one is investment related. The first import duty related instrument sets the import duty for CBUs at 25% and for completed knocked-down vehicles (CKDs) at 20% for the period between 2013 and 2020, which is a continuation of the MIDP regulation.⁹¹ The next instrument on tariffs is called the Production Incentive (PI) which is an import duty rebate available for eligible motor vehicle assemblers and automotive component manufacturers located in South Africa. It is offered based on the local value added in the production process.⁹² The PI is managed by the International Trade Administration Commission, Republic of South Africa

⁸⁸ APDP Regulation opt cit (n1) 2. Objectives, Page 6

⁸⁹ Government committed to Production of 1.2 million vehicles a year by 2020, Media Statements, October 10, 2012, available <https://www.thedti.gov.za/editmedia.jsp?id=2529>

⁹⁰ 8.5 Export Incentives - Industry Specific. South Africa: Investor’s handbook 2014/2015, Page 20, available at <https://www.thedti.gov.za/DownloadFileAction?id=1004>

⁹¹ Roger Pitot ‘The South African Automotive Industry, the MIDP and the APDP’, NAACAM, October 2011, available at <http://www.automechanikasa.co.za/pdf/2013-docs/NAACAM-Presentation.pdf>

⁹² APDP Regulation opt cit (n1) Part C - Production Rebate Credit Certificates, Pages 6-11

(ITAC) who is authorized to issue the so-called Production Rebate Credit Certificates that includes the PI that an applicant is eligible for.⁹³ The incentive can be used to reduce the value of the import duty of motor vehicles and automotive components into the South African Customs Union (SACU).⁹⁴ The PI element is supposed to encourage producers to increase the local value added and the local content of automotive products with either producing or sourcing components or sub-components from South Africa.⁹⁵ The third tariff related element of the APDP, called the Vehicle Assembly Allowance (VAA), is also an import duty rebate provided for light motor vehicle assemblers with a plant capacity and actual production of minimum 50,000 units per annum who have been registered with ITAC and the South African Revenue Services (SARS). The VAA is calculated by SARS based on the given company specific percentages determined by ITAC. The percentage to be applied by SARS in 2014 is 19% and from 2015 it shall be 18%.⁹⁶ The VAA can be used to reduce the import duty on automotive components imported from and on imported component values of automotive components received from any person in the SACU.⁹⁷

The import duty related provisions of the APDP are governed in general by Section 75 to 77 of Chapter X of the Customs and Excise Tax Act

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Section 1.3 'Definitions', Rebate item 317.03 Industry Specified Motor Vehicles, Schedule 3 of the Customs and Excise Tax Act No. 91 of 1964, available at <http://www.sars.gov.za/AllDocs/LegalDoclib/SCEA1964/LAPD-LPrim-Tariff-2012-16%20-%20Schedule%20No%203.pdf>

⁹⁷ Page 4, The Company Specific Percentage used in the calculation of the Volume Assembly Allowance. ITAC, available at [http://www.itac.org.za/upload/APDP%20Info%20Doc%20B%20\(CSP\).pdf](http://www.itac.org.za/upload/APDP%20Info%20Doc%20B%20(CSP).pdf)

No. 91 of 1964 regulating rebates and refunds of duties⁹⁸, whereas the detailed regulation on the calculation method, off-set and compliance of the PRCC and the VAA is included in Schedule 3 of the Act, namely in Rebate items 317.03 and 317.06 on the implementation of the APDP regarding light motor vehicle OEMs and CMs, Rebate item 317.04 on the process and rebate and refund available under the APDP, Rebate item 460.17 on the calculation of specific duties relating to specified motor vehicles, and Refund items 536.00, 536.03, 537.03, 538.00 regarding the extent and treatment of refund relating to the light motor vehicle OEMS and CMs under the APDP⁹⁹.

Finally, the fourth policy element of the APDP is the AIS, being the successor of the PAA from the MIDP.¹⁰⁰ The AIS is an investment-based cash grant provided to investments in machinery, buildings, tooling and equipment to be used in motor vehicle and automotive component production, as well as, in motor vehicle assembly.¹⁰¹ The objectives of the AIS are to strengthen and diversify the automotive sector, increase plant production volumes, sustain employment, strengthen the automotive value chain and improve the competitiveness of component manufacturers.¹⁰² It offers non-taxable cash grants up to 30% for OEMs and 35% for CMs of the value of the qualifying investment in productive assets distributed over three years, and it is controlled by the DTI. It must be noted that the Preamble of the AIS

⁹⁸ Customs and Excise Tax Act without its schedules are available at <http://196.38.114.178/WebTools/LNB/sarsLegislation.asp>

⁹⁹ Schedules to the Customs and Excise Tax Act available at <http://www.sars.gov.za/Legal/Primary-Legislation/Pages/Schedules-to-the-Customs-and-Excise-Act.aspx>

¹⁰⁰ Please see Chapter 2, Section 2.3, page 16-7.

¹⁰¹ AIS Summary opt cit (n2) Objectives

¹⁰² Ibid.

Guidelines indicates that the availability funds and approval of the applications are subject to the provisions of the Public Finance Management Act No. 1 of 1999.¹⁰³ The PFMA promotes the transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of departments, governmental bodies and specified public entities.¹⁰⁴ In other words the PFMA regulates how inter alia the ministries can spend their allocated annual budget when for instance they use the state revenue, the taxpayers' money to issue grants or incentives like the AIS. The PFMA refers back to the duty of the ministries to comply with the provisions of the annual Division of Revenue Act regulating the budget allocated annually to the given ministries¹⁰⁵. The applicable provisions of the PFMA, however, envisage to ensure that the effective and transparent financial management and internal control systems are not only implemented on the side of the Government but also on the side of the grant receiving entity claiming monies under the AIS¹⁰⁶, and so creating a two-way security of spending public monies. This is the reason why the AIS Guidelines make a specific reference to the PFMA.

The AIS consists of three policies based on the differentiation of the type of eligible enterprises, the qualifying criteria and the economic requirements to be fulfilled. The type and amount of cash grants available are the same for the different enterprises. These policies are (1) the AIS for light

¹⁰³ AIS Guidelines opt cit (n46), Section 1.5, Page 4, Preamble

¹⁰⁴ Section 2 of the PFMA, available at <http://www.treasury.gov.za/legislation/PFMA/Public%20Finance%20Management%20Act%20No%201%20of%201999%20Government%20Gazette%2038735%20dated%2030%20April,%202015.pdf>

¹⁰⁵ Point i) Subsection 1, Section 38 of the PFMA opt cit (n104), General responsibilities of accounting officers

¹⁰⁶ 12.4.3.7 of the AIS Guidelines (opt cit 46) which refers to Point j) Subsection 1, Section 38 of the PFMA opt cit (n104), General responsibilities of accounting officers

motor vehicle manufacturers and CMs, (2) the P-AIS for CKD and Semi-knocked down vehicles (SKD) assemblers of motor vehicles carrying a minimum of 10 but not exceeding 35 persons, and (3) the MHCV-AIS for truck manufacturers, bus chassis manufacturers, CMs, as well as, bus and truck body manufacturers.

In order that the APDP but more specifically the AIS achieve their goal of giving non-taxable subsidy to the industry, the Act No. 58 of 1962 on the Income Tax was changed by inserting a new 12.P section to Part I of Chapter II and a new Eleventh Schedule on the exemption of amounts from normal tax received in respect of government grants which make explicit reference to both the APDP and the AIS¹⁰⁷. On the one hand, Section 12.P of Part I of Chapter II of the Income Tax Act exempts the amounts of the said government grants received by the tax payers from normal tax. On the other hand, however, no tax deductions will be allowed against such exempt grants meaning that the base cost of an asset, which was acquired or improved with help of the government grant, will have to be reduced by the amount of the grant and this reduced amount will be the basis for any further tax allowances permitted under the Income Tax Act.¹⁰⁸ Furthermore, if the amount of the grant is not entirely used, the remaining amount will be treated as taxable income.¹⁰⁹ These rules most certainly encourage the entities to establish and accordingly execute a thorough plan for the acquisition or improvement of

¹⁰⁷ Section 33 and 140 of the Act No 22 of 2012: Taxation Laws Amendment Act, 2012 Government Gazette No. 36122, 1 February 2013, Vol. 572, available at <http://www.mylexisnexis.co.za.ezproxy.uct.ac.za/Index.aspx>

¹⁰⁸ Subsections (3)-(5) of Section 12.P of the Income Tax Act, available at <http://196.38.114.178/WebTools/LNB/sarsLegislation.asp>

¹⁰⁹ Subsection (6) of Section 12.P of the Income Tax Act opt cit (n108)

their manufacturing equipments and facilities considered as “Qualifying investments” under Section 8 of the AIS Guidelines¹¹⁰ in order to be able to use the entire amount of the AIS cash grant approved by the DTI and so avoid any potential taxation.

Even from such a high level overview of the South African policy it is obvious that the APDP was constructed in a way to encourage rather the import of automotive components than the import of CBUs and so to promote local assembly and sourcing of local sub-components. Furthermore, the scope of the APDP has been expanded, and none of the tariff related instruments include the non-WTO compliant requirement of “export performance”¹¹¹ as opposed to the MIDP.

As for the AIS, there are four immediately noticeable differences compared to the PAA: the circle of eligible enterprises has been widely expanded, the type of the incentive is not a tariff rebate but a cash grant giving more flexibility to the recipients in terms of usage (timing and allocation), and the amount is higher and it is spread over a shorter time period which overall seems like a more attractive solution than the PAA. Lastly, as mentioned earlier,¹¹² the new element introduced by the AIS is the economic requirement that the applicant may choose to invest into R&D for which the applicant obtains an additional 5% grant. This was not articulated at all in the MIDP. Even though, as observed by Bronkhorst, Stiglingh and Steyn, it is usually beyond control of the OEMs local or even regional decision making to

¹¹⁰ AIS Guidelines opt cit (n46) Section 8, Page 12

¹¹¹ Please see Chapter 2, Section 2.3, Page 18-19.

¹¹² Please see Chapter 2, Section 2.3, Page 17.

decide upon where the global R&D is carried out for the particular brand or product, this R&D related criterion should hopefully influence OEMs to consider South Africa as a potential place of R&D even if that means relocating only certain type(s) of their R&D activities.

3.2 Nigeria: The NAP and the NAIDP

The NAP is the legislative confirmation of the agreement of the Nigerian government and the automotive stakeholders on what the parties have to do to ensure the survival and then growth of the Nigerian automotive industry. The NAP defines the following objectives that shall be fulfilled to achieve the aforesaid goal:¹¹³

- 'Provision of automotive vehicles for urban and human areas.
- Accelerated technological development of the Nigerian economy.
- Increased employment opportunities for Nigerians.
- Conservation of scarce foreign exchange.
- Establishment of integrated Automotive Industry in Nigeria.
- Standardization and rationalization of the Nigerian automotive industry.
- Increased private sector participation in the establishment of the auto industry.
- Technology acquisition; and
- Creating conducive operational environment through the introduction of appropriate fiscal policy and monetary incentives.'

To comply with its main obligation, the NAC created the NAIDP with the support of the Federal Ministry of Industry and it was released as part of

¹¹³ NAP opt cit (n5)

the NIRP in February 2014.¹¹⁴ This instrument functions partly as an action plan for what the Nigerian government, the specialized ministries and the NAC have to accomplish in the upcoming five years, and partly as an information document serving as a guideline for companies wanting to invest in the automotive industry.¹¹⁵ The goal of the policy is to recreate the auto manufacturing by ‘establishing vehicle assembly plants that source many of their local content locally’.¹¹⁶ It is emphasized that Nigeria has the potential to become a sustainable source of petrochemical raw materials for the component manufacturing in the automotive industry being the 7th largest oil producing country in the world.¹¹⁷ In my view this practically means that in reality the NAIDP has a short-term goal of re-establishing the automotive manufacturing by encouraging OEMs to bring their vehicle assembly to Nigeria. The mid-term goal that follows the assembly activities is to create an attractive environment for investors to invest in local manufacturing of automotive components that is supposed to supply the Nigerian SKD and CKD vehicle assemblers at first.¹¹⁸ Lastly, because of its significant petroleum and gas resources, after having established a competitive local component industry, it plans to achieve the long-term goal of becoming a supplier of automotive components to the global auto industry.¹¹⁹

The above-defined goals are supported by five objectives in the NAIDP to be implemented by the NAC with the support of specialized ministries and

¹¹⁴ NAIDP opt cit (n7)

¹¹⁵ NAIDP opt cit (n7) Chapter One, Page 4.

¹¹⁶ NAIDP opt cit (n7) Section 3.1 Fiscal structure, Page 9

¹¹⁷ NAIDP opt cit (n7) Chapter One, Page 4

¹¹⁸ Ibid.

¹¹⁹ Ibid.

agencies, as well as, the cooperation of OEMs and educational institutions:

(i) Industrial infrastructure, (ii) Skills Development, (iii) Standards, (iv) Investment Promotion, and (v) Vehicle Purchase Scheme.¹²⁰ These objectives are briefly discussed here below.

Industrial infrastructure: Nigeria suffers from deficit in infrastructure needed by industries for which the NAIDP shall help to create

‘automotive supplier parks and clusters where industries can share infrastructure, resources, information, knowledge and technical expertise. It will enhance competitiveness, learning and technical innovation. This will (ultimately) reduce production costs due to inadequate infrastructure and high logistics costs and attract investment in local content production.’¹²¹

Skills Development: The NAC conducted a study to find out what are the skill shortages of the Nigerian workforce and the major finding was that (i) 80% of the skill deficiencies of the Nigerian auto-technicians is related to the electrical/electronic systems of modern vehicles, and (ii) 20% is caused by incorrect work methods, safety and environment, as well as, poor workshop management and organizational ability.¹²² To address these skill shortages the NAC has established training centres for manufacturing with the support of the Industry Training Fund and the Nigerian Universities Commission. The NAC has developed a curriculum for a degree in automotive engineering, which will be offered by three universities.¹²³ Besides, as a result of cooperation with universities and other educational institutions, there are already a variety of engineering courses offered in the field of maintenance

¹²⁰ NAIDP opt cit (n7) Chapter 2, Section 2.1 Policy Framework, Page 6

¹²¹ NAIDP opt cit (n7) Section 2.2 Industrial Infrastructure, Page 6

¹²² Industry and Infrastructure Development Programmes and Project, the official website of the Nigerian Automotive Council available at http://www.nac.org.ng/industries_policy.php

¹²³ Ibid.

and repair, operations, design and development.¹²⁴

Standards: Having internationally recognized quality and safety standards is one of the foundations for a competitive manufacturing environment that will create the trust of OEMs to bring their investments to a country and also to create trust amongst Nigerian consumers in locally produced products. The NAC and the National Organization of Standards have already established a number of safety standards and the NAC is also building automotive test centres where automotive products can be tested to ensure conformity with standards and vehicle homologation.¹²⁵

Investment Promotion: The investment promotion related initiatives of the NAIDP can be divided into two major parts: a tariff related instrument giving the framework for establishing SKD and CKD operations by OEMs, and the investor guideline. The tariff related instrument is a concessionary import available for authorized automotive distributors of OEMs who demonstrate commitment to assemble vehicles in Nigeria through a signed agreement and manufacturing license with their global OEM partner. The instrument allows such distributors to import CBUs at a duty rate of 20% on passenger cars and 35% on commercial vehicles without levy for three years' time period subject to certain conditions.¹²⁶ The investor guideline is detailed in Chapter 4 of the NAIDP and gives a very good overview of how to do business by foreign nationals and companies in Nigeria. It explains the different types of business

¹²⁴ NAIDP opt cit (n7) Section 2.3 Skills Development, Page 6-7

¹²⁵ NAIDP opt cit (n7) Section 2.4 Standards, Page 7-8

¹²⁶ NAIDP opt cit (n7) Section 3.4 Mitigating measures to allow for adjustment by industry participants and consumers, Page 13

enterprises allowed to be established, the legal forms foreigners may operate a business in Nigeria, it lists and summarizes the most important foreign investment protection laws and related role of the One Stop Shop Investment Centre, and lastly it describes the Nigerian Free Trade Zones and the National Trade Hub.¹²⁷ Neither the AIS, nor the APDP contains an investor guideline because the DTI has chosen a different method namely to issue annual Investor's Handbooks which contain similar information for all industries, not only the automotive industry. Therefore, the Investor's Handbook will not be analysed herein.

Vehicle Purchase Scheme: The scheme is available for existing vehicle owners to trade in their vehicles for new ones while new applicants can immediately acquire new vehicles from local Assemblers or OEM dealers registered under the NAIDP.¹²⁸ It is managed by the NAC and facilitates customers to access new vehicles, which currently are not affordable for most Nigerians due to the high vehicle prices.¹²⁹

When looking at the concrete and real legal instruments of the NAIDP, on the one hand it operates with the tariff regulations in that it defines the six stages of the first five year period of the NAIDP whereby the first three years provide for a duty rebate. On the other hand, the policy aims that, after the initial rebates helping to re-establish the vehicle assembly industry, the difference between the import duty for CBUs and SKDs/CKDs should

¹²⁷ NAIDP opt cit (n7) Section 4.5 One Stop Shop Investment Centre, Page

¹²⁸ NAIDP opt cit (n7) Section 2.6 Vehicle Credit Purchase Scheme/Dealer And Aftermarket Development Program, Page 9

¹²⁹ Ibid.

significantly grow. The corporate income tax related regulations seem to follow the same path by providing significant relieves and rebates for an initial phase of investment. Furthermore, the regulations regarding establishment of local branches and subsidiaries by foreign investors are relatively straightforward and easy (“one stop shop registration”) which may create a significant advantage for the country versus other African countries with investment potentials.

The most important observation is however that many of the elements of the NAIDP and the NAP are typical for developing countries in trying to create attractive environment for foreign investors by implementing the same or similar instruments as other successful developing and developed countries.

3.3 Kenya: The NIP

Having indicated that Kenya does not have an automotive policy yet, this section discusses the NIP. Before the NIP was issued there were numerous inconsistent and weak laws in existence giving overlapping ministerial mandates, which lead to the issuance of similarly overlapping and inconsistent policies and strategies that culminated into an uncoordinated and slow industrialization in Kenya.¹³⁰ This policy has therefore been developed as a framework to synchronize and coordinate the various policies, strategies and activities within Kenya’s industrialization process. It intends to work as a broad framework within which all stakeholders, including the public and private sector, civil society and development partners will contribute to

¹³⁰ NIP opt cit (n9) Section 1.1 The Problem, Page 2

industrial development.¹³¹ The organization responsible for the implementation of the NIP is the National Industrial Development Commission that is organized under the umbrella of the Ministry of Industrialisation and Enterprise Development.¹³²

The NIP defines its mission as ‘to enhance sustained growth of the industrial sector, by at least 15% per annum by 2017’¹³³ and a long-term goal that is to enhance ‘the GDP contribution of the industry by at least 10% per annum’¹³⁴. This mission and goal is further broken down to short-term goals for the subsequent five years which set very ambitious targets for the country such as for instance improving the sector’s productivity and value addition by 20%, increase the share of locally produced industrial components by 25%, and increase the local content of locally manufactured goods for export to at least 60%.¹³⁵

With respect to the automotive industry the NIP acknowledges that

‘the automotive and auto parts industry is a major economic driver and the government should nurture and encourage growth and development of the industry. Similarly like in Nigeria most motor vehicles sold in Kenya are imported either as new or second hand with the later constituting the bulk of the imports. Locally manufactured vehicles are assembled from CKD components with little input of the local content.’¹³⁶

The goal of the NIP relative to the auto industry is to enable sustainable growth of the industry by gradual replacement of second hand

¹³¹ NIP opt cit (n9) Chapter I (Introduction), Section 1.1 The Problem, Page 2-3

¹³² NIP opt cit (n9) Section 5.2.3 The National Industrial Development Commission, Page 36

¹³³ NIP opt cit (n9) Chapter I (Introduction), Section 1.4 The Mission, Page 4

¹³⁴ NIP opt cit (n9) Chapter I (Introduction), Section 1.6 The Goals, Page 6

¹³⁵ Ibid.

¹³⁶ NIP opt cit (n9) Chapter 4 (Priority Sectors), Section 4.4 Automotive and auto parts, Page 25

(imported) vehicles, providing support to entrepreneurs specializing in auto parts industry, establishing high tariffs on imported auto parts that can be manufactured locally via joint ventures with OEMs that eventually will commence producing vehicles locally within 10 years with a 30% local input.¹³⁷ The overall automotive related goal of the NIP can be broken down into concrete targets as follows: establish automotive industrial parks by 2012; increase purchase of locally assembled vehicles; establish an automotive industry board; issue auto parts supply chain program by 2012; increase volume of purchasing of locally manufactured parts and establish at least one manufacturing franchise by 2016. Chapter 6 of the NIP provides for an implementation framework whereby the key performance indicator, the intended outcome, the timeframe and the responsible governmental bodies are indicated.

Before making observations about the NIP it must be noted that Kenya, equally to Nigeria, has got further legislative measurements which can be utilized to enhance the automotive industry but these are not listed in the NIP unlike it is done in the NAIDP. As per the East African Community (EAC) Customs Union Protocol, Chapter 87, Annex I locally assembled vehicles have an advantage over imported vehicles within the EAC as they attract 0% import duty on unassembled parts.¹³⁸ Fully built imported vehicles attract 25% duty.¹³⁹ Similarly to Nigeria foreign investors must also obtain an investment certificate. This requires a minimum investment of US\$100,000 and an

¹³⁷ Ibid.

¹³⁸ EAC Customs Union Protocol, Chapter 87, Annex I on EAC Common External Tariff, Page 425 available at file:///C:/Users/user/Downloads/EAC%20CET%20Tariff%20Handbook.pdf

¹³⁹ Ibid.

explanation of how the potential investment will be beneficial to Kenya on the basis of criteria such as employment, skill upgrading, transfer of technology, foreign exchange generation, and tax revenue enhancement.¹⁴⁰ The Ministry of Industrialisation and Enterprise Development has endorsed several incentives to grow the Kenyan industrial sector in general such as the Export Processing Zones, the Manufacturing under Bond, Capital Investment Allowances which in general provide for different level of tax holidays for corporate income tax or withholding tax, VAT and customs import duty relief.

The NIP's automotive industry related provisions are certainly less sophisticated than the NAIDP for the obvious reason that it is only a formulation of the mission, goals and objectives with a high level implementation framework but the detailed plan or policy is to be worked out by the responsible ministries. The most outstanding target of the NIP is to reach 30% local content within 10 years. It seems to be an extremely aggressive and at first glance almost impossible target to bring the local content of Kenyan produced motor vehicles and parts to such an ambitious level for the following reasons. In comparison to South Africa, it took nearly 20 years to reach to 35% of local content in the South African automotive manufacturing by 2011, having had automotive policies in place since 1995 and significant government support. Also, Kenya's local vehicle production consists purely of vehicle assembly that produced only 9.7% of the total number of vehicles sold in the market in 2014. Furthermore up until 2015 the

¹⁴⁰ Frequently Asked Questions, KenInvest, available at <http://www.investmentkenya.com/frequently-asked-questions>

Ministry of Industrialisation and Enterprise Development could only show achievements regarding value chain development in the leather, textile and food processing industries.¹⁴¹

This Chapter has highlighted why sector specific industrial policies are required and explained why South Africa, Nigeria and Kenya treat their auto industries differently. The South African policy is without question the most sophisticated and comprehensive policy of the three discussed policies having had higher and more consistent government and industry support compared to Nigeria and Kenya.

¹⁴¹ Achievements of the Ministry for the Period July 2013 to 2014, official website of the Ministry of Industrialisation and Enterprise Development, available at <http://www.industrialization.go.ke/index.php/media-center/news-updates/164-achievements-of-the-ministry-for-the-period-july-2013-to-2014>

4 INVESTMENT SPECIFIC INCENTIVES OF SOUTH AFRICA, KENYA AND NIGERIA

This chapter will compare the investment specific incentives and policy tools of the three countries to see whether there are any Nigerian or Kenyan legislative techniques which could be used to improve the AIS. First the eligibility criteria, the benefits, the evaluation criteria, and the general rules for qualifying (and disqualifying) of projects/investments of the three sub-components of the AIS will be considered. After this the achievements of the AIS through statistical data will be analysed. Then, the tariff concession instrument of the NAIDP, the Automotive Development Fund, and finally the Specialized Auto Industry Research Fund of Nigeria will be described, which have similar features as the AIS (its R&D element) and the APDP (the VAA). Finally, the Kenyan Export Processing Zones and the Manufacture under Bond will be analysed as these have the same objectives and some resemblance to the AIS by facilitating local manufacturing for export purposes.

4.1 South Africa: The AIS

As mentioned in Chapter 3, the AIS consists of three elements, the AIS for light motor vehicle manufacturers and CMs, the P-AIS for people-carrier motor vehicles (buses) assemblers, and the MHCV-AIS for medium and heavy commercial vehicle manufacturers and CMs.¹⁴²

¹⁴² Please see Chapter 3, Section 3.1, page 29.

For the sake of simplicity, whenever a rule of the AIS is discussed and there is no specific reference to a different rule regarding the P-AIS or the MHCV-AIS, it means that the same regulation applies to these schemes too.

4.1.1 Eligibility criteria

There are general and special eligibility criteria under the AIS. The general or mandatory eligibility criteria are the same for the three elements with a few exceptions in the P-AIS and the MHCV-AIS.¹⁴³ These are the so-called “mandatory conditions” regulated under section 4 of the AIS Guidelines.¹⁴⁴ These provisions quoted below encompass company registration, clear tax history, submission of business and financial plan, cost benefit analysis and timelines for filing of completed applications, and lastly requirement for local usage of the grant. The AIS Guidelines provide that

‘4.1 The applicant must be a registered legal entity in South Africa in terms of the Companies Act 71 of 2008 (as amended); or the Close Corporations Act, 1984 (as amended), and must undertake manufacturing in South Africa.

4.2 The applicant must be a taxpayer in good standing and must, in this regard, provide a valid tax clearance certificate before the AIS grant is disbursed.

4.3 The grant will only be applicable to investment in assets that will be used in the entity’s South African operations.

4.4 The applicant must submit a business plan with a detailed marketing and sales plan, a production plan, budget and projected financial income statement, cash flow statement and balance sheet, for a period of at least three (3) years for the project.

4.4.1 The applicant must, in addition to the information supplied in 4.4, submit a projected financial income statement, cash flow statement and balance sheet for a period of at least three (3) years of the relevant

¹⁴³ AIS Guidelines opt cit (n46), Section 4, Page 6; P-AIS Guidelines, Section 4, Page 7-8, available at http://www.thedti.gov.za/DownloadFileAction?id=884&filename=PAIS_Guidelines2014.pdf; Section 4, Page 4-5, MHCV-AIS Guidelines, available at http://www.thedti.gov.za/DownloadFileAction?id=974&filename=MHCV_AIS_Guidelines_v1.pdf

¹⁴⁴ AIS Guidelines opt cit (n46), Section 4, Page 6

division, cost centre or branch where the project is located, if applicable.
 4.4.1.1 The applicant must submit a cost benefit analysis for the project in cases where it cannot provide information as per 4.3.1 in respect of a cost centre.

4.4.2 Completed applications should reach the offices of the dti no later than:

4.4.2.1 One hundred and twenty (120) days but not earlier than one hundred and eighty (180) days prior to commencement of production for light motor vehicle manufacturers; and

4.4.2.2 Ninety (90) days but not earlier than one hundred and twenty (120) days prior to commencement of production for component manufacturers, deemed component manufacturers and /or tooling companies.

4.4.3 In the case of component manufacturers and tooling companies; an original letter of intent and/or purchase order on the letterhead of the awarding OEM/ customer, or certified copy thereof should be submitted with the application.¹⁴⁵

The P-AIS Guidelines have almost the exact same wording for its Section 4 but there is one significant difference, namely that the condition of using the grant in the applicant's South African operations is not listed.¹⁴⁶ This might be just an oversight because it is later mentioned under Section 8 (Qualifying Assets) of the P-AIS Guidelines that only assets and investments costs 'to be used in the entity's South African operations' may qualify for the grant'.¹⁴⁷ The difference in the mandatory conditions of the MHCV-AIS is that under Section 4.4.1 the submission of the BB-EEE certificate (obtained in accordance with the Broad-Black Based Empowerment Act No. 53 of 2003) and the ITAC registration (obtained in accordance with Note 1 to Chapter 98 of the Customs and Excise Tax Act) is required as a mandatory condition.¹⁴⁸ This again may be an inaccuracy because Section 12.4.3 of the AIS lists

¹⁴⁵ AIS Guidelines opt cit (n46) Section 4, Page 6

¹⁴⁶ P-AIS Guidelines opt cit (n143), Section 4, Page 7

¹⁴⁷ P-AIS Guidelines opt cit (n143), Section 8, Page 11

¹⁴⁸ MHCV-AIS Guidelines opt cit (n143) Section 4.4.1, Page 5

these certificates as mandatory annexes to the applications.¹⁴⁹ The P-AIS criteria differs in that the ITAC registration certificate is required under Section 5.1 (Qualifying Projects),¹⁵⁰ however, the BBB-EE certificate is not mentioned anywhere in this policy document. Considering that the P-AIS is declared as a sub-component of the AIS,¹⁵¹ it would be surprising if this criterion would not be applicable to the P-AIS applicants too. There is another difference with respect to the MHCV-AIS that it does not require under the mandatory conditions from CMs to submit the original letter of intent or an order from their OEM partner that proves that the company will be producing components for the supply chain of the OEM.¹⁵² The original letter of intent or order is also not listed as a mandatory annex to the application. This condition is nevertheless indirectly mentioned under the special eligibility criteria in Section 7.3.1 and in Section 12.3 on the conditions of grant disbursement when both of the said Sections put the obligation on the entity to prove that such a letter of intent or order exists,¹⁵³ which can only be fulfilled if the entity presents the document in question.

The special eligibility criteria are understandably different in each policy as they target enterprises engaged in different types of sub-industries of the automotive industry. These criteria define exactly what pre-conditions the different types of enterprises should meet in addition to the mandatory conditions to be eligible to lodge an application that may be considered by the

¹⁴⁹ AIS Guidelines opt cit (n46), Section 12.4.3, Page 20

¹⁵⁰ P-AIS Guidelines opt cit (n143), Section 5.1, Page 7

¹⁵¹ P-AIS Guidelines opt cit (n143), Section 1.1, Page 4

¹⁵² MHCV-AIS Guidelines opt cit (n143), Section 4, Page 5

¹⁵³ MHCV-AIS Guidelines opt cit (n143), Section 7.3.1, Page 6, and Section 12.3, Page 13

DTI. The AIS special eligibility criteria in Section 6 of the AIS Guidelines are as follows:

‘6.1 Light Motor Vehicle Manufacturers

6.1.1 An existing light motor vehicle manufacturer that has achieved, or can demonstrate that it will achieve, within three (3) years, a minimum of 50,000 annual units of production per plant.

6.1.2 A new light motor vehicle manufacturer has to demonstrate that it will achieve within three (3) years a minimum of 50,000 annual units of production per plant.

6.2 Component Manufacturers, Deemed Component Manufacturers or Tooling Companies

6.2.1. A component manufacturer that can prove that a contract is in place and/or a contract has been awarded and/or a letter of intent has been received for the manufacture of components to supply into the light motor vehicle manufacturer supply chain locally and/or internationally; and

6.2.2. A component manufacturer that can prove that after this investment it will achieve at least 25% of total entity turnover or R10m annually by the end of the first full year of commercial production, as part of a light motor vehicle manufacturer supply chain locally and/or internationally.¹⁵⁴

The P-AIS regulates the special eligibility criteria equally in Section 6 as quoted below:

‘6.1 Semi Knocked Down (SKD) Vehicle Assemblers

6.1.1 Mono-built motor vehicles for the transport of 14 persons or more including the driver but not exceeding 35 persons including the driver and with a vehicle mass exceeding 2000 kg, trimmed or untrimmed and painted but not fitted with engines, transmission assemblies, axles, radiators, suspension components or braking equipment.

6.1.2 SKD investment projects should have a start of production (SOP) between 01 January 2012 and 31 March 2015 to qualify for support under this programme.

6.2 Complete Knocked Down (CKD) – Vehicle Assemblers

People-carriers for the transport of 10 or more persons including the driver but not exceeding 35 persons including the driver and of a vehicle mass exceeding 2,000 kg. i) The floor panels, body sides or roof panels are not permanently attached to each other. ii) The engine and transmission assemblies, axles, radiators, suspension components, steering mechanisms, braking or electrical equipment or instrumentation are not fitted to such floor pans or chassis frames; and

¹⁵⁴ AIS Guidelines opt cit (n46) Section 6, Page 7

iii) The bodies/cabs are not fitted to floor pans or chassis frames.¹⁵⁵

The special eligibility criteria for the CMs under the P-AIS is the same as for CMs in the light motor vehicle industry only that here it is evidently to supply into the medium and heavy commercial vehicle manufacturer supply chain for the purposes of producing people-carrier motor vehicles.¹⁵⁶

Lastly, the MHCV-AIS regulates the special criteria for eligibility under Section 7 of the MHCV-AIS Guidelines.

7.1 Truck Manufacturers

An existing or new manufacturer of medium and heavy motor vehicles (trucks) has to comply with the extent of assembly (i.e. C.K.D. definition as specified in Note 5 to Chapter 98.) The minimum extent of assembly required to be undertaken within SA for purposes of participating in the MHCV entails that:

7.1.1 The cab may be imported in an assembled and trimmed condition into South Africa until 31 March 2016.

7.1.2 The engine and transmission, axles, radiators, suspension components, steering mechanisms, braking or electrical equipment and instrumentation may be imported into South Africa but have to be fitted to the floor pan or chassis frame of the truck within South Africa;

7.1.3 The body or cab has to be fitted to the floor pan or chassis frame within South Africa.

7.1.4 With effect from 1 April 2016 the amended CKD definition as specified in ITAC Report 419 will apply and projects with a start of production of 1 April 2016 and beyond that do not comply with the revised definition will not be supported.

7.2 Bus Chassis Manufacturers

7.2.1 The chassis, engine and transmission assemblies must comply with the CKD definition of Note 5 as stipulated in Chapter 98 of the Customs and Excise Act", 1964".

7.2.2 The chassis, engine and transmission must be assembled semi knocked down in South Africa and the hang-on parts (fuel tank, tyres, battery, wheel rims) for the chassis may be imported into South Africa but have to be fitted to the floor pan or chassis frame of the bus within South Africa.

7.2.3 Projects with a start of production date from 1 April 2016 onwards will be required to comply with the amended CKD definition as

¹⁵⁵ P-AIS Guidelines opt cit (n143) Section 6, Page 8

¹⁵⁶ Ibid.

specified. From this date projects that do not comply with the revised definition will not be supported under the MHCV-AIS.¹⁵⁷

The same is true as observed above with the P-AIS with respect to the CMs for supplying in the medium and heavy commercial vehicle industry.

4.1.2 Benefits and Evaluation Criteria

According to section 3.2 of the AIS Guidelines, the AIS provides for a non-taxable cash grant of 20% of the value of qualifying investment in productive assets carried out by light motor vehicle manufactures, and 25% for CMs subject to approval of the DTI.¹⁵⁸ Section 3.3 of the AIS Guidelines describes the additional non-taxable cash grant of between 5% (or a cumulative 10%) of the value of qualifying investment for projects that are found to be strategic by the DTI subject to special conditions as detailed in sections 7.3 and 7.4 of the AIS Guidelines.¹⁵⁹ These conditions are set out below.

As per section 7.3 of the AIS Guidelines for one of the available 5% grant the applicant needs to

‘demonstrate that the investment will result in base year employment levels being maintained throughout the incentive period and, in the case of light motor vehicle manufacturers demonstrate, also that the said levels will be maintained during the model phase-out period; and achieve at least two economic benefit requirements under Table A1 below’.¹⁶⁰

‘Table A1: Economic Benefit Requirements’¹⁶¹

Tooling	Demonstrate substantial support for the development of
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¹⁵⁷ MHCV-AIS Guidelines opt cit (n143), Section 7, Page 6-7

¹⁵⁸ AIS Guidelines opt cit (n46) Section 3.2, Page 5

¹⁵⁹ Ibid.

¹⁶⁰ AIS Guidelines opt cit (n46) Sections 7.3.1 and 7.3.2, Page 8

¹⁶¹ AIS Guidelines opt cit (n46) Section 7.3.2, Page 8

	<p>the local vehicle related tooling industry:</p> <p>* Light motor vehicle manufacturers must demonstrate this by indicating that at least 10% of their tooling budget or a 10% increase in real terms from base year in their tooling budget, whichever is the highest, shall be allocated to the support of the local vehicle related tooling industry.</p> <p>* Component manufacturers must demonstrate this by indicating that at least 20% of their tooling budget or a 20% increase in real terms from base year in their tooling budget, whichever is the highest, shall be allocated to the support of the local vehicle related tooling industry.</p>
R&D in South Africa	Manufacturers must spend at least 5% of the value of the investment project on experimental research, development or invention to achieve technological advancement for the purpose of creating new, or making appreciable improvement to existing materials, devices, products or processes performed in South Africa and resulting in production competitiveness, provided that the 5% of the value may not be less than R50 million for light motor vehicle manufacturers; and R1,5 million for component manufacturers.
Employment creation	Demonstrate that the plant employment levels at base year will be maintained throughout the incentive period and that the project will result in the creation of at least 1 new job per R5 million investment or at least an additional 100 new direct jobs for light motor vehicle manufacturers; 1 new job per R1 million investment or at least 50 new jobs for component manufacturer or deemed component manufacturers.
Strengthening of the automotive value chain	<p>* Light Motor Vehicle Manufacturers: must demonstrate that the Investment will result in introduction of new components, intermediate products not currently manufactured for that OEM or processes not performed for that OEM in South Africa or the creation of new markets for current component manufacturers or the introduction of a new foreign supplier of components not currently manufactured for that OEM in South Africa.</p> <p>* Component manufacturers and Tooling companies: must demonstrate that the Investment will result in introduction of new components, intermediate products or processes not currently manufactured or performed by that company or that the component or tool is not currently made for that OEM in South Africa.</p>
Value addition	Demonstrate substantial increase in local content with respect to value addition of products.
Empowerment	Achieve level 3 or higher on the B-BBEE codes of good practice as issued under Section 9 of the Broad Based Black Economic Empowerment Act of 2003

To qualify for the second additional 5% (cumulative 10%) AIS grant, the project, in addition to achieving the requirements of section 7.3 of the AIS Guidelines as detailed above, must also fulfil the economic benefit requirement under Table A2 below.

'Table A2: Economic Benefit Requirements'¹⁶²

<p>Increase in unit production per plant for Light Motor Vehicle Manufacturers</p>	<p>If current plant volume is less than 50,000 units per annum, the volume must be increased to 65,000 units per annum. If current plant volume is greater than 50,000 to 65,000 units per annum, the volume must increase by 30%. If current plant volume is greater than 65,000 to 100,000 units per annum, the volume must increase by 25%. If current plant volume is greater than 100,000 units per annum, the volume must increase by 20%. If current plant volume is greater than 200 000 units per annum, the applicant/legal entity must maintain volumes. The increased plant volumes should be achieved by the end of the second full year of commercial production.</p>
<p>Increase in turnover for Component Manufacturers and Tooling Companies</p>	<p>Demonstrate an increase in turnover of at least 20% in the first full year and 30% in year 2 of production commencing from Start Of Production (over and above the other requirements set out in these guidelines) for the legal entity's appropriate division or plant producing that type of component/tool, or total company turnover in the case of a new category of product or tool. For a new component manufacturing company or tooling producer to qualify for this additional 5% they have to demonstrate that they will be making components or tools of a type not currently manufactured for that OEM in South Africa.</p>

The P-AIS makes a distinction between SKD and CKD investments for vehicle assemblers when it comes to the qualifying criteria for the grants. SKD investments are only eligible for 20% non-taxable cash grant in the event that

¹⁶² AIS Guidelines opt cit (n46) Section 7.4.1, Page 10-11

the start of production is from 01 January 2012 to 31 March 2015, whereby no investments with a start of production after this date is eligible for the P-AIS. There is only one additional 5% cash-grant available (no second additional 5%) and the SKD vehicle assembler shall fulfil three economic requirements from the Table A1.¹⁶³ CKD investments having the aforesaid start of production date may qualify for 25% non-taxable cash grant which shall be decreased to 20% with start of production from 01 April 2015 onwards.¹⁶⁴ The CMs may apply for a non-taxable cash grant equalling to 25% of the value of the qualifying investment costs but the first additional 5% cash grant does not require the maintenance of the base year employment levels during the model phase out period unlike with the AIS or the SKD and CKD investments under the P-AIS.¹⁶⁵ With respect to the MHCV-AIS, the only difference is regulated in section 8.3 of the MHCV-AIS Guidelines which provides for different volumes under the economic requirement of 'Increase in unit production per plant for Medium and Heavy Commercial Vehicle Manufacturers' and the 'Increase in turnover for component Manufacturers, Tooling companies and Bus Body Manufactures' that have to be fulfilled for the second additional 5% cash grant in addition to the requirements to be fulfilled under the first additional 5% cash grant. The volumes are significantly lower here due to the reason that the market demand for trucks and buses is obviously considerably lower than for passenger cars.¹⁶⁶

¹⁶³ P-AIS Guidelines opt cit (n143) Section 7.1.1-7.1.4, Page 9

¹⁶⁴ P-AIS Guidelines opt cit (n143) Section 7.2.1, Page 9

¹⁶⁵ P-AIS Guidelines opt cit (n143) Section 7.3.1 and 7.3.4, Page 10

¹⁶⁶ MHCV-AIS Guidelines opt cit (n143) Section 8.3, Page 9-10

4.1.3 Qualifying conditions

The provisions regarding the rules on which projects and costs may be claimed under the AIS can be divided into three categories: general conditions on projects, specific provisions on what assets and costs are eligible to be claimed and the list of exclusions and limitations. The general conditions on projects are the same across the three policies and contain two conditions: (i) the OEMs to be a manufacturer of specified light motor vehicles, medium or heavy commercial vehicles registered with ITAC, and (ii) the CMs to be part of the supply chain of a light, motor vehicles, medium or heavy commercial vehicles OEM.¹⁶⁷ The productive asset and investment costs specific provisions regulate in detail the type of assets and costs which may qualify for the grant in general, and secondly the competitiveness improvement costs that can be claimed by CMs only.¹⁶⁸ According to Section 8 of the AIS Guidelines, the costs of investments into the following types of assets may be claimed under the grant: owned buildings and/or improvements to owned buildings (Section 8.1), new plant, machinery, equipment and tooling (Section 8.2), second-hand, refurbished and upgraded plant, machinery and tooling (Section 8.3).¹⁶⁹ The buildings must be newly acquired, constructed or an expansion, and must be owned by the applicant entity.¹⁷⁰ The value of the costs of qualifying investments in buildings is limited to the costs of qualifying

¹⁶⁷ AIS Guidelines opt cit (n46) Section 5, Page 7; P-AIS Guidelines opt cit (n129) Section 5, Page 7-8; and MHCV-AIS Guidelines opt cit (n143) Section 6, Page 6-7

¹⁶⁸ AIS Guidelines opt cit (n46) Section 8-9, Page 12-15; P-AIS Guidelines opt cit (n143) Section 8-9, Page 11-15; and MHCV-AIS Guidelines opt cit (n143) Section 9-10, Page 9-11

¹⁶⁹ AIS Guidelines opt cit (n46) Section 8, Page 12

¹⁷⁰ AIS Guidelines opt cit (n46) Section 8.1.1, Page 12

investments into plant, machinery, equipment and tooling.¹⁷¹ New plant, machinery, equipment and tooling must be either owned or leased by way of financial leasing by the applicant entity.¹⁷² Second-hand, refurbished and upgraded plant, machinery and tooling are those that are not new but have not been used previously by the applicant and have not been claimed under another South African state subsidy.¹⁷³ The competitiveness improvement costs related provisions first of all acknowledge that the goal is

‘to enhance the competitiveness of (CMs) through the improvement of processes, products, quality standards and related skills development through the use of business development services.’¹⁷⁴

The types of costs that may qualify hereunder are process improvement/optimisation costs, conformity assessment (e.g. accreditation or energy efficiency or ISO audit), product improvements (e.g. design), skills development (e.g. SAQA accredited training courses), resource efficiency, and IT systems deployment costs.¹⁷⁵ The amount claimed cannot be more than the amount granted under the general provisions under Section 8 and it must be linked to an asset listed therein. Should the applicant submit a stand-alone claim for competitiveness improvement costs, it is limited up to 20% of the qualifying costs.¹⁷⁶ Lastly, the Exclusions and Limitations shall be mentioned, which again can be put under three categories: the excluded costs and assets (Section 10.1), the general exclusions (Section 10.2) and the projects that have received incentives under another capital investment

¹⁷¹ Ibid.

¹⁷² AIS Guidelines opt cit (n46) Section 8.2.1, Page 12

¹⁷³ AIS Guidelines opt cit (n46) Section 8.3.1, Page 12

¹⁷⁴ AIS Guidelines opt cit (n46) Section 9.1, Page 13

¹⁷⁵ AIS Guidelines opt cit (n46) Section 9.5, Page 13-14

¹⁷⁶ AIS Guidelines opt cit (n46) Section 9.2, Page 13

incentive scheme offered by the DTI (Section 10.3).¹⁷⁷ Without trying to be exhaustive, investment assets and costs of eg land, office equipment, canteen, company cars, vehicle distribution centres, travel allowance and any costs of assets not directly used in the manufacturing of the product are excluded from the AIS.¹⁷⁸ The only significant difference with the P-AIS is that in addition to the AIS exclusions, SKD investments with start of production date after 31 March 2015 are also excluded.¹⁷⁹ The general exclusions under Section 10.2 of the AIS Guidelines define the minimum amount of investments to be made by applicants that may qualify for the grant: R1 million for CMs, R100,000 for standalone competitiveness improvement applications by CMs and R30 million for light motor vehicle manufacturers.¹⁸⁰

The overall observation regarding the provisions of the AIS indicate that while some provisions are very detailed and straightforward, others lack detail and require interpretation. Potential applicants need to be certain of the meaning of the given terms or conditions in the context of the AIS, in particular what is exactly expected from them. To give an example of this uncertainty, when claiming costs under the competitiveness improvement category, the conditions under “Consulting Fees and Expenses” are phrased very broadly and flexibly. It is not clear for instance what criteria or standards shall a process improvement fulfil in order to be considered new or improved to enable applicants to claim costs under “process improvement/optimization” or “resource efficiency”. Also, it is not clear whether an applicant could claim

¹⁷⁷ AIS Guidelines opt cit (n46) Section 10, Page 15

¹⁷⁸ AIS Guidelines opt cit (n46) Section 10.1, Page 15

¹⁷⁹ P-AIS Guidelines opt cit (n143) Section 10.1.1, Page 15

¹⁸⁰ AIS Guidelines opt cit (n46) Section 10.2, Page 15

under both categories if the given process improvement also leads to energy saving. Furthermore, the skills development related costs could perhaps also detail the type of courses beyond “manufacturing related technical skills” by highlighting the concrete skills shortages in the country and requiring minimum attendees to achieve higher and more effective participation. The question whether courses offered by foreign or local group companies to South African related companies within the same group may qualify cannot be directly answered from the AIS Guidelines, but their eligibility could be debated because this is basically a cost allocation within the group and not an expense paid to an external consulting firm.

Therefore, in order to correctly complete an AIS application or submit a claim form, the applicant requires the help of experts, and so does the DTI, not having the required wide range of in-depth skills and knowledge the implementation of the AIS Guidelines require. It also requires continuous conversation and cooperation between the applicant and the DTI from the application phase until the end of the monitoring phase.

4.1.4 Achievements

After having looked at the operation of the AIS, its achievements will be discussed to understand whether the AIS in its current form is able to meet its objectives. Conclusions regarding the statistical data on achievements will be detailed in the last Chapter.

The Incentive Development and Administration Division, DTI (IDAD) Performance Report 2013/2014 shows that over R2 million AIS grants were

approved in 2013/2014 for investments in the value of more than R8.5 million.¹⁸¹

TABLE 18: OVERVIEW OF APPROVED AIS PROJECTS (2012/13 AND 2013/14)

	Financial Year	No of Projects Approved	Grant Approved (R)	Investment Approved (R)	Sustained Jobs	Projected Jobs
COMPONENTS MANUFACTURES	2012/13	25	125 679 000	546 302 000	6 265	582
	2013/14	33	390 621 941	1 585 196 761	1 646	680
ORIGINAL EQUIPMENT MANUFACTURERS (OEM)	2012/13	4	281 314 000	1 259 003 000	10 720	185
	2013/14	3	1 976 806 139	6 815 259 694	0	441
PEOPLE-CARRIER: ORIGINAL EQUIPMENT MANUFACTURERS (P-AIS)	2012/13	0	0	0	0	0
	2013/14	2	26 055 615	111 816 076	10	308
TOTALS	2012/13	29	406 994 000	1 805 306 000	16 985	767
	2013/14	38	2 393 483 695	8 512 272 531	1 656	1 429

As opposed to the data indicated above, the South African Government News Agency reported on 23 June 2015 that there were three projects approved under the P-AIS in the mini bus assembly industry to the tune of approximately R158 million supporting 680 direct jobs.¹⁸² This revision may be explained by the launch of Toyota's Quantum Ses'fikile CKD plant in Durban with an investment amount of R476 million¹⁸³ which should create more than 400 jobs¹⁸⁴.

The production volumes of the same time period show similar growth:

	2012 ¹⁸⁵	2013 ¹⁸⁶	2014 ¹⁸⁷
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¹⁸¹ Section 6.3 of the IDAD 2013-14 Performance Report, Page 75, available at <https://www.thedti.gov.za/DownloadFileAction?id=982>

¹⁸² 'DTI welcomes launch of Toyota plant', 23 June 2015, South African Government News Agency, available at <http://www.sanews.gov.za/south-africa/dti-welcomes-launch-toyota-plant>

¹⁸³ Ibid.

¹⁸⁴ Roy Coyane 'Toyota SA's new plant creates more than 400 jobs' (23 June 2015) Business Report, available at <http://www.iol.co.za/business/companies/toyota-sa-s-new-plant-creates-more-than-400-jobs-1.1874927#.VYw-AqYThFU>

¹⁸⁵ Automotive Export Manual 2014 opt cit (n18), Page 20

¹⁸⁶ Ibid.

¹⁸⁷ Production Statistics, OICA opt cit (n12)

Passenger cars	272,076	265,257	277,491
Light commercial vehicles	245,081	248,533	288,592

The export earnings of the industry grew from R102.7 billion to R115.7 billion from 2013 to 2014 of which R45.68 billion counted for component exports.¹⁸⁸ Local vehicles and components were exported to 148 countries and the export value doubled in 25 of these export markets in 2014.¹⁸⁹

The allocation of grants per province in 2013/2014 as per the IDAD Performance Report shows that 67% of the CM grants was approved for Eastern Cape accounting for 80% of the projected jobs, 27% for KwaZulu-Natal accounting for 16% of the projected jobs and 3% in Gauteng Province accounting for 4% of the projected jobs.¹⁹⁰ The figures for the same period for OEM grants per province: 80% of the grants was approved for the Eastern Cape accounting for 57% of the projected jobs, 16% for KwaZulu-Natal accounting for 42% of the projected jobs and 4% for the Western Cape accounting for 1% of the projected jobs.¹⁹¹ This means an increase in projected jobs by 57% in Eastern Cape, 97% in KwaZulu-Natal, and 100% increase in Western Cape from 2012/2013 whereby there was a 100% drop in Gauteng because there were no applications from Gauteng in 2013/2014.¹⁹²

¹⁸⁸ I. Venter 'Rand, improved volumes push SA auto exports to new record', Engineering News, published 16 April 2015, available at <http://www.engineeringnews.co.za/print-version/rand-improved-volumes-push-sa-auto-exports-to-new-record-2015-04-16>

¹⁸⁹ Ibid.

¹⁹⁰ IDAD 2013/2014 Performance Report opt cit (n181), Page 75

¹⁹¹ IDAD 2013/2014 Performance Report opt cit (n181), Page 79

¹⁹² Ibid.

The change of employment in the manufacturing sector of the provinces having received AIS grants are as follows: Western Cape -9.8%, Eastern Cape is -7.5%, Gauteng -5.6%.¹⁹³

The local content of automotive products was about 35% in 2011.¹⁹⁴ According to the National Association of Automotive Component and Allied Manufacturers (NAACAM) in 2015 the net value of local components used in vehicles is less than 40% of the total component value.¹⁹⁵ Positive result relative to the APDP was, however, reported by the National Association of Automobile Manufacturers of South Africa (NAAMSA) in May 2015 that the total local APDP value addition rose from R41.8 billion in 2013 to R47.0 billion in 2014.¹⁹⁶

There is no data available for the AIS's impact on South African R&D activities.

4.2 Nigeria: The tariff concession, the Automotive Development Fund, and the Specialized Auto Industry Research Fund

4.2.1 Tariff Concession of the NAIDP

Currently the import duty rate on fully built passenger cars is 20% with 5% VAT, and 35% with 5% VAT on commercial vehicles whereas CKD passenger cars do not attract any import duty or a maximum of 5% with 5%

¹⁹³ Table 3.2: Employed by industry and province, Quarterly Labor Force survey, Quarter 4, 2014, Statistics South Africa P0211, Page 24, available at <http://www.statssa.gov.za/publications/P0211/P02114thQuarter2014.pdf>

¹⁹⁴ M.J. Naude & J.A. Badenhorst-Weiss opt cit (n39) 70 at 71

¹⁹⁵ NAACAM profile, available at <http://naacamdirectory.webhouse.co.za/pages/32917>

¹⁹⁶ NAAMSA media release on the APDP comment to be attributed to dr. Johan van Zyl, president, NAAMSA, available at <http://www.naamsa.co.za/papers/20150515/07%20may%202015%20-%20naamsa%20media%20release%20on%20the%20automotive%20production%20development%20programme.pdf>

VAT.¹⁹⁷ Because of the fallen auto manufacturing and the overall economic situation of Nigeria highlighted in Chapter 2, Nigerians cannot afford to buy new vehicles sold in the market but the vast majority of them import used cars. This scenario makes it impossible for the local distributors to compete with the more established markets that can easily export their motor vehicles to the country. Therefore, the NAIDP intends to increase the import duty tariff rates for a defined time period based on its mid-term goal to establish a vehicle assembly industry that sources most of their content locally.¹⁹⁸

The tariff rates of imported automotive products vary depending upon the different production stages of the imported product. Furthermore, they differ between passenger cars and commercial vehicles:

‘The NAIDP sets the import duty tariffs and levies for CBU vehicles initially high at a maximum of 70% (35% duty and 35% levy) and 35% duty without levy for commercial vehicles in the first phase. This level will decrease as the sector grows and becomes more competitive. CKD and SKD import for assembling will be charged 0% and 5%-10% duty. As an incentive measure, local manufacturing operations are allowed to import CBUs at 35% without the levy and commercial vehicles at 20% (without the levy) in proportion to their local production as detailed in (the NAIDP). Tariff on these inputs will increase as well once local manufacturing capacity strengthens.’¹⁹⁹

According to the timeline of the NAIDP, there are three phases: 2014-15 is the initial phase where the above quoted tariff increase and the first level of tariff concession enters into force that supports the existing assembly plants to survive (“Surviving phase”); 2016-18 is the second phase where the tariffs are still kept high but the tariff concession rules are changed to initiate the

¹⁹⁷ HS Heading 87., Section XVII of the Nigerian Customs and Excise Tax Act available at <https://www.customs.gov.ng/hscodere/resulthscodere.php?HSCODE=motor+vehicle&TYPE=BOTH&MODE=ANY&Submit2=Search>

¹⁹⁸ Please see Chapter 3, Section 3.2, Page 31.

¹⁹⁹ NAIDP opt cit (n7) Section 3.1 Fiscal structure, Page 10

growth of the local auto assembly (“Growth phase”); and 2019-24 is the last phase where the local assembly has been rebuilt and focus can be shifted to increasing local production and local content resulting in lower import duty tariff rates and more flexible tariff rebate scheme (“Local Content phase”).²⁰⁰

In the Surviving phase in order to receive the levy relief the local OEM partner has to import CBUs in twice the number of the imported CKD and SKD kits.²⁰¹ This number decreases in the Growth phase to the obligation of importing the same number of CBUs as CKD and SKD kits. The NAIDP defines that the collected levy shall be used amongst others to create local content incorporation programs.²⁰² During these two phases the local OEM partners who have received the tariff concessions shall move from a “SKD2 assembly level” to a “SKD1 assembly level”. The difference between the two phases is that in SKD1 assembly phase there is a need to invest in a paint shop as the body of the car is imported in white colour.²⁰³

In the Local Content phase the import duty rate on passenger cars will be 35% with a 20% levy, 35% import duty without a levy on commercial vehicles and 0%, 5% and 10% on the different CKD and SKD kits. The tariff concession rules change by dropping the number of imported CBUs to half the number of imported CKD and SKD kits. During this phase it is expected from the OEMs to move from the SKD1 assembly level to the CKD assembly level (“all materials supplied loose for final local assembly”) and start

²⁰⁰ NAIDP opt cit (n7) Annex II General Timelines for NAIDP, Page 23

²⁰¹ NAIDP opt cit (n7) Section 3.1 Fiscal structure, Page 11

²⁰² Ibid.

²⁰³ NAIDP opt cit (n7) Annex II CKD and SKD Definitions for Cars, Trucks and Buses, Page 21-22

increasing the sourcing of locally produced components and sub-components.²⁰⁴

The above detailed concessionary import is subject to the below rules:

- ‘(a) An indication of commitment (by signing agreement with their global OEM partner, obtaining land and/or factory space, amongst others) to invest in vehicle assembly operations (in Nigeria).
- (b) An unconditional bank guarantee against each import will be provided to the NAC to cover the 35% levy for cars or the 15% duty differential for commercial vehicles. Failure to adhere to the planned investment commitment will lead to the cancellation of the concession and the redemption of the guarantee.
- (c) This concession will be allocated to registered and authorised OEM distributors only based on certain criteria, including their average imports over the last three years to compensate for the gap between local supply and market demand, amongst others.’²⁰⁵

In addition to the above conditions, the Frequently Asked Questions of the NAIDP (FAQ) set out another rule to be eligible for the concession as follows: the entity planning to apply for the concession has to receive the “Prospective Manufacturer” status from the NAC if and when the entity has fulfilled the condition under above point (a), signed a memorandum of understanding with the Nigerian government and submitted a roadmap of the proposed SKD-CKD operations. The FAQ also clarify that there is a grace period of maximum 18 months during which the applicant can enjoy the concession without the implementation of the planned investment eventually aiming to increase the local assembly.²⁰⁶

If the tariff concession of the NAIDP had to be compared with any of the APDP measures – since it evidently cannot be compared to the AIS – it would probably have the closest connection to the VAA because both aim the

²⁰⁴ NAIDP opt cit (n7) Section 3.1 Fiscal structure, Page 11

²⁰⁵ NAIDP opt cit (n7) Section 3.4 Mitigating measures to allow for adjustment by industry participants and consumers, page 13

²⁰⁶ NAIDP opt cit (n7) FAQ, Page 25

increase of local assembly and local content. Considering how little the difference is between the import duty rate of CKD and CBU motor vehicles in South Africa, the VAA is a more attractive incentive for investors because in the end it reduces the CBU motor vehicle import duty rate to 7% which, even compared to the Local Content phase of Nigeria with its 35% of import duty rate and 20% of levy, is still significantly better. Furthermore, the condition of importing CBU motor vehicles in the double and then equal number of the SKD and CKD kits, although providing significant public revenue for the Nigerian state, allows postponing the actual increase in local assembly. Nonetheless, considering that the South African auto industry is a developed and mature industry compared to the Nigerian industry, keeping the high import duty tariffs in the first 10 years of the policy is understandable and probably also required.

4.2.2 Automotive Development Fund

The NAC has established the Automotive Development Fund in 2004 that is available throughout the entire supply chain of the auto manufacturing from component manufacturers to vehicle assemblers in order to address the issue of financing as described on the NAC's website:

'A major factor that has militated against the development of the sub-sector has been inadequate capitalization and funding. Apart from working capital requirements, a lot of forex is needed because currently more than 70% of the sector's material inputs are imported. The current high interest rate charged by Commercial banks makes long-term loans unattractive.'²⁰⁷

²⁰⁷ Local Automotive Components/Parts Development Fund, NAC website opt cit (n66)

The fund is derived from the 2% levy imposed on all imported vehicles, auto-components, spare parts and raw materials, and it is managed and distributed by the Bank of Industry to whom the NAC allocates the necessary budget. The Bank offers an interest rate of 7.5% for term loan and 10.5% on working capital loan, which is very attractive compared to the 10% usually offered by the commercial banks in Nigeria. The Bank received N16.91 billion from the NAC and by March 2013 it committed to a payment of N8.39 billion.²⁰⁸ Since the Fund was established, out of the 61 local component makers listed with the NAC, 25 of them have benefitted from around N11.5 billion in loans from the Bank.²⁰⁹ The Automotive Development Fund cannot really be compared to the AIS or any other elements of the APDP because, although, it provides financing/cash to the auto industry stakeholders intending to further the local auto industry with feasible investments, the legal nature of the Fund is a loan that has to be repaid at the end of the contract whereas the AIS offers non-taxable cash grants that, unless the entity commits an infringement of the terms and conditions of the utilization of the grant, do not have to be repaid. Nevertheless, the terms of the loan are or may be potentially less onerous as the conditions the AIS receivers have to fulfil. Furthermore, the objective of the Fund to create alternative affordable financing for the auto industry makes it comparable to the AIS.

²⁰⁸ The Automotive Development Fund, Bank of Industry available at <http://boinigeria.com/nac-fund/>

²⁰⁹ Local Automotive Components/Parts Development Fund, NAC website opt cit (n66)

4.2.3 Specialized Auto Industry Research Fund

The NAC established the Specialized Auto Industry Research Fund in order to support by direct cash grant research work aimed at advancing the technological development in the automotive sector.²¹⁰ The conditions for the grant are as follows:

'Research would only be supported if the assessment panel finds that: (i) it is relevant to the development of the automotive sector; (ii) it is technically feasible and have potential for commercialisation; and (iii) the raw materials, infrastructure and relevant manpower to conduct the study are available.'²¹¹

Since the introduction of the scheme many R&D proposals have been submitted for funding. A project, "The development of Production Tools for the Commercial Production of 3 HP Petrol Engine" submitted by Prof. A.O.A. Ibadode of the University of Benin has been funded with N3.3 million.²¹² NAC has set up a committee out of the Raw Materials R&D Council and other stakeholders to advise on R&D priorities in the automotive sector. The research fund is a great initiative introduced by the NAC, however, based on the amounts granted so far might seem a little low-key compared to how important the skills and technological development is deemed by the NAIDP and the NAP. Perhaps, the efforts of the above committee will revolutionize the Fund and will be also used by OEMs to bring some of their R&D activities to Nigeria. The closest comparison to this Fund is the R&D criterion for the

²¹⁰ Specialized Auto Industry Research Fund, NAC website opt cit (n66)

²¹¹ Ibid.

²¹² Ibid.

second 5% additional cash grant of the AIS.²¹³ The AIS requires a minimum value of the investment to be spent by OEMs (minimum R50 million) and CMs (at least R1.5 million) which is not required under the Nigerian Fund.²¹⁴ The criteria for grant under the Nigerian Fund seem similar to the definition of patentable subject matters under the Agreement on Trade-Related Aspects of Intellectual Property Rights of the WTO.²¹⁵ It is unclear whether this was the intention of the NAC but it certainly creates a higher technological/industrial threshold for funding applications and promotes commercial exploitation of funded research work. Also, creating this potential link to patentability might encourage companies to patent their R&D achievements in Nigeria. The R&D criterion of the AIS takes a different approach and focuses on production competitiveness to be achieved by OEMs and CMs via investing in R&D activities in South Africa.²¹⁶ It shall be noted that Annexure A Section B of the AIS Guidelines on the R&D criteria does not really give a detailed guidance to the interpretation of the different elements (eg “creating new, or making appreciable improvement to existing materials”) that have to be achieved by OEMs and CMs²¹⁷, which again speaks for the uncertainty in implementation and interpretation of the AIS mentioned under Section 4.1 of this Chapter.

²¹³ Please see Table A1: Economic Benefit Requirements, Point 1.2, Section 4.1 of Chapter 4, Page 48 above.

²¹⁴ Ibid.

²¹⁵ Article 27 Section 1: ‘(...) patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.’, TRIPS Agreement, available at https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm#5

²¹⁶ Please see Table A1: Economic Benefit Requirements, Point 1.2, Section 4.1 of Chapter 4, Page 48.

²¹⁷ AIS Guidelines opt cit (n46) Annexure A Section B, Page 28

4.3 Kenya: Export Processing Zones (EPZs) and the Manufacture Under Bond

Kenya currently has no such publicly available investment incentive as the AIS, nor does it have tariff related rebates like the other elements of the APDP or the tariff concession of the NAIDP, other than the common external tariffs on motor vehicle imports under the EAC as mentioned earlier.²¹⁸

Therefore, this Section will briefly discuss legislative instruments of the Kenyan legislation that are classified by the Kenya Investment Authority as investment opportunities in the manufacturing sector,²¹⁹ and which, due to their objective of supporting local production and inducing export, can be compared to the AIS and/or the APDP.

4.3.1 EPZs

The Act No 12 of 1990 (CAP. 517) on Export Processing Zones regulates the EPZs. According to the Act EPZ enterprises shall be incorporated in Kenya (whether a 100% foreign owned or not) for the sole purpose of producing goods or services for export within an EPZ, and shall obtain a license issued by the Export Processing Zones Authority.²²⁰ There are significant benefits that EPZ enterprises enjoy, as listed below, that may attract foreign investors, especially those who have a well-established supply and logistics network in the area, because the burden of transportation costs

²¹⁸ Please see Section 3.3, Chapter 3, Page 38.

²¹⁹ Investment opportunities, Manufacturing, Kenya Investment Authority, available at <http://www.investmentkenya.com/opportunities/manufacturing>

²²⁰ Section 23 (2) (b) of the Export Processing Zones Act No 12 of 1990 (CAP. 517) available at http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20517&term=%22exp%20processing%20zone%22#KE/LEG/EN/AR/E/CHAPTER%20517/sec_19_t11

together with the import duty rates can make up a significant part of an investment.

- › ‘An initial 10 year corporate income tax holiday and 25% corporation tax.
- › 10 years withholding tax holiday on dividends and other remittances to non-resident parties.
- › Perpetual exemption from VAT and customs import duty on inputs—raw materials, machinery, office equipment, certain petroleum fuel for boilers and generators, building materials, other supplies. VAT exemption also applies on local purchases of goods and services supplied by companies in the Kenyan customs territory or domestic market. Motor vehicles, which do not remain within the zone are not eligible for tax exemption.
- › Perpetual exemption from payment of stamp duty on legal instruments.
- › 100% investment deduction on new investment in EPZ buildings and machinery applicable over 20 years.
- › Exemptions from any quotas or other restrictions or prohibitions on imports or exports with the exception of trade in firearms and military equipment.
- › Procedural incentives-facilitation services by the EPZ authority together with exemption from having to take out a number of licenses.²²¹

4.3.2 Manufacture Under Bond

The Manufacture Under Bond is a customs instrument that has been introduced in Kenya in 1988 with the Act No. 10 of 1988, and it is regulated in detail under Part IV of the Customs And Excise Act No 13 of 1978 (Cap. 472). It also serves the purpose of manufacturing goods for export and ‘offers for duty and VAT-free importation of goods but investors will need to pay corporation tax’,²²² and ‘shall reimburse the government for all costs of the

²²¹ 03 Incentives for Investing in Kenya, Page 22-23 of the Invest in Kenya, a Brochure of the Kenya Investment Authority, available at <https://drive.google.com/file/d/0B6WblmfCZRIMTm5nNXRBNWILU0/edit>

²²² Ibid.

customs officer and guards at site'.²²³

Neither the AIS, nor the APDP has an export related element because of South Africa's obligations to comply with WTO requirements as explained earlier.²²⁴ Furthermore, because EPZ and the Manufacture Under Bond both have a wider spectrum than just the automotive industry, there is no need to refer to such instruments or to incorporate the relevant laws of South Africa under the APDP or the AIS.²²⁵ Nevertheless, both of these Kenyan instruments ultimately support very similar objective as the AIS: to encourage foreign direct investment into local production in order to create and maintain employment, and to increase output of the local industries.²²⁶ The analysis of the investment related instruments of the three countries demonstrate that again the comprehensive South African AIS is able to reach out to more automotive sub-sectors and defines more criteria that may help to improve the local value addition and so eventually increase the local content of the South African automotive production. Nigeria has started the journey by creating its own national policy and introducing an import duty related incentive mechanism as a tool to influence the automotive trade and local production by increasing the import duty rate difference between CBUs and CKDs/SKDs. Furthermore, the Automotive Development Fund and the Specialized Auto Industry Research Fund both recognize the need of the industry for affordable

²²³ D.F. Marti & I. Ssenkubuge 'Industrialisation And Industrial Policy In Africa: Is It A Policy Priority?' *South Centre*, May 2009, 34, available at http://www.southcentre.int/wp-content/uploads/2013/05/RP20_Industrialisation-and-Industrial-Policy-in-Africa_EN.pdf

²²⁴ Please see Section 2.3, Chapter 2, Page 18.

²²⁵ The South African variation of the EPZs are the Industrial Development Zones regulated by Section 10 of the Manufacturing Development Act No. 187 of 1993, available at <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/SC-CW-02-01%20-%20Industrial%20development%20zones%20-%20External%20Guide.pdf>

²²⁶ AIS Summary opt cit (n2), Objectives

and quick financing to enhance local R&D besides the increase of local production. In Kenya the consensus between the industry association and the Kenyan government does not yet seem to be at a level that is necessary to introduce a consistent sector specific policy. The measures available today for companies wanting to invest in the automotive sector in Kenya are not tailored for the needs of the automotive industry but are generic tools available for any industry. Considering that Kenya just like Nigeria used to have a fairly large local production as opposed to the current very low volumes of local assembly clearly indicates the need for an effective automotive policy.

5 THE INSTITUTIONAL BACKGROUND, APPROVAL AND MONITORING OF INCENTIVE SCHEMES

This chapter will discuss the institutions and government agencies which control the investment related incentive instruments discussed in the previous chapter. In particular the Chapter will analyse the process of funding applications from an evaluation and approval perspective, and the obligations and rights of the responsible institutions in the monitoring period of the investment projects. The sequence of examination will be the same as in the previous chapters, namely first the AIS will be analysed in that only the different rules applicable to the P-AIS and MHCV-AIS will be mentioned separately. Then the investment incentivizing instruments of Nigeria and finally Kenya will be discussed.

5.1 South Africa: The DTI

5.1.1 Application Process

The responsible ministry for the AIS in South Africa is the DTI and the division within the DTI that administers the AIS is the IDAD. The role of IDAD is two-folded: on the one hand it designs efficient and effective incentives to help building a sustainable and competitive industry, on the other hand it administers, monitors and evaluates the incentives.²²⁷ The IDAD provides free advice to applicants and approved projects regarding the completion of the application and the claim forms for grant disbursement.

²²⁷ IDAD 2013-14 Performance Report opt cit (n181) Section 2.1

The application process for the AIS commences by the applicant filing a completed application form either by mail or via online application at the DTI's website.²²⁸ The submitted application form is then checked for completeness and the applicant may be requested to file additional information. The IDAD reviews whether the applicant has submitted all the supporting documents to prove that it is an eligible enterprise required as per Section 6 and complies with all the mandatory conditions required as per Section 4 of the AIS Guidelines. When this formal assessment is completed, the application goes to the project appraisal phase when the project business plan, the applicant's and the project's financial viability, and the undertaken economic benefits are analysed.²²⁹ The underlying principle of the project appraisal process is to establish whether the project is commercially viable when evaluated against its projections, which again must be realistic and reasonable.²³⁰ The project verification process, which may include on-site visits, ends with a report of the inspector on whether the planned project meets all requirements. In this phase the IDAD will consider the application's feasibility based on the economic benefit requirements discussed earlier.²³¹ The application form, the inspection report and the project appraisal are then submitted to the adjudication committee as appointed by the DTI. The adjudication committees comprise both internal and external officials with diversified technical skills, industry and sector specific knowledge.²³² The

²²⁸ AIS Guidelines opt cit (n46) Section 19, Application process, Page 24

²²⁹ IDAD 2013-14 Performance Report opt cit (n181) Section 2.2

²³⁰ AIS Guidelines opt cit (n46) Section 7.1 Qualifying Criteria, Page 8

²³¹ AIS Guidelines opt cit (n46) Section 3.6 Qualifying Criteria, Page 5

²³² Ibid.

committee first checks whether the application is complete and may request additional information from the applicant. Fully completed applications are then scheduled for evaluation. In the adjudication stage the committee reviews the report of the project evaluator and the inspector whether the project is commercially viable and feasible to meet the targets in the business plan and the undertaken economic benefit requirements. If necessary, there will be additional information requested from the applicants. The committee's decision will be either approval or rejection, which the applicant receives via an official letter from the DTI.²³³

In the event of a rejection the applicant has 45 days to lodge an appeal from the date of issue of the notification letter. The decision of the DTI regarding the appeal is final and binding and there is no further appeal possible.²³⁴

Last but not least it is worth taking a note of Section 14.2 of the AIS Guidelines, which gives the right to the DTI to adjust the requirements and conditions of the AIS scheme or the approved grant under certain market or production circumstances. If this provision was not broad enough, the AIS Guidelines go one step further when they declare that such adjustments will be at the sole discretion of the DTI.²³⁵ The AIS Guidelines do not define any criteria that would limit or guide the DTI in making such a decision. In my opinion this provision places significant power in the hands of the DTI potentially putting administrative, operational or financial burden on the

²³³ AIS Guidelines opt cit (n46) Section 19, Application process, Page 24

²³⁴ AIS Guidelines opt cit (n46) Section 16, Appeal process, Page 22

²³⁵ AIS Guidelines opt cit (n46) Section 14.2 General conditions, Page 21

respective entities. On the other hand, the lack of limits of the discretion of the DTI allows for more flexible negotiation by applicants, which may prevent or mitigate the aforesaid negative consequences.

5.1.2 Grant Disbursements

Approved grants will be disbursed upon approval of the submitted claim form subject to achievement of predetermined performance requirements defined in Section 11 of the AIS Guidelines. The conditions applicable to the claim and claim form are regulated under Section 12 and partially Section 13 of the AIS Guidelines.

The principle obligation of the claimant is to demonstrate in its claim that it has invested in qualifying assets on an approved project for which the claimant has to document the respective capital expenditure on the qualifying assets and attach the required documents to the claim form.²³⁶ From a formal legal perspective only complete and accurate original claim forms, that have been duly signed by a person authorized by a resolution of the Board of Directors of the company and an independent external auditor or accredited person, will be accepted by the DTI.²³⁷ As long as the claim form is formally acceptable, complete and accurate, the DTI will appoint an accredited consulting engineer to visit the claimant's sites and verify the capital expenditure and assets upon which it will issue the AIS certificate.²³⁸ In addition the DTI may also have an independent audit done upon the financial

²³⁶ AIS Guidelines opt cit (n46) Section 12.1 Claim Submission, Page 19

²³⁷ AIS Guidelines opt cit (n46) Section 12.4 Claim Submission, Page 19

²³⁸ AIS Guidelines opt cit (n46) Section 12.2 Claim Submission, Page 19

statements of the claimant.²³⁹ The importance of the verification and audit process is that only the value of investment into such qualifying assets can form basis of the grant payment which has been certified by the accredited consulting engineer or the auditor, whichever is the lower amount.²⁴⁰

The claim periods are defined in 12 months and grants are accordingly paid on an annual basis if the claims are submitted latest within six months after the end of the claim period.²⁴¹ The level of readiness of the requirements that must be achieved in order to be eligible to file a claim is regulated in Section 11 of the AIS Guidelines. There are three different levels of readiness for the three claim periods. The three levels of readiness requirements are related to the start of the investment commissioning, the start of the commercial production, as well as, the level of completion of the eligibility criteria and undertaken economic benefit requirements. Each level attracts a different maximum amount of payment.

The rules for the light motor vehicle OEMs are as follows. The first claim can be submitted either 12 months after the start of the commercial production qualifying for a maximum amount of 33.33%, or it may be submitted for a maximum amount of 16.66% six months after the commencement of the investment commissioning if and when the project has at least 50% of the qualifying investment on site, assembled and installed. Claim number two cannot be submitted earlier than 12 months after start of commercial production and only in the event that the project achieved at least

²³⁹ AIS Guidelines opt cit (n46) Section 12.3 Claim Submission, Page 19

²⁴⁰ AIS Guidelines opt cit (n46) Section 12.6 Claim Submission, Page 19

²⁴¹ AIS Guidelines opt cit (n46) Section 11.1 Grant Disbursement, Page 17 and Section 13.1 Conditions Regarding Grant Disbursement, Page 20

50% of the approved eligibility criteria and at least 50% of the undertaken economic benefit requirements. The maximum amount of the payment for the second claim is a cumulative 66.66% of the costs of the certified qualifying assets. The third claim for the remaining amount of the 100% payment may be lodged 24 months after start of commercial production if and when the project has achieved the minimum 50,000 plant production volume and achieved 100% of the approved economic benefit requirements and eligibility criteria.²⁴² For CMs the regulation follows the same structure and logic but the percentages of the maximum payment amount are different. At the first claim they can claim either 40% maximum payment if commercial production has already started, or 20% if the investment commissioning has started and 50% of the qualifying investment on site, assembled and installed. The second claim's maximum cumulative payment is 70%.²⁴³

There are two additional criteria for the CMs: (i) they must prove that after this investment, they will achieve at least 25% of the total entity turnover or a minimum turnover of R10m annually by the end of the first full year of commercial production;²⁴⁴ and (ii) they have a letter of intent or order for the production of components to supply into the global value chain of a light motor vehicle OEM (copy of purchase order to be filed).²⁴⁵ It shall be noted that the level of total entity turnover (25%) to be achieved by the CMs by the end of the first full year of commercial production under this Section 11.3 of the AIS Guidelines is different to the percentage of total entity turnover indicated

²⁴² AIS Guidelines opt cit (n46) Section 11.1 Grant Disbursement, Page 17

²⁴³ AIS Guidelines opt cit (n46) Section 11.2 Grant Disbursement, Page 17

²⁴⁴ AIS Guidelines opt cit (n46) Section 11.3 Grant Disbursement, Page 18

²⁴⁵ AIS Guidelines opt cit (n46) Section 11.4 Grant Disbursement, Page 18

under Section 7.4.1 of the AIS Guidelines under the economic benefit requirements for the second additional 5% grant. This latter Section requires achieving at least 20% in the first full year of commercial production. In my opinion this is a discrepancy and may create confusion in interpretation by participating entities since if a claimant proves that it achieved 20% “anytime” in the first full year of commercial production it is qualified for the proportionate amount of the second additional 5% grant. However, the claim rules would only allow to claim the payment if the claimant has already reached 25% “at the end” of the first full year. As per my opinion the discrepancy might come from the lawmaker’s intention to differentiate between the right to qualify for and the right to claim the payment of the 5% cash grant: the applicant qualifies for the 5% second additional cash grant if it demonstrates in the business plan submitted with the application form that it is feasible to achieve 20% of the total entity turnover in the first full year of commercial production but it may only claim and receive payment after the end of the first full year of commercial production if it in fact reaches 25% of the total entity turnover or a minimum turnover of R10 million by the end of the first full year of commercial production. This interpretation might be supported by the fact that the conditions of Section 11.3 are also mentioned under the eligibility criteria under Section 6.2.2 of the AIS Guidelines in the exact same way.²⁴⁶ The wording of Sections 11.3 and 7.4.1 however fails to represent this potential intention.

Section 11.7 finally regulates the provisions for filing claims by CMs for

²⁴⁶ Please see Section 4.1.1, Chapter 4, Page 45.

the investment costs of business development services and other competitiveness improvement activities. The grant disbursement will be made upon completion of activities under each focus area in the way that if the duration of the activity is longer than 12 months, two claims may be submitted, the first claim at the end of 12 months and the second claim at the completion of the activities. If a claim is however not submitted six months after the completion of the activities for the focus area, the grant approval will be cancelled.²⁴⁷

The MHCV-AIS regulates the grant disbursement differently in the sense that there both the medium and heavy commercial vehicle OEMs and the CMs follow the same rules as those being the rules detailed above for the light motor vehicle CMs under the AIS.²⁴⁸

5.1.3 Monitoring Period

The monitoring process represents the transparency element of the AIS and it is extremely important for both the participating entities and the DTI. In a broader context it also represents the protection of the interest of the public to monitor, eventually, how the taxpayer's monies are spent. The monitoring related rules are officially included under Section 18 of the AIS Guidelines. However, there are a number of provisions in other sections (Section 13, 14, 15 and 17), which due to their nature and the attached consequences, needs to be considered.

According to the AIS Guidelines, the DTI shall continuously monitor all

²⁴⁷ AIS Guidelines opt cit (n46), Section 11.7, Page 17

²⁴⁸ MHCV-AIS Guidelines opt cit (n143) Section 12 Grant Disbursements, Page 14-15

approved projects in order to assess their performance against the undertaken economic requirements and compliance with the rules of the AIS.²⁴⁹ The monitoring and assessment may happen any time from the moment of filing the application until the end of the monitoring period and may include site inspections.²⁵⁰ The monitoring period continues for two years following the completion of the incentive period that is altogether five years from the grant approval.²⁵¹ To help the monitoring work of the DTI the entities shall develop and submit project-monitoring reports for the approved projects. The importance of the project reports is crucial because failing to submit the report or to submit it on time may result in the DTI reclaiming any moneys paid in terms of the AIS, which may represent significant negative financial impact on the companies.²⁵² Another serious obligation of the participating entities with respect to the monitoring is to retain a copy of all financial statements, invoices and other relevant records according to the South African Bureau of Standards specifications, for at least five years after submission of the claim to which it relates, or the completion/termination of the AIS grant, whichever is the latest date.²⁵³ Should the entity fail to comply with this obligation or fail to make these documents available to the DTI upon request, the AIS grant automatically terminates.²⁵⁴ There are several

²⁴⁹ AIS Guidelines opt cit (n46) Section 18.1 Monitoring, Reporting and Impact Assessment, Page 28

²⁵⁰ AIS Guidelines opt cit (n46) Section 18.2 Monitoring, Reporting and Impact Assessment, Page 28

²⁵¹ AIS Guidelines opt cit (n46) Section 18.3 Monitoring, Reporting and Impact Assessment, Page 28

²⁵² Ibid.

²⁵³ AIS Guidelines opt cit (n46) Section 18.2 Monitoring, Reporting and Impact Assessment, Page 28

²⁵⁴ Ibid.

provisions which speak to the duty to inform the DTI without any delay of any material changes to the main business or the approved investment project, that are to be approved by the DTI, failing which the approved grant may be cancelled and the entity in question will be required to reapply for the grant.²⁵⁵ Section 15 provides for rules regarding the consequences of circumvention of the AIS Guidelines, which more often than not, comes to light during an inspection. The consequence of circumvention is the rejection of an application or claim. Examples are changing the business set-up, the processes or products in order to make the project qualify, or manipulation of inter-company assets, products or processes.²⁵⁶ Section 17 of the AIS Guidelines regulates the criminal, misleading, dishonest and/or irregular activities. The DTI may upon a suspicion of any of the aforesaid activities, suspend payments that may be due or may become due to an applicant.²⁵⁷ Furthermore, findings of an investigation indicating such activities gives the right to the DTI to cease all payments and reclaim any payments already made, with *mora* interest.²⁵⁸

Although the lawmaker intended to create detailed and clear rules for the most important aspects of the incentive period, due to some discrepancies and unreasonably flexible rights of the DTI, the provisions of the AIS Guidelines regarding the application, claim and monitoring process might

²⁵⁵ AIS Guidelines opt cit (n46) Section 13.4 Conditions Regarding Grant Disbursement and Section 14.1 General conditions, Page 21

²⁵⁶ AIS Guidelines opt cit (n46) Section 15 Additional Legal Conditions, Page 22

²⁵⁷ AIS Guidelines opt cit (n46), Section 17.1 Criminal, misleading, dishonest and/or irregular activities, Page 22

²⁵⁸ AIS Guidelines opt cit (n46) Section 17.2 Criminal, Misleading, Dishonest And/Or Irregular Activities, Page 22

leave room for improvement.

5.2 Nigeria: The NAC, Nigerian Customs Services and the Bank of Industry

5.2.1 The NAC and the Nigerian Customs Services

The NAIDP is administered by the following institutions: the Federal Ministry of Industry, Trade and Investment, the Federal Ministry of Finance, the Nigerian Customs Service and the NAC. The NAC's responsibility is to be the voice of the automotive sector towards the government through planned consultation with all stakeholders and monitoring the industry. In this role the NAC gives advice to the government, especially to the Federal Ministry of Industry Trade and Investment and the Federal Ministry of Finance on reviews of current fiscal measures and proposals for new ones.²⁵⁹

To implement the tariff related initiatives of the NAIDP the NAC has to first send its proposal on the tariff changes to the National Tariff Technical Review Committee chaired by the Director (Fiscal) of the Federal Ministry of Finance. The aforesaid Committee then forwards its reports to the National Tariff Review Board chaired by the Federal Minister of Finance, with the Minister of Industry as member. The outcome is then presented for Presidential or Federal Executive Council consideration. If approved, the Federal Minister of Finance issues the respective circulars.²⁶⁰

As mentioned in Chapter 3, the NAC issues a certificate to the companies who would like to benefit from the tariff concession to obtain the

²⁵⁹ NAIDP opt cit (n7) Section 3.3 Administrative Measurements, Page 12

²⁶⁰ Ibid.

status of “Prospective Manufacturer” being the eligibility criteria of the concession.²⁶¹ The duty differentials and levies to be paid by the concessionaries are imposed and collected by the Nigerian Customs Services. To make sure that the Nigerian Customs Services recognize their status as “Prospective manufacturer” and allow the concessionaries to pay reduced tariffs, NAC forwards the details of the applicant’s eligible status of “Prospective manufacturer”.²⁶² Point c of Section 3.4 of the NAIDP declares that ‘the concession will be allocated to registered and authorized OEM distributors only based on certain criteria, including their average imports over the last three years’. According to the FAQ to this condition, the Nigerian government through the monitoring services of the NAC and the Nigerian Customs Services will monitor vehicle supply and demand but an average of previous import over a time period will most likely apply. The government based on the proposal of the NAC will then determine the criteria in question, and after adoption, the NAC will inform the Nigerian Customs Services for implementation purposes.²⁶³ This explanation does not necessarily give more clarity to what criteria may be the basis of the concession other than the indicated previous average imports, which, in my opinion gives floor to uncertainty in interpretation and implementation of the tariff concession. Besides, such a broad right may also create the possibility of imposing unrealistic and inefficient conditions upon the applicants coming from too ambitious targets of the responsible institutions. On the other hand, such a

²⁶¹ NAIDP opt cit (n7) FAQ, Page 25

²⁶² Ibid.

²⁶³ NAIDP opt cit (n7) FAQ, Page 26

“flexible” rule may be beneficial to the applicants as they may have better chances for negotiating a more personalized plan.

My overall impression of the structure of the process of the tariff concession is that the rules of application and approval process are not detailed enough and important rules are embedded in the FAQ instead of the main body of the instrument. In my opinion the FAQ should rather engage with interpretational questions and give practical guideline to the applicants and not stipulate rules on the merits of the given instruments.

5.2.2 Bank of Industry of Nigeria

The Automotive Development Fund as stated earlier is controlled by the NAC and processed through the Bank of Industry of Nigeria. There is no special application and decision making process for the Fund but the Bank follows the same process with all types of funding applications. Companies that wish to apply for funding have to submit a formal application letter and complete the questionnaire of the Bank in order to get assessed for eligibility. The questionnaire contains questions regarding the ownership and management structure of the applicant (details of owners, officers and the members of the board of directors), the analysis of the business operation, justification for the need of requested loan, credibility and credit worthiness (existing credit facilities), detailed description of the planned project the loan is supposed to finance in part (products, existing and proposed increased capacity, investment costs, source of finance, production plan, production process and phases, production costs, technical details of all existing and planned assets and equipment, as well as, labour force required etc.),

description of the applicant's market/sector, financial projection (sales and working capital forecast), risk and success factor analysis.²⁶⁴ The applicants have to annex their financial statements and annual balance sheets for the preceding four years.²⁶⁵

The Bank's emphasis is on prudent project selection and management. Accordingly, it supports quality projects with potential developmental impact.²⁶⁶ Therefore, it considers industries that meet the below pre-conditions which suit nicely to the goal and objectives of the NAIDP to enhance industrial growth inter alia through making available affordable financing for the motor industry:

- 'Capacity to substantially add to industrial output.
- Projects that use largely domestic raw materials.
- Industry in which Nigeria's comparative advantages could be converted to competitive ones.
- Ability to promote the expansion of exports through the production of high quality products that are attractive to domestic and export markets.
- Niche projects that produce for worldwide consumption.
- Projects that create both forward and backwards linkages, with the rest of the domestic or regional economy.
- Ventures that promote inter-state or regional integration.
- Small and medium enterprises that have linkage with large firms belong to clusters and operate under franchise.
- Enterprises with high employment generation capacity.
- The project must be technically feasible, commercially viable and economically desirable.
- Environmentally friendly projects.
- Enterprises that have good management set-up and proper accounting procedures.
- Enterprises promoted by women entrepreneurs.²⁶⁷

²⁶⁴ Project Appraisal Questionnaire in respect of credit facility request for Small, Medium and Large enterprises, Bank of Industry of Nigeria opt cit (n208)

²⁶⁵ Ibid.

²⁶⁶ Project Selection Criteria, Bank of Industry of Nigeria opt cit (n208)

²⁶⁷ Ibid.

The Bank in general assists the following types of enterprises irrespective of the type of funding they apply for, henceforth applicable to the applicants of the Fund too:

‘small, medium and large enterprises, excluding cottage industries; new or existing companies, seeking expansion, modernization or diversification; credit worthy promoters who will be required to prove their commitment to the project by contributing at least 25% of the project cost excluding land; borrowers whose management capability, financial situation (including availability of collateral and guarantee), character and reputation are incontrovertible; clients with demonstrable ability to meet loan repayments; and borrowers with no record of unpaid loans to erstwhile development finance institutions and other banks’.²⁶⁸

As mentioned in the previous chapter, the Fund is not really comparable with any of the APDP instruments, however, the elements of the project appraisal questionnaire are very similar to the content of the AIS application form. The difference is that the project description in the AIS obviously focuses on how the project will comply with the economic benefit requirements but the information requested otherwise is similar. In my view the Fund’s questionnaire seems to be more detailed than the AIS questionnaire in regards to description of the project, the products and production processes or the market/sector analysis. This in my view may raise the question of transparency of the AIS grants and whether the DTI indeed has all the necessary information when making decisions considering that the AIS is a non-taxable cash grant made available from the taxpayers monies.

²⁶⁸ Who can Bol Assist? Bank of Industry of Nigeria opt cit (n208)

5.3 Kenya: The EPZ Authority and the Commissioner of Customs and Excise

As seen earlier Kenya does not have a sector specific national policy, nor does it have sector specific investment incentives that could have been analysed. Therefore, Chapter 4 gave a brief overview of certain legislative instruments that may be applied by automotive companies too. The NIP only defines two ministries, the Ministry of Transport and the Ministry of Industrialisation and Enterprise Development that are responsible for driving the achievement of the automotive related goals and objectives of the NIP as discussed earlier.²⁶⁹ Their performance will be measured by a price analysis of the motor vehicles in the Kenyan market that should show a reduction over the required time period of 15 years, which, based on the policy, should mean that the said ministries implemented the required instruments to achieve the said goals which, however, at present are still to be fulfilled.²⁷⁰ Besides these provisions on institutions relative to the auto industry, the authorities responsible for the EPZ and the Manufacture under Bond may also have relevance for this study due to their nature inducing foreign investment into the country as discussed earlier. Therefore, this Section shall discuss briefly the licensing and monitoring process of the EPZ and the Manufacture under Bond.

²⁶⁹ NIP opt cit (n9) Chapter 7 (Monitoring and Evaluation), Page 63

²⁷⁰ Ibid.

5.3.1 EPZ Authority

Section 3 (1) of the Export Processing Zones Act No 12 of 1990 (CAP. 517) establishes the Authority.²⁷¹ The principal objectives of the Authority are

‘(a) the development of all aspects of the export processing zones with particular emphasis on provision of advice on the removal of impediments to, and creation of incentives for, export-oriented production in areas designated as export processing zones; and
(b) the regulation and administration of approved activities within the export processing zones, through implementation of an administrative system in which the export processing zone enterprises are self-regulatory to the maximum extent; and
(c) the protection of Government revenues and foreign currency earnings.’²⁷²

The Authority in fulfilling the above objectives is empowered to inter alia advise the minister responsible for industry of development of EPZs, plan the development and the maintenance, as well as, finance the basic infrastructure of the EPZs, examine and process the EPZ applications, issue certificate of origin to EPZ enterprises, suspend or cancel license for violation of the applicable provisions of the Customs and Excise Act (Cap. 472), the Exchange Control Act (Cap. 113) and the Value Added Tax Act (No. 7 of 1989).²⁷³

Part IV of the Export Processing Zones Act regulates the licensing procedure. According to Section 19 (1) of the Act

‘No person shall carry on business as an export processing zone developer, export processing zone operator or export processing zone enterprise or hold himself out as providing or maintaining activities or facilities within an export processing zone enterprise unless he has been licensed as

²⁷¹ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220)

²⁷² Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 9 (1)

²⁷³ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 9 (2)

an export processing zone developer or an export processing zone operator or an export processing zone enterprise, as the case may be.²⁷⁴

Only applications completed in the prescribed form may be granted by a license by the Authority.²⁷⁵ The Authority before issuing the license may consult with the Commercial-General of the Kenya Revenue Authority whom the Authority anyhow needs to inform every time a license has been issued by specifying the activities to be carried out under the EPZ license, the location and any special conditions defined.²⁷⁶ The Authority is obliged to keep a register of all the licenses issued including any changes or termination of registered licenses.²⁷⁷ In the event that the application has been rejected or the license has been cancelled, the entity in question may file an appeal with the ministry responsible for industry that may set aside the decision of the Authority if it deems necessary in the interest of the public.²⁷⁸

5.3.2 The Commissioner of Customs and Excise

According to Part IV of the Customs And Excise Act No 13 Of 1978 (Cap. 472) the Commissioner is entitled to issue, suspend, cancel or refuse to renew the licenses for Manufacture under Bond.²⁷⁹ Applications for a licence for Manufacture under Bond shall be in the prescribed form, an application fee is to be paid, and the Commissioner may require to deposit a security in the amount as the Commissioner deems appropriate as a condition to the grant of

²⁷⁴ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 19 (1)

²⁷⁵ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 19 (2)

²⁷⁶ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 19 (2A) and Section 19 (3)

²⁷⁷ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 20

²⁷⁸ Export Processing Zones Act No 12 of 1990 (CAP. 517) opt cit (n220) Section 31

²⁷⁹ Customs And Excise Act No 13 Of 1978 (Cap. 472), available at http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20472#part_V

the licence.²⁸⁰ Every license must be renewed annually (expires on December 31 each year) and an annual license fee must be paid.²⁸¹ The consequences for infringing the terms of the license or for using or permitting premises to be used for manufacturing under bond without a licence may be punished by a fine or by imprisonment or both.²⁸² Furthermore, goods related to the offence shall be subject to forfeiture.²⁸³ Any resolution of the Commissioner regarding revocation, cancellation, suspension or refusal to renew a license shall be delivered in writing and include reasoning.²⁸⁴ The Act determines very strict rules on the parameters of the layout of the building, room, place of the factory, which may only be changed by permission of the Commissioner.²⁸⁵ All raw materials, machinery and any other items of the plant entering and leaving the premises must be registered and stored in prescribed form and any non-compliance is considered as an offence and may result in a fine and/or suspension or revocation of the license.²⁸⁶

The review of the institutional framework of the national auto policies in South Africa and Nigeria shows that the main institution that is usually responsible for the implementation and monitoring of the incentive schemes is the ministry responsible for trade and industry. NAC in Nigeria basically fulfils the role of IDAD within the limitations of the current policy framework. The lack of policy in Kenya as seen earlier shows that the Kenya Motor Industry

²⁸⁰ Customs And Excise Act No 13 Of 1978 (Cap. 472), opt cit (n279), Section 58A (2) and (4)

²⁸¹ Customs And Excise Act No 13 Of 1978 (Cap. 472), opt cit (n279), Section 58A (3)

²⁸² Customs And Excise Act No 13 Of 1978 (Cap. 472) opt cit (n279) Section 58A (6)

²⁸³ Ibid.

²⁸⁴ Customs And Excise Act No 13 Of 1978 (Cap. 472) opt cit (n279) Section 58C

²⁸⁵ Customs And Excise Act No 13 Of 1978 (Cap. 472) opt cit (n279) Section 58B-H

²⁸⁶ Ibid.

Association has to find a way to receive enough support from the Kenyan Ministry of Trade and Industry so that together they can persuade the government that a sector specific policy is required which would give centralized control over the implementation to one ministry.

6 CONCLUSIONS

This final chapter shall give answer to the question of the comparative analysis of the AIS with the Nigerian NAIDP and certain Kenyan legislative instruments: can the AIS in its current form fulfil its objectives, and what are its potential weaknesses. This chapter shall therefore reflect to the achievements and anomalies of the AIS identified earlier, draw the conclusions and propose improvement areas if possible.

6.1 Objectives and Achievements

Section 4.1.4 of Chapter 4 has introduced the statistical data giving an overview of the achievements of the AIS. This Section shall make reflections to those data in order to understand whether the objectives of the AIS since its introduction have been met.

The objectives of the AIS can be grouped as follows: increase output ('increase plant production volumes'), increase employment ('sustaining employment'), increase local value addition and through that the local content ('strengthen the automotive value chain') and increase R&D ('strengthen and diversify the automotive sector') of the South African auto industry. The fulfilment of these objectives should eventually achieve the last objective such as improving the competitiveness of CMs.

Considering the data of the IDAD Performance Report 2013/2014 one can say that there has been a significant increase in the amount of projected investments in 2013/2014 compared to 2012/13, in particular in the OEM

investments which is a 99% year-on-year increase.²⁸⁷ Interestingly however, if one looks at the production statistics of the same time period, the impact of the above investments and approved AIS grants on the local production volumes is rather marginal for passenger cars with a 4.4% increase whereas there was a relatively high, 13.8% increase for light commercial vehicles.²⁸⁸ NAAMSA refers to a projection for a total vehicle production of 630,000 units in 2015 which would mean approximately 10% increase compared to 2014²⁸⁹ and may give hopes to have a bigger increase in the passenger cars production than in 2014. Nevertheless, the figures showed earlier points towards that the contraction of the local production in the passenger car market evolved during the MIDP era has seemingly not changed yet under the new policy era of the AIS or the APDP.

As mentioned earlier, the figures for export earnings of the auto industry are considered to be record high for South Africa compared to previous years: 12% growth from 2013 to 2014 out of which 7.8% accounts for components.²⁹⁰ The 2015 year-to-date data of South African vehicle exports show continuous progress by a 33% higher export volume compared to the same period of 2014.²⁹¹

The contribution of the approved investment projects to the overall employment in the automotive industry can be reviewed based on the number

²⁸⁷ Please see Section 4.1.4, Chapter 4, Page 54.

²⁸⁸ Please see Section 4.1.4, Chapter 4, Page 54-55.

²⁸⁹ NAAMSA media release on the APDP comment to be attributed to dr. Johan van Zyl, president opt cit (n196)

²⁹⁰ Please see Section 4.1.4, Chapter 4, Page 55.

²⁹¹ From approximately 113,000 units to 168,500 units. South African Vehicle Exports, available at <http://www.aiec.co.za/>

of projected jobs, geographical allocation of grants and the unemployment data per province for the manufacturing. The IDAD Performance Report shows a year-on-year increase of 196% in the total number of the projected jobs, and an average increase of 63.5% in projected automotive jobs across the provinces of KwaZulu-Natal, Western Cape and Gauteng, which seems like a major increase.²⁹² The year-on-year change in employment from 2013 to 2014 for the manufacturing sector, however, shows that the only real positive change happened in KwaZulu-Natal with an increase by 4.9% but the rest of the provinces show decrease in manufacturing jobs.²⁹³ Considering that the largest portion of the AIS grants in total was approved for projects in the Eastern Cape where the biggest employer is the automotive manufacturing, the positive impact of the AIS on employment creation in the province is rather subtle and one may question whether the economic benefit criteria of employment creation as approved by the DTI per projects were indeed realistic and reasonable as the AIS Guidelines in Section 7.1 clearly require.

The objective of increasing the local content of South African built automotive products is again not only an objective but an economic benefit criterion in order to be eligible for an additional 5% of cash grant. Between 2011 and 2015 the local content increased only by approximately 4-5%, which does not create a significant change in the structure of the automotive supply chain and demonstrates that this objective of the AIS has yet to

²⁹² Please see Section 4.1.4, Chapter 4, Page 55.

²⁹³ Ibid.

become reality.²⁹⁴ This might partially be caused by the vague definition of the said criteria in the AIS Guidelines.²⁹⁵ Another reason may be the lawmaker's intention to create a fully WTO compliant policy having learnt from the MIDP's bad example which requires a high degree of creativity to create a lawful local content requirement since besides export performance, it is also prohibited by the Agreement on Subsidies and Countervailing Measures to condition a state subsidy upon the use of domestic over imported goods.²⁹⁶ Nevertheless, the NAAMSA media release cited earlier claims for an increase of the total APDP local value addition of over R5 billion or 12.3% which indicates that the level of domestic value creation has indeed started to increase.²⁹⁷

There is no data on the R&D related achievements of the AIS policies in the quoted IDAD Performance Report, which may indicate that there has not been or only marginal undertaking and improvement in the field for which the DTI has decided not to communicate it at this stage. Therefore, the assumption is that the AIS has not yet made or not much progress in this field compared to the MIDP.

According to the analysis of NAACAM provided in the review of the APDP, due to the current situation of the industry, the sequence of the AIS objectives should rather be reversed in the sense that the main objective of the APDP, and so that of the AIS, should be supplier competitiveness because the other growth objectives can only be achieved once the South

²⁹⁴ Please see Section 4.1.4, Chapter 4, Page 56.

²⁹⁵ 'Demonstrate substantial increase in local content with respect to value addition of products.' (Subsection E. Value addition of Section 7.3.2 Table A1 of the AIS Guidelines)

²⁹⁶ Article 3.1 b) of the Agreement on Subsidies and Countervailing Measures, available at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

²⁹⁷ Please see Section 4.1.4, Chapter 4, Page 56.

African produced vehicles and components can compete on an even level with low cost countries.²⁹⁸ NAACAM believes that this can only be achieved if the APDP aims to offset the disadvantages of manufacturing in South Africa such as low level of production, high level of complexity in production; low economies of scale, the so-called “country costs” (e.g. facility amortization, availability of local raw materials or technology, financing costs, cost of labour etc.), and the low level of productivity which altogether count for approximately 29% increase of the wholesale price of locally produced motor vehicles.²⁹⁹ To address these problems in the AIS, NAACAM proposes to increase the grant on tooling to 75% from the current 20%-30% and on facilities to 45% from the current 20%-35%.³⁰⁰ To raise funding for this proposal NAACAM suggests increasing the difference between CBU and CKD import duty rates, furthermore, creating a new levy to be charged per imported CBU and CKD unit.³⁰¹ NAAMSA supports the idea of focusing on supplier competitiveness but it does not see a need to change the currently available financial incentive schemes in order to achieve the necessary improvement.³⁰²

According to a recent media statement of the Minister of Trade and Industry, Rob Davies, the DTI will propose a number of changes to the APDP as a reaction to the findings of the APDP review process which show that

²⁹⁸ NAACAM's response to APDP Key Strategic Issues raised by the automotive industry stakeholders (NAACAM, NAAMSA, NUMSA & The dti), June 19, 2014, opt cit (n24) Slide 6

²⁹⁹ Ibid.

³⁰⁰ NAACAM's response to APDP Key Strategic Issues raised by the automotive industry stakeholders opt cit (n24) Slide 8

³⁰¹ NAACAM's response to APDP Key Strategic Issues raised by the automotive industry stakeholders opt cit (n24) Slide 10

³⁰² NAAMSA media release on the APDP comment to be attributed to dr. Johan van Zyl, president opt cit (n196)

achieving the projected target of 1.2 million vehicles produced in South Africa by 2020 is unlikely to happen³⁰³ Therefore, inter alia, the DTI proposes to decrease the currently applicable 50,000 units annual capacity and actual production volume to 10,000³⁰⁴ to promote new entrants into the industry and to continue encouraging established manufacturers to produce and source locally. This means that the AIS would also be available for such new entrants committing to achieve the lower threshold.³⁰⁵

6.2 Formal Review

As mentioned in Chapter 4 and 5, there are a number of discrepancies between the wording and structure of the three AIS policies allowing for potential misinterpretation. In my view, it would be advisable to first and foremost clarify the relation of the three policies by perhaps including only those provisions in the P-AIS and the MHCV-AIS Guidelines that are special and different to the AIS Guidelines based on the principle of “lex specialis derogat legi generali”. This would make it clear that all matters not regulated specifically in the two sub-components are regulated under the general provisions as defined in the AIS Guidelines. Similarly, the contradictory conditions regarding the total entity turnover under the provisions of the second additional 5% of cash grant in Sections 7.4.3 and

³⁰³ Announcement: 2014/15 Review of the Automotive Production and Development Programme (APDP), 8 November 2015, available at <https://www.thedti.gov.za/editmedia.jsp?id=3567>

³⁰⁴ “Even established manufacturers such as General Motors South Africa and Nissan South Africa have also been struggling to achieve these numbers, especially as domestic new vehicle sales and economic growth have stalled.”, New incentive threshold opens way for lower-volume auto assemblers, by Irma Venter, Engineering News, available at <http://www.engineeringnews.co.za/article/auto-industry-2015-11-20>

³⁰⁵ Ibid.

11.3 of the AIS should also be urgently clarified for the reason that it can hinder claiming payment by applicants and non-compliance can also result in serious financial consequences.³⁰⁶ The R&D related provisions under Annex II of the AIS Guidelines, as mentioned under Section 4.2.3 of Chapter 4 would require further clarification for consistent implementation and decision-making.³⁰⁷ Considering the transparency of the AIS, as seen above, currently the concrete data per applicant is not available but only the geographical and overall data per OEMs and CMs is available per AIS grant. In my view it would be inevitable to issue a public version of the approval letter issued by the DTI to the applicant entities and make it available for any South African citizen upon request like in developed countries. The public version of the approval letter should contain data of public interest such as name of entity, place of investment, value of investment, and the high level figures of the undertaken economic benefit criteria but at least the projected number of jobs and production volume increase to ensure that the taxpayers are able to follow how their taxes are spent by the state. An alternative solution could be to follow the Nigerian example and sign a memorandum of understanding³⁰⁸ between the applicant and the South African government to be approved by a government decree, which perhaps would ensure even higher transparency and commitment from both sides. Another improvement proposal for the AIS may be to review the AIS questionnaire that has to be submitted with the application and perhaps take the Nigerian Automotive Development Fund's

³⁰⁶ Please see Section 5.1.2 of Chapter 5, Page 74.

³⁰⁷ Please see Section 4.2.3 of Chapter 4, Page 63.

³⁰⁸ Please see Section 4.2.1 of Chapter 4, Page 59.

questionnaire as an example. The questions and details of the Automotive Development Fund regarding the project description, the products and production processes or requesting a market/sector analysis for the entity could provide useful and more detailed information to the DTI regarding the planned projects applied for funding. Furthermore, the market/sector analysis may help the DTI in prioritizing regions, sub-industries or particular objectives of the AIS. This potential improvement in my views could eventually increase the level of transparency of the AIS.

6.3 Conclusion

The analysis of the achievements and the formal review of the AIS in my opinion demonstrates that the South African automotive sector needs the continued application of the AIS because it has achieved significant progress in certain areas of the industry contributing approximately 6% to the country's GDP.³⁰⁹ The most valuable achievement in my opinion is that the data analysed under Section 6.1 refers to that almost the entire increase of the production output has supplied export markets which is an important step for South Africa to get more involved in the global automotive supply chain. Nonetheless, the analysis also indicates that perhaps more robust conditions for employment creation and sourcing for locally produced and assembled components should be implemented especially for the light motor vehicle OEMs and CMs supplying the biggest part of the demand for domestic and export markets. Important to note that there have been no grants approved

³⁰⁹ Manufacturing in South Africa, available on May 30, 2015 at <http://www.southafrica.info/business/economy/sectors/manufacturing.htm#.VWmGyKYThFU>

under the MHCV-AIS yet and the annual production volume between 2012 and 2014 remained in the range of 28-34,000 units per annum, so one must ask the question whether the MHCV-AIS is really needed for the South African market and if it is, it may have to be reconstructed. Furthermore, the current inconsistencies as discussed in Section 6.2 above are also advised to be resolved for the sake of good governance and consistent and transparent implementation of the scheme.

The conclusion from the comparative analysis of the AIS with the investment related legislative tools of Nigeria and Kenya is that the overall disadvantageous economic situation of their manufacturing industries makes them uncompetitive even against other developing countries having lower production costs, easier market access conditions and cheaper workforce. This results in a very low share of the global trade having the effect that the significance these countries play in the global OEMs supply chain is still trivial which is true even for South Africa (0.63% of the global production)³¹⁰ having had a relatively steady automotive industry and high government support for the past 20 years. Therefore, to turn the sector competitive to be able to increase its share in the global value chain, and increase local value addition and local content in the production process of automotive products and ultimately sustain employment, the automotive industry needs transparent and effective industry specific policy and incentive schemes such as the AIS with continuous revision and timeously adaptation to the changing market environment as underlined by the cited recent media statement of Minister of

³¹⁰ I. Venter 'Rand, improved volumes push SA auto exports to new record' opt cit (n188)

Trade and Industry, Rob Davies³¹¹.

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