SOUTH AFRICA

In 1996, the U.S. trade surplus with South Africa was $784 million, an increase of $243 million from the U.S. trade surplus of $541 million in 1995. U.S. merchandise exports to South Africa were $3.1 billion, an increase of $355 million (12.9 percent) from the level of U.S. exports to South Africa in 1995. South Africa was the United States' thirty-fifth largest export market in 1996. U.S. imports from South Africa were $2.3 billion in 1996, an increase of $114 million (5.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in South Africa in 1995 was $1.3 billion, an increase of 25.3 percent from the level of U.S. FDI in 1994. U.S. FDI in South Africa is concentrated largely in the manufacturing and wholesale sectors.

IMPORT POLICIES

Import permits under South Africa's Import and Export Control Act of 1963 authorize the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports. In recent years, the list of restricted goods requiring import permits has been substantially reduced, reflecting the Department of Trade and Industry's (DTI) preference for supply-side measures as a means of stimulating local industry. Among the few products still requiring import permits are foodstuffs, used clothing, refined petroleum products, and chemicals. Import permits must be obtained from the Director of Imports and Exports before the date of shipment. Failure to produce a required permit could result in the imposition of penalties.

The Government of South Africa eliminated import surcharges on all goods effective October 1, 1995, in conformance with its WTO commitments. Several U.S. firms have claimed that import surcharges remain in several industries, but the charges cited appear to be excise taxes that are applied in a nondiscriminatory manner to both domestic and foreign producers. Moreover, South African officials expressed an interest in discussing the issue further with company officials once the source of these perceptions has been clearly identified.

Although the Government of South Africa reduced the tariff on instant print cameras from 6 percent to zero on June 28, 1996, instant print cameras and instant print film continue to be classified as "luxury items" and remain subject to high excise taxes of 37.5 percent and 32.5 percent, respectively. Although these excise taxes are non-discriminatory, U.S. producers claim that there are no domestic producers, and the high taxes induce circumvention by illegal importers. Extensive circumvention of customs collection at South African ports of entry may allow some foreign importers to avoid paying the high tax, giving them an advantage over those importers paying proper excise taxes.

Tariff protection may be sought by any South African producer by petitioning the Board of Tariffs and Trade (BOTT). In practice, approval of such petitions is more likely in cases where the producer has a major share of the domestic market and can show that foreign competition is eroding market dominance.

South Africa

Although public commentary on tariff protection requests is normally open for a 6-week period, the Government of South Africa introduced a 3-week public comment provision for emergency situations. In both cases, however, the government can deliberate for an undefined period before rendering a decision.

In keeping with its WTO commitments, the Government of South Africa has sought to reform a complex tariff structure inherited from apartheid-era governments. In the past two years, the Government of South Africa has simplified and reduced its overall tariff rate from a level in excess of 20 percent to 12 percent. Despite these liberalizing policies, many industries previously protected by nontariff barriers have sought to increase tariffs in their industry to WTO bound levels. DTI and BOTT, however, have refused most of these tariff increase applications in favor of more WTO-consistent supply-side measures. In April 1996, BOTT and DTI turned down a request from the telephone manufacturers of South Africa to increase tariff rates on telephone sets and telephone set components from 0 and 5 percent, respectively, to 20 percent. In recent instances where domestic producers have petitioned the Government of South Africa for tariff increases, the Government of South Africa has accepted U.S. input.

Between 1992 and 1994, increases in South African tariffs on paperboard and paper products, certain steel products, and cosmetics were noted. Although DTI maintains that no tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or misclassification into a higher tariff category. One such instance involves the misclassification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate.

As a result of a DTI/BOTT evaluation of the textile and clothing industry, South Africa set a 7-year period of tariff reduction for clothing and textiles, rather than the 12-year reduction negotiated under the WTO. In most categories of textiles, tariff rates will decrease between 2 and 7 percent per year until they reach the end rates applicable, which are, in several instances, lower than WTO binding levels. In 1996, a scheduled reduction in textile tariffs set for September 1996 was delayed several months as domestic concerns urged governmental review of the phase-down plan. Nevertheless, the DTI and BOTT adhered to Uruguay Round commitments, and the scheduled tariff reduction was enacted in December 1996 and made retroactive to September.

While increases in certain tariff headings for paper and paperboard occurred in 1992, the Government of South Africa instituted a general phased reduction of tariffs on paper and paperboard in 1995 that will bring most tariffs down to 10 percent ad valorem by 2000 and to 5 percent ad valorem by 2005. Both DTI and BOTT have introduced rebate provisions for many categories of paper and paperboard, authorizing full duty rebates on imports of uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard. Because of the complex nature of the tariff headings and rebate provisions of the paper and paperboard industry, the Government of South Africa requested that numerical tariff headings be provided to facilitate inquiries about these industries.

U.S. officials have received several complaints from U.S. producers regarding the 10 percent tariff applied to soda ash imported into South Africa. Specifically, U.S. exporters are concerned about the amount of soda ash imported into South Africa from Botswana duty free under the Southern African Customs Union (SACU). As SACU was created in 1910, and thus predated the creation of the GATT (1947), notification

of the duty-free status of goods from Namibia, Botswana, Swaziland, and Lesotho was "grandfathered." South Africa is in the process of renegotiating the SACU agreement with its partners, a process which it hopes to conclude by mid-1997. Following this renegotiation, South Africa plans to notify the WTO of the duty-free status accorded to its neighbors under SACU, which will be referred to the Committee on regional Trade Agreements for examination.

In late 1996, South African poultry producers requested that BOTT increase the tariff on poultry product imports from 27 percent to 64 percent. The legally-mandated public commentary period elicited strong letters of opposition from U.S. producers, the U.S. Department of Agriculture, and the French and Canadian missions and continued to be the subject of discussion into 1997.

In early 1997, the Government of South Africa responded positively to U.S. Government requests to remove the tariff on top-loading washing machines, which had been applied because of a new interpretation of "washability specifications" apparently intended to deny major U.S. producers access to the South African market. After considerable bilateral discussions and the intercession of both Vice President Gore and Deputy President Mbeki, top-loading washing machines have been reclassified into a zero-tariff category, with reimbursement of duties collected since April 1994.

As a result of market access commitments made in the Uruguay Round and DTI's attempts to reform its tariff structure, South Africa:

- has rationalized 9,580 tariff lines down to 7,182;
- will bind 98 percent of its tariff lines to WTO binding levels by 2000, up from the 55 percent currently bound;
- will replace all remaining quantitative controls with ad valorem duties and make formula duties WTO-consistent; and
- will cut back tariff lines from the 80 different levels of the past into six levels (0 percent, 5 percent, 10 percent, 15 percent, 20 percent, and 30 percent), with a few exceptions, including clothing and textiles, which will comply with the WTO binding levels over 7 years, ending in 2002, instead of the 12 years negotiated under the WTO. Maximum tariffs in several categories will fall to levels below WTO binding levels. According to the DTI/BOTT plan, South African tariffs in textiles will fall to the following five levels:

Product	South African Plan (*percent*)	WTO Binding Level (*percent*)
Clothing	40.0	45.0
Made-up textiles	30.0	30.0
Fabrics	22.0	25.0
Yarn	15.0	17.5
Fibers	7.5	10.0

South Africa

Customs valuation, in accordance with the WTO Customs Valuation Agreement, is based on the f.o.b. price in the country of export or the transaction value, i.e., the price actually paid or payable. Where the transaction value cannot be ascertained, the price actually paid for similar goods, or a computed value may be used based on production costs of the imported goods. It can be even more technically complex, where the goods are imported into South Africa for shipment to the members of the SACU, and more susceptible of duty evasion.

Over the past year, several South African importers have complained about illicit imports and import duty evasion. Importers of agricultural products, poultry, and manufactured goods have asserted that a lack of adequate funding, training, and staffing has led to a problem of inefficiency and malfeasance among the port customs inspectors and within the state-owned port and cargo handling company, Portnet, facilitating the evasion of customs duties by "gray market" importers. According to sources, malfeasance within the South African port system is exacerbated by corruption within the ports of entry of South Africa's SACU partners (Namibia, Botswana, Swaziland, and Lesotho), where imported goods are occasionally repackaged as items made in one of these respective countries and exported to South Africa where they evade customs levies due to the SACU accord. Finally, illegal shipments overland through Mozambique account for a high share of illegal imports and contraband trade. Importers and foreign customs officials have estimated the percentage of intercepted illegal imports into South Africa at less than 10 percent.

The government is aware of the problems with its customs service and is attempting to redress them through cooperation with international organizations and through training programs with U.S., British, and European customs services. Nonetheless, the problem of illegal imports and customs evasion will take many years to overcome, as the Government of South Africa struggles to direct limited funding and inadequate available human resources across a wide area of law enforcement needs.

While the Government of South Africa has discussed the possibility of a pilot pre-shipment inspection project, BOTT officials state that no such program exists at this time. The U.S. Embassy has not received specific complaints concerning pre-shipment inspections, but several importers expressed their opinion that such a project could be corrupted given the climate of malfeasance and inefficiency in the customs system.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Customs and Excise Administration (CEA) refers to several testing standards to determine the applicability of tariff and customs duties on imported products. Most tests have been described as fair and transparent, and those charges of discriminatory standards that have arisen from time to time have been treated with great concern by the Government of South Africa. In early 1996, U.S. exporters petitioned the Government of South Africa concerning restrictive cold treatment requirements for red meats. Under the Agricultural Committee of the Binational Commission (BNC), the U.S. Department of Agriculture (USDA) and the South African Ministry of Land and Agriculture negotiated an accord to reduce the freezing time of red meats from a minimum of 30 days to 20. Although the protocol awaits final approval by South African officials, it is expected to be enacted in 1997.

Most recently, U.S. exporters of poultry products petitioned the Government of South Africa to rescind its decision to reinstitute the requirement of shipping chicken products in refrigerated containers rather than

in bulk. Viewed by many U.S. exporters and South African importers as a discriminatory phytosanitary requirement, this new requirement has elicited considerable opposition from both domestic and international industry sources. The Government of South Africa has agreed to review its decision in early 1997 and has accepted input from consumers, retailers, importers, and exporters.

GOVERNMENT PROCUREMENT

The Government of South Africa is in the midst of reforming its government procurement policy. South African officials have indicated that the most notable changes in government procurement will be aimed at redressing the legacy of apartheid-era policies, standardization of procurement policy among national, provincial, and municipal tender boards, and a preference system for black South African enterprises. Preferences for local content which the Government of South Africa describes as akin to the "Buy America Act" have also been considered. Although South African officials have underscored the necessity of using procurement policy to redress the inequities of apartheid-era policies, the new bill will attempt to remain consistent with the WTO Government Procurement Agreement (GPA) although South Africa is not a signatory to the GPA. The procurement policies detailed below are current but subject to reform pending the release of the new bill.

Government purchasing is a significant component of the South African economy. Once highly centralized under a national procurement board, procurement is now conducted by the central tender board for central government departments, the nine provinces, and to a limited extent at the municipal level by local tender boards. Nearly all such purchasing is done through competitive bidding on invitations published in Government Gazette and local newspapers. Although the purchasing procedures of the central government and parastatal institutions tend to favor products of local manufacture, an overseas firm may bid if it has an agent in South Africa to act on its behalf. As a general practice, payment is made to the local agent.

Purchases are by competitive tender for project, supply, and other contracts. Bidders generally need not prequalify, but the ability of bidders to supply goods or render a service is usually examined. Foreign firms can bid through a local agent, who will then be so examined. As part of the government's policy of encouraging local industry, a price preference schedule, based on the percentage of local content in relation to the tendered price is employed to compare tenders. The price preference is computed as follows:

Local Content (*percent*)	Price Preference	Local Content (*percent*)	Price Preference
1 to 5	1	40 to 50	6
5 to 10	2	50 to 60	7
10 to 20	3	60 to 70	8
20 to 30	4	70 to 80	9
30 to 40	5	over 80	10

Most parastatals, local authorities, and private buyers such as the mining houses employ their own tender boards, but, for the most part, have practices similar to those of the central government. Most parastatal procurement is guided by, and bound to, the schedule of local content preference. Local government purchases, including those of the nine new provincial governments, are increasingly significant and also involve overseas bidding.

Offsets and Reconstruction and Development Project Concerns

Many South African tenders include an “offset requirement,” a compensatory package that partially “offsets” the government purchase with the promise of a development package funded by the recipient company. Successful offset packages have included worker training provisions, infrastructural development, joint ventures with South African companies, and projects that help fulfill the government’s reconstruction and developmental objectives.

The practice of vetting large tenders through several government ministries has resulted in contradictory valuations of the relative worth of a tender and its offset package by competing interests. This, in turn, has contributed to charges of a lack of transparency in the tender process. In 1995-96, Boeing Industries, awarded a contract worth over $1 billion to supply 10 airframes, was left in a state of confusion when the tender and offset were reportedly reexamined by the Ministry of Public Enterprises and the DTI. Rumors of South African attempts to gain further offset contributions from Boeing and of post-award lobbying by Airbus Industries, Boeing’s competitor for the contract, contributed to perceptions of mishandling.

Of equal concern has been the handling of the aircraft engine tender for these airframes. The engine tender, sought by General Electric, Pratt & Whitney, and Rolls Royce, has been marked by contradictory remarks by various South African officials and a lack of clear instructions regarding the weighting of technical specifications and offset packages. Originally slated for a decision in early 1996, the Government of South Africa delayed its decision until December 1996, forcing Boeing to delay production (and delivery date) of the aircraft. In addition, although the Government of South Africa selected Rolls Royce to provide engines for two of the aircraft, it has yet to make a decision regarding the remaining five aircraft contracted in the Boeing deal. It remains unclear when the Government of South Africa will render its decision regarding these engines.

EXPORT SUBSIDIES

The primary subsidy regime of the Government of South Africa has been the General Export Incentive Scheme (GEIS), through which South African exporters receive direct nondiscriminatory cash subsidies based on the value of exports, the degree of beneficiation or processing, and the local content of the exported product. The Government of South Africa has shown steadfast commitment to the elimination of export subsidies despite considerable opposition from local manufacturers. The DTI “revised”the GEIS in early 1995, “downsized” it again in early 1996, and is expected to eliminate the program before the end of 1997. Under the most recent revision in June 1996, all export subsidies except for those applied to fully manufactured products were eliminated. An export subsidy of 6 percent of local content remains in effect for certain manufactured goods until March 31, 1997.

Instead of direct subsidies, the Government of South Africa has focused on other means of promoting South African exports. The Export Marketing Assistance (EMA) scheme offers financial assistance for the development of new export markets through financing for trade missions and market research. The new export finance guarantee scheme for small exporters is the government's newest means of promoting small and medium exporters through credit guarantees with participating financial organizations.

For a limited period, existing nondiscriminatory tax allowances in terms of the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. Where any new or unused plant or machinery is acquired and brought into use for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost will be written off over 3 years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for the erection of any building, or any improvements to a building, used for manufacturing during the period July 1, 1996, to September 30, 1999, and brought into use before March 31, 2000. Finally, the recently enacted tax holiday scheme provides for up to 6 years of tax-free status for incipient or "greenfield" investments which qualify in "specified manufacturing concerns," satisfy a "labor intensity" formula, and promote development in an underdeveloped geographic location. For each component, the qualifying company will receive 2 years of continuous tax-free status. The tax holiday scheme is available to all qualifying investments, foreign or domestic, export or domestic market oriented. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In light of several complaints from well-known U.S. firms regarding lax enforcement of intellectual property rights (IPR), the Government of South Africa has responded with new and pending legislation and new enforcement techniques for IPR violations. The South African legal framework provides comprehensive IPR protection generally on a par with most western industrialized nations. In May 1995, the new Trade Marks Act of 1993 replaced the Trade Marks Act of 1963, improving protection of internationally-known trademarks. The 1996 decision of the South African Supreme Court Appellate Division that McDonald's is the rightful owner of its mark within South Africa indicates South African commitment to protecting well-known trademarks. As of October 1996, USTR announced as part of its Out-of-Cycle Review that South Africa would remain off the Special 301 watch list from which it was provisionally removed in April 1996. These actions supplement earlier South African efforts to provide IPR protection. The Designs Act of 1993 introduced a registration system providing protection for design proprietors for 10 years from the date of registration or issue, whichever is earlier. In addition, the Patent Act of 1978 was amended in 1988 to provide patent protection of inventions and innovations for a period of 20 years from the date of filing, without extension. Other South African IPR laws include the Plant Breeder's Rights Act of 1976 and the Copyright Act of 1978 (amended in 1992).

While progress has been made in trademark protection, U.S. firms are concerned about substantial trade losses due to copyright violations. South Africa's 1978 legislation protecting copyrights is being supplemented by a proposed Counterfeit Goods Act legislation this year that would set up a special anti-piracy unit. In addition, South Africa's courts have imposed fines on persons found to infringe copyrights. Enforcement remains a problem in part because of a lack of availability of enforcement resources. While U.S. businesses acknowledge that trade losses have declined from $96 million in 1995 to $77 million in

1996, U.S. firms note that continuing trade loses are significant, citing substantial software losses, book piracy, and satellite signal piracy. Awareness of the problem has prompted some business organizations to identify violations and take corrective actions.

The Government of South Africa attempted to pass three new IPR laws in 1996 to improve its efforts to reach full international standards for IPR protection, but only managed to push one through during this parliamentary session. The "Intellectual Property Laws Rationalization Act, 1996" integrates existent intellectual property rights in the former Homelands into the South African system and extends South African IPR legislation to the former Homelands. The Government of South Africa has introduced two bills concerning further IPR protection in the 1997 parliamentary session. The first amends the 1995 Trademarks Act in conformity with TRIPs and WIPO requirements, while the second provides for enhanced protection against counterfeit goods.

SERVICES BARRIERS

In the recently concluded WTO negotiations on basic telecommunications services, South Africa made commitments on most basic telecom services. It adopted the reference paper on regulatory commitments. While South Africa offered to end its monopoly systems in long-distance, data, telex, fax and private leased circuits services as of 2004, it committed only to guarantee one additional operator in these areas at that time. South Africa will make commitments within one year of adoption of legislation on satellite-based services.

INVESTMENT BARRIERS

Vice President Gore and South African Deputy President Mbecki signed an income tax treaty on February 17, 1997, in Cape Town. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. It accomplishes these objectives by reducing tax rates on certain cross-border income flows, and by increasing investor certainty through protection against non-discriminatory taxation and provision for a dispute resolution mechanism. This treaty will enter into force following completion of the ratification process by both countries.