SOUTH AFRICA

In 1997, the U.S. trade surplus with South Africa was $500 million, a decrease of $284 million from the U.S. trade surplus of $784 million in 1996. U.S. merchandise exports to South Africa were $3 billion, a decrease of $106 million (3.4 percent) from the level of U.S. exports to South Africa in 1996. South Africa was the United States' thirty-sixth largest export market in 1997. U.S. imports from South Africa were $2.5 billion in 1997, an increase of $177 million (7.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in South Africa at the end of 1996 was $1.4 billion, an increase of 12.7 percent from the level a year earlier. U.S. FDI in South Africa is concentrated largely in the manufacturing, wholesale, and services sectors.

IMPORT POLICIES

South Africa's Import and Export Control Act of 1963 authorizes 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 products still requiring import permits are foodstuffs, used clothing, refined petroleum products, and chemicals; ozone-depleting chemicals have recently been added per the Montreal convention. DTI contends that it will phase out import permits over time in favor of tariffs. DTI is developing an electronic system to link DTI with customs and with persons applying for permits to facilitate customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

While working toward eliminating import permits in accord with WTO regulations, the South African government has also simplified its tariff structure and reduced tariffs across many product lines. South Africa, however, has recently raised tariffs on certain agricultural products in order to protect local producers. The following agricultural goods are affected:

Wine: As of January 1, 1998, duties on imported wines range upward from 25 percent FOB for ordinary wines or wines used for blending with South African wines. The highest quality wine and champagne have tariffs between 1,500 percent and 4,000 percent. DTI argues that this increase was part of South Africa's efforts to replace import permits with tariffs.

Wheat: DTI announced that a tariff designed to rise in accordance with a drop in international wheat prices is set to take effect this year. At current international prices, the tariff would be approximately $10 a ton.

Poultry: Despite strenuous lobbying by the U.S. government, the Board of Trade and Tariffs (BOTT) raised tariffs on imported frozen chicken parts from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in "seasoned" parts that could be imported at the 27 percent rate. Recently, this loophole was closed, and all frozen chicken parts carry the higher (effectively 64 percent) rate.

BOTT took this action in response to pressure from one large South African chicken producer, which is a part of a corporate conglomerate.

Irradiated meat: Because of a Ministry of Agriculture determination that not enough information exists regarding the safety of irradiated meat and other irradiated food products, importing such goods into South Africa is prohibited.

One major U.S. chemical firm sought through its local agent to reduce the tariff on slabstock polyol (a material for producing foam rubber) from 16 percent to 10 percent. The tariff protects a single local producer. The BOTT recently refused the application to lower the tariff citing “no demand” from local foam consumers for the imported raw material (a point vehemently denied by the petitioning firm).

Overall tariff rates now average 10 percent. Although DTI and BOTT are open to U.S. government advice, no evidence exists that it is suasive in the South African decision-making process.

South Africa reduced the tariff on instant-print cameras from 6 percent to 0 percent on June 28, 1996. However, instant-print cameras and instant-print film continue to be classified as “luxury items” and remain subject to excise taxes of 15 percent. Although these excise taxes are nondiscriminatory, U.S. producers maintain that no domestic producers exist, and the the high taxes are being circumvented by illegal importers.

Any South African producer may petition the BOTT for tariff protection. Approval of such petitions is granted if the producer has a major share of the domestic market and can prove that foreign competitors are challenging its market dominance. Although public comment on tariff -protection requests is normally open for a 6-week period, South Africa introduced a 3-week public comment provision for emergency situations. In either case, the government can deliberate for an undefined period before rendering a decision.

South Africa, complying with its WTO commitments, has worked to reform a complex tariff structure. In the past 2 years, South Africa has simplified and reduced its overall tariff rate from more than 20 percent to 12 percent. Nevertheless, many industries previously protected by nontariff barriers have tried to increase industry tariffs to WTO-bound levels. DTI and BOTT, however, refused most of these tariff increase applications in favor of more WTO-consistent 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 components from 0 and 5 percent, respectively, to 20 percent. In recent instances where domestic producers have petitioned the government for tariff increases, the government has accepted U.S. counter submissions.

Between 1992 and 1994, South Africa increased tariffs on paperboard and paper products, certain steel products, and cosmetics. 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.

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.

DTI has instituted an export promotion scheme specifically for the textile industry whereby an exporter is permitted to import duty free an amount of raw material equivalent to 30 percent of its exports.

The SACU

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 duty free into South Africa from Botswana 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 continues to be permitted under a grandfather clause. South Africa is in the process of renegotiating the SACU agreement with its partners, but it it not clear when these discussions will be completed. In the meantime, the current trading regime between the SACU countries is expected to continue. The revenue-sharing formula for the combined customs pool remains the same as that negotiated in early 1997. The sticking point in finalizing negotiations centers largely around harmonizing tariff rates.

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

rationalize 9,580 tariff lines down to 7,182.

bind 98 percent of its tariff lines to WTO-binding levels by 2000, up from the 55 percent currently bound.

replace all remaining quantitative controls with ad valorem duties and making formula duties WTO consistent.

cut back tariff lines from the past 80 different levels into six levels (0 percent, 5 percent, 10 percent, 15 percent, 20 percent, and 30 percent), with a few exceptions, including clothing and textiles. These tariff lines 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 (%)	WTO Binding Level (%)
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

In accordance with the WTO Customs Valuation Agreement, customs valuation is based on the FOB price in the country of export or the transaction value, that is, the actual price paid or payable. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on production costs of the imported goods. If the goods are imported into South Africa for shipment to the members of the SACU, the transaction value can be more complex and more susceptible of duty evasion.

In 1997 South African Customs was placed under the South African Revenue Service (SARS) and the position of commissioner of Customs was eliminated. This action has lowered employee morale and impaired the effectiveness of customs officials to detect illegal shipments. The U.S. Customs agent in South Africa reports that the SARS investigators review papers and accounting records in tracing funds to detect illegal activities. The customs inspectors argue that physical searches are also required, and they believe that the SARS personnel are more concerned with collecting revenue than enforcing customs regulations.

Although some South African points of entry have been closed and some customs agents redeployed, a severe shortage of customs officials remains. Establishing a border unit of the South African police in April 1997 with the mission of security and enforcement at South African ports of entry has been helpful.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. exporters of poultry products recently petitioned South Africa to rescind its requirement that chicken products be shipped in refrigerated containers rather than in bulk. Viewed by many U.S. exporters and South African importers as discriminatory, this new requirement is sharply opposed by both domestic and international industry sources. In early 1997, South Africa reviewed and maintained its decision against bulk shipment of chicken products.

GOVERNMENT PROCUREMENT

In October 1997, the Ministry of Public Works issued a green paper on reform in public sector procurement. Its aim was to make the procurement system more accessible to disadvantaged groups and to small, medium and micro enterprises. How to accomplish these goals transparently without increasing public corruption and without totally excluding large or white-owned business. A proposal presently exists to rationalize the many provincial and parastatals tender boards into one national tender board (rules and regulations setting authority).

The South African defense forces (SADF) modernization program has received bids from Spain, Italy, Germany, the UK, and Sweden for modernizing certain SADF equipment. All of the tenders have significant offset components as required by the bidding terms. These terms took effect in September 1996 and require all government and parastatal contracts with an import content exceeding $10 million to include an offset component with a value of at least 30 percent of a bid's imported content (50 percent in the case of defense bids). By reducing the offset requirement in proportion to the amount of domestic content in a bid, the South African procurement system favors local producers.

EXPORT SUBSIDIES

South Africa has focused on means other than direct subsidies for promoting South African exports. Export Marketing Assistance (EMA) offers financial assistance for the developing new export markets through financing of trade missions and market research. The new export finance guarantee 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 such as the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. If any new or unused plant or machinery is acquired and used for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost can 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 erecting any building, or any improvements to a building for manufacturing during July 1, 1996, to September 30, 1999, and used 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 that 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 foreign or domestic market-oriented investors. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In light of complaints from U.S. firms regarding lax enforcement of intellectual property rights (IPR), South Africa, which is regarded as a developed country in terms of its IPR obligations in the WTO, has introduced new legislation and enforcement techniques for IPR violations. In May 1995, the Trade Marks Act of 1993 entered into force, replacing the Trade Marks Act of 1963. Also, the 1996 decision of the South African Supreme Court Appellate Division affirmed that McDonald's is the rightful owner of its trademark within South Africa.

Two new IPR-related laws were passed on September 9, 1997: The Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods. However, the South African police are currently so overwhelmed with illegal activities that enforcing these laws on a consistent basis has proved difficult. Thus, one U.S. firm estimates that pirated software comprises approximately 50 percent of the local market and similar estimates are made for the percentage for recorded music and video that is pirated.

South Africa

In 1997 an American company brought suit against a South African firm for trademark infringement. The South African firm argued that the American company's trademark had become generic. On appeal, the South African court found for the U.S. firm, arguing that the company had historically utilized its trademark and had always worked to protect it as unique.

In November 1997, a bill was passed that seems to permit the Minister of Heath to abrogate the patent rights of pharmaceutical companies if deemed necessary to lower the cost of medicine in South Africa. The Ministry of Health avers that the law strictly permits parallel importation of medicine and does not to infringe on patent rights. A second concern in the bill, namely a proposed prohibition on the use of trademarks on medicines sold to the state, was removed from the legislation. USTR is discussing with the South African Government ways to clarify the law and eliminate any potential TRIPs violations before it goes into effect.

Although 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 has been supplemented by the proposed Counterfeit Goods Act legislation that has set up a special anti-piracy unit. In addition, South Africa's courts have fined persons who infringe copyrights. Enforcement remains a problem partly because of inadequate enforcement resources. Although U.S. businesses acknowledge that trade losses have declined from $96 million in 1995 to $77 million in 1996, they also note that continuing trade loses are significant, citing substantial software losses, book piracy, and satellite signal piracy.

SERVICES BARRIERS

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

In the WTO financial services negotiations, South Africa submitted a proposal for increased access to its market. However, to operate as a branch, a foreign bank will be required to capitalize its local operation by the greater of 8 percent of risk-weighted assets and other contingent liabilities or 50 million rand.

INVESTMENT BARRIERS

South Africa has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the automotive, telecommunications, equipment, tea and coffee sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

Vice President Gore and South African Deputy President Mbeki 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. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism. This treaty was ratified by each country and entered into force on January 1, 1998.

ANTICOMPETITIVE PRACTICES

Competition Policy

Oligopolies and monopolies prevail in certain South African industries because of weak competition laws, international isolation, and the dirigiste policies of the apartheid era government. One glaring example is the beer industry. South African breweries control almost 98 percent of the South African beer market. They also control the distribution of alcoholic beverages. When a leading U.S. brewer reportedly investigated entering this market, it determined that the cost of entry, because of the difficulty of distribution, was too high to proceed.