

SOUTH AFRICA

TRADE SUMMARY

In 2001, the U.S. trade deficit with South Africa was \$1.5 billion, an increase of \$346 million from the 2000 deficit. U.S. goods exports to South Africa were \$3.0 billion in 2000, a decrease of \$128 million from 2000. South Africa was the 34th largest U.S. export market in 2001. U.S. imports from South Africa were \$4.4 billion in 2001, an increase of \$218 million from the level of imports in 2000. The stock of U.S. foreign direct investment in South Africa in 2000 was \$2.8 billion, a 2.7 percent decrease from 1999.

South Africa has substantially opened its market since 1994. Tariff rates have generally declined and other non-tariff barriers have been reduced. As a matter of government policy, the South African Government (SAG) is aiming to open its market still further in order to increase trade and to develop more competitive domestic industries.

IMPORT POLICIES

Import Permits

The Import and Export Control Act of 1963 allows the Minister of Trade and Industry to restrict the importation of certain goods into South Africa. Each year a list of goods requiring import permits is specified in an annual Import Control Program, and is valid for imports from any country. The Directorate of Import and Export Control within the Department of Trade and Industry (DTI) administers the issuance of permits, though additional and prior authorization may be required from other departments that also have jurisdiction over the control of goods in question. The average time frame for the issuing of a permit is three days and the permits are issued free of charge. Applications are expected to be filed at least two weeks prior to the date of shipment and may be issued for up to 12 months.

In recent years, the DTI has tried to phase out import permits in favor of tariffs. Almost all new goods are exempted from import control measures. All used goods, second-hand goods, waste and scrap are, however, subject to import control measures. The other products that require import permits include: fish and fish products, residues, petroleum products, ozone-depleting chemicals, firearms and ammunition, gambling equipment, and radioactive chemical elements.

Tariffs

Since 1994, South Africa has reformed and simplified its tariff structure as well as reduced tariff rates substantially in order to comply with its WTO commitments. Ninety-eight percent of South Africa's tariff lines are now bound. Tariff rates generally fall within eight levels ranging from zero to 30 percent, and the import-weighted average tariff rate has been reduced from more than 20 percent to just under 7 percent in 2001.

In spite of these reforms, South Africa's tariff schedule remains complex and can create uncertainty for businesses that frequently import goods. The complexity of the system often makes it necessary to employ facilitators to assist with importing. Furthermore, some industries are still subject to high tariffs while others (industries previously protected by non-tariff barriers) have tried to increase tariffs to WTO-bound levels, which are usually substantially higher than applied rates. The paper industry is an example where high tariffs are maintained. Although the South African paper industry is a modern, world-class industry, it receives a level of protection ranging up to 10 percent and higher. South African tariffs on manufactured wood products are also considered higher than typical in world markets. For example, tariffs are 15 percent on particle board, 10 percent on plywood and fiberboard, and 15 percent on builders' joinery. U.S. exporters are also concerned that they will be

SOUTH AFRICA

less competitive in South Africa because of the free trade agreement with the European Union which allows most European forest products to enter duty-free. The Board of Tariffs and Trade (BTT) has explained that South Africa increased tariffs on certain paperboard and paper products between 1992 and 1994 to achieve greater uniformity of tariffs. These increases were followed in 1995, however, by a general phased reduction of tariffs on paper and paperboard, bringing most tariffs down to 10 percent in 2000. The rate is expected to 5 percent *ad valorem* by 2005. Rebate provisions have been introduced for categories of paper and paperboard not manufactured locally, authorizing full duty rebates on imports of some uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard.

The textile and apparel industry is another industry that is still subject to high tariff duties. In the Uruguay Round, South Africa agreed to a 12-year phase down in duties on clothing and textiles, but since then has unilaterally moved to a 7-year phase down process. As of September 1, 2001, the following tariffs apply:

Apparel	47 percent
Yarns	18 percent
Fabrics	24 percent
Finished goods (household goods)	30-34 percent
Fibers	0-11 percent

The rates that South Africa expects to achieve in 2002 are:

Apparel	40 percent
Yarns	15 percent
Fabrics	22 percent
Finished goods (household goods)	30 percent
Fibers	7.5 percent

Beyond this, the South African tariff code provides for maximum limits on actual tariffs to be paid. As a result, according to the BTT, the actual duty percentage paid on goods imported from the United States is already at the lower 2002 level.

South Africa applies a five percent tariff on imports of distilled spirits. Its WTO bound rates, which were phased-in as of January 1, 2000, however, remain very high. South Africa's WTO bound tariff rate on imports of bottled grape brandy, whisky, rum, and gin is 67 percent *ad valorem*. Imports of these spirits in bulk containers are subject to a bound tariff rate of 121 percent *ad valorem*. South Africa's bound rate on imports of all other distilled spirits, *e.g.*, vodka and liqueurs, is 597 percent *ad valorem*, whether in bottles or in bulk containers.

Under its free trade agreement with the European Union, South Africa will progressively reduce and ultimately eliminate tariffs on imports of EU spirits by 2012. Although the EU and South Africa continue to finalize a separate mutual recognition and protection agreement for spirits, the tariff reduction schedule became effective with the entry into force of the trade agreement in 2000.

Equal tariff treatment for U.S. products in the short term, and the subsequent elimination of South Africa's WTO bound tariffs on all distilled spirits, would provide U.S. distilled spirits companies with a more level playing field and greater opportunity to increase their sales (valued at \$2.7 million in 2000) in South Africa.

Dumping

The number of antidumping petitions instituted in South Africa remains high. The BTT says that the increase in petitions, which started in

SOUTH AFRICA

1997, was expected as a result of tariffs being phased down. Previously, the BTT acknowledges, formula duties and even high rates of *ad valorem* or specific duties were sometimes used to counter dumping. But due to South Africa's WTO binding commitments and tariff policy, this practice is no longer followed.

In a December 2000 ruling, the BTT reaffirmed the anti-dumping duties on poultry leg quarters imported from the United States, preliminarily imposed in July 2000. The antidumping duties were finalized at 224c/kg for poultry parts exported by one major producer, 245c/kg for another major producer, and 696c/kg for other U.S. producers. The South African industry argued that poultry parts, i.e., dark chicken meat, was being dumped in South Africa below U.S. costs. U.S. industry argues strongly that international free market supply and demand factors alone account for the lower, more competitive price for U.S. exports of dark poultry meat. In the first nine months of 2001, U.S. exports of poultry to South Africa were down to \$2.2 million, a decrease of 77 percent from \$9.3 million in the same period in 2000. Prohibitive antidumping duties are the primary cause of the drop in these exports.

The BTT is also currently investigating allegations that lysine from the U.S. is being dumped. A final determination is expected early in 2002. In January 2002, BTT imposed final anti-dumping duties of 33.5 percent and 48 percent on imports of lysine from the United States but, in a separate case, terminated anti-dumping duties on imports of calcium propionate.

Free Trade Agreement with the European Union

During 2000, South Africa and the European Union (EU) implemented the trade provisions of their Agreement on Trade, Development and Cooperation. Under the Agreement, South

Africa and the EU will establish a free trade area (FTA) over a transitional period of up to twelve years for South Africa, and up to ten years for the EU. Because the Agreement calls for the reduction and eventual elimination of duties on trade between the EU and South Africa, certain U.S. firms exporting to South Africa have expressed concern that their products may become less competitive in South African markets, limiting future trade and investment opportunities for U.S. companies. A U.S. truck exporter, for example, said that the 5 percent differential between the EU and U.S. duties on this high-price item would render the U.S. product uncompetitive. The truck industry in South Africa has no substantial local players and the current import tariff of 20 percent on trucks is regarded as too high.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology

There has been an active debate in South Africa on products produced using modern biotechnology. The 1997 Genetically Modified Organisms Act, which entered into force on December 1, 1999, aims to ensure that all activities involving the use of biotechnology (including production, import, release and distribution) will be carried out in such a way as to limit possible harmful consequences to the environment. Since 1999, some boutique stores have started selling a limited range of biotechnology-free products, while a few consumer groups have urged the Ministry of Health to introduce compulsory biotechnology labeling.

The SAG provided more clarity on biotechnology issues with the publication of the National Biotechnology Strategy for South Africa in June 2001. This document shows the government's intent to stimulate the growth of

SOUTH AFRICA

biotechnology industries and states that biotechnology can make an important contribution to national priorities, particularly in the area of human health, food security and environmental sustainability. Bt soybeans, Bt cotton, and two types of Bt corn are currently grown in South Africa.

Agricultural Standards

The Directorate of Plant Health and Quality within the National Department of Agriculture, and the National Department of Health, Directorate of Food Control, are responsible for regulating and setting standards for certain agricultural and agricultural-related products. This includes aspects such as the composition, quality, packaging, marketing and labeling of the product, as well as physical, physiological, chemical and microbiological analyses. These requirements and standards are published pursuant to the Agricultural Product Standards Amendment Act of 1998 and the Liquor Products Act of 1989 as regulations governing the sale of products in the local and export markets.

The South African government requires import permits for certain controlled products. The importer must submit an application for a permit to the appropriate authority at least 30 days prior to the arrival of the product into the country. South Africa recently notified the WTO of a proposal to reconsider certain tolerances for specified noxious seeds in grain (primarily wheat, corn and oilseeds). The current maximum tolerance levels allowed are low by world standards, and are seen by some to be potentially trade-restricting. The U.S. Department of Agriculture has provided comments on the proposal that questions the scientific basis for the current tolerance levels.

The import of irradiated meat from any source is still banned on public health grounds. U.S. horticultural producers have complained about

various South African phytosanitary barriers to the importation of apples, cherries, and pears from the United States. They estimate that with these barriers removed, U.S. exports of each of these fruits could increase to \$5 million to \$25 million in annual sales to South Africa.

GOVERNMENT PROCUREMENT

State Tender Board

The South African Government is attempting to centralize and universalize the buying procedures of national, provincial, local, and state-owned corporate entities. Currently, the Chief Directorate of the Office of the State Tender Board in Pretoria and nine provincial offices perform the administrative work of the State Tender Board and provincial tender boards, which have responsibility for procuring for over forty government departments. As part of the Public Finance Management Act Regulations, however, the tender boards will cease to exist on March 31, 2002.

Government purchasing is a significant factor in the South African economy. Nearly all such purchasing is done through competitive bidding on invitations for tenders, which are published in an official state publication, the State Tender Bulletin, and sometimes in leading newspapers. Certain tender price preferences, which do not affect the tender price but which are taken into account when calculating the comparative price, are allowed. These include preferences based on local content and an approved SABS standardization mark.

The Government uses its position of both buyer and seller to promote the economic empowerment of historically disadvantaged individuals (HDIs) through the Black Economic

SOUTH AFRICA

Empowerment program. Although businesses are aware that when selling to the government, consideration should be given to the Government's priority on accelerating black participation in the economy, the lack of clarity of the basis on which these decision are taken has been a serious concern. Some argue that the rules for awarding government tenders have been applied inconsistently.

The SAG passed the Preferential Procurement Policy Framework Act in 2000 and the regulations pursuant to the Act were promulgated in August 2001. According to the new evaluation system contemplated in the regulations, preferences will apply to all tenders, irrespective of the amount. An 80/20 point system will be applicable for tenders up to R500,000 (\$50,000). A maximum of 80 points will be allocated to the lowest acceptable tender, while tenders higher in price will receive a lower number of points. A maximum of 20 points will be awarded to tenders HDIs and for achieving specified developmental goals. The government contract will be awarded to the tender that scores the highest number of points. For larger tenders (with a value above R500,000), a 90/10 point system is used.

The major concern is not the point system, however, but the possibility that HDI equity ownership will be interpreted as a mandatory part of the system. Some U.S. companies have indicated they have stopped tendering for government contracts in South Africa because of the government's procurement practices. South Africa is not a signatory to the WTO Agreement on Government Procurement.

Industrial Participation

Any bidder for a government or parastatal contract whose bid contains imported content worth over \$10 million must submit an "industrial participation" plan showing that the bidder will invest in a new or incremental business in South

Africa. Under the National Industrial Participation Program (NIPP), the seller must invest at least 30 percent of the value of the imported content of the tender in a South African business. In the case of defense bids, the figure increases to 50 percent.

EXPORT SUBSIDIES

Export incentives are offered through a number of initiatives, including the Export Marketing and Investment Assistance (EMIA) schemes, which aim to assist exporters through trade missions and exhibitions, as well as outward and inward investment missions. The incentives are available for all exporters with special terms for SMMEs. Other export-oriented schemes include the Short-term Export Finance Guarantee Facility offered to small businesses to accelerate their export development by reducing financial risk, and the life scheme, offering low fixed interest finance to large industrialists for the purposes of investment promotion. The U.S. Department of Commerce has found several programs for the South African steel industry to be unfair subsidies which are countervailable, including certain tax allowances, preferential wharfage fees for exports, and loan guarantees. U.S. steel producers charge that these programs harm their efforts to compete in South Africa and other markets.

Rebates

There are various rebate provisions available for the drawback of duty otherwise due on the importation of goods if used solely for manufacturing/finishing and re-export. In the textile industry, the rebate system is intended to assist in the restructuring and development of the South African textile industry. Under this program, an exporter is permitted to import duty-free an amount of textile products equivalent to 25 percent of its exports of

SOUTH AFRICA

clothing, 12.5 percent of fabrics and 8 percent of yarns.

For the automotive industry, the SAG established the Motor Industry Development Program (MIDP) in September 1995. The program includes measures to promote exports and introduces a phased reduction in import tariffs. The MIDP allows vehicle assemblers and component manufacturers to offset vehicle and component exports against similar imports. The ability to rebate import duties by exporting allows importers to bring in vehicles at lower effective rates of duty. It also enables assemblers to use import credits to source components at close-to-international prices. This results in a strong incentive to assemble locally. The benefits under the MIDP are decreasing, while tariffs have been reduced dramatically from 115 percent in 1993 to 40 percent currently. The tariffs on imported vehicles will be reduced further from 2003 by 2 percent per annum to 30 percent in 2007.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Legal Regime

The government passed two IPR-related laws at the end of 1997: the Counterfeit Goods Act (CGA) and the Intellectual Property Laws Amendment Bill, bringing South Africa's laws largely into conformity with its international trade obligations under the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The CGA provides for criminal prosecution of persons trading in counterfeit or pirated goods and establishes a special anti-piracy unit. In 2001, the government took additional steps to improve the protection of intellectual property rights. Several Intellectual Property Acts have been amended, and enforcement improved during 2001 after the necessary infrastructure was put in place and inspectors completed their training.

South Africa is a member of the Paris Union and acceded to the Stockholm Text of the Paris Convention for the Protection of Industrial Property. South Africa is also a member of the World Intellectual Property Organization. Although, South Africa's intellectual property laws and practices are generally in conformity with those of the industrialized nations, several U.S. firms have experienced problems. Some have resulted in court cases, where individuals or companies in South Africa have re-engineered U.S. company products for sale as South African products, or have copied well known brand advertising very closely. The enforcement of individual copyright claims is complicated by the lack of evidentiary presumptions in the law, requiring the use of an expensive registration system or submission of extensive proof of copyright ownership. Additionally, U.S. industry notes that improvement in South Africa's border enforcement regime is essential to stemming the flow of counterfeit imports into the country.

Pharmaceutical IPR Issues

The pharmaceutical industry has argued that changes made in 1997 to South Africa's Medicines Act undermine patents and could be a violation of South Africa's TRIPS obligations. On April 19, 2001, however, following a three-year protracted legal battle with the SAG, 39 drug companies, represented by the Pharmaceutical Manufacturers Association (PMA), dropped its court challenge to South Africa's Medicines and Related Substances Control Amendment Act. The case, which received worldwide attention, revolved around the right of the SAG to permit parallel imports or to grant compulsory licenses of patented drugs. In the agreement with the PMA, the SAG agreed that its implementation of the Medicines Control Act would be consistent with the South African Constitution and TRIPS.

SOUTH AFRICA

The South African Health Ministry also agreed to consult with industry and the public on regulations implementing the Act.

Software/Audio Visual IPR Issues

Software piracy occurs frequently in South Africa. Between February and March 2001, the Business Software Alliance (BSA) gave South African organizations an opportunity to legalize their software. The campaign received 608 registrations to legalize pirated or illegally installed software, representing over 60,000 desktop computers. The BSA estimates that the level of pirated software could, however, still be as high as 47 percent. Software piracy includes counterfeiting, CD copying, hard disk loading, internal copying by businesses, and Internet piracy. Piracy in the video and sound industry is also a concern. The Motion Pictures Association estimates video and optical disc piracy to be 16 percent.

SERVICES BARRIERS

Telecommunications

During 2001, South Africa passed new amendments to the telecommunications law that are the subject of considerable controversy and concern to industry. In the WTO, South Africa made a series of value-added telecom commitments and, for basic telecommunications services, adopted the WTO reference paper on pro-competitive regulatory principles. The South African Government also committed to license a second supplier no later than January 1, 2004 to compete against the the current monopoly supplier, Telkom, in long-distance, data, telex, fax and private leased circuits services. After several policy changes in 2001, South Africa announced that it will license a Second Network Operator (SNO) to compete with Telkom at the end of its exclusivity period, which ends May 2002. Despite the expiry of its monopoly, delays

in the tendering process are likely to postpone the licensing of a SNO until late in 2002.

Equity interest from outside investors in the SNO will be limited to 51 percent. Nineteen percent will be reserved for Black Economic Empowerment Groups (BEE) and the remaining 30 percent will be allocated to the telecommunications divisions of Eskom (the state energy utility) and Transnet (the transport parastatal), which already have some infrastructure in place. Once the BEE element of the SNO is established (anticipated in early 2002), the SAG will invite domestic or international bidders to apply for the license.

Until Telkom's exclusivity ends, Internet Service Providers (ISPs) and Value-Added Network Services (VANS) operators may continue to face problems from Telkom. Although value-added services do not fall within the scope of Telkom's monopoly, Telkom has claimed that VANS and ISPs are resellers of basic services and thus are infringing on Telkom's monopoly. Telkom has subsequently refused to provide new facilities to VANS operators. South Africa's telecommunications regulatory authority (ICASA), not Telkom, has sole authority to determine whether these services are illegal. However, ICASA has not effectively asserted its authority over Telkom. Decisions taken by ICASA are often challenged by Telkom, which delays implementation of ICASA's rulings.

The United States continues to monitor South Africa pursuant to Section 1377 of the Trade Act of 1988 for compliance with its WTO commitments. After the intervention of the U.S. Government, Telkom resumed the provision of telecommunications facilities to certain VANS providers. On November 21, 2000, however, Telkom filed a complaint with ICASA, alleging that certain providers were using facilities to provide services outside the

SOUTH AFRICA

scope of their VANS licenses. Disputes over facilities provision to the VANS remain unresolved.

The amended Telecommunications Act allows only Telkom and the SNO to provide Voice Over Internet Protocol (VOIP) services. The amended Act also appears to expand the definition of a Public Switched Telecommunications Service (PSTS) to include the provision, repair and maintenance of any other telecommunication apparatus. This definition will likely face legal challenges from the VANS as it may eliminate their ability to provide Customer Premise Equipment. Interested persons continue to raise questions concerning the consistency of these and other provisions of the amended Telecommunications Act with South Africa's WTO obligations.

Other Services

In the 1997 WTO financial services negotiations, South Africa made commitments resulting in increased access to its market in a number of financial services sectors, including banking, securities, and insurance. By regulation, however, a foreign bank that wishes to operate a branch in South Africa is required to capitalize its local operation by the greater of eight percent of risk-weighted assets and other contingent liabilities, or R50 million held in South Africa.

In 2000, South Africa implemented legislation to regulate private and foreign higher education institutions to ensure the development and sustainability of the country's education system. The recent legislation empowers the government to determine how many students private and foreign institutions may enroll, what courses they may offer, and whether or not they may use the name "university". Private and foreign institutions are subject to a lengthy process of registration, from which local institutions are exempt.

INVESTMENT BARRIERS

South Africa actively encourages direct and indirect investment by non-resident persons and companies. Virtually all business activities are open to foreign investors and there is generally no restriction on foreign investment. Restrictions usually relate to a particular industry and are applicable both to residents and non-residents. Very few restrictions apply only to foreign companies. For example, a foreign bank establishing a branch may be required to employ a minimum number of local residents to obtain a banking license and may be obliged to have a minimum capital base. Restrictions also exist regarding the ownership of immovable property by foreign companies. Foreign companies are required to register as external companies before immovable property may be registered in their names (a company incorporated outside South Africa that establishes a place of business in South Africa is classified as an "external company" and its local business is colloquially known as a "branch"). A branch is in most respects subject to the same regulations as a South African company.

The SAG rejected proposals in Parliament in 2001 that could have led to a restriction on the full participation by foreign investors in the property market and the security industry. Although no government approval is required for foreign investors to establish a new business in South Africa, approval is required under the exchange control regulations. Generally, there are no restrictions on inward or outward transfer of funds where non-residents are the beneficial owners. There is normally no limit on the remittance of commissions, director's fees, technical service payment, management fees, or the purchase of technology, although certain restrictions may apply when these payments are made within group companies.

SOUTH AFRICA

ANTICOMPETITIVE PRACTICES

Ownership Patterns

Ownership continues to be highly concentrated in many sectors of the South African economy. During the apartheid years, a large portion of the South African population was entirely excluded from ownership of business enterprises. In addition, from 1961 to 1994, successful companies such as South African Breweries, Anglo American (including De Beers) and SASOL had been prohibited from investing abroad and, therefore, expanded their activities locally. Conglomerates, which can exert considerable market power, are therefore prevalent in the South African market. However, many of them have started to expand internationally and are listed on foreign stock exchanges. This, together with the much more effective competition authority, has helped to South Africa's business environment become more competitive. Furthermore, sectors such as energy, transport and telecommunications have historically been controlled or dominated by parastatals. These sectors are also gradually opening up for competition from the private sector, and the privatization program of the SAG, although moving slowly, is starting to bring a change in ownership patterns.

The Competition Commission

The Competition Act of 1998, which came into effect in September 1999, is aimed at eliminating anticompetitive practices, ending abuse of dominant positions (defined as a market share of 35 percent or more) and strengthening merger control. The legislation also gave more power to restrict anticompetitive behavior of the state-owned enterprises, especially when they compete unfairly with the private sector. The Act provides for a Competition Commission, Competition Tribunal, and Competition Appeal

Court to replace the former Competition Board. The competition legislation is functioning effectively and, as a result, the SAG is in a much better position to take action against anticompetitive practices of state-owned and private firms that restrict the sale of U.S. products and services.

When the Act first took effect, private companies originally were not satisfied with the stricter merger control. They argued that the threshold applicable to mergers was too low and that the fees charged by the Commission for its investigations (between \$500 and \$ 5,000) were unnecessarily high. During 2001, some legislative amendments were introduced to increase the thresholds.

ELECTRONIC COMMERCE

South Africa has a vibrant and rapidly growing Internet industry. The Department of Communications is currently reviewing proposed legislation on electronic commerce which the Parliament may take up in the 2002 session. The public was allowed time to comment, and no U.S. firms submitted any objections to the proposed legislation.

OTHER BARRIERS

Transparency, Corruption and Crime

South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, dismissal for government employees, or deportation for foreign citizens. South Africa boasts no fewer than 10 agencies engaged in anti-corruption activities. Some, like the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and address corruption as only part

SOUTH AFRICA

of their responsibilities. Others like the South African Police Anti-Corruption Unit, and the Directorate for Special Operations – more popularly known as the Scorpions – are dedicated to combating crime and corruption. High rates of violent crime make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts. U.S. firms have, however, not identified corruption as a serious obstacle to foreign direct investment.

During the last few years, violent crime has been a far more serious problem than corruption, and an impediment to and a cost of doing business in South Africa. Although there were some positive changes in the last part of 2001, the South African Police forces generally have not been effective or well accepted in many communities because of their historical role in enforcing minority rule, lack of training, and internal crime and corruption within the forces.

Government transparency has increased substantially during the last few years. It was enhanced by the Promotion of Access to Information Act, signed into law in February 2000. The Public Finance Management Act (PFMA), which became effective on April 1, 2000, helped raise the level of oversight and control over public monies and also helped improve the transparency of government spending, especially with regard to off-budget agencies and parastatals. The Regulations in terms of the Preferential Procurement Policy Framework Act announced in 2001 should increase transparency in government procurement by, *inter alia*, establishing clear rules for preferential awarding of government contracts to firms with black ownership or shareholders.

Medicines Control Act

One U.S. company has experienced great

difficulty in marketing its vitamin supplements in South Africa because of the way the Medicines And Related Substances Control Act of 1965 is administered. Some government regulators have interpreted the Act to define the company's products as medicine subject to licensing although the products are sold in major markets around the world as nutritional supplements. The company estimates it lost sales in 2001 of \$1 million. The implementation of the law favors domestic producers who market competing products. Moreover, the U.S. company has lost significant market share to other international companies because of the action by the regulatory authorities. Other companies have expressed concern about the inadequacy of draft regulations being proposed with regard to parallel importation and their potential incompatibility with the Trademark and Copyright Acts.

Immigration Laws

Several U.S. and other foreign companies have complained that South Africa's immigration legislation and the current application of the law make it extremely difficult to get work permits for their foreign employees. The SAG accepts that this is a problem and introduced an Immigration Bill that would create more categories of permits for temporary residence in June 2001. The Immigration Bill, more than four years in the making, had by December still not been approved by Parliament and had been subjected to many amendments during 2001.

The private sector continues to protest about the lack of legislation, saying that this has affected the recruitment of much-needed foreign labor. South Africa currently relies on the apartheid-era Aliens Control Act that does not take into account recent international developments and the opening up of the South African market.

SOUTH AFRICA

Southern African Customs Union

South Africa has been a member of the Southern African Customs Union (SACU) since its inception in 1910. The SACU agreement was renegotiated in 1969 following the independence of Botswana, Swaziland, and Lesotho. Namibia joined SACU in 1990. SACU aims to promote free trade and cooperation on customs matters among its five member states. There are presently no internal tariff barriers between SACU member states, but because of different tax regimes, some tax adjustments occur at the borders.

Because of the Southern African Customs Union, products from Botswana, Lesotho, Swaziland and Namibia enter South Africa duty-free. In a few cases, products from these countries compete directly with U.S. goods and have the advantage of a lower tariff duty. For example, soda ash from Botswana comes into South Africa at a zero percent duty whereas soda ash from the U.S. faces an 8 percent duty. South Africa does not produce soda ash, but the duty on imported soda ash was introduced for the benefit of Botswana.

Southern African Development Community

Another development that is likely to affect U.S. exports to South Africa, as well as the other members of the Southern African Development Community (SADC), is the implementation of a SADC Trade Protocol in September 2000. The Protocol aims to establish a SADC free trade area over a period of 8 years. It immediately limits ratifying countries' ability to raise tariffs against other SADC members or to impose new non-tariff barriers. South Africa and other SACU members are, however, liberalizing much faster than other SADC members are. The Protocol also calls for the harmonization of customs, trade facilitation, and standards.