

# **SOUTHERN AFRICAN CUSTOMS UNION**

## **TRADE SUMMARY**

The U.S. trade deficit with SACU countries was \$3.6 billion in 2004, an increase of \$1.2 billion from \$2.4 billion in 2003. U.S. goods exports in 2004 were \$3.3 billion, up 14.9 percent from the previous year. Corresponding U.S. imports from SACU countries were \$6.9 billion, up 30.2 percent. The stock of U.S. foreign direct investment (FDI) in SACU in 2003 was \$4.0 billion, up from \$3.4 billion in 2002.

## **OVERVIEW**

The Southern African Customs Union (SACU) links the trade regimes of Botswana, Lesotho, Namibia, South Africa, and Swaziland. The South African economy dominates SACU, representing approximately 91 percent of SACU's 2003 GDP of \$175 billion. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana share a common currency as members of the Common Monetary Area. Imports from outside SACU are subject to a common external tariff. The 2002 SACU Agreement, which became fully operational in 2004, provided for a more democratic structure that reduces reliance on South Africa for administrative decisions. The agreement set up a Council of Ministers (COM) as the supreme decision making body for SACU. The COM is supported by the Commission of Senior Officials (a group of technical experts) and a SACU Secretariat located in Windhoek, Namibia. A SACU Tariff Board reports directly to the COM and formulates and implements tariff policy.

The United States began free trade agreement negotiations with the five SACU countries in June 2003. The ongoing negotiations provide an opportunity to address trade constraints on U.S. exports to SACU countries, including relatively high tariffs and import restrictions on certain U.S. exports; insufficient copyright protection for software, films, and music; and barriers in telecommunications and other key service sectors. SACU countries are also negotiating free trade agreements with Mercosur and the European Free Trade Association (EFTA).

## **IMPORT POLICIES**

### **Tariffs and Non-Tariff Barriers**

Nearly all intra-SACU trade in goods is free of barriers. Imports from the rest of the world face a common external tariff and a common excise tax. Revenue flows into a common consolidated revenue fund controlled by South Africa. Since the WTO's Uruguay Round in 1994, SACU countries, led by South Africa, have reformed and simplified their common tariff structure. Tariff rates have been reduced from a simple average of more than 20 percent to 5.8 percent. Notwithstanding these reforms, importers have complained that the SACU tariff schedule

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remains complex and can create uncertainty. Tariff rates mostly fall within eight levels ranging from 0 percent to 30 percent, but some are higher, such as for most apparel items. Many of South Africa's specific and composite duties were converted to *ad valorem* rates, with a few exceptions remaining in a limited number of sectors, including textile and apparel products. In the Uruguay Round, South Africa agreed to a twelve-year phase-down of duties on textiles and apparel, but unilaterally moved to expedite its phase-down process. As of September 1, 2002, the following SACU rates, which are also the end rates, apply: apparel - 40 percent; yarns - 15 percent; fabrics - 22 percent; finished goods - 30 percent; and fibers - 7.5 percent. Duty rates on cars, light vehicles, and minibuses are still at the high level of 36 percent, while the rate of duty on original motor parts is 28 percent.

Country-specific information on the five SACU Members follows.

## **1. SOUTH AFRICA**

### **IMPORT POLICIES**

The South African International Trade Administration Commission (ITAC) came into operation in June 2003, replacing the Board on Tariffs and Trade. It has been tasked with establishing an efficient and effective system for the administration of trade. ITAC's responsibilities include:

- **Tariff Investigations** - The ITAC administers tariff-related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). Interested parties are entitled to approach ITAC with specific requests for a review, reduction, or increase in tariff rates;
- **Trade Remedies** - The ITAC deals with antidumping and countervailing duties and safeguards. The safeguards procedures were introduced in August 27, 2004, but have not yet been applied; and
- **Import and Export Control** - The ITAC issues import and export permits for certain items designated by the Minister under the authority of the International Trade Administration Act of 2002, which repealed the Import and Export Control Act of 1963.

### **Import Control**

The Minister of Trade and Industry may, by notice in the Government Gazette, prescribe that no goods of a specified class or kind be imported into South Africa, except under the authority of, and in accordance with, the conditions stated in a permit issued by ITAC. The main categories of controlled imports and the objectives of control are as follows:

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- Used goods: Import permits are granted only if such goods or substitutes are not manufactured domestically, constituting a *de facto* ban on such goods. These restrictions are designed to protect domestic industries such as clothing, motor vehicles, machinery and plastics, but also restrict imports of low-cost used goods from the United States and Europe;
- Waste, scrap, ashes, and residues (Basel Convention): The objective of import controls of these goods is to protect human health and the environment;
- Other harmful substances: Imports of substances such as ozone depleting chemicals (Montreal Convention) and chemicals used in illegal drug manufacturing (1988 United Nations Convention) are controlled for environmental, health, and social reasons; and
- Goods subject to quality specifications, such as tires: This restriction permits monitoring of manufacturer adherence to specifications that enhance vehicle safety or protect human life.

## **Tariffs**

ITAC continues to receive requests for tariff protection from industries, especially since the South African rand's appreciation curve started in late 2002. The appreciation of the rand resulted in increased competition from imports. U.S. companies have cited tariffs as a barrier to trade in South Africa, along with port delays and congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, IPR crime, an inefficient bureaucracy, and excessive regulation.

Under SACU, 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 that are subject to duties. For example, soda ash from Botswana comes into South Africa at a zero percent duty, whereas soda ash from the United States faces a 5.5 percent duty. South Africa does not produce soda ash, but the duty on imported soda ash was introduced for the benefit of Botswana. Moreover, a legal complaint from Botswana's soda ash producer under South Africa's competition law threatens to block U.S. exports. The South African Competition Commission has pursued the claim as a "per se" offense, without making any judgment on the U.S. soda ash producer's impact on competition or consumers. If the South African Supreme Court does not grant an appeal so that the legal merits of the case can be argued, U.S. soda ash exports would be adversely affected. If the tariffs on U.S. soda ash were eliminated, industry estimates that U.S. exports of soda ash to South Africa could increase from less than \$8 million to \$25 million, which is closer to its historical level.

## **Anti-Dumping**

Twelve new antidumping petitions were filed in South Africa during 2003 to 2004, the majority against Chinese products. While no new antidumping investigations against imports from the United States were instituted in 2004, antidumping duties on U.S. chicken meat portions, suspension PVC, roller bearings, lysine, and acetaminophen remain in force. U.S. industry and the U.S. Government have challenged these petitions. In early 2004, ITAC also increased the MFN applied duty on imports of poultry offal, as requested by the domestic industry. In an important step to increase transparency and clarity in the antidumping investigation processes, antidumping regulations were promulgated on November 14, 2003.

## **Free Trade Agreement with the European Union**

In 2000, South Africa and the European Union (EU) began to implement the development co-operation and financial co-operation provisions of their Agreement on Trade, Development and Cooperation, a free trade agreement (FTA). Under the Agreement, South Africa and the EU will establish a free trade area over a transitional period of up to 12 years for South Africa, and up to 10 years for the EU. The FTA provides for the reduction and eventual elimination of duties for approximately 85 percent of the products imported by South Africa from the EU and 95 percent of the products exported by South Africa to the EU. Certain agricultural products were exempted from liberalization under the agreement. South African and EU negotiators announced at the end of 2003 that they would seek to accelerate the process of negotiation towards freer trade in automobiles. Some U.S. sectors exporting to South Africa are concerned that their products will be less competitive because of the preferences given to the EU. For example, there is a 5 percent differential between the duties on EU and U.S. trucks. Another example includes a tariff differential between EU and U.S. bottled and bulk distilled spirits. Overall, U.S. companies are divided on whether they have been disadvantaged by the EU FTA.

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

### **Biotechnology**

There has been an active debate in South Africa about products produced using agricultural biotechnology. The Genetically Modified Organisms Act (“the GMO Act”), which entered into force in 1999, aims to ensure that all activities involving the use of agricultural 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 stores have promoted claims of selling a limited range of biotechnology-free products, while a few consumer groups have urged the Department of Health to introduce compulsory labeling of biotechnology products.

Under the leadership of the Department of Health’s Directorate of Food Control, the South African government issued regulations on the labeling of biotechnology products in early 2004.

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The regulations mandate the labeling of foods containing agricultural biotechnology only in certain cases, including when allergens or human/animal proteins are present, and when biotechnology food products differ significantly from a non-biotechnology equivalent. The rules also require validation of enhanced-characteristic claims for food containing agricultural biotechnology. The regulations do not address labeling claims that products are biotechnology-free. Biotechnology advocates are concerned about this omission, noting it could lead to many fraudulent claims. Trade organizations seem satisfied with the regulations, which follow internationally recognized, scientific (CODEX) guidelines. South Africa's CODEX representative comes from the Directorate of Food Control.

In November 2004, the government published draft changes to the GMO Act to bring it into compliance with the Cartagena Biosafety Protocol. The government solicited public comments on the draft changes and, as of early 2005, was evaluating those comments.

In June 2001, the South African government published the National Biotechnology Strategy for South Africa, a document that articulated the South African government's intent to stimulate the growth of biotechnology industries. The document states that biotechnology can make an important contribution to national priorities, particularly in the areas of human health, food security and environmental sustainability. Environmental groups continued to exert pressure on the South African government in 2004 to examine the safety of foods derived from agricultural biotechnology.

The government has approved for commercial production agricultural biotechnology soybeans that are tolerant to herbicides, and cotton and yellow and white maize that are resistant to insects. Farmers are enthusiastically adopting the new technology, and are expected to plant up to one million hectares of biotechnology varieties in 2004, up from about 400,000 hectares in 2003. The use of these products is widespread in the food processing industry.

U.S. grain producers have raised concerns about South Africa's treatment of agricultural biotechnology "stacked events." Although the U.S. Government considers products containing a combination of two previously approved genetic modifications (such as for insect resistance and herbicide tolerance) as "conventional" and encourages producers to notify the U.S. government of such stacked events, South Africa -- like the EU -- considers the combined "stacked events" as a new event, and requires a complete, *de novo* review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities. At present, U.S. yellow corn is not approved for import by the government of South Africa due to delays in registering stacked events and other new events. As a result, if yellow corn were in short supply in South Africa in 2005, importers would have to apply to the government for a special waiver in order to import U.S. yellow corn, with the guarantee that the U.S. yellow corn would be milled near the port to ensure that it cannot be planted. In 2003 and 2004, Biowatch, an environmental lobby group, took legal action against the National Department of Agriculture (NDA) in order to obtain information on how it made decisions on

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issuing licenses for biotechnology crops. The local courts ruled in favor of the NDA, which protects certain information on a business proprietary basis.

In September 2003, countries of the Southern African Development Community (SADC), including South Africa, developed common guidelines on the regulation of products resulting from biotechnology. The guidelines assert that the region should develop common policy and regulatory systems that are based on either the Cartagena Protocol or the African Model Law on Biosafety. The leaders of SADC member states also agreed to develop national biotechnology policies and strategies and to increase their efforts to establish national biosafety regulatory systems. Member states were also urged to commission studies on the implications of biotechnology for agriculture, the environment, public health and socio-economics.

### **Agricultural Standards**

The South African government requires prospective importers to apply for an import permit for certain controlled products. The import of irradiated meat from any source is still banned by public health officials. U.S. horticultural producers have complained about various South African phytosanitary barriers on the importation of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of each of these fruits could increase by \$5 million to \$25 million in annual sales to South Africa. U.S. producers have also expressed concern about unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

In order to fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the National Department of Agriculture published the rules and procedures regarding the application for market access permits for agricultural products on October 24, 2003. The permits will be issued to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for importation of the agricultural products listed in the Table of Import Arrangements. Ten percent of such permits are reserved for "new importers" (those who have not imported over the past 3 years), and 10 percent for small, medium, and micro-enterprise importers.

In response to the Bovine Spongiform Encephalopathy case in Washington State announced on December 23, 2003, South Africa banned all ruminant animals and products originating in the United States. By January 15, 2004, South Africa, in accordance with World Organization for Animal Health (OIE) standards, exempted non-risk products such as hides, skins, wool and mohair from the ban. At the end of 2004, a ban was still in place on ruminant meat products. The South African Department of Agriculture is impressed with USDA's surveillance program but wants to see a full report with data from the surveillance program before considering lifting the ban.

During 2004 South African grain, pork and poultry producers petitioned the government to raise tariffs, with little success except for poultry offal. Farmers' groups will likely continue to pressure the government to increase tariffs on these items or otherwise limit imports of them.

## **GOVERNMENT PROCUREMENT**

Government purchases are by competitive tender for project, supply, and other contracts. The government uses its position as both buyer and lawmaker, however, to promote the economic empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) policy. (See also the Investment section for more on BEE.)

South Africa's Preferential Procurement Policy Framework Act of 2000 and its implementing regulations set a legal framework and formula for evaluating bidders of government contracts by price and the advancement of socio-economic priorities. Revised draft regulations were released in November 2004 to take into consideration the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003. The new regulations give greater preference to bidders of government contracts who more effectively comply with BEE objectives. In addition, the draft regulations raise tender thresholds. Previously, companies bidding on tenders worth up to R500,000 earned 80 percent of their points from their bid price and 20 percent on their commitment to social objectives. Now, the 80-20 point system is applied to tenders valued up to R1 million and firms are evaluated on their compliance with their respective industry BEE scorecards. Similarly, a 90-10-preference point system is applied to tenders valued over R1 million. The National Treasury is expected to approve and gazette the new Preferential Procurement regulations by mid-2005.

South Africa's Industrial Participation (IP) program, introduced in 1996, subjects all government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an IP obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity equaling or exceeding 30 percent of the imported content of total goods purchased under government tender. The program is intended to benefit South African industry by generating new or additional business.

In August 2004, the Minister of Finance issued the Code of Good Practice for BEE in Public Private Partnerships (PPPs) that had been released as a draft document in December 2003. The Code of Good Practice sets out the targets for BEE to be achieved in PPPs and provides clarity to bidding private parties.

South Africa is not a signatory to the WTO Agreement on Government Procurement.

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## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

### Legal Regime

Property rights, including intellectual property rights, are protected under a variety of laws and regulations. The South African parliament passed two IPR-related laws at the end of 1997 -- the Counterfeit Goods Act and the Intellectual Property Laws Amendment Acts -- in order to enhance IPR protection. The Department of Trade and Industry (DTI) administers these acts. Although South Africa's intellectual property laws and practices are in some ways in conformity with those in developed countries, there are deficiencies in enforcement and in guaranteeing the protections afforded under these laws. The U.S. government has raised with the South African government concerns about shortcomings in South Africa's IPR protection regime. The United States has also provided training on IPR enforcement to South African government and private sector representatives.

The U.S. software industry has cited three principal deficiencies in the 1978 Copyright Act:

- *Lack of criminal penalties for end user piracy.* South African law currently provides that the sale of infringing software is a criminal offence, but there is no criminal penalty for end users;
- *Lack of presumptions relating to copyright subsistence and ownership.* Amending the law to add ownership and subsistence presumptions would reduce the procedural burden on rights holders in proving their cases; and
- *Non-deterrent civil damages.* Amending the law to introduce statutory damages to cover end users and to ensure that monetary damages serve as a deterrent would improve IPR protection. Neither the current provisions on damages nor the application of these provisions are sufficient to serve as a deterrent to future infringement.

Until these changes are made in the law, the enforcement of individual copyright claims will continue to be complicated by the lack of evidentiary presumptions in the law. Amendments have been considered for years, but relatively little has been done in this area.

In 2001, South Africa introduced measures to enhance enforcement of the Counterfeit Goods Act. The South African government appointed more inspectors, designated more warehouses for counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. In 2004, there were 100 convictions for people arrested with counterfeit DVDs and computer games, compared to 14 in 2003. Cooperation between industry and customs authorities and police also improved. Despite these efforts, monetary losses from trademark counterfeiting and copyright piracy remain high. U.S. industry estimates total U.S. industry losses from copyright piracy in South Africa in 2004 at \$128 million, including \$91

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million in business software applications and \$35 million in motion pictures. U.S. industry is also increasingly concerned about illegal commercial photocopying, especially at universities, libraries, and other on-campus venues. Counterfeit medicines are also a growing problem. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, there are concerns about laxity in enforcement of IPR laws against imports of infringing goods. Complainants can take both civil and criminal action against offenders. U.S. industry also reports that South Africa is becoming a transshipment point for pirated and counterfeit goods into the rest of Africa.

U.S. firms have complained that South Africa does not adequately protect the safety and efficacy studies (also called “registration data”) filed before national authorities for approval of some products. The U.S. firms claim that these data are unfairly “referenced” by competitors in order to register their products.

South Africa is a member of the World Intellectual Property Organization (WIPO) but has yet to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. South Africa has acceded to the Stockholm Text of the Paris Convention for the Protection of Intellectual Property.

### **Software/Audio Visual IPR Issues**

Software piracy still occurs frequently in South Africa. The Business Software Alliance estimates that the piracy rate was 37 percent in 2004 and that U.S. industry in South Africa lost an estimated \$91 million. Piracy in the video and sound industry also continues to be a concern. U.S. industry estimates that piracy rates for the audiovisual industry rose from 15 percent to 40 percent from 2001 to 2004, caused mainly by the growth in imports of pirated optical disc products. The Motion Picture Association estimates U.S. industry losses from audiovisual piracy of \$35 million in 2004.

## **SERVICES BARRIERS**

### **Telecommunications**

South Africa has scheduled WTO commitments on value-added telecommunications and basic telecommunications services and has 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 current monopoly supplier, Telkom, in long-distance, data, telex, fax, and private leased circuits services. Despite the end of Telkom’s exclusivity period in May 2002, Telkom has been able to continue its monopoly because of the government’s unsuccessful attempts to license a second network operator (SNO). Telkom is also involved in an on-going multi-million dollar contract dispute with a U.S. telecommunications software company. The lawsuit is currently pending in the South African courts. Although the Minister of Communications conditionally approved a license for the SNO

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in December 2003, disagreements between the SNO shareholders over operational control and allocation of the remaining equity stake delayed the operation of the SNO. In February 2005, the Minister of Communications awarded the remaining equity stake in the SNO. The Independent Communications Authority of South Africa (ICASA) will issue the license once the stakeholders finalize a shareholders agreement and business plan.

In September 2004, the Minister of Communications announced a sweeping liberalization of the telecommunications sector, which went into effect February 1, 2005. Among other things, the Minister indicated that mobile operators would be allowed to use any fixed lines for the provision of their service, value-added network services (VANS) could be provided by facilities other than those owned by Telkom and the SNO, VANS providers would be allowed to carry voice using any protocol, and private telecommunications network operators could resell their spare capacity. ICASA is developing regulations to take into account the Minister's announcement. The new regulations are expected to resolve past complaints by Internet Service Providers (ISPs) and VANS providers, who have previously cited problems in acquiring new facilities from Telkom.

The Department of Communications (DOC) released a Draft Convergence Bill in December 2003, which industry analysts hoped would simplify the existing legislative framework, empower the regulator, and open the telecommunications industry to greater competition. Following a highly critical public comment period, the DOC undertook to revise the Bill. Many in the industry believed that the bill did not go far enough and created significant ambiguities. A revised bill is expected to be released in 2005.

Despite the progress these developments represent, some problems in the telecommunications sector still exist. For example, South Africa has continued to restrict the resale of telecommunications services. In the past, service providers have complained about ICASA ineffectiveness in asserting its authority over Telkom and have resorted to pursuing remedies in the Pretoria High Court. Telkom also often challenges decisions taken by ICASA, leading to delays in implementing rulings. Some companies continue to raise questions concerning the consistency of provisions in the Amended Telecommunications Act with South Africa's WTO obligations.

Additional concerns have been raised about the South African market for satellite services. In particular, there is a lack of transparency in satellite regulations, limitations on foreign satellite operators to serve the market, and excessively high licensing fees for Mobile Satellite Services.

### **Other Services**

The United States and the Government of South Africa are currently discussing the possibility of negotiating an open skies air transport agreement. Government-to-government technical discussions were held during January 2005, with both sides promising further consultations later in the year. These were the first formal consultations since negotiations in May 2001, when

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South African authorities indicated that their government was not ready for open skies, preferring instead incremental liberalization of the existing 1996 air transport agreement. Open skies agreements provide for open route rights, capacity, frequencies, designations, and pricing, as well as opportunities for cooperative marketing arrangements, including code-sharing and airline alliances. South African Airways (SAA), the national airline wholly owned by the transport parastatal Transnet, had previously noted concerns about U.S. airlines exercising “fifth-freedom rights” in Africa (i.e. carrying passengers between countries other than the United States and South Africa), which could impinge on one of SAA’s strategic markets.

U.S. financial services providers have expressed ongoing concerns about the implementation of the Black Economic Empowerment (BEE) charter for the financial services sector. In 2003 and 2004, several of these providers participated in the negotiations with government, labor and industry stakeholders that resulted in the drafting of the BEE financial services charter. DTI has released some generic scorecard targets, including a 25 percent equity ownership target. It is unclear whether this may affect the financial services charter, which currently permits foreign financial institutions to substitute equity ownership requirements by financing and investing in BEE transactions. It is uncertain whether there will be pressure to eliminate this foreign alternative to equity ownership or whether it will be allowed as an exception to the overall generic target. (See the investment section for more on BEE.)

## **INVESTMENT BARRIERS**

### **Uncertain Implementation of the BBEE Act**

In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment (BBEE) Act of 2003, the legislation enacting South Africa’s Black Economic Empowerment (BEE) strategy, which is intended to move the historically disadvantaged majority population in South Africa into the mainstream of the national and global economy. U.S. businesses strongly support the goals of BEE, and many have a long history of instituting human resource management, procurement, and enterprise development policies in South Africa that are consistent with BEE objectives. These businesses hope BEE will be implemented in a manner that allows them to continue these policies and to participate fully in South Africa’s economic growth. However, as South Africa’s BEE strategy has evolved through a series of human resource development, management, procurement, enterprise development (investment in black-owned firms) and equity transfer policies, several key implementation and interpretation questions remain unanswered, creating uncertainty for investors.

The BBEE Act directs the Minister of Trade and Industry to develop a national strategy for BEE, issue BEE implementing guidelines in the form of Codes of Good Practice, encourage the development of industry-specific charters, and establish a National BEE Advisory Council to review progress in achieving BEE objectives. The Minister released three Codes in December 2004, with seven more due in 2005. The recently released Codes address specific issues pertaining to the BEE Framework, Equity Ownership, and Management and include a new

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generic scorecard with suggested targets for areas such as equity ownership, management, procurement, and equality in employment. The Codes are intended to harmonize existing and future industry empowerment charters. Sectors that have completed or are close to finalizing empowerment charters for their respective industries include: accounting, agriculture, chemicals, cosmetics, clothing and footwear, construction, engineering services, financial services, forestry, health, information and communications technology (ICT), liquid fuels, liquor, marketing, mining, property, tourism, transport, and wine.

U.S. businesses hope the Codes of Good Practice will establish flexible criteria that allow them to meet BEE objectives through multiple means, and they believe that flexibility will be especially important with respect to equity ownership. Because of their corporate structures, most U.S. businesses cannot transfer equity, and they are concerned that mandatory equity transfer requirements or provisions that would leave open that possibility could – for very practical reasons – put the future of their South African operations in doubt and perhaps deter further investment.

The Minister is expected to establish the National BEE Advisory Council early in 2005. The Minister is also developing a statement on equity ownership for multinationals to be included in the Code of Good Practice on Equity Ownership, which is expected to explain the South African government's equity expectations for U.S. companies operating in South Africa. USTR and the U.S. Embassy in Pretoria have been closely monitoring the ongoing development and implementation of South Africa's BEE policies and have maintained a continuous dialogue with the South African government and U.S. industry on BEE.

## **ANTICOMPETITIVE PRACTICES**

### **Ownership Patterns**

There is an historical legacy of concentrated ownership in some 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. Moreover, government policies from 1961 to 1994 prohibited some successful companies such as South African Breweries, Anglo American (including DeBeers) and SASOL from investing abroad. They therefore expanded their activities locally. As a result, conglomerates with considerable market power developed in the South African marketplace. This situation has been changing, as many of the major players have been expanding internationally and have been listed on foreign stock exchanges. Together with the more effective competition authority and strong sectoral initiatives to enlarge the share of black participation in the economy, South Africa's business environment is becoming more competitive and more open to new entrants, including U.S. companies. Sectors such as energy, transport and telecommunications have also historically been controlled or dominated by parastatals. These sectors are gradually restructuring and opening up for competition from the private sector. The privatization program of the South African government, although moving slowly, is also starting to bring a change in ownership patterns.

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## **ELECTRONIC COMMERCE**

The Electronic Communications and Transactions Law, effective July 31, 2002, governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce but instead may increase regulatory burdens and introduce uncertainty into the future of electronic commerce in the country. The law requires government accreditation for certain electronic signatures, takes government control of the “.za” domain name, and requires a long list of disclosures for web sites that sell via the Internet.

In December 2003, the State Law Commission released Issue Paper 24: Privacy and Data Protection. The Issue Paper sought feedback for proposals on privacy and data protection legislation and creation of a statutory regulatory agency. Comprehensive legislation may negatively impact the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data, thereby weakening cross-border e-commerce and services between South Africa and its trading partners. No bill was submitted to the legislature in 2004.

## **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 from government employment, or deportation (for foreign citizens). South Africa has no fewer than ten agencies engaged in anti-corruption activities. Some, like the Public Service Commission, Office of the Public Protector, and Office of the Auditor-General, are constitutionally mandated and address corruption as only part 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, however, are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts.

During the last few years, crime has been a far more serious problem than either corruption or political violence and an impediment to, and a cost of, doing business in South Africa. The South African police forces have not been effective or well accepted in many communities because of their historical role in enforcing minority rule, as well as their lack of training and internal crime and corruption within the forces. The levels of crime, especially violent crime, are a deterrent to attracting U.S. companies to South Africa.

New laws, such as the Promotion of Access to Information Act signed into law in February 2000, have helped to increase transparency in government in the last few years. The Public Finance Management Act, which became effective on April 1, 2000, helped to raise the level of oversight

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and control over public funds and improved the transparency of government spending, especially with regard to off-budget agencies and parastatals. Notwithstanding these efforts, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

On April 28, 2004, President Mbeki signed “The South African Prevention and Combating of Corrupt Activities Act” (PCCAA) into law. The PCCAA, *inter alia*, makes it more clear which activities are considered graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report any corrupt activities. One shortcoming of the Act is its failure to protect whistleblowers against recrimination or defamation claims.

## **Immigration Laws**

For a number of years, U.S. and other foreign companies have complained that South African immigration legislation and the application of the law made it extremely difficult to get work permits for their foreign employees. Previously, South Africa relied on the apartheid-era Aliens Control Act, which did not take into account international developments and the opening up of the South African market. A new immigration law entered into force on May 31, 2002. The legislation establishes yearly quotas for granting work permits to foreigners. Local businesses have criticized the new law for creating uncertainty because the quota system sets limits on the number of skilled people that may enter the country in particular categories. Corporate investors are allowed under a separate dispensation to make blanket applications for the people they need. It is not clear whether these corporate permits fall in or out of the quota system. The Trade and Industry Minister has suggested that the South African government may need to revise the law to acquire critically needed skills in South Africa. Home Affairs officials oppose moving away from quotas because it might mean reverting to the Aliens Control Act, wherein an employer had to establish the clear need for a skill. The Minister of Home Affairs has said that the new law is an enormous improvement over the previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

## **2. BOTSWANA**

### **IMPORT POLICIES**

Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and are obtainable from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. The import permits are not transferable. Permits are usually granted upon request.

Prohibited imports include habit-forming drugs and objectionable literature (pornographic magazines and videotapes). Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining the import permit from the

### **FOREIGN TRADE BARRIERS**

Department of Trade and Consumer Affairs. Imports of fresh pork are banned, but processed pork products may be imported. Poultry imports are permitted only when there is a domestic market deficit. Imports of some vegetables, meat, and dairy products are seasonally banned.

## **GOVERNMENT PROCUREMENT**

To comply with the Public Procurement and Asset Disposal Act of 2002, the Public Procurement and Asset Disposal Board (PPADB) was created in 2003 as an independent parastatal to take over the functions of its predecessor organization, the Central Tender Board. The PPADB is responsible for the award of all government tenders. The tender process is open. Lobbying of the PPADB or its members is strictly prohibited. The Independent Complaints Review Committee of the PPADB, established in November 2004, reviews the Board's decisions subject to challenge by stakeholders (e.g., contractors and procuring entities). Since December 2003, the PPADB has published its decisions concerning awarded tenders, prequalification lists and newly registered contractors.

Government procurement practices do involve some preference schemes and reserve certain tenders for 100 percent citizen-owned companies. The PPADB has stated that it considers these schemes within the context of Botswana's obligations under the WTO, the Southern African Development Community (SADC), and SACU. Botswana is not a signatory to the WTO Agreement on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

In 1998, Botswana became a member of both the Berne and Paris Conventions, the international baseline intellectual property rights agreements. The Botswana Copyright Law, enacted in 2000 but not yet fully implemented, is intended to improve standards of protection for the rights of creators of literary, artistic, dramatic, cinematographic works; computer programs; broadcasting organizations; and sound recordings. The government believes that, once implemented, the law will put in place mechanisms that will help to deter future infringement.

## **SERVICES BARRIERS**

The government is continuing to reorganize and restructure some ministries and departments, to improve the efficiency and effectiveness of services delivery, and it is moving towards privatizing a number of parastatal businesses. One reform requires the Government to establish autonomous authorities or boards, working largely on commercial principles. One such authority is the Public Enterprise Evaluation and Privatization Agency (PEEPA), which was established in 2000 to oversee the implementation of the Privatization Policy. PEEPA will ultimately determine the extent of foreign participation in the privatization process and the mechanics that will be used to promote citizen participation. The government intends to use privatization as a tool to increase foreign direct and portfolio investment in the country.

## **FOREIGN TRADE BARRIERS**

The Ministry of Finance and Development Planning, to which PEEPA reports, welcomes foreign investment, but has stated, however, that local investors may be given preference in privatization initiatives in some instances.

The telecommunications market was liberalized in 1996 following the adoption of the Telecommunications Policy of 1995 and enactment of the Telecommunications Act (Act No. 15 of 1996), which abolished Botswana Telecommunication Corporation's (BTC) monopoly in some segments of the market and established the independent regulator, the Botswana Telecommunications Authority (BTA). Botswana did not participate in the WTO extended telecommunications and financial services negotiations. The BTA was created to safeguard competition and inter-connection to the public network, yet the state-owned BTC still maintains a monopoly as the sole licensed supplier of fixed-line voice services, including international calls. Market segments liberalized so far are mobile telephones, data communications, payphones, sale of telecommunications equipment, and Internet services. Competition in the cellular phone industry is dominated by two international firms, Mascom (Portuguese) and Orange (French), who compete for the bulk of the local market share. Voice Over Internet Protocol (VOIP) is not allowed (except over private networks); this prevents licensed Internet providers, as well as suppliers of international data transmission through very small aperture terminals (VSATs), from offering voice services in competition with BTC. BTA has almost complete freedom in deciding the number of licenses and associated conditions. BTA rulings need not be made public, and interconnection agreements between parties (copies are provided to the BTA) remain confidential.

BTC must operate any new telecommunications services as subsidiaries or associated entities to allow sufficient accounting separation from its fixed-line operations (BTC Act and 1996 amendments). BOTSNET, a BTC subsidiary, for example, is competing in Internet services with nine other licensed providers.

## **INVESTMENT BARRIERS**

All foreign investors wishing to invest in Botswana are required to register a company in Botswana in accordance with the Companies Act and to comply with other applicable legislation; transfer technology to Botswana, as appropriate; transfer skills to citizens of Botswana by promoting their involvement and participation in positions in the supervisory, middle and senior management levels of companies; and ultimately replace expatriate employees with Botswana citizens within an agreed period, though there are often exceptions to this rule in practice.

The Botswana Export Development and Investment Authority (BEDIA), founded in 1998, is an autonomous organization established to promote investment in Botswana with a special emphasis on export-oriented manufacturing industries. The Authority is designed to serve as the primary government contact point for both domestic and foreign investors. BEDIA maintains a

## **FOREIGN TRADE BARRIERS**

One Stop Service Center to help investors secure all clearances and approvals as quickly as possible.

In addition, the Government is developing a competition policy, privatization master plan, and foreign direct investment strategy, all of which are scheduled for consideration by Parliament early in 2005. These new initiatives are geared towards attracting foreign investment by clarifying the rules and regulations for participation in the Botswana economy.

## **ELECTRONIC COMMERCE**

Internet usage is on the rise, but nationwide usage remains extremely low. According to the government, five percent of the population uses the Internet. There is a growing number of Internet Service Providers and Internet cafes, but due to the high cost of fixed-line phone charges associated with dial-up service, the cost of accessing the Internet remains prohibitive for the majority of the population.

## **OTHER BARRIERS**

The legal system is sufficient to conduct commercial dealings, and foreign and domestic parties have equal access to, and standing under, the judicial system. Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of cases has seriously impeded international companies that have won government procurement contracts, which have subsequently been challenged in court. There is a growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

## **3. LESOTHO**

### **IMPORT POLICIES**

Lesotho applies a permit system for all imports from non-SACU members. The system is applicable to all consignments imported by individual consumers and investors. Industrialists are accorded preferential treatment through which a "Blanket Permit" is allowed with a validity of 12 months and an additional grace period of 3 months.

### **Tariff and Non-Tariff Barriers**

Lesotho applies the SACU Common External Tariff. Additional charges include clearing fees ranging from M750 to M1,000 (approximately \$130 to \$175). Lesotho is a member of the WTO, the Southern Africa Development Community (SADC), and the Africa, Caribbean and Pacific-European Union (ACP-EU) Cotonou trade agreement.

## **FOREIGN TRADE BARRIERS**

## **Import Licensing**

The agricultural sector has witnessed some structural reforms that halted price subsidies and import controls on maize and wheat produce in favor of market-determined prices. The 1967 Agricultural Marketing Act, however, continues to control the importation of bread, legumes, sugar, eggs, meat, dairy products, fruits and vegetables.

With the exception of eggs, sugar and legumes, the import restrictions allow a minimum exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors the level of production of these commodities and issues import licenses in the event of short supply. However, national production has never met local demand. As a result, import permits are issued as a matter of course. Non-automatic licenses apply to imported used clothing. In practice, however, no licenses for used clothing are issued, with the effect of a *de facto ban* on this product. Liquor imports are prohibited, with the exception of duty-free allowances from countries outside the SACU area.

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Lesotho does not have a national standards body. The Standards and Quality Assurance section of the Ministry of Trade and Industry, Cooperatives and Marketing functions as the focal point for standards and quality assurance. No national standards have been developed to date. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards facilities and quality assurance schemes. Local exporters have relied on traditional export markets and have developed their standards according to technical and quality requirements of importing countries or international standards.

Lesotho participates in a regional program on Standardization, Quality, Accreditation and Metrology for the Southern Africa Development Community. The program aims to harmonize standards for adoption by all member states. Efforts are also underway to develop a regional accreditation authority.

## **GOVERNMENT PROCUREMENT**

The Central Tender Board, a body within the Ministry of Finance and Development Planning, is responsible for the procurement of goods and services for all government departments through mainly (though not exclusively) open tender.

The Board employs a stage-by-stage process that entails among other things, soliciting bids for goods and services from local, regional and international suppliers/contractors. Standard practice for the Board is to follow the UNCITRAL model law on Government Procurement. Lesotho is not a signatory to the WTO Agreement on Government Procurement.

## **FOREIGN TRADE BARRIERS**

Government procurement rules do not give Lesotho nationals preference in bids for goods and services. The Ministry of Trade and Industry encourages joint ventures.

Lesotho is working on a procurement policy that will conform strictly with SACU and WTO regulations except where there is a clause allowing for special preferences. New procurement guidelines are being considered which, among other things, would use the Internet to widen the scope of coverage for solicitation of bids.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Lesotho's Industrial Property Order (1989), Copyright Order (1989) and the Industrial Property Regulations (1989) are the basis for legal protection of intellectual property rights. Patents, valid for 15 years from the date of application, have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Lesotho is a member of WIPO and the African Regional Intellectual Property Organization.

## **SERVICES BARRIERS**

Foreign participation is not restricted in the service sector. The banking and telecommunications sectors are largely controlled by foreign ownership, in particular by South African institutions.

The Trading Enterprises Order of 1996 restricts foreigners from participating in small trading activities that are reserved for nationals only. These include butcheries, barbershops, general cafes and hair salons.

## **INVESTMENT BARRIERS**

Lesotho welcomes foreign investment. Foreign investors have participated in the country's privatization program without discrimination.

## **ELECTRONIC COMMERCE**

Commercial outlets in Lesotho do not offer electronic trading. Some handicraft producers and tourist destinations market their produce on the Internet, although they do not have Internet payment facilities. The Ministry of Communications, Science and Technology is circulating a National Information and Communication Technology policy paper which proposes the introduction of electronic commerce and the formulation of related regulatory mechanisms. The Standard Bank group this year introduced a debit card that enables its customers to make electronic payments in Lesotho and outside the country.

## **FOREIGN TRADE BARRIERS**

## **OTHER BARRIERS**

### **Corruption**

Business people state that solicitation of bribes in connection with government services does not occur. The government has received international accolades for its prosecution of multinational companies for corruption related to the awarding of contracts for construction of the Lesotho Highlands Development Project. In cases that have been upheld by the Lesotho Court of Appeals, the former Chief Executive of the Lesotho Highlands Development Authority and three multinational corporations have been convicted for fraud and bribery.

The government has established a Directorate on Corruption and Economic Offenses that continues to prosecute cases regarding the LHDA project, as well as others involving embezzlement and bribery.

## **4. NAMIBIA**

### **IMPORT POLICIES**

Namibia is a member of various regional and international economic and trade bodies including the Southern African Development Community (SADC) and the WTO. Namibia uses the Harmonized System of Classification and applies the SACU common external tariff (CET).

The Directorate of International Trade of the Ministry of Trade and Industry (MTI) is responsible for coordinating the country's trade policies and overseeing Namibia's participation in international trade bodies. The Directorate is responsible for managing import/export procedures. Importers must have an import permit from the Ministry of Trade and Industry. Namibia is a party to the WTO Agreement on Import Licensing. A limited number of products are subject to non-automatic import licensing: medicines; chemicals; frozen, chilled, fish and meat; live animals and genetic materials; controlled petroleum products; firearms and explosives; diamonds, gold and other minerals; and seemingly all second-hand goods such as clothing and motor vehicles. In practice, however, the Ministry of Trade and Industry does not issue licenses for imported used clothing, with the effect of a *de facto ban* on this product. Most non-agricultural imports require a permit issued by MTI. With respect to agricultural trade, the Namibian Agronomic Board issues permits for the import, export, and transit of controlled agronomic crops (i.e., wheat and wheat products and corn and corn products). Imports of agronomic crops and derivatives, as well as all plants and plant products, also require the issuance of a phytosanitary certificate by the Ministry of Agriculture, Water and Rural Development. The Namibian Meat Board regulates the import and export of live animals (cattle, sheep, goats and pigs) and derivative meat products. Importers of live animals and meat products must demonstrate compliance with the country's animal health standards by obtaining a veterinary import permit from the Directorate of Veterinary Services.

## **FOREIGN TRADE BARRIERS**

In January 2005, Namibia introduced a new regulation to ban the importation of used vehicles older than five years from non-SACU countries, as well as left-hand drive vehicles.

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. To meet its international commitments, the government is drafting new legislation – the Biosafety Act – which will regulate the importation, sale and use of products of agricultural biotechnology and will establish new regulatory and administrative structures. It will impose new registration obligations on facilities that use or produce agricultural biotechnology products and will require persons and companies to receive authorization prior to importing such products. It will require biotechnology products to be clearly labeled and identified for purposes of traceability. Pending passage of the Biosafety Act, the government has imposed a moratorium on the importation of agricultural biotechnology products.

## **GOVERNMENT PROCUREMENT**

Most government transactions, including the awarding of contracts and the purchase of supplies, are made through the Tender Board of Namibia. The Board is comprised of representatives from various government ministries and appointed by the Minister of Finance. Government requests for procurement tenders are publicized in the local media. The Tender Board gives preference for goods manufactured and/or assembled in Namibia. Namibia is not a signatory to the WTO Agreement on Government Procurement.

## **EXPORT SUBSIDIES**

Since independence in 1990, the government has pursued policies to diversify its economy and to create employment. To achieve that goal, the government has put in place tax and non-tax incentives to attract manufacturers and export-oriented businesses. The Offshore Development Company administers the country's Export Processing Zone (EPZ) regime. Companies granted EPZ status can set up operation anywhere in Namibia. There are no restrictions on the industrial sector so long as the exports are destined for markets outside the SACU region. Benefits of the EPZ regime include no corporate tax, no import duties on the importation of capital equipment or raw materials, and no VAT, stamp or transfer duties. Non-residents operating in an EPZ may hold foreign currency accounts.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Namibia is a member of the World Intellectual Property Organization. The responsibility for IPR protection is divided between two government ministries. The Directorate of Internal Trade of the Ministry of Trade and Industry oversees industrial property and is responsible for the

## **FOREIGN TRADE BARRIERS**

registration of companies, private corporations, patents, trademarks and designs. The Ministry of Information and Broadcasting manages copyrights.

The government is in the process of updating copyright legislation to bring it in line with the TRIPS Agreement and the WIPO Treaties on Performance and Phonograms and Copyrights. A draft bill is scheduled to be tabled in Parliament in 2005. Absent new legislation, Namibia lacks adequate legal and enforcement mechanisms to address the problems associated with piracy and copyright violations.

## **SERVICES BARRIERS**

Services account for nearly 60 percent of Namibia's GDP with government services representing the largest single component. Foreign participation in the services sector is generally unrestricted. Due to historical links between the two economies, South African companies dominate many commercial services in Namibia, particularly in the retail and financial sectors. Other services -- including telecommunications, water, electricity and most major transport services -- are dominated by Namibian parastatals. Many of the 41 recognized parastatals operate as "commercialized" entities, meaning they are profit-seeking and are not maintained on the national budget. However, only a limited number produce annual reports on a regular basis. There is currently little U.S. participation in the Namibian service sector.

Under the Namibia National Re-insurance Act of 1998, insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation (NamibRe). In 2001, the government and private insurers reached an agreement in which the mandatory cessions clause would not be enforced for five years. The government-industry agreement will be re-evaluated in 2006.

## **INVESTMENT BARRIERS**

Namibia's Foreign Investment Act of 1990 assures equal treatment of domestic and foreign investors and provides non-discriminatory access to all sectors. The government guarantees foreign investors access to foreign currency, repatriation of capital, and dispute settlement through international arbitration. There are few restrictions on the establishment of private businesses or the size of an investment. The Namibian Investment Centre, which was created by the 1990 Act, is responsible for implementing the country's investment promotion policies.

There is no local participation requirement for foreign investments, but the government actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, there has been a concerted campaign to "Namibianize" existing investments.

The Namibian Constitution provides for the expropriation of property in the public interest subject to the payment of "just" compensation. As in other Southern African countries emerging

## **FOREIGN TRADE BARRIERS**

from apartheid, land reform is at the forefront of public debate. The government continues to pursue a “willing buyer-willing seller” program rooted in the Namibian Constitution. The process has been criticized recently for the slow pace of acquiring commercial farmland and resettling Namibia’s landless. The government considers foreign-owned and non-productive farmland primary targets for expropriation. The government is poised to implement a new land tax (originally scheduled to take effect in April 2002) in an effort to raise money for land acquisition. Absentee landowners will be subject to higher tax rates per hectare than resident farmers.

## **ELECTRONIC COMMERCE**

Electronic commerce is still relatively unknown to Namibian consumers. Only a small percentage of Namibians enjoy access to the Internet. The government is in the early stages of formulating policies to regulate electronic commerce. MTI’s Directorate of Internal Trade has included a section on electronic commerce in an updated version of the Companies Act, which is awaiting Parliamentary action.

## **OTHER BARRIERS**

According to recent surveys, there is a growing public perception that official corruption is on the rise. Several presidential commissions have been established in recent years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

Despite the growing perception of corruption, similar studies have shown that Namibians retain confidence in government institutions to address the problem. Anti-corruption bodies include the Prime Minister’s Anti-Corruption and Bribery Committee, the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anti-Corruption Bill was passed that provides for the establishment of an independent Anti-Corruption Commission (it has yet to be set up due to purported budgetary constraints). In November 2003, the National Assembly released the country’s first assets register for lawmakers.

## **5. SWAZILAND**

### **IMPORT POLICIES**

Swaziland is a member of the WTO, the Common Market for Eastern and Southern Africa (COMESA), and the Southern Africa Development Community (SADC). As a member of SACU, Swaziland applies the SACU common external tariff (CET). Swaziland has at times exercised its right under the SACU Agreement to protect infant industries such as fertilizer, cement, and beer by applying tariff rates higher than those included in the CET.

There are no restrictions on imports into Swaziland and no prohibited imports. A limited number of products from outside the SACU area require an import permit. Licensing permits issued by

### **FOREIGN TRADE BARRIERS**

the Ministry of Finance are generally easy to obtain and payment is governed by foreign exchange controls.

## **GOVERNMENT PROCUREMENT**

Although the government accords local business a 15 percent preferential rate in tenders for government contracts, there is little transparency and it appears that this preferential treatment for local bidders is not always granted. A large portion of government contracts is filled by firms from South Africa and other southern African countries, but for small-to-medium sized tenders, bidding companies must be registered in Swaziland. The government inspects the premises of all companies prior to awarding the tender.

Swaziland is not a signatory to the WTO Agreement on Government Procurement. The government solicits for bids 7 days to 30 days before the bid is due, depending on the size of the tender. Bid documents are obtained from Government Stores after the bidder pays at the Government revenue office. Bids are returned to the Central Tender Board. Awards are made known to all bidders.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Swaziland has an IPR regime inherited from the colonial era, under which copyrights, patents, and trade marks were more or less protected under various acts promulgated by the colonial authorities. The Ministry of Justice, responsible for these concerns, has been working on improved laws.

Patents are currently protected under a 1936 act that automatically extends patent protection upon proper application to products that have been patented in either South Africa or Great Britain. Updated patent legislation has been approved by the Cabinet, passed by both houses of Parliament, and is now awaiting the King's approval. Under the new legislation, patents would be issued by the Swazi government with technical assistance from the African Regional Industrial Property Organization. Protection would be extended to pharmaceutical and agricultural chemical products.

Copyright protection is addressed under four statutes, dating from 1912 to 1933. According to the Registrar General for the Ministry of Justice, the acts have never been implemented and copyright protection in Swaziland is limited. The Ministry of Justice is in the process of finalizing a draft, updated Copyright Act, based on the WIPO model act. Swaziland does not have a bilateral copyright arrangement with the United States.

The 1981 Trade Marks Act was revised in 1994. The Office of the Registrar General in the Ministry of Justice and Constitutional Affairs registers trademarks according to the updated act. There are no known, ongoing disputes with regard to copyrights, patents, or trademarks in Swaziland.

## **FOREIGN TRADE BARRIERS**

## **SERVICES BARRIERS**

Foreign participation in the services sector is generally not restricted, except for the insurance industry. Swaziland Royal Insurance, monopolized in the 1970s, remains the sole insurer in the country.

## **INVESTMENT BARRIERS**

Swaziland does not have an investment code or securities act. As a result, policies affecting foreign investment are established and influenced more through government statements and decrees than through formal legislative or administrative processes. The Swaziland Investment Promotion Authority (SIPA), which was established in 1998, provides services for investors and designs and implements strategies for attracting new investment. There are no formal policies or practices that discriminate against foreign investors. Companies in Swaziland may be 100 percent foreign-owned and foreign investors are free to invest in most sectors. However, as of December 2004, the government maintained monopolies in insurance, telephones, water, and electricity. Nearly all of the largest businesses in Swaziland are owned by foreign investors, either fully or with minority participation by Swazi institutions.

The government encourages foreign direct investment by providing factory shells at cost and offering generous tax allowances to foreign firms. Tax allowances include a low corporate tax of 10 percent, as compared to the standard 30 percent, and a 10-year exemption from withholding tax on dividends. New investors also enjoy duty-free import of machinery and equipment.

To work in Swaziland, all foreign nationals must acquire work and residence permits. These permits have been a source of tension between the expatriate business community and a government otherwise friendly to foreign investment. Employers must apply to the Immigration Office for a work permit and demonstrate that no Swazi is available to fill the relevant vacancy. Residence permits are only good for two years, at which time they must be renewed. Although permits are almost always renewed, expatriate businesspeople often complain that the process is cumbersome and exasperating.

## **ELECTRONIC COMMERCE**

The Kingdom's telecommunications network is fully digital. Optical fiber and local loop systems have been installed and link with key areas. An Internet gateway that links directly with the United States was launched in July 2000. A cellular network started operating in 1998; only one company, MTN Swaziland Ltd, offers this service. The Internet has become an integral part of the communications network in Swaziland. Internet service providers with web hosting services have been established in Manzini and Mbabane.

## **FOREIGN TRADE BARRIERS**