SOUTH AFRICA

TRADE SUMMARY

U.S. goods exports in 2014 were $6.4 billion, down 12.4 percent from the previous year. South Africa is currently the 40th largest export market for U.S. goods. Corresponding U.S. imports from South Africa were $8.3 billion, down 1.9 percent. The U.S. goods trade deficit with South Africa was $1.9 billion in 2014, an increase of $748 million from 2013.

U.S. exports of services to South Africa were $3.0 billion in 2013 (latest data available), and U.S. imports were $1.7 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $7.3 billion in 2012 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $294 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was $5.2 billion in 2013 (latest data available), down from $5.5 billion in 2012. U.S. FDI in South Africa is led by the manufacturing, wholesale trade, and professional, scientific, and technical services sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

The United States and South Africa discuss technical barriers to trade (TBT) during meetings of the WTO TBT Committee, bilaterally on the margins of these meetings, and under the United States-South Africa Trade and Investment Framework Agreement (TIFA).

The Department of Health published in 2010, and implemented in 2012, a labeling regulation for foodstuffs (Regulations Relating to the Labeling and Advertising of Foodstuffs (R146)) that restricts the use of testimonials, endorsements, or statements claiming a food as healthy or nutritious. In May 2014, the Department of Health published the second phase of these regulations, which imposes new labeling requirements and restrictions (R429). The use of terms such as "healthy", "nutritious" or "diet" is prohibited unless the food has either no added, or "low" levels, of sodium, sugar or saturated fat. In addition, foods may not contain any addition of fructose, non-nutritive sweeteners, fluoride, aluminum or caffeine, in any quantity, in order to use the protected terms. Stakeholders are particularly concerned that, if finalized as drafted, the new regulations could require some brand owners to make changes to existing trademarks, and branding and labels in order to continue to sell their products in South Africa. Specifically, the Department of Health has indicated that, in the case where health claims or nutrient content claims form part of a brand name or trademark, the use of that brand name or trademark on the packaging of the foodstuff would be required to be phased out.

In September 2014, the Department of Health issued proposed amendments on its regulations relating to health measures on alcoholic beverages (Amendment to Regulations Relating to Health Messages on Container Labels of Alcoholic Beverages (R697)). The proposal would require that the health warnings printed on the labels of alcoholic beverages be increased in size to 1/8 of the total container size, as opposed to 1/8 of the label. Stakeholders have expressed some concerns about the proposal, including the lack of a definition of the word "container", which at present could be interpreted to include not just the consumer-facing packaging, but also any other packaging materials used to contain or transport the beverages. In addition, stakeholders are seeking clarity about enforcement of the proposed rotation requirement, which would require that the seven health warnings be exhibited on the labels with equal regularity to one another within a 12-month period. The United States submitted comments via the World Trade Organization

(WTO) Technical Barriers to Trade (TBT) Committee on March 3, 2015 seeking clarification on these issues.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

In June 2010, South Africa opened its market to U.S. deboned beef from cattle of all ages, but continues to ban the importation of all other beef cuts and beef products, as well as other U.S. ruminant animals and products. The United States will continue to urge South Africa to open its market fully to U.S. beef and beef products based on science, World Organization for Animal Health (OIE) guidelines, and the U.S. negligible risk status for bovine spongiform encephalopathy.

Pork

South Africa imposes stringent time and temperature requirements on pork and pork products, including a 20-day freezing requirement to prevent the transmission of trichinae. The United States does not consider such requirements to be necessary for U.S. pork products since most U.S. producers maintain stringent biosecurity protocols that limit the appearance of trichinae in the United States to extremely low levels in commercial swine.

South Africa also requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004.

Additionally, in May 2012, South African notified to the WTO a new class restriction regarding Porcine Reproductive and Respiratory Syndrome (PRRS), which further restricted U.S. pork exports to South Africa. The United States has engaged with South Africa to note that these PRRS restrictions are unscientific, not recognized by the OIE, and should not further restrict U.S. pork exports to South Africa.

The United States will continue to work with South Africa to eliminate these barriers and to establish procedures and standards that are fully consistent with all OIE and Codex Alimentarius guidelines regarding animal health and food safety.

Poultry

In December 2014, South Africa banned all poultry imports from the entire United States due to the detection of high pathogenic avian influenza (HPAI) in backyard flocks in Washington and Oregon. The United States is encouraging South Africa to limit poultry restrictions to only regions affected by the disease consistent with OIE guidelines, which recommend that countries take regional approaches to imposing trade restrictions on poultry and poultry products where HPAI is found in commercial or backyard flocks.

Horticultural Products

South Africa prohibits U.S. imports of Pacific Northwest apples, except apple fruit originating from orchards that are declared pest free from Rhagoletis pomonella (apple maggot). The United States is currently seeking to expand access for apples that originate from areas regulated for apple maggot and that undergo a cold treatment protocol. South Africa also prohibits imports of U.S. cherries and U.S. pears.

IMPORT POLICIES

Tariffs

South Africa is a member of the WTO, the Southern African Development Community (SADC), and the Southern African Customs Union (SACU). As a member of SACU, South Africa applies the SACU common external tariff (CET). In practice, South Africa sets the level of MFN tariffs applied by all SACU countries, and manages all matters related to trade remedies and disputes for the SACU countries. South Africa's average applied MFN duty rate in 2014 was 7.6 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area (EFTA), and SADC. In 2014, South Africa concluded negotiations for a SADC Economic Partnership Agreement (EPA) with the EU.

U.S. exports face a disadvantage compared to EU goods in South Africa. The European Union-South African Trade and Development Cooperation Agreement (TDCA) of 1999 covers a significant amount of South Africa-EU trade. Tariffs for EU imports on TDCA-covered tariff lines average 4.5 percent based on an unweighted average, while the general tariff rates, which U.S. imports face, average 19.5 percent for TDCA-covered lines. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, and agricultural products and machinery.

Final phase-in of the EU tariff preferences under the TDCA became effective in 2012, and U.S. companies are increasingly impacted by the tariff differential. Concerned importers of U.S. products report dealing with the issue in three ways: (1) substituting EU supply chains for U.S. supply chains (primarily large U.S. multinationals with complex global supply chains); (2) limiting marketing risk in South Africa, such as testing market response to new U.S. imports; or (3) pressing for tariff parity.

The EU-SADC EPA will further erode U.S. export competitiveness in South Africa and the region when it enters into force. The United States consistently highlights concern about the tariff disparity in bilateral discussions with South Africa, since this disadvantage contrasts the unilateral advantages the United States offers South African imports under the African Growth and Opportunity Act. South African authorities have emphasized that the only way to address this imbalance is through a free trade agreement, which they note was attempted unsuccessfully in the 2003–2006 United States-South African Customs Union FTA negotiations.

In September 2013, the South African International Trade Administration Commission (ITAC) increased import duties for whole chickens to the maximum bound rate of 82 percent, and announced import duty increases for other poultry products, including an increase in duties to 37 percent for imports of frozen bone-in chicken (U.S. imports of frozen bone-in chicken are also subject to antidumping duties, as noted below). South Africa raised the tariffs in response to requests from its domestic industry. In recent years, the South African government has encouraged domestic industry to appeal for increases up to the bound tariff rates where a lack of global competitiveness was a concern.

Nontariff Measures

The Department of Trade and Industry (DTI) prohibits specified classes of imports into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by ITAC. ITAC also requires import permits on used goods if such goods are also manufactured domestically, thus significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

In addition, U.S. stakeholders have a longtime objection to South Africa's imposition of antidumping duties on imports of frozen bone-in chicken from the United States. U.S. stakeholders' objections are many-fold, ranging from methodological, transparency, and due process concerns from the original investigation and final determination in 2000 to the improper initiation of subsequent sunset reviews. The United States continues to raise these antidumping issues with South Africa in the United States-South Africa Trade and Investment Framework Agreement meetings, as well as in other bilateral fora.

Other often-cited nontariff barriers to trade include customs valuation above invoice prices, and excessive regulation.

GOVERNMENT PROCUREMENT

South Africa uses competitive tenders for government procurement of goods, services, and construction. South Africa's Preferential Procurement Policy Framework Act of 2000 and its implementing regulations created the legal framework and formula for evaluating tenders for government contracts.

The South African government actively uses fiscal policy and its government tendering framework to fight unemployment. The 2011 Local Procurement Accord (the Accord) commits the government to significantly expand the value of goods and services it procures from South Africa suppliers. The Accord included an "aspirational target" of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa's national Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content greater than or equal to $10 million. This obligation requires the seller or supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the goods and/or services purchased or leased pursuant to a government tender.

South Africa also uses government procurement to empower historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy (see section on Investment Barriers for more detail on B-BBEE).

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

South Africa was not listed in the 2014 Special 301 Report. The South African government has formed an interagency counterfeit division including the DTI, the South African Revenue Service, and the South African Police Service to improve coordination of intellectual property rights (IPR) enforcement. The government has also appointed more inspectors, designated more warehouses for securing counterfeit goods, and improved the training of customs, border police, and police officials. Additionally, the DTI is working with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups. The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace.

In 2013, the Cabinet issued for public comment a draft national intellectual property strategy, which would have proposed significant changes to IPR laws that the Government of South Africa has stated seeks to address social welfare and development issues. There were concerns that the policy would significantly reduce protection for patent holders, could lead to an uptick in trade in counterfeit products, and would not meet internationally agreed standards under new copyright provisions. Based on significant stakeholder concerns regarding these and other provisions contained within the draft policy, South Africa retracted this draft policy and is in the process of drafting a new draft national intellectual property strategy, which has not yet been released for public comment. Further, under the European Union-South African Development Community EPA concluded in 2014, South Africa has agreed to prohibit the use of certain terms as geographical indications (GIs) in its domestic market, a move that will have a significant impact on U.S. agricultural exporters.

SERVICES

Telecommunications

Telecommunications regulation is divided between the South African Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA), the regulator for South Africa's communications, broadcasting, and postal services. ICASA was established under the ICASA Act (2000), which merged the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority. ICASA receives funding from DOC.

Telkom is South Africa's leading communications services provider, and it dominates fixed-line telecommunications services. Telekom operated as a monopoly until 2006, when Neotel was launched as a fixed-line operator following the passage of the Electronic Communications Act of 2005, which allowed the creation of a second national operator for telecommunications services. Even though it has a parallel regulatory role, the DOC is the largest shareholder in Telkom with a 39.8 percent stake. DOC expects Telkom to operate as a private company, but reportedly views Telkom as a strategic asset and often influences management decisions. An ICASA proceeding to determine whether ICASA should regulate FDI in electronic communications has been pending since 2009.

DOC has implemented measures to address some problems facing smaller operators. As a result, more mobile operators may now install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity.

Broadcasting

ICASA imposes local content requirements for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is capped at a maximum of 20 percent.

In 2006, an agreement with the International Telecommunications Union committed South Africa to achieve digital migration by June 1, 2015. After this date, the 11.5 million South African households with a TV will require a set-top box (STB) for terrestrial broadcasting transmission signals as the analog broadcasting frequencies' exclusivity will be lifted, resulting in signal interruptions. There are concerns that South Africa will miss the 2015 deadline. DOC is attempting dual-illumination, a period wherein digital TV signals would be broadcast concurrently with analog TV signals. During this transition, South Africa needs to convert all of its analog TV households to digital STBs. DOC admits it is "desperately behind schedule," but has no clear timeline to achieve digital migration.

Telecommunications operators continue to be frustrated by the migration delays. Telecommunications operators have requested access to the 2.6 GHz band and frequencies below 850 MHz, which will be freed by analog-to-digital migration, to build next generation mobile broadband networks. However, the spectrum cannot be allocated until the analog-to-digital migration is complete.

ELECTRONIC COMMERCE

The 2002 Electronic Communications and Transactions Law governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but has been criticized as imposing significant regulatory burdens. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for websites that sell goods and services via the Internet.

In 2003, the South African Law Reform Commission (the Commission) began considering the need for new data protection legislation. In 2009, the Commission introduced the Protection of Personal Information Act (POPIA) to the National Assembly. The bill cleared the national Assembly in August 2013, and President Zuma signed the bill in November 2013. The bill entered into effect in April 2014. The POPIA established a data protection authority (Information Regulator) and contains provisions affecting, inter alia, the processing of personal information by responsible parties and the transfer of cross-border data.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield FDI, merger and acquisition-related FDI has been scrutinized more closely for its impact on jobs and local industry. Private sector and other stakeholders are concerned about politicization of South Africa's posture towards this type of investment. South Africa also imposes increasingly high local content requirements on investments in areas such as renewable energy projects.

The B-BBEE Codes of Good Practice, promulgated in 2007 and entered into force in 2011, created a certification system (a "B-BBEE scorecard") that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A high rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid's assessment, but is also important for branding purposes and for managing client relationships, as a company's score can influence a client's score.

In October 2013, South Africa introduced stricter B-BBEE requirements, which are expected to enter into force on April 1, 2015. The government hopes an increased focus on enterprise and skill development on the B-BBEE scorecard will produce more transformation of the South Africa economy. U.S. firms are wary that the changes will reduce their current B-BBEE ratings. U.S. firms have struggled to score well on the "ownership" element of the scorecard, particularly when corporate rules prevent the transfer of discounted equity stakes to South African subsidiaries. Previously, U.S. firms compensated by scoring higher on other elements, but the new rules introduce penalties for failing to comply in key elements of ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with "Empowering Suppliers," which could prove challenging to companies importing products or inputs for value chains.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within those sectors. The charters for the integrated transport, forest products, construction, tourism, and chartered accountancy sectors have force of law in South Africa. Many other sectors, including financial services, information and communications technology (ICT), and property have transformation charters that do not have force of law, yet express the sector's commitment to "economic transformation."

Mineral and Petroleum Resources Development Act (MPRDA)

The pending MPRDA would grant the government 20 percent carried interest in any new petroleum or mineral activity. Further, the act allows the government to acquire additional ownership of the venture on terms determined by the minister of mineral resources. U.S. oil companies invested in South Africa have stated that if the bill becomes law, they will not invest further.

Other Legal Concerns for Investment

The pending Investment Promotion and Protection Act redefines the term "expropriation." The proposed bill states that if the government takes property or an investment, not for its own use but instead for transfer to a third-party, the taking would not qualify as expropriation and the government need not compensate the owner. Analysts suggest that this new definition is unconstitutional, and the Act is currently under review by an interagency working group before being resubmitted to South Africa's parliament.

Another concern for investors is the Private Security Industry Regulation Act Amendment Bill, which, if signed, would require 51 percent local ownership in private security firms. The bill gives foreign-owned firms only one month to comply with these provisions after they go into effect. Local analysts note that passage of the bill would probably result in "fire sales" of shares at rock bottom prices as firms seek to comply within the tight timeframe, and would amount to a virtual government seizure in violation of the constitutional protection of property clauses.

OTHER BARRIERS

Transparency and Corruption

Several laws have been enacted in the last 15 years to increase transparency and reduce corruption in South Africa's government, but some of those laws suffer from deficiencies. For example, the 2004 Prevention and Combating of Corrupt Activities Act bars the payment of bribes by South African citizens and firms to foreign public officials and obliges public officials to report corrupt activities. However, the Act fails to protect whistleblowers against recrimination or defamation claims. Additionally, the Protection of State Information bill (passed in 2013) has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression. President Zuma has yet to sign the bill into law.

Implementation of transparency and anticorruption laws also suffers from challenges. Although South Africa has no fewer than 10 agencies engaged in anticorruption activities, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. President Zuma reshuffled his cabinet in May 2014 to remove some ministers who were alleged to have engaged in corrupt activities.

Labor Constraints

Companies in many economic sectors experience difficulty recruiting qualified employees due to the emigration of skilled workers. Businesses also allege that labor laws are too stringent and limit job creation and expansion. For many years, U.S. companies and other foreign companies have complained of difficulties in obtaining temporary work permits for their skilled foreign employees. These issues are likely to be exacerbated by the new immigration regulations promulgated by the Department of Home Affairs which came into effect in May 2014. The regulations impact foreigners looking to visit, study, work, live and own businesses in South Africa. The implementation of the new visa requirements might affect sectors that rely on international visitors, such as tourism.