PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $1.6 billion in 2010, up $65 million from 2009. U.S. goods exports in 2010 were $1.9 billion, up 17.4 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.5 billion, up 11.0 percent. Pakistan is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was $517 million in 2009 (latest data available).

IMPORT POLICIES

Pakistan's overall average applied tariff in 2009 was 13.9 percent. There are 14 different *ad valorem* tariff levels, ranging from 0 percent - 150 percent. Prior to FY2008-09 (July 2008 – June 2009), specific rates of duty were applied to 44 products. These rates were continued in the FY2009-10 and FY2010-11 budgets.

In FY2008-09, the government of Pakistan (GOP) increased specific tariff rates on 397 non-essential and luxury items from the 15 percent to 25 percent range to the 30 percent to 35 percent range. These items include cosmetics, domestic appliances, luxury food items, and cigarettes. The tariff on cars with 1800cc to 2500cc engine capacity was increased from 90 percent to 100 percent, and from 100 percent to 150 percent on cars with engine capacity from 2500cc to 3000cc. A 50 percent tariff was imposed on imported vehicles with engine capacity less than 850ccs. These tariff rates were continued in the 2010-11 budget. In an effort to protect its domestic automotive parts manufacturers, Pakistan imposes higher tariff rates (50 percent) on imports of automotive part types that compete with domestically manufactured products than on imports of automotive parts that have no domestic competition (35 percent).

The government of Pakistan grants sector-specific duty exemptions, concessions, and other protections through promulgation of Statutory Regulatory Orders (SROs). For example in 2008, certain substances identified as drugs by Pakistan's 1976 Drug Act were granted tax exemptions, while certain other pharmaceutical products not covered under the SRO remained subject to a 15 percent duty. The GOP also provides concessionary tariffs for the import of raw materials used as active ingredients in pharmaceutical production. A list of SROs and other trade policy and regulatory documents can be found on the Federal Board of Revenue's website: http://www.cbr.gov.pk.

In January 2000, the Pakistani government implemented a transactional valuation system, in accordance with the WTO's Customs Valuation Agreement. Currently, this system covers roughly 90 percent to 95 percent of imports. A number of traders in the food and consumer products sectors have noted that the system is not uniformly applied. Similarly, a few major U.S. companies in the machinery and materials sector have reported specific concerns that customs officials have erroneously assessed goods based on their minimum values rather than the declared transactional value.

On October 5, 2009, Pakistan began to enforce a 2005 regulation requiring that commercial invoices and packing lists be included inside each shipping container. This procedure is difficult to follow, particularly in cases in which the invoice and packing lists do not originate in the same location as the shipments themselves, cases in which the invoices and packing lists are created after the shipment departs, or cases in which several companies are involved. Importers are charged a penalty of $58 for non-compliance.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The government uses an open procurement process in which bidders have to register with the government to be awarded contracts in order to ensure that only legitimate businesses bid for public contracts.

The Public Procurement Regulatory Authority (the Authority), established in 2002, is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. In 2004, the Authority put in place a regulatory framework for public procurement aimed at establishing transparent public procurement practices. According to the framework, international tender notices must be publicly advertised. The framework prohibits sole source contracting tailored to company-specific qualifications. There are no official "buy national" policies. The Authority includes a mechanism for bidders to lodge their complaints, and if the bidders are not satisfied with the response, they may file their case with the relevant court.

Political influence on procurement decisions, charges of official corruption, lack of transparency, and long delays in bureaucratic decision-making have become common in the last two years. Suppliers have reported instances in which the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid as required by regulation. In one example of the government's failure to follow its procurement regulation, Pakistan Railways (PR) purchased over 140 Chinese locomotives that did not meet the PR's technical requirements. In another example, although it offered the lowest price, the Pakistan Navy refused to accept a bid from a U.S. company for a tender involving the sale of high frequency receivers, and instead announced another round of bids.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. The majority of Pakistan's $6.9 million in other subsidies provided during FY2010-2011 focused on its large wheat sector. In that same period, the government ended freight subsidies and provided a $3 million interest rate subsidy to the textile spinning sector.

In 1989, Pakistan established its first Export Processing Zone (EPZ) in Karachi. The EPZ provides special fiscal and institutional incentives specifically targeted to encourage the development of export-oriented industries. The government subsequently created EPZs in eight additional locations, including Risalpur in KPK Province, Gujranwala and Sialkot in Punjab, and Saindak, Gwadar, Reko Dek and Duddar in Balochistan. Of these, only Karachi, Risalpur, Sialkot and Saindak are operational.

Principal government incentives for EPZ investors include: exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts, and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services, including facilitated issuance of import permits and export authorizations. Foreign investors are eligible to establish businesses in the EPZ and are guaranteed full repatriation of capital and profits.

The Export Processing Zone Authority (EPZA) has the exclusive right to collect presumptive taxes on exports. Final taxes range between 0.5 percent and 1.25 percent of the total profits. EPZA collects a "development surcharge" of 0.5 percent of the total profits. Companies' exports are otherwise exempt from all other federal, provincial, and municipal taxes. There are no minimum or maximum limits for investment. However, despite these incentives, most of the EPZs have failed to attract significant investment.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 2009, Pakistan was listed on the Special 301 report's Priority Watch List. The report cites weak protection and enforcement of intellectual property rights, particularly as they relate to copyright and pharmaceutical data protection.

While the government took steps in 2009 and 2010 to improve copyright enforcement, especially with respect to optical disc piracy, it appears that only some of the arrests resulted in prosecutions and the few verdicts that were issued resulted in minor prison sentences. Pakistan's Federal Investigation Agency continues to conduct large scale raids. From October 2009 - October 2010, 20 new cases were filed against IPR violators and millions of rupees worth of pirated material were confiscated. However, the failure to successfully prosecute those cases has meant that they had little deterrent effect: of the 41 individuals arrested and charged with IPR infringement during the course of the investigation, only 2 were accused and both were acquitted. Pakistan is now reportedly being used as a conduit for illicit products from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution to third countries. Book piracy also continues to present barriers to legitimate trade and investment.

Pakistan has not made progress in providing effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Since 2006, the Government of Pakistan and international and local pharmaceutical companies have been involved in negotiations related to draft regulations on data protection. Although draft data protection regulations were finally formulated in 2009, the regulations remain under Government of Pakistan review and have not been promulgated.

The recently enacted 18th Amendment makes healthcare a provincial responsibility. As a result, data protection regulations now require passage from the provincial assemblies in addition to the National Assembly, further delaying their enactment. Pakistan also lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. In 2009, President Zardari issued an ordinance that removed an 18-month patent application processing deadline, slowing the processing of pending patent applications.

In 2009, the Pakistan Cabinet approved a draft Plant Breeder's Rights Law and an amendment to the Seed Act of 1976. These bills await Parliamentary approval.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment requirement of $150,000 for most sectors. These provisions do not apply, in particular, to the information technology services sector, which is exempt from the minimum initial investment requirement; nor to banking, which is subject to special rules (*described below*).

Foreign investors may hold equity stakes up to 100 percent and are allowed 100 percent repatriation of profits in most sectors. The previous requirements that foreign investors accumulate 40 percent local equity within 5 years of an initial investment, and the cap on repatriation of profits at 60 percent of total equity or profits, have been abolished. Foreign investors in services and other non-manufacturing sectors are allowed to remit royalties and technical fees, subject to certain conditions. Royalty payments are limited to a minimum of $100,000 and subsequent royalty payments are capped at five percent of net sales for five years.

Telecommunications

In 2003, the government of Pakistan deregulated the telecommunications sector in order to comply with its WTO commitments and encourage growth in the sector. The Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services and the government issued 14 licenses to long distance telephone companies (12 of which are currently in use), 84 licenses to 37 local loop companies (of which 13 are operational), and 93 licenses to 16 wireless local loop companies (of which 10 are operational).

The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure. In 2005-2006, the government combined 15 value-added services including: Internet service provision, vehicle tracking systems, and data network operations into one license - the Class Value Added Services (CVAS) license. Applicants who applied prior to the announcement of this policy were given the option to either continue their old licenses or convert to CVAS licenses. To date, the government has issued 124 new CVAS licenses and converted 93 old licenses to CVAS. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services.

Banking and Insurance

Foreign banks that do not have a global tier-1 paid up capital (*e.g.*, equity and retained earnings of $5 billion or more) or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation) are capped at a 49 percent equity stake. Locally incorporated banks as well as subsidiaries of foreign banks are required to have a minimum paid up capital (free of losses) of Rs. 10 billion ($116 million) in order to conduct banking activities in Pakistan.

The parastatal National Insurance Company has the exclusive authority to underwrite and insure public sector firms, assets and properties. However, the government reserves the right to grant exemptions to this requirement pursuant to Section 166 of the Insurance Ordinance 2000. Private sector firms may seek foreign reinsurance facilities to meet up to 65 percent of their re-insurance needs. At least 80 percent of the foreign facilities must be with A-rated foreign companies, and the remainder from reinsurance companies rated BBB or above.

Market domination in the life insurance sector may pose a significant barrier to entry. The State-owned State Life Insurance Company holds over 68 percent of the market, although its market share has been declining over the past several years. Three domestically-owned companies account for 64 percent of the general insurance (property, casualty, and health) market. The State-owned National Insurance Company Limited held over 14 percent of the general insurance market in FY 2009-10.

INVESTMENT BARRIERS

Foreign investors are generally free to establish and own business enterprises in Pakistan with the exception of five restricted sectors arms and munitions, high explosives, currency/mint operations, radioactive substances, and new, non-industrial alcohol plants. There is a $150,000 minimum foreign investment requirement in non-financial services (except information technology services), and a minimum investment requirement of $300,000 in agriculture, infrastructure projects, and social services.

OTHER BARRIERS

Businesses operating in Pakistan have repeatedly called for strengthening Pakistan's domestic security. Corruption and a weak judicial system remain prevalent and are substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and provincial anti-corruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's Cabinet approved the National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended the implementation of reforms to combat corruption. The NACS recognized the NAB as the sole federal anti-corruption agency. In mid-2009, the Supreme Court directed that legislation replace the executive ordinance establishing the NAB, but as of December 2010 the National Assembly has yet to pass the related legislation. Pakistan's executive and judicial branches also have unresolved differences over the appointment of the NAB's chairman.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a long standing investment dispute between a major U.S. multinational company and a local partner raised concerns about the enforceability of international arbitration awards regarding contracts between private parties. After nearly a decade of litigation, the case was resolved in 2009 only after the local party withdrew its appeal.

In July 2005, Pakistan's Cabinet ratified the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) by ordinance. That ordinance expired in August 2010. Equivalent legislation is currently pending Parliamentary approval. If approved, the legislation is expected to be back dated to September 2010 to ensure continuity.