

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was \$2.6 billion in 2010, up \$1.2 billion from 2009. U.S. goods exports in 2010 were \$5.6 billion, up 26.4 percent from the previous year. Corresponding U.S. imports from South Africa were \$8.2 billion, up 39.5 percent. South Africa is currently the 38th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to South Africa were \$2.2 billion in 2009 (latest data available), and U.S. imports were \$1.5 billion. Sales of services in South Africa by majority U.S.- owned affiliates were \$4.5 billion in 2008 (latest data available), while sales of services in the United States by majority South Africa -owned firms were \$1.0 billion.

The stock of U.S. foreign direct investment (FDI) in South Africa was \$5.9 billion in 2009 (latest data available), up from \$4.9 billion in 2008. U.S. FDI in South Africa was led by the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Tariffs

South Africa is a member of the World Trade Organization (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 effectively sets the level of most-favored nation (MFN) tariffs applied by all SACU countries. South Africa's overall average MFN duty in 2009 was 8.1 percent. Almost 97 percent of tariffs are charged on an *ad valorem* basis, with rates ranging from 0 percent to 96 percent, the highest of which are charged on dairy products, beverages, and spirits. According to the WTO, average tariff protection is highest for the manufacturing sector in South Africa.

The International Trade Administration Commission (ITAC) administers South African trade laws. ITAC continues to receive requests from a number of industries for tariff protection, and U.S. companies have cited protective tariffs as a barrier to trade in South Africa. For example, U.S. apparel exporters expressed concern about increases in South African tariffs on over 120 clothing items in late 2009. Tariffs for these products were increased from 20 percent and 40 percent up to their WTO bound rate of 45 percent (the rate that generally cannot be exceeded under WTO rules) and impede entry into South Africa's apparel market. The tariff situation in South Africa remained similarly constraining in 2010.

Nontariff Measures

The Minister of Trade and Industry is authorized to prohibit 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 requires import permits on used goods if such goods are also manufactured domestically, resulting in *de facto* restrictions on most used goods, including used clothing. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

Other often cited nontariff barriers to trade include customs valuation above invoice prices, import permits, antidumping measures, and excessive regulation.

Antidumping Measures

Transparency and due process remain issues with respect to the actions of ITAC and its administration of South Africa's antidumping laws and regulations. As of the end of 2010, South Africa maintained antidumping duties on three products from the United States: poultry products, L-lysine-HCl, and acetaminophenol. In September 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the five-year expiration date of antidumping duties imposed on A4 paper imported from Indonesia. As a result of this decision, ITAC's domestic legal authority to impose antidumping duties had expired prior to the initiation of the sunset review for that product. ITAC subsequently announced its intention to terminate the antidumping duties on several imported products because the sunset review of those duties had not been initiated before the expiration of the five-year period as calculated in accordance with the court's interpretation of South African law. At the same time, ITAC indicated its intention to seek court permission to retain the antidumping duties on many products from various countries, including poultry products, acetaminophenol, and L-lysine-HCl from the United States. ITAC found that dumping and injury were likely to continue or recur even though those sunset reviews were initiated after the five-year lapse date. In April 2010, ITAC, along with the Minister of Finance and the Minister of Trade and Industry, jointly filed an action with South Africa's High Court seeking permission to conduct *de novo* the sunset reviews on these products such that ITAC would avoid having to revoke the antidumping measures. A decision from the High Court is expected in April 2011.

GOVERNMENT PROCUREMENT

Government purchases are made through the competitive tenders for goods, services, and construction. South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Broad-Based Black Economic Empowerment (BBBEE) strategy. See the section on Investment Barriers for more detail on BBBEE.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and associated implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. The Department of Trade and Industry (DTI) is working on regulations to clarify the Framework Act and incorporate the objectives of the Broad-Based Black Economic Empowerment Act of 2003. These regulations would give preference to bidders who comply with BBBEE objectives, and would include BBBEE thresholds in tender evaluations. In procurements valued up to one million rand (about \$142,000), 80 percent of the tender evaluation would be based on the bid price and 20 percent on the supplier's commitment to BBBEE objectives. For tenders valued over one million rand, companies would earn 90 percent of their points from the bid price and 10 percent from their commitment to BBBEE objectives. The National Treasury is working with the DTI to align preferential procurement regulations with the BBBEE Code of Good Practice on Procurement in order to help standardize how firms are evaluated on their compliance with industry BBBEE scorecards.

South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an industrial participation obligation. This condition requires that the seller/supplier engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender. There are also complaints of cases of government entities' failing to comply with procurement contracts.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In recent years, the South African government introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. While law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, some members of the business community have expressed concerns about lax enforcement of IPR laws against imports of infringing goods, and about slow and cumbersome court proceedings. Many are concerned about a South African Customs Administration interpretation of a 2004 court ruling as limiting the Customs Administration's authority to seize potentially IPR-infringing goods that are marked for transshipment through South Africa. This interpretation is still being debated within the South African government.

The number of arrests for trading in pirated or counterfeit goods has increased in recent years. In addition, South Africa has taken steps to improve enforcement, such as the creation of DTI's enforcement unit, and the establishment of Commercial Crime Courts in several cities. Stakeholders were encouraged by a November 2010 Pretoria Commercial Crime Court decision sentencing an optical disc pirate to imprisonment. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination of IPR enforcement. The DTI is also working with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry has expressed concern about software, optical disc, and internet piracy, the growing number of counterfeit production facilities, advertisements for "burn-to-order" services, and the unwillingness of South African internet service providers (ISPs) to shut down infringing sites. Counterfeit medicines are also a problem.

SERVICES BARRIERS

Telecommunications

Fixed-line telecommunication services in South Africa are dominated by Telkom, a former parastatal monopoly that is now partially privatized. Many businesses complain about high telecommunications prices, which are partly a result of Telkom's control of most of South Africa's wire line infrastructure. Telkom enjoyed a protected legal monopoly status prior to passage of the Electronic Communications Act of 2005, which allowed the creation of a second national operator for telecommunications services. While the second operator, Neotel, has yet to offer serious price competition in the consumer market, over the last two years Neotel and other wireless transmission services have begun to compete with Telkom for market share.

Liberalization policies implemented by the Department of Communications (SADOC) have addressed some problems facing smaller operators. As a result, more mobile operators are permitted to install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers can use infrastructure not owned by Telkom, and VANS providers can offer voice services. In addition, private telecommunications network operators are permitted to sell spare capacity.

The Independent Communications Authority of South Africa (ICASA) announced the recipients of the Individual Electronic Communications Network Services (I-ECNS) licenses on January 20, 2009. At the time, ICASA also promised licensees that it would complete the spectrum allocation process for these

licenses and finalize BBBEE equity ownership requirements by the end of the first quarter of 2009. As of December 2010, the process had not been completed.

In January 2009, the South African government approved the sale of existing government-controlled shares in Neotel to its parent corporation, India-based Tata Communications. This decision allowed Tata to gain a controlling share (56 percent) of Neotel. Neotel was the sole South African sponsor of the United States-led SEACOM undersea fiber-optic cable, which became operational in late July 2009 and provides the first true broadband connectivity for countries on Africa's eastern seaboard. Neotel is also promoting the development of other undersea cable projects, including EASSY (East Africa) and WACS (West Africa), which are expected to begin operations in mid-2011.

Broadcasting

ICASA requires local content for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is capped at a maximum of 20 percent. In July 2009, the South African government embarked on plans to amend the country's Broadcasting Act (1999). This followed a number of changes in the broadcasting and telecommunications sector, such as the migration from analog to digital television broadcasting. The SADOA announced a goal for the completion of digital migration by November 2011, but later revised the date to 2012. The standard (DVB-T) that had been announced earlier is under review. Full migration should free up scarce spectra (approximately 80 megahertz to 100 megahertz) that could be used to promote new technology and e-government services.

INVESTMENT BARRIERS

The only reported barrier to foreign investment in South Africa is BBBEE. In February 2007, the DTI published Codes of Good Practice in the Government Gazette that included a new generic scorecard to measure a company's level of BBBEE in areas such as equity ownership, management, employment, procurement from black-owned companies, and development of black-owned enterprises. The Codes permit multinational corporations to earn BBBEE equity ownership "points" for empowerment actions in non-equity areas, provided the DTI approves, and provided the multinational has a global corporate policy of owning 100 percent of the equity in its subsidiaries. Many U.S. companies had pressed for the right to use such "equity-equivalent" mechanisms. While completion of the Codes of Good Practice has cleared up much of the uncertainty that surrounded BBBEE, they are complex documents and much about their interpretation and implementation remains unclear. DTI has recently provided more clarity and the rate of approval has improved. Nonetheless, the process for getting an "equity-equivalent" mechanism approved remains complicated and requires a significant effort from the company. By the end of 2010, only six total "equity-equivalent" deals had been approved.

Several "transformation charters" have also been negotiated by stakeholders in sectors such as financial services, mining, and petroleum. These charters are intended to promote accelerated empowerment within particular sectors. Some stakeholders expect that many of these charters will be converted into binding sector codes. There is uncertainty, however, as to whether equity-equivalent plans approved by DTI under the Codes of Good Practice would automatically satisfy equity requirements imposed by the transformation charters. Draft legislation is circulating that would restrict the presence of foreign investment in the security industry.

In the Financial Services sector, a charter was reopened after labor unions complained that the charter permits 10 percent black ownership, while other sectors are required to have 25 percent. Banks argue that a lower equity threshold is appropriate due in part to banks' lack of physical capital as well as rapidly shifting capital market conditions, which can require frequent changes in the composition of equity shareholders as markets shift and investors need access to quick capital through sale of bank equity.

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but it 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 via the Internet.

In early 2006, the South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment and held a series of workshops on the draft legislation. This legislation, titled "Protection of Personal Information Bill", has undergone many changes since 2006, and will be promulgated in 2011. It will possibly come into effect by September 2011. Industry considers this version of the legislation superior to previous editions.

OTHER BARRIERS

Transparency and Corruption

Laws such as the Promotion of Access to Information Act and the Public Finance Management Act, both enacted in 2000, have helped to increase transparency in government. The 2004 Prevention and Combating of Corrupt Activities Act defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims.

South Africa has no fewer than 10 agencies engaged in anticorruption activities. Some, including the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as part of their responsibilities. However, 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. Following the April 2009 elections, the Zuma administration pledged to make anticorruption efforts a high priority and initiated a presidential hotline to receive reports of corrupt practices. In August 2010, the government announced that the Special Investigating Unit (SIU) would investigate five ministries, two provincial departments and the South African Social Security Agency for tender and procurement irregularities. Also in August, the Minister of Human Settlements announced the arrest of 1,910 government officials who were illegally benefitting from housing subsidies worth Rand 44 million (\$6.35 million).

Labor

For a number of years, U.S. and other foreign companies have complained of difficulties in the procedures for obtaining temporary work permits for their employees from overseas and from other parts of the African continent.