

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was \$2.2 billion in 2011, down \$372 million from 2010. U.S. goods exports in 2011 were \$7.3 billion, up 29.5 percent from the previous year. Corresponding U.S. imports from South Africa were \$9.5 billion, up 15.7 percent. South Africa is currently the 37th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to South Africa were \$2.5 billion in 2010 (latest data available), and U.S. imports were \$1.7 billion. Sales of services in South Africa by majority U.S.-owned affiliates were \$3.8 billion in 2009 (latest data available), while sales of services in the United States by majority South Africa-owned firms were \$372 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was \$6.5 billion in 2010 (latest data available), up from \$6.1 billion in 2009. 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, and the Southern African Customs Union (SACU). South Africa has preferential trade agreements with the European Union (EU), MERCOSUR, the European Free Trade Area, and SACU. As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa effectively sets the level of most favored nation (MFN) tariffs applied by all SACU countries. In 2011, the average *ad valorem* MFN duty in South Africa was 7.7 percent. However, South Africa applies specific duties on 220 products, including textiles, fish, oil, and many agricultural goods.

Due to South Africa's preferential arrangements with other countries, U.S. companies often face a disadvantage when exporting their products to South Africa, and many U.S. companies have cited differential tariffs as an impediment to doing business in South Africa. For instance, the South Africa-EU trade agreement resulted in import tariffs on EU goods that in many cases are much lower than tariffs on U.S. goods. For some products, exports from the EU enjoy a 10 percent to 15 percent tariff advantage compared to U.S. products. Key categories in which the U.S. faces a tariff disadvantage compared to the EU include cosmetics, distilled spirits, chocolate and confectionery products, plastics, textiles, trucks and parts, fiber optic cable, agricultural equipment, and arms and ammunition. The U.S. highlights this disparity consistently in bilateral discussions with South Africa.

Nontariff Measures

The International Trade Administration Commission of South Africa (ITAC) 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, thus creating a *de facto* import ban 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, excessive regulation, standards, and sanitary and phytosanitary measures.

Antidumping Measures

U.S. exporters have expressed concerns regarding transparency and due process with respect to ITAC's administration of trade remedy laws. At present, South Africa imposes antidumping duties on two products¹ from the United States: poultry products 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, 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 and acetaminophenol 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 so that ITAC could avoid having to revoke the antidumping measures. A decision from the High Court is expected sometime in 2012.

GOVERNMENT PROCUREMENT

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 (BEE) strategy. See the section on Investment Barriers for more detail on BEE.

Increasingly, South Africa is using government procurement to support and promote domestic economic development and to fight persistent unemployment. South Africa's Preferential Procurement Policy Framework Act of 2000 and associated implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. South African government and labor leaders also recently signed a pact to increase the government procurement of goods and services from South African producers to an "aspirational target" of 75 percent in a bid to boost industrialization and to create jobs.

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 obligation requires that the 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.

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

¹ Antidumping measures on a third product, L-lysine-HCl, were terminated on June 22, 2011, when ITAC published a report on its website terminating the antidumping measure on imports from the United States.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Under South African law, complainants can take both civil and criminal action against intellectual property rights (IPR) offenders. In practice, civil litigation in South Africa is an expensive and time-consuming process. As a result, most counterfeit goods complaints use criminal statutes. The number of arrests for trading in pirated or counterfeit goods has increased in recent years. For example, a December 2011 raid by the South African Police Service (SAPS) resulted in more than 30 arrests and the seizure of more than \$6 million worth of counterfeit products. In addition, South Africa has taken steps to improve enforcement, such as the creation of the Department of Trade and Industry's (DTI) enforcement unit, and the establishment of Commercial Crime Courts in several cities. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service, and SAPS to improve coordination of IPR enforcement. 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, and the private sector believes that significant progress has been made since 2001. Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high; South Africa is also used as a transit point for counterfeit materials. U.S. industry is concerned about illegal commercial photocopying, especially at universities, libraries, and other on-campus venues. U.S. industry has also expressed concern about software and optical disc piracy, the growing number of counterfeit production facilities, advertisements of "burn-to-order" services and piracy over the Internet. Counterfeit medicines are also prevalent.

The U.S. continues to engage with South Africa on intellectual property issues through regular dialogue and extensive education and training.

SERVICES BARRIERS

Telecommunications

Regulation is divided between the Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA), the latter of which replaced the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority in July 2000 under the ICASA Act (No. 13). Fixed-line telecommunications services in South Africa are dominated by Telkom, which held a legal monopoly prior to passage of the Electronic Communications Act of 2005. Despite its regulatory role, the DOC retains South Africa's ownership interest in Telkom. An ICASA proceeding has been pending since 2009 to determine whether ICASA should regulate foreign direct investment in electronic communications.

Liberalization measures implemented by the DOC have addressed 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. However, VANS providers continue to be concerned over Telkom's monopoly. South Africa's Competition Tribunal is currently reviewing a case brought by several VANS providers in 2004. This case could result in a substantial fine for Telkom for charging

excessive prices to VANS providers, refusing access to an essential facility, and engaging in price discrimination. A decision in this case is due in 2012.

Broadcasting

ICASA requires local content for satellite, terrestrial, and cable subscription services. Foreign ownership of 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 DOC originally announced a goal to complete the digital migration by November 2011, but then pushed back the date to December 2013. South Africa plans to activate the digital signal in April 2012 and have 100 percent coverage by the 2013 deadline. Full migration should free up spectrum (approximately 80 megahertz to 100 megahertz) that could be used for new technology and electronic government services.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger-and-acquisition-related foreign direct investment is scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders have expressed concern about politicization of South Africa's posture towards this type of investment.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within the sectors. As of November 2011, these charters of 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, communications and technology; and property have transformation charters that do not have force of law, yet express the sector's commitment to "economic transformation."

ELECTRONIC COMMERCE

The 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 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 is still awaiting action by the National Assembly and remains in draft form. Industry is still evaluating the extent to which the legislation would affect the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data.

OTHER BARRIERS

Transparency and Corruption

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. After allegations of corruption in his Cabinet, President Zuma reshuffled his Cabinet in October 2011 to remove some ministers who were under investigation.

BUSINESS MOBILITY

Companies in many economic sectors experience recruiting difficulty because of skills shortages and emigration. 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 skilled foreign employees.