NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $34 billion in 2008, an increase of $4 billion from $30 billion in 2007. U.S. goods exports in 2008 were $4.1 billion, up 47.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $38.1 billion, up 16.2 percent. Nigeria is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $190 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

In September 2008, the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with its West African neighbors' under the Economic Community of West African States (ECOWAS) Common External Tariff (CET). Nigeria has been partially implementing the CET since 2005. The new tariff regime has five tariff bands and import duties have been reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band is still under negotiation among member countries. Adoption of the CET is part of ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the subregion. There remains resistance within the Nigerian government and the private sector to deepen trade reforms.

Companies state that high tariffs, nontransparent valuation procedures, frequent policy changes and unclear interpretations by the Nigerian Customs Service (NCS) continue to make importing difficult and expensive, and often create bottlenecks for commercial activities. Some importers complain that tariffs are excessively high and that the Nigerian government sometimes uses arbitrary reference prices for valuation purposes. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods and affects both foreign and domestic manufacturers. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs. Transparent and proper implementation of the CET would be an important step toward resolving most of these problems.

Nontariff Measures

Though the government continues to ban certain imports, citing the need to protect local industries, the new tariff book reduces the number of items on the import prohibition list from 44 to 26. Items removed from the list include corn, sorghum, millet, wheat flour, crude vegetable oil, biscuits, sugar confectioneries (including white chocolate), fresh and dried fruit, flowers (both fresh and plastic), toothpaste, envelopes, diaries, greeting cards, exercise books, bentonites, barites, calendars, cutlasses, axes, pick axes, spades, shovels, fully built mudguards, wheel barrows, and electric generating sound proof casings.

Items remaining on the import prohibition list include: bird's eggs, cocoa butter, powder and cakes, pork, beef, live birds, frozen poultry, refined vegetable oil and fats, cassava, bottled water, spaghetti, noodles, fruit juice in retail packs, nonalcoholic beverages (excluding energy drinks), certain textile products, and bagged cement. Companies were awarded concessions to import bagged cement for a limited time to bridge supply gaps. The cement concessions terminated at the end of December 2008, but the companies have applied for an extension.

Customs Administration

Nigeria practices a destination inspection policy for imports. Under this policy, all imports are inspected upon arrival into Nigeria, rather than at the ports of origin. Nigeria port practices continue to present major obstacles to trade. The country's long list of items prohibited for import, coupled with incorrect declaration of goods by importers, result in 95 percent of containers being physically examined. This delays the clearing process and increases costs. Nigeria's uneven application of import and labeling regulations make importing high-value perishable products difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can contribute to product deterioration and may result in significant losses for importers of perishable goods.

Realizing that delays at the ports significantly increase the cost of doing business in Nigeria, the Nigerian government plans to implement a 48 hour cargo clearance policy at the ports. Roads coming in and out of the ports are decaying, and overuse results in around-the-clock traffic congestion. There is no rail system transporting freight in and out of ports. As such, despite the 48 hour custom clearance policy, congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The bottlenecks resulting from the lack of infrastructure at and around the ports affect the level of efficiency at which goods can be processed for import. Currently over 15 agencies are represented at the ports. In a bid to achieve the 48 hour cargo clearance target at the ports, the Nigerian government plans to withdraw all agencies, except customs, from the ports and improve the technical capacity of customs to handle special cargos through continuous training of personnel. There are also plans to automate all customs payments.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

Nigeria's government administers various export incentive programs such as tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs in addition to operating Free Trade Zones and Export Processing Zones. According to the 2008-2012 CET Book, most concessions, waivers or exemptions have been stopped; however, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Rules concerning sanitary and phytosanitary standards, testing, and labeling are well defined, but bureaucratic hurdles slow the import approval process. Regardless of origin, Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates of analysis from manufacturers and appropriate national authorities; and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. By law, items entering Nigeria must be labeled exclusively in the metric system. U.S. producers and exporters note that relabeling goods to meet this requirement is expensive and limits U.S. exports to Nigeria. The NCS is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency continues to focus special attention on eliminating the illicit importation of counterfeit and expired pharmaceuticals, particularly from East and South Asia. NAFDAC's limited capacity for carrying out inspections and testing contributes to what critics have characterized as an occasionally heavy-handed or arbitrary approach to regulatory enforcement which sometimes leads to delays in clearance of legitimate food imports.

Although Nigeria has no laws governing agricultural biotechnology or biosafety, the government is generally supportive of biotechnology. The Federal Ministry of Environment has presented draft biosafety legislation to the National Council on Environment, the highest decision-making body on environmental issues. If approved, the legislation will be sent to the National Executive Council of Ministers for ratification and then to the National Assembly for its consideration. The draft bill generally portrays products of biotechnology as safe for animal and human consumption; however, it includes a mandatory labeling requirement.

GOVERNMENT PROCUREMENT

The government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act, which was signed into law in June 2007, established the Bureau of Public Procurement (BPP) in place of the Budget Monitoring and Price Intelligence Unit. The public procurement reforms are aimed at ensuring that the procurement process for public projects adheres to international standards for competitive bidding. The BPP acts as a clearinghouse for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira ($419,000) is subject to review by the BPP. The 36 state governments have also agreed to enact the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment in government procurement; government tenders are published in local newspapers; and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty getting paid, often as a result of delays in the national budget process.

The National Petroleum Investment and Management Services agency's approval is required for all procurement in the energy sector with a value above $500,000. Approval processes are slow and can significantly increase the time and resources required for a given project. Nigeria is not a signatory to the WTO Agreement on General Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to establish a legal framework for an IPR system consistent with WTO obligations has been pending in the National Assembly for several years.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. Despite

Nigeria's active participation in the conventions cited above and growing interest among Nigerians in seeing their intellectual property protected, piracy remains a problem. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly, and piracy of books and optical disc products is also a problem. Industry reports contend that intellectual property infringers from other countries appear increasingly active in using Nigeria as a base for the production of pirated goods.

Patent and trademark enforcement remains weak, and judicial procedures are slow and reportedly subject to corruption. However, the Nigerian government is taking steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results. The Nigerian government also included pirated materials in the list of prohibited imports in the 2008-2012 CET Book, which provides NCS the authority to seize pirated works if imported into the country. In addition, the Nigerian government has requested training to improve its enforcement efforts. In 2008, the United States responded by providing training assistance on IPR enforcement to Nigerian government officials in several sectors, with a focus on copyright piracy. The U.S. intends to continue IPR training assistance to Nigeria in 2009, focusing on customs enforcement and combating counterfeiting that endangers public health and safety.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission (NCC) launched an anti-piracy initiative named "Strategy against Piracy." The Nigerian police force, working closely with the NCC, has raided enterprises producing and selling various pirated works such as software, books, and videos. About 29 cases are currently being prosecuted against IPR violators in various courts in the country. The Nigerian Economic and Financial Crimes Commission has also been active in IPR enforcement.

SERVICES BARRIERS

Foreign energy services suppliers are confronted with a number of barriers in Nigeria, particularly with respect to movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas are especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process and in the approval of visas for foreign personnel present serious challenges to the energy industry in acquiring the necessary personnel for their operations.

INVESTMENT BARRIERS

Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except those firms on an exemption list, which includes, for example, companies that manufacture firearms, ammunition, and military and paramilitary apparel. Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation.

Potential investors must contend with complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. The sanctity of contracts is often violated and Nigeria's court system for settling commercial disputes is weak and can be biased.

Foreign oil companies are under significant pressure to increase procurement from domestic firms. The Nigerian government, through the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC), has set a target of 45 percent local content for oil-related projects by 2006 and 70 percent by 2010. The Nigerian government did not meet its target for 2008 due to infrastructure challenges such as electric power, and insecurity in the oil producing Niger Delta. In many cases, sufficiently trained personnel and physical infrastructure do not currently exist to meet the government's local content targets. Although some domestic firms possess adequate technical expertise, managerial and financial capabilities are often lacking. New legislation to codify mandatory levels of Nigerian content in specific petroleum activities is pending in the National Assembly. If enacted, the legislation would have a strong negative impact on the operations of foreign energy services companies already operating in Nigeria and could lead to a reduction in oil production.

The vast majority of natural gas flaring in Nigeria is done in older, onshore, and near offshore oilfields. International oil companies typically operate those fields in a joint venture arrangement with the state oil company as the majority partner. Funding for joint venture operations, maintenance, and equipment upgrades comes from joint venture partners in proportion to their equity ownership. Over the past several years, the Nigerian government has failed to fully fund its share of the joint venture costs, reducing the ability of the operating partners to install new anti-flare technology in these older oilfields.

OTHER BARRIERS

The Nigerian government has made efforts to eliminate financial crimes such as money laundering and advance fee fraud (also known as "419 fraud," after the relevant section of the Nigerian Criminal Code). In June 2006, the Financial Action Task Force removed Nigeria's name from the list of noncooperating countries and territories in the fight against money laundering and other financial crimes. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world, with the latest Transparency International rating being 121, an improvement from 147 in 2007, out of 180 countries. Despite this trend, Nigeria's corruption levels remain high and its main anticorruption institution, the Economic and Financial Crimes Commission has faltered recently in its reputation and commitments on the issue. Some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their exposure to corruption.