NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $15.5 billion in 2009, down $18.5 billion from 2008. U.S. goods exports in 2009 were $3.7 billion, down 10.8 percent from the previous year. Corresponding U.S. imports from Nigeria were $19.1 billion, down 49.8 percent. Nigeria is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $3.4 billion in 2008 (latest data available), up from $1.4 billion in 2007. U.S. FDI in Nigeria is concentrated in mining and nonbank holding companies.

IMPORT POLICIES

Tariffs

Nigeria is a member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). Nigeria's average applied tariff rate in 2008 was 12 percent but ranged as high as 50 percent on specific tariff lines. In September 2008, the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with those of its West African neighbors under the ECOWAS Common External Tariff. The tariff regime has five tariff bands and import duties were reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on social goods (*e.g.*, medicine, publications); 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 – proposed by Nigeria – was accepted in 2008 by ECOWAS member countries as part of the CET, but products to be covered under the 35 percent tariff band are 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 sub-region. There is some resistance within the government of Nigeria and the private sector to deepening trade reforms.

Non-transparent implementation of the tariff system – including arbitrary valuation procedures, frequent policy changes, and unclear interpretations by the Nigerian Customs Service (NCS) – has presented problems for importers.

Nontariff Measures

Nigeria continues to ban certain imports, citing the need to protect local industries. The CET book reduced 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: 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, non-alcoholic beverages (excluding energy drinks), certain textile products, and bagged cement. A new cement policy was announced in October 2009. The policy bans the importation of bagged cement, while providing some incentives to cement producers, including duty exemptions on imported machinery and raw materials such as gypsum.

Customs Procedures

Nigeria's port practices continue to present major obstacles to trade. The country's list of items prohibited for import, coupled with incorrect declarations of goods by some 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 makes 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 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 for transporting freight in and out of ports. This congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The port operator for Lagos made significant improvements with off-loading ships in 2009. Containers come off ships at a much faster rate but have to wait for up to 45 days to be processed through customs. There are over 15 agencies represented at the ports. In an effort to achieve the 48 hour cargo clearance target at the ports, the government plans to withdraw all agencies except the NCS from the ports and improve the technical capacity of the NCS. There are also plans to automate all customs payments.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

The government of Nigeria 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 CET Book, most concessions, waivers, or exemptions on imports have been terminated. However, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

GOVERNMENT PROCUREMENT

Nigeria continues to take steps to improve public procurement. An amendment to the Public Procurement Act is being considered by the National Assembly that would decentralize government procurement and increase the procurement authorization limits for ministries, departments, and agencies, unlike the current legislation, which provides for a central clearinghouse for issuing and monitoring all government procurement above 50 million naira ($333,333). The 36 state governments have agreed to enact the amended Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria are permitted to participate in government procurement on the same terms as local companies. 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. Budget delays often result in both local and foreign companies experiencing delays in receiving payment under public contracts. This has contributed to financial difficulties for suppliers of some goods and services.

Approval from the National Petroleum Investment Management Services agency (NAPIMS) is required for all procurement in the energy sector with a value above $500,000. The NAPIMS approval process is slow and can significantly increase the time and resources required for a given project.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The lack of institutional capacity to address IPR issues is a major constraint to enforcement. Piracy and counterfeiting remain a problem despite growing interest among Nigerians in seeing their intellectual property protected. Counterfeit and pirated products ranging from automotive parts, pharmaceuticals, software, music and video recordings, and other consumer goods are rampant. Legislation intended to establish a legal framework for an IPR system to implement WTO obligations has been pending in the National Assembly for several years.

In 2004, the Nigerian Copyright Commission (NCC) launched an antipiracy initiative named “Strategic Action Against Piracy.” The Nigerian police force, working closely with the NCC, raided enterprises producing and selling various pirated works such as software, books, and videos. The NCC obtained two convictions on broadcast piracy and software piracy in 2009. About 60 cases are currently being prosecuted against IPR violators in various courts in the country. However, inconsistent application of legal and law enforcement measures remain barriers to 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 Nigerian 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 NAPIMS. Each oil company must negotiate its foreign worker allotment with NAPIMS. 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 invest in any Nigerian firm except those on an exemption list, which includes 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, overlapping land ownership claims, arbitrary application of regulations, power shortages, poor roads, 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. There were at least three prominent cases in 2009 in which the judicial system or law enforcement agencies may have been manipulated by local companies in order to exert pressure on U.S. companies and individuals for commercial advantage.

Violence in the oil-producing Nigerian Delta region is a longstanding issue and has affected production levels in the oil sector. Attacks in the first half of 2009 led major oil companies to invoke *force majeure* exemptions from delivery contracts. Although the government and militants have generally upheld a truce since late 2009, any resurgence in violence would be a clear deterrent to inward oil investment.

International oil companies are under significant pressure to increase procurement from domestic firms. The government, through the Nigerian Content Division of the Nigerian National Petroleum Corporation (NNPC), has set a target of 70 percent local content for oil-related projects by 2010. The government's local content target was not met in 2008, and will likely not have been met in 2009 due to infrastructure challenges such as power shortages, and insecurity in the Delta region. New legislation to codify mandatory levels of local content in specific petroleum activities is pending in the National Assembly. The proposed legislation could lead to higher costs and have a strong negative impact on the operations of international energy services companies operating in Nigeria.

The majority of natural gas flaring in Nigeria is done in older, on-shore, and near-off-shore oilfields. International oil companies typically operate those fields in joint-venture arrangements with the NNPC as the majority partner. Funding for joint venture operations, maintenance, and equipment upgrades comes from joint venture partners in proportion to their equity ownership. The government has failed to fully fund its share of the costs in these joint ventures during the past several years, reducing the ability of international operating partners to install new anti-flare technology in these older oilfields.

The government has proposed a Petroleum Industry Bill that would reorganize the NNPC and could worsen the investment climate in the oil and gas sector. Stakeholders in the sector, including international oil companies and oil and gas service providers, as well as Nigerian firms, have been advocating changes in the terms of the proposed bill to make it more attractive to private sector investment. Sanctity of contracts, mediation, and dispute settlement are other issues of particular concern for companies in this sector.

OTHER BARRIERS

Nigeria's corruption levels remain high and its main anticorruption institution, the Economic and Financial Crimes Commission, has faltered recently in its commitment 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.