SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was $1.1 billion in 2012, down $1.1 billion from 2011. U.S. goods exports in 2012 were $7.6 billion, up 4.1 percent from the previous year. Corresponding U.S. imports from South Africa were $8.7 billion, down 8.7 percent. South Africa is currently the 35th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to South Africa were $2.8 billion in 2011 (latest data available), and U.S. imports were $1.8 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $4.4 billion in 2010 (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), roughly the same as in 2010. U.S. FDI in South Africa was led by the manufacturing, professional/scientific/technical services, 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. In 2011, South Africa's average MFN duty was 7.7 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area (EFTA), and SACU; and is working towards an African Tri-Partite Free Trade Agreement among the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and SADC. South Africa is also negotiating a preferential trade agreement with India.

U.S. companies have cited preferential tariff treatment of EU origin products as an impediment to doing business in South Africa. The South Africa-EU trade agreement resulted in about 12 percent lower tariffs on EU goods; in some categories, EU products enjoy up to a 50 percent tariff advantage compared to U.S. products. Key categories in which the U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, agricultural machinery, and arms and ammunition. EU apparel products have an average 15 percent tariff advantage across a broad number of product categories. On men's and women's clothing, the EU advantage is between 20 percent and 25 percent, depending on the material. The advantage is 45 percent for pantyhose and socks of synthetic fibers. The United States highlights the tariff disparity consistently in bilateral discussions with South Africa.

Nontariff Measures

The Department of Trade and Industry prohibits 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 the International Trade Administration Commission (ITAC). ITAC requires importers to apply for permits on used goods, if such goods are also manufactured domestically. 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, requirements for ITAC import

permits for products other than used goods, antidumping measures, excessive regulation, standards, and sanitary and phytosanitary measures.

Antidumping Measures

Antidumping (AD) duties have been in place on imports of frozen bone-in chicken pieces from the United States for 12 years. Before imposing AD duties, South Africa imported approximately $10 million to $24 million of chicken meat from the United States annually; however, the imposition of AD duties has effectively priced U.S. exports of chicken meat to South Africa out of the market and allowed other countries such as Brazil to gain market share. South African producers petitioned South Africa's investigating authority, ITAC, in 2011 to renew the duties for another five-year term. As a result, AD duties were extended until 2017. The United States has raised antidumping issues with South Africa at all appropriate levels, including during the June 2012 United States-South Africa Trade and Investment Framework Agreement (TIFA) discussions.

GOVERNMENT PROCUREMENT

Government purchases are made through competitive tenders for goods, services, and construction. South Africa's Preferential Procurement Policy Framework Act of 2000 and associated implementing regulations created the legal framework and formula for evaluating tenders for government contracts.

The South African government actively uses its expansive fiscal policy and regulatory framework for government tendering to fight unemployment. The 2011 Local Procurement Accord commits the government to significantly expand the value of goods and services it procures from South African suppliers. The Accord includes an "aspirational target" of 75 percent sourced locally, 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 greater than or equal to $10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation 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.

South Africa also uses government procurement to empower the historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. *See the section on Investment Barriers for more detail on B-BBEE.*

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

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 IPR offenders. However, in practice, civil litigation in South Africa is such an expensive and time-consuming process that it usually deters rights holders from bringing suit.

The number of arrests for trading in pirated or counterfeit goods has increased in recent years. The South African government has an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination of intellectual property rights (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. The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. 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 online piracy, the growing number of counterfeit production facilities, advertisements of "burn-to-order" services, and the unwillingness of South African internet service providers (ISPs) to take measures to combat illegal counterfeiting and piracy enterprises operating online. South African authorities reported that industry cooperation on digital media has improved enforcement in that sector. However, in other manufacturing sectors, industry is not as well organized and progress has been more difficult. Imported counterfeit medicines are also prevalent. South Africa and the United States continue to work together on intellectual property issues of mutual interest through regular dialogue among experts and extensive education and training programs.

SERVICES BARRIERS

Telecommunications regulation is divided between the Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA). ICASA replaced the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority in July 2000 under the ICASA Act (No. 13), and receives funding from the DOC. The government-owned former monopoly supplier, Telkom, dominates fixed-line telecommunications services in South Africa. Despite its parallel 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.

The DOC has implemented liberalization measures that 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.

VANS providers, however, continue to be concerned over Telkom's domination of the local market. In August 2012, the South African Competition Tribunal fined Telkom ZAR 449 million ($50.27 million) for abusing its dominance in the telecommunications market over a five-year period from 1999 to 2004. The Competition Tribunal concluded that "Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive VANS market," and "Telkom's conduct caused harm to both competitors and consumers alike and impeded competition and innovation in the dynamic VANS market."

Broadcasting

ICASA requires local content for satellite, terrestrial, and cable subscription services. Foreign ownership of each broadcaster is capped at a maximum of 20 percent.

In 2006, an agreement with the International Telecommunications Union (ITU) committed South Africa to achieve digital migration by June 1, 2015. After this date, the 11.5 million South African households with a television will require a set-top box (STB) for terrestrial broadcasting transmission signals as the analog broadcasting frequencies' exclusivity will be lifted, resulting in signal interruptions. Six years later, however, the DOC's efforts to migrate from analog to digital broadcasting have been met with repeated delays, and there are concerns that South Africa will miss the deadline. The DOC is attempting

to begin a dual-illumination period, in which digital television signals would be launched and broadcast concurrently with analog television signals. During this transition, South Africa needs to convert all of its analog television households to digital STBs.

In the meantime, telecommunications operators have requested access to the 2.6 GHz band and frequencies below 850 MHz that will be freed up as a result of this analog to digital migration to build next-generation mobile broadband networks. However, until the analog to digital migration is complete, the spectrum cannot be allocated. This has frustrated telecommunications operators.

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 on privacy and data protection to the National Assembly, which is still pending.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger-and-acquisition-related foreign direct investment is, however, scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders remain concerned about politicization of South Africa's posture towards this type of investment. The Black Economic Empowerment (BEE) Codes of Good Practice promulgated in 2007 created a certification system that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A high rating is particularly important in competition for public tenders, as the BEE scorecard will account for 10 percent of a bid's assessment. Multinationals have struggled to score well on the "ownership" element of empowerment assessment, particularly where their corporate rules prevent the selling of discounted equity stakes in their South African subsidiary.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within these sectors. As of November 2011, the integrated finance, transport, forest products, construction, tourism, and chartered accountancy sectors' charters have the force of law in South Africa. Many other sectors, including information and communication technology (ICT) and property, have transformation charters that do not have the force of law, yet express the sector's commitment to "economic transformation."

South Africa is currently reviewing its BEE requirements, with a view to emphasizing enterprise-development and procurement over simple equity ownership. The government also hopes an increased focus on enterprise- and skill-development on the BEE scorecard will produce more transformation of the South African economy. The government released proposed amendments to the 2003 BEE Act for public comment in October 2012. U.S. firms are wary that the proposed changes would prevent them from gaining certification in the future.

OTHER BARRIERS

Transparency and Corruption

Several laws have been enacted in the last decade and a half to increase transparency and reduce corruption in South Africa's government, although some of the laws suffer from deficiencies. For example, the 2000 Protected Disclosures Act, intended to protect whistleblowers, is limited by a stipulation that a whistleblower is protected only in disclosing information regarding his or her employer; the same protection does not apply if the whistleblower discloses information about an organization with which his or her employer has a contract. In 2011, in a step said to take the government away from greater transparency, South Africa's National Assembly passed a controversial "Protection of State Information bill" to regulate the classification, protection, and dissemination of State information. The bill has not been passed by the upper house, the National Council of Provinces, and has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression.

Implementation of transparency and anticorruption laws also suffers from challenges. South Africa has no fewer than ten agencies engaged in anticorruption activities, including those, such as the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, that 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. A number of high-level officials were investigated for corruption during 2012, and in June, President Zuma fired the then-National Police Commissioner after he served a seven month prison sentence.

Labor Constraints

Companies in many economic sectors experience difficulty in recruiting because of skills shortages and emigration. Businesses also alleged labor laws are too stringent and limit job creation and expansion. For a number of years, U.S. and other foreign companies have complained about the difficult procedures for obtaining temporary work permits for their skilled foreign employees.