SOUTH AFRICA

TRADE SUMMARY

U.S. goods exports in 2013 were $7.3 billion, down 3.4 percent from the previous year. Corresponding U.S. imports from South Africa were $8.5 billion, down 2.2 percent. The U.S. goods trade deficit with South Africa was $1.2 billion in 2013, up $66 million from 2012. South Africa is currently the 36th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to South Africa were $2.7 billion in 2012 (latest data available), and U.S. imports were $1.9 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $5.1 billion in 2011 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $315 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was $5.5 billion in 2011 (latest data available), down from $5.8 billion in 2011. U.S. FDI in South Africa was led by the manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariffs

As a member of the Southern African Customs Union (SACU), South Africa applies the SACU common external tariff (CET). In practice, South Africa sets the level of MFN tariffs applied by all SACU countries, and manages all matters related to trade remedies and disputes. South Africa's average MFN duty in 2012 was 7.6 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area (EFTA), and the Southern African Development Community (SADC). In addition, South Africa is working towards a new free trade agreement, the Tri-Partite FTA (T-FTA) that would include the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and SADC. A preferential trade agreement with India remained under negotiation in 2013. South Africa also participated in negotiations for a SADC Economic Partnership Agreement (EPA) with the EU.

U.S. exports face a disadvantage compared to EU goods in South Africa. The EU-South African Trade and Development Cooperation Agreement of 1999 (TDCA) covers a significant amount of South Africa-EU trade. Tariffs for EU imports on TDCA-covered tariff lines average 4.5 percent based on an unweighted average, while the general tariff rates, which U.S. imports face, average 19.5 percent. Key categories in which the U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, agricultural exports, and agricultural machinery.

Final phase-in of EU tariff preferences under the TDCA became effective in 2012, and U.S. companies are increasingly impacted by the tariff differential. There is growing concern about their competitiveness, with several companies reporting a real negative impact on their markets. Concerned importers of U.S. products are dealing with the issue in three ways: (1) substituting EU supply chains for U.S. supply chains (primarily larger U.S. multinationals with complex global supply chains); (2) limiting marketing risk in South Africa, such as testing market response to new U.S. imports; or (3) pressing for tariff parity.

The EPA under negotiation between the EU and a number of SADC countries will further erode U.S. export competitiveness in South Africa and the region when it enters into force. The United States highlights concern about the tariff disparity consistently in bilateral discussions with South Africa, since this disadvantage contrasts the unilateral advantages the United States offers South African imports under the African Growth and Opportunity Act (AGOA). South African authorities have emphasized that they see no way to address this U.S. concern other than through an FTA – something they note was tried and failed in the 2003-2006 U.S.-SACU FTA negotiations.

In September 2013, the South African International Trade Administration Commission (ITAC) increased import duties for whole chickens to its maximum bound rate of 82 percent, and announced import duty increases for other poultry products. South Africa raised the tariffs in response to requests from its domestic industry. In recent years, the South African government has encouraged industry to appeal for increases up to bound tariff rates where a lack of global competitiveness was a concern.

Nontariff Measures

The Department of Trade and Industry (DTI) 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). The 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, excessive regulation, and unjustified standards and sanitary and phytosanitary measures.

Antidumping Measures

Unwarranted antidumping duties (ADDs) have been in place on imports of frozen bone-in chicken pieces from the United States for thirteen years. South African producers successfully petitioned ITAC to renew the duties for another five-year term, initiating a sunset review completed in 2012 after South African courts ruled the initial review invalid for failing to comply with administrative timelines. The ITAC opened an investigation into alleged U.S. dumping of soda ash in 2013, which resulted in preliminary ADDs. South Africa dropped ADDs against U.S. exports of acetamidophenol in 2013 after South African industry ceased production. The United States continues to raise antidumping issues with South Africa, including during meetings of the U.S.-South Africa Trade and Investment Framework Agreement.

GOVERNMENT PROCUREMENT

South Africa uses competitive tenders for government procurement of goods, services, and construction. South Africa's Preferential Procurement Policy Framework Act of 2000 and its implementing regulations created the legal framework and formula for evaluating tenders for government contracts.

The South African government actively uses fiscal policy and its regulatory government tendering framework to fight unemployment. The 2011 Local Procurement Accord (the Accord) commits the government to significantly expand the value of goods and services it procures from South African suppliers. The Accord included an "aspirational target" of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa's National Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on 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). This obligation requires the seller/supplier to 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 pursuant to a government tender.

South Africa also uses government procurement to empower 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 party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government states that it is committed to enforcement of copyright and trademark rights, but challenges remain. The South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. 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. The number of arrests for trading in pirated or counterfeit goods has increased in recent years. South Africa improved enforcement in 2008 with the establishment of the Companies and Intellectual Property Commission, DTI's enforcement unit, and Commercial Crime Courts in several cities. The South African government has an interagency counterfeit division including the DTI, the South African Revenue Service, 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, significant concerns persist and monetary losses from counterfeiting and piracy remain high. South Africa is a transit point for counterfeit materials from East Asia and South Asia primarily to neighboring countries. Government and industry cooperation on digital media violations has improved enforcement in that sector; however, cybercrime is becoming an area of increased concern. The government and the private sector are collaborating on a comprehensive response. The U.S. continues to engage with South Africa on intellectual property issues through regular dialogue and extensive education and training. In September 2013, the Cabinet issued for public comment a national intellectual property strategy which proposes changes to all IP laws in an effort to better protect public welfare and enable development.

SERVICES BARRIERS

Telecommunications regulation is divided between the South African Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA), the regulator for South Africa's communications, broadcasting, and postal services sectors. ICASA was established under the ICASA Act (2000), which merged the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority. ICASA receives its funding from DOC.

Telkom is South Africa's leading communications services provider and dominates fixed-line telecommunications services. Formerly, Telkom operated as a monopoly, but Neotel was launched in 2006 as a fixed-line operator. Even though it has a parallel regulatory role, the DOC is the largest shareholder in Telkom with a 39.8 percent stake. DOC expects Telkom to operate as a private company, but reportedly views Telkom as a strategic asset and often influences management decisions. An ICASA proceeding to determine whether ICASA should regulate foreign direct investment in electronic communications has been pending since 2009.

DOC has implemented measures to address 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. Additionally, private telecommunications network operators may sell spare capacity.

VANS providers remain concerned about Telkom's domination of the local market. In 2012, the Competition Tribunal of South Africa fined Telkom ZAR 449 million ($50.27 million) for abusing its dominance in the telecommunications market from 1999 to 2004. The Competition Tribunal concluded: "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. Seven years later, however, there are concerns that South Africa will miss the global deadline. DOC is attempting dual-illumination, a period wherein digital television signals would be broadcast concurrently with analog television signals. During this transition, South Africa needs to convert all of its analog television households to digital STBs. DOC admits it is "desperately behind schedule," but has no clear timeline to achieve digital migration.

Telecommunications operators are frustrated by the migration delays as well. Telecommunications operators have requested access to the 2.6 GHz band and frequencies below 850 MHz, which will be freed by analog to digital migration, to build next generation mobile broadband networks. However, the spectrum cannot be allocated until the analog to digital migration is complete.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger and acquisition-related foreign direct investment has been scrutinized closely for its impact on job creation and local industry. Private sector and other stakeholders remain concerned about the politicization of South Africa's posture towards this type of investment.

The B-BBEE Codes of Good Practice, promulgated in 2007 and entered into force in 2011, 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 B-BBEE scorecard will account for 10 percent of a bid's assessment. However, it also matters informally for branding purposes and in managing client relationships, as a company's score can influence a client's score.

South Africa introduced stricter B-BBEE requirements in October 2013 with amendments to the 2007 act and 2011 codes of good practice. The government hopes an increased focus on enterprise and skill development on the B-BBEE scorecard will produce more transformation of the South African economy. U.S. firms are wary that the changes will reduce their current B-BBEE levels. U.S. firms have struggled to score well on the "ownership" element, particularly when corporate rules prevent the transfer of discounted equity stakes to South African subsidiaries. Previously, they compensated by scoring higher in other elements, but the new rules introduce penalties for failing to comply in key elements of ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with "Empowering Suppliers," which could prove challenging to companies importing products or inputs for value chains.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within these sectors. As of 2011, the integrated finance, transport, forest products, construction, tourism, and chartered accountancy sectors' charters had the force of law in South Africa. In 2012, transformation charters were introduced for information and communication technology, property, and agriculture.

ELECTRONIC COMMERCE

The 2002 Electronic Communications and Transactions Act 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 2003, the South African Law Reform Commission began considering the need for new data protection legislation. In 2009, it introduced the Protection of Personal Information Bill to the National Assembly. The bill cleared the National Assembly in August 2013, and President Zuma signed the bill in November 2013. It will enter into effect one year after the commencement date, which is expected within the first six months of 2014.

OTHER BARRIERS

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 2013, in a step said to take the government away from greater transparency, South Africa's Parliament passed a controversial "Protection of State Information Bill" to regulate the classification, protection, and dissemination of state information. The bill has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression. Critics do acknowledge, however, that the latest version of the bill is vastly superior to the first proposed version, and that many of their recommendations for changes to the bill have been made. While President Zuma returned the bill to Parliament for technical changes, it is expected to become law during 2014, after which it will likely face a Constitutional challenge.

The implementation of transparency and anticorruption law suffers from challenges. South Africa has more than 10 agencies engaged in anticorruption activities, 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 2013, including former Communications Minister Dina Pule. Pule is alleged to have funneled several contracts and government resources to her partner through the International Communications Technology Indaba (tradeshow). Pule was removed as Minister of Communications but retains her position in Parliament.

Labor Constraints

Companies in many economic sectors experience difficulty in recruiting because of skills shortages and emigration of skilled workers. Businesses also allege certain 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.