NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $30.0 billion in 2007, an increase of $4.4 billion from $25.6 billion in 2006. U.S. goods exports in 2007 were $2.8 billion, up 24.8 percent from the previous year. Corresponding U.S. imports from Nigeria were $32.8 billion, up 17.6 percent. Nigeria is currently the 50th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $339 million in 2006 (latest data available), down from $1.2 billion in 2005. U.S. FDI in Nigeria is concentrated largely in nonbank holding companies and the wholesale trade sectors.

IMPORT POLICIES

Tariffs

In October 2005, the Nigerian government adopted the Economic Community of West African States (ECOWAS) Common External Tariff (CET). Though not yet implemented, the CET would reduce the number of tariff bands in Nigeria from 20 to 4. The four 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; and 20 percent on finished goods. Nigeria has proposed a fifth band that would impose a 50 percent duty on goods in specific industries that the government seeks to protect. The 50 percent tariff would cover many items currently subject to import bans. Adoption of the CET is part of the ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the subregion.

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. Some of the products that incur very high tariffs include sparkling wine (100 percent), rice (110 percent), and tomato puree (50 percent).

Nontariff Trade Barriers

Despite adoption of the ECOWAS CET, the government continues to ban certain imports, citing the need to protect local industries. Items on the import prohibition list include: maize (corn); bird's eggs; cocoa butter, powder, and cakes; millet; pork; beef; live birds; frozen poultry; fresh and dried fruit; wheat flour; sorghum; vegetable oil and fats; cassava; bottled water; biscuits; spaghetti; noodles; fruit juice in retail packs; beer; nonalcoholic wine; alcoholic beverages; certain textile products; and bagged cement.

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. These factors can contribute to product deterioration and may translate into significant losses for importers of perishable goods.

Customs Administration

Nigerian port practices continue to present major obstacles to trade. Importers report erratic application of customs regulations, long clearance procedures, high berthing and unloading costs, and corruption. Customs exemptions granted to U.S. firms as a concession for setting up operations in Nigeria have not always been honored. Under a new physical destination inspection regime that began in 2006, all imports are inspected on arrival into Nigeria, rather than at the ports of origin.

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 would be expensive and would limit 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 has sometimes led 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. An enabling regulatory framework for biotechnology is in the early stages of consideration. 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 by the Council on Environment, the legislation will be sent forward to the National Executive Council of Ministers for ratification and then, if ratified, to Congress 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

Nigeria is not a signatory to the GPA. 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 clearing house 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 pass the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment, 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 in getting paid, usually 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 above $500,000. Approval processes are slow and can significantly increase the time and resources required for a given project.

EXPORT SUBSIDIES

Nigeria's government administers various export incentives 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. In September 2007, the government announced a freeze on new tax and duty waivers, exemptions, and other incentives, and ordered an investigation of their implementation. Businesses that were granted incentives before the freeze will continue to enjoy the incentives granted until the investigation is concluded and the government acts on the recommendations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

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. Fraudulent alteration of IPR documentation is common. Despite Nigeria's active participation in the conventions cited above and growing interest among Nigerians in seeing their intellectual property protected, piracy is rampant. 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 that intellectual property infringers from other countries appear increasingly to be using Nigeria as a base for the production of pirated goods. Efforts to combat the sale of counterfeit pharmaceuticals have yielded some results.

Patent and trademark enforcement remains weak, and judicial procedures are slow and reportedly subject to corruption. (See "Other Barriers" section.)

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 respected, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Almost no foreign feature films have been legally distributed in the country in the last two decades. 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" (STRAP). The Nigerian police force, working closely with the NCC, has raided enterprises producing and selling pirated software and videos and a number of high profile charges have been filed against IPR violators. 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 firms on a “negative list” (such as manufacturers of firearms, ammunition, and military and paramilitary apparel). Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation under the Companies and Allied Matters Decree of 1990. The Decree prohibits nationalization or expropriation of a foreign enterprise, except when necessary to protect the national interest.

Potential investors must contend with poor infrastructure, 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 sometimes 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), set a target of 45 percent local content for oil related projects by 2006 and 70 percent by 2010. 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. Legislation to codify various levels of Nigerian content in specific petroleum activities failed to pass the National Assembly in 2007. The bill’s sponsors plan to reintroduce it in 2008.

OTHER BARRIERS

The Nigerian government has increased its efforts to eliminate financial crimes such as money laundering and advance fee fraud (also known as “419 fraud,” named after the relevant section of the Nigerian Criminal Code). With the encouragement and cooperation of U.S. law enforcement agencies, the Nigerian government is now prosecuting more “419” perpetrators. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units. 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.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. 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.