SOUTH AFRICA

TRADE SUMMARY

In 1999, the U.S. trade deficit with South Africa was $613 million, a decrease of $1.184 billion from the U.S. trade surplus of $571 million in 1998. U.S. merchandise exports to South Africa were $2.6 billion, a decrease of $1.04 billion (28.8 percent) from the level of U.S. exports to South Africa in 1998. South Africa was the United States' 36th largest export market in 1999. U.S. imports from South Africa were $3.2 billion in 1999, an increase of $140 million (4.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in South Africa in 1998 was $2,363 million, down slightly from $2,451 million in 1997. U.S. FDI in South Africa is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum), telecommunications, and the financial sector.

IMPORT POLICIES

Import Permits

South Africa's Import and Export Control Act of 1963 authorizes the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports for, inter alia, health, environmental, or security reasons and to ensure minimum quality specifications. In recent years, the list of restricted goods requiring import permits has been substantially reduced as Department of Trade and Industry (DTI) has tried to phase out import permits in favor of tariffs. However, some products still require import permits, including fish and fish products, used goods, scrap, waste, ashes, residues, petroleum products, ozone-depleting chemicals, firearms and ammunition, gambling equipment, and radioactive chemical elements. DTI is developing a system to issue permits electronically and to link DTI with customs and with persons applying for permits to facilitate the customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

Tariffs

To comply with its WTO commitments, South Africa has reformed and simplified a complex tariff structure, reducing its average tariff rate from more than 20 percent to an import weighted average rate of seven percent. Nevertheless, some industries previously protected by non-tariff barriers have tried to increase tariffs to WTO-bound levels, which are usually substantially higher than applied rates. Any South African producer may petition the Board of Tariffs and Trade (BTT) for tariff protection or tariff reduction. If an application passes an initial assessment by the BTT, a consultation process is initiated. Although public comment on tariff protection requests is normally open for a 6-week period, a shorter period may be applied in emergency situations. After the consultations, the BTT investigates the matter further and then makes a recommendation to the South African Government for a decision. There is no statutory limitation on the time the South African Government may take to reach a decision.

Petitions for tariff protection are decreasing because of the South African Government's policy to lower tariffs in order to improve competitiveness. DTI and the BTT have refused most but not all tariff increase applications. In 1998, the BTT handled 18 tariff increase cases. Of these cases, five concerned adjustments in the variable tariffs on maize (corn), wheat and sugar (see discussion of corn and wheat below) and two concerned tariffication of non-tariff barriers (for black tea and dried fruit). Of the other eleven cases, nine were rejected and two (on "smart" cards and on telephones) were recommended.

Ninety-eight percent of South Africa's tariff lines are now bound. Most duties are *ad*

valorem, but mixed duties which call for both an *ad valorem* duty and a specific duty are also levied for some products. Tariff rates generally fall within eight levels ranging from zero to 30 percent.

South Africa has recently raised tariffs on certain agricultural products in order to protect local producers when international prices fall below a certain level. The following agricultural goods are affected:

Corn: the minimum import price formula tariff on imported corn was increased from $15/ton to $25/ton on November 5, 1999. The import tariff is subject to a formula that tracks the price of number two, U.S. yellow corn over a 21-day moving average. When the monitored price falls to between $70 and $80, the duty is the highest at $35/ton reducing in line with the increase of corn prices. If the price exceeds $110/ton, the duty is lifted. International corn prices recently increased and since December 28, 1999, the monitored price indicates a threshold average of $15/ton tariff. By January 9, thirteen consecutive days of prices over $90/ton had been recorded. The local millers have subsequently requested a reduction in the levy, which will be considered by the BTT as soon as the 21-day limitation is reached.

Wheat: the wheat tariff is calculated differently but still basically implies a minimum import price. To calculate subsequent adjustments to the level of protection, the difference between the world reference price on which the previous adjustment was based, and the 3-week moving average of the same price is calculated on a weekly basis. When this deviation amounts to more than $10/ton for three consecutive weeks, a new tariff is calculated and a new world reference price set. On January 5, 2000, the world reference price (three weeks moving average) was $112.67/ton and the South African initial reference price $157.00/ton. The difference between the two prices of $44.33/ton is the level of the current wheat tariff.

Poultry: despite strenuous lobbying by the U.S. Government, the BTT recommended that tariffs on imported frozen chicken parts be raised from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in "seasoned" parts that could be imported at the 27 percent rate. Following an application to the BTT from a local producer, this loophole was closed in 1998, and all frozen chicken parts now carry the higher (effectively 65-70 percent) rate. The Board argued that this action was taken after consideration of the current level of protection and the effects on domestic producers. The BTT is currently reviewing tariffs with respect to frozen chicken cuts (and prepared or preserved meat). The South African poultry industry is seeking to maintain or increase the current level of tariff protection. The United States has urged the Government of South Africa to lower import duties on poultry parts. U.S. poultry meat exports to South Africa have declined sharply over the past two years, in large part because of the very high effective tariff rate.

Between 1992 and 1994, South Africa increased tariffs on certain paperboard and paper products as well as on certain steel products in order to achieve greater uniformity of tariffs. These increases were, however, followed by the BTT instituting, in 1995, a general phased reduction of tariffs on paper and paperboard that will bring most tariffs down to 10 percent by 2000 and to five percent *ad valorem* by 2005. Some rebate provisions have been introduced for categories of paper and paperboard not manufactured locally, authorizing full duty rebates on imports of some uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard.

South Africa's textile tariff lines will comply with its WTO binding levels over a seven-year period (ending in 2002). According to the program adopted by BTT, South African tariffs on textiles will fall to the following five levels:

PRODUCT	BTT PROGRAM	WTO BINDING LEVEL (PERCENT)
Clothing	40	45
Made-up textiles	30	30
Fabrics	22	25
Yarn	15	17.5
Fibers	7.5	10

Although DTI maintains that very few tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or mis-classification into a higher tariff category. One such instance involves the classification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate. The allegation of mis-classification in this instance was challenged in the South African courts, which upheld customs' decision.

Tariffs on instant-print cameras were terminated during 1996. However, the cameras as well as instant-print film continue to be classified as "luxury items" and remain subject to excise taxes. The excise taxes are nondiscriminatory, but U.S. producers maintain that no domestic producers exist, and the high taxes are being circumvented by illegal importers. In 1999, South Africa reduced the level of excise tax from 15 to 10 percent on instant-print cameras and film.

South Africa and the European Union recently implemented trade provisions of their agreement on Trade, Development and Cooperation. Under the Agreement, South Africa and the European Union will establish a Free Trade Area over a transitional period lasting on the South African side, a maximum of twelve years, and for the European Union, a maximum of 10 years. Because the agreement calls for the reduction and eventual elimination of duties on trade between the EU and South Africa, U.S. firms exporting to South Africa may face higher tariffs than European firms exporting similar products.

Anti-dumping Actions

The South African Government is currently conducting an investigation into the importation of poultry meat. The Anti-Dumping Unit of the DTI announced this dumping investigation on November 5, 1999. The anti-dumping investigation is U.S. specific and the product coverage includes whole birds and cuts consisting of drumsticks, thighs, backs and other portions (generally referred to as dark meat or rear quarters). U.S. industry has argued strongly that international free market supply and demand factors alone account for the lower, more competitive price for U.S. exports of dark poultry meat.

Rebates

DTI has developed a program for the restructuring and development of the textile industry. Under this program, an exporter is permitted to import duty free an amount of textile products equivalent to 25 percent of its exports of clothing, 12.5 percent of fabrics and 8 percent of yarns. A similar program exists for the automobile industry known as the Motor Industry Development Programme (MIDP).

Customs

Customs valuation in South Africa is, in accordance with the WTO customs valuation agreement, based on the transaction value, that is the actual price paid or payable, or the FOB price in the country of export. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on the production cost of imported goods.

During 1997, South African Customs was integrated in the South African Revenue Service (SARS) and the position of Commissioner eliminated. SARS personnel are concerned with ensuring effective collection of revenue and enforcing customs regulation. SARS inspectors

have increased the number of physical searches of passengers and cargo. Some South African land points of entry have been closed to commercial traffic to allow customs officials to increase control and examinations at the remaining posts. As a result, some customs agents have been redeployed, but a shortage of customs officials still exists. A border police unit was established in 1997 to take on the responsibility for security and enforcement at South African ports of entry. This unit of the South African Police Service works closely with South African customs officials.

STANDARDS, TESTING, LABELING AND CERTIFICATION

There is an active debate ongoing in South Africa on products produced using modern biotechnology – often referred to as genetically modified organisms (GMOs). The 1997 Genetically Modified Organisms Act came into force on December 1, 1999. The Act creates an Executive Council for Genetically Modified Organisms (composed of, inter alia, representatives from six government agencies), a registrar, and a separate Advisory Committee composed of scientists and environmentalists. A proposal to require GMO labeling is currently under review by the Ministry of Health.

South Africa recently notified the WTO of a proposal to reconsider certain tolerances for specified noxious seeds in grain (primarily wheat, corn and oilseeds). The current maximum tolerance levels allowed are very low by world standards, and are potentially trade-restricting. USDA has provided a comment on the proposal that questions the scientific basis for the current tolerance.

The importation of irradiated meat from any source is still banned on public health grounds. Phytosanitary concerns regarding Stewart's Wilt in corn from the U.S. appear close to resolution. Phytosanitary restrictions on U.S. apples, pears and cherries are also on the agenda for forthcoming talks and South African officials are convinced that differences can be overcome and the market opened for these products.

GOVERNMENT PROCUREMENT

South Africa is not a signatory to the WTO Agreement on Government Procurement. Government procurement is regulated by the State Tender Board and nine Provincial Tender Boards. Parastatals funded by the government generally follow government policy on procurement. A government procurement rationalization proposal made during 1998 was not implemented. However, all parties agreed on the need for uniformity and a consensus was reached on introducing conformity between central and provincial procurement policies.

A Preferential Procurement Policy Framework Act was enacted in February 2000. It directs that preference points may be awarded to tenderers who comply with specific goals. These goals include: contracting with persons historically disadvantaged by unfair discrimination on basis of race, gender or disability and promoting the objectives of the Reconstruction and Development Program (RDP). The Act aims to promote public sector procurement reform in all organs of state and to introduce a more uniform public sector procurement system. However, given the complexity of the Act and the exceptions provided, it is unclear if it will be possible to implement the Act in a transparent and predictable manner.

The national industrial participation program provides for an industrial participation component in all state and parastatal contracts with an import content of $10 million or more. Under the program, the seller must invest at least 30 percent of the value of the imported content of the tender in a new or incremental business in South Africa. In the case of defense bids, the figure increases to 50 percent.

EXPORT SUBSIDIES

South African exports are mostly promoted by means other than direct subsidies. An Export Marketing and Investment Assistance Scheme (EMIA) provides financial support for trade missions, exhibitions, market research and outward and inward investment recruitment missions. Export financing for capital goods and projects is provided at fixed interest rates by a group of financial institutions contracted to DTI. An export finance guarantee facility for small exporters promotes small and medium sized enterprises.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Two IPR-related laws were passed on September 9, 1997: The Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The former amends the 1978 Patent Act, 1993 Trademarks Act, and the 1993 Designs Act, among others, to address South Africa's obligations under TRIPS. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods and establishes a special anti-piracy unit. However, enforcement of these laws has not been consistent, and piracy and trademark counterfeiting remain serious concerns. The U.S. has consulted with the South African Government on developing a government-wide software management program consistent with the Administration's initiative to encourage all governments to ensure that their officials use only legal software, and only for authorized uses. U.S. firms estimate that the piracy rate in South Africa for software is about 50 percent, videos about 18 percent, and music about 40 percent.

South Africa amended its Medicines Act in December 1997. The Act is currently being challenged in South Africa's Constitutional Court, although the lawsuit was temporarily suspended because of a commitment by the South African Government to return the bill to the Parliament for revision. The U.S. Government was concerned that the new law was overly broad and could empower the Minister of Health to abrogate patent rights for pharmaceuticals. However, the U.S. and South African governments reached an understanding that South Africa, while moving vigorously forward to bring improved health care to its citizens, will do so in a manner consistent with international commitments and that fully protects intellectual property rights. South Africa was removed from the Special 301 Watch List on December 1, 1999.

SERVICES BARRIERS

On basic telecommunications services, South Africa adopted the WTO reference paper on pro-competitive regulatory principles and committed to license a second supplier no later than January 1, 2004 to compete against Telkom, the current monopoly supplier, in long-distance, data, telex, fax and privately leased circuits services. South Africa will also consider the feasibility of licensing additional suppliers. The parastatal Telkom's exclusivity period continues until March 2002, but may be extended for a further year if Telkom meets its telephony rollout targets. Competition for the second network operator may begin as early as 2001.

Until Telkom's exclusivity ends, Internet Service Providers (ISPs) and Value Added Networks (VANs) may continue to face problems from Telkom. Although value added services do not fall within the scope of Telkom's monopoly, Telkom has claimed that VANs and ISPs are mere resellers of basic services and are thus infringing on Telkom's monopoly (see also Electronic Commerce below). The South African Telecommunications Regulatory Agency (SATRA) directed Telkom, on September 10, 1999, to immediately cease and refrain from issuing threats to terminate the existing facilities and services of VAN operators. However, Telkom has subsequently

refused to provision new facilities to VAN operators. SATRA continues to examine this issue under the relevant provisions of South Africa's telecommunications law. Under Section 1377 of the Telecommunications Trade Act of 1988, AT&T has urged USTR to take action to ensure that South Africa meets its commitments under the WTO General Agreement on Trade in Services and the WTO Agreement on Basic Telecommunications.

The status of call-back services is unclear. In mid-1997, SATRA ruled that call-back operators were illegal since only Telkom is licensed to provide international service. The Call-Back Association (SACBA) filed suit, and in the absence of any decision by the court, call-back operators continue to function. South Africa has not yet issued any operational satellite mobile telecommunication licenses, and is still studying the issue. The third cellular license was awarded in February 2000 to a consortium known as Cell C.

In the 1997 WTO financial services negotiations, South Africa made commitments resulting in increased access to its market in a number of financial services sectors, including banking, securities, and insurance. Although not prescribed in terms of the Banks Act, a foreign bank that wishes to operate a branch in South Africa will, however, be required to capitalize its local operation by the greater of eight percent of risk-weighted assets and other contingent liabilities or 50 million rand held in South Africa.

INVESTMENT BARRIERS

Trade-Related Investment Measures Agreement

In accordance with the Trade-Related Investment Measures Agreement, South Africa notified the WTO of measures (its tea scheme and Phase VI of its motor industry program) that were inconsistent with its TRIMS obligations. Tea measures have been tariffied and the Phase VI program has been replaced. Proper notification allows developing-country WTO members to maintain trade-related investment measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, was required to eliminate these measures by January 1, 2000. The United States is working in the WTO to ensure that WTO members meet these obligations.

Bilateral Agreements

Vice President Gore and South Africa's then Deputy President Mbeki signed an income tax treaty on February 17, 1997, in Cape Town. It was ratified by each country and entered into force on January 1, 1998. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism.

On February 18, 1999, in a ceremony in Cape Town presided over by Vice President Gore and then Deputy President Mbeki, the United States and South Africa signed a Trade and Investment Framework Agreement (TIFA). The TIFA, the first ever negotiated with a country in Sub-Saharan Africa, creates a Trade and Investment Council, composed of representatives of both governments, which meet regularly to discuss specific trade and investment matters, negotiate agreements if appropriate, and identify and work to remove impediments to trade and investment flows. While the Trade and Investment Council is a government-to-government body, the private sectors of both countries may also be consulted. The first TIFA meeting was held in July 1999.

Tax Incentives

South Africa has used tax incentives to encourage investment. For a limited period, existing nondiscriminatory tax allowances, such as those contained in the Income Tax Act of 1962 for machinery and buildings used in a manufacturing process, are being granted on an accelerated basis. If any new or unused plant or machinery was acquired and used for manufacturing by a taxpayer between July 1, 1996 and September 30, 1999, the cost can be written off over three years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for erecting any building, or any improvements to a building for manufacturing during July 1, 1996 to September 30, 1999, and used before March 31, 2000. The corporate tax rate was reduced from 35 percent to 30 percent in 1999.

ANTI-COMPETITIVE PRACTICES

Ownership remains highly concentrated in many of the sectors of the South African economy. Among other things, a large portion of the South African population was entirely excluded from ownership of business enterprises. In addition, successful companies such as South African Breweries, Anglo America (including De Beers which is part of Anglo America) and SASOL had been prohibited, since 1961, from investing abroad and, therefore, expanded their activities locally. Conglomerates, which can exert excessive market power, are therefore prevalent in the South African market. The previous competition authority was weak; it had no enforcement powers and could only make recommendations to the Minister of Trade and Industry on practices or acquisitions which might restrict competition in the market. A new Competition Act, concentrating much more on the abuse of dominant power, was passed in 1998. This law introduced significant improvements by prohibiting certain forms of anti-competitive conduct and by instituting a notification requirement for mergers. Importantly, the legislation established an independent competition authority, the Competition Commission, which started operations in September 1999. It is expected that the Competition Act will be amended in 2000, in part because of questions raised by the Nedcor-Stanbic merger/acquisition, where jurisdiction fell under more than one regulatory agency.

Sectors such as energy, transport, telecommunications, mining, and financial services have historically been controlled and dominated by parastatals.

ELECTRONIC COMMERCE

South Africa has a vibrant and rapidly growing Internet industry. The South African Department of Communications is formulating an electronic commerce policy through a series of public working groups, and expects to have draft legislation completed by September 2000.

The telecommunications parastatal Telkom has been restricting service to Internet Service Providers (ISPs) and Value Added Networks (VANs). Telkom claims that firms are re-selling basic services and are thus infringing on Telkom's monopoly in violation of the Telecommunications Act. The matter is currently before the regulatory agency, SATRA. The U.S. believes that such action may be inconsistent with South Africa's obligations under the WTO General Agreement on Trade in Services and the WTO Agreement on Basic Telecommunications. (See Service Barriers above.)

OTHER BARRIERS

Transparency and Corruption

The South African Government has taken a number of steps to fight corruption and increase transparency. This has been accomplished

through legislation, national anti-corruption summits, the establishment of anti-corruption bodies, and reform of government institutions. South Africa has actively participated in a U.S. anti-corruption initiative and has endorsed a Global Coalition for Africa list of principles to combat corruption in Africa.

South Africa boasts 10 anti-corruption bodies. Some, such as the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and address corruption as only part of their responsibilities. Others such as the Heath Special Investigative Unit (HSIU), the South African Police Anti-Corruption Unit, and the newly created Scorpions Unit, are dedicated to combating crime and corruption.

Government transparency will be enhanced by the Promotion of Access to Information Act, signed into law in February 2000. The Public Finance Management Act (PFMA), passed in 1999, is expected to raise the level of oversight and control over public monies and in doing so should also improve the transparency of government spending, especially with regard to off-budget agencies and parastatals. The legislation will become effective on April 1, 2000. The Preferential Procurement Policy Framework Act, enacted in February 2000, may increase transparency in government procurement, by, inter alia, establishing rules for preferential awarding of government contracts to firms with black ownership or shareholders. However, given the complexity of the law and the exceptions provided, it is unclear whether it can be implemented in a transparent and predictable manner.

Southern African Customs Union

The Southern African Customs Union (SACU) was established in 1910 and re-negotiated and substantially amended in 1969. SACU now includes South Africa, Botswana, Lesotho, Namibia and Swaziland as members. South Africa is in the process of renegotiating the SACU agreement with its partners, but it is not clear when these discussions will be completed. In the meantime, the current trading regime among the SACU countries is expected to continue. Key issues in the negotiations include the revenue-sharing formula, time lags in distribution of revenue, management of the system, and the need for a dispute resolution mechanism.

Imports from outside the SACU are subject to a common external tariff. Under the current agreement, the tariffs for all of SACU are instituted by the Minister of Trade and Industry of South Africa upon the recommendation of the BTT. The other SACU members are, however, consulted on the tariff. When the tariff is amended, the new tariff is implemented by all the SACU member states.

An Agreement on Trade, Development and Cooperation between the European Community and its Member States and the Republic of South Africa was signed in October 1999. Trade provisions of the Agreement were provisionally implemented in early 2000. The trade provisions call for the establishment of a free trade area over a transition period lasting a maximum of twelve years for South Africa and a maximum of 10 years for the European Community. Elimination of duties on European Community goods exported to South Africa will impact on customs revenues distributed to members of SACU.

Because of the Southern African Customs Union, products from Botswana, Lesotho, Swaziland and Namibia enter South Africa duty free. In a few cases, products from these countries compete directly with U.S. goods and have the advantage of a lower tariff duty. For example, soda ash from Botswana comes into South Africa at zero duty whereas soda ash from the U.S. faces a 10 percent duty. South Africa does not produce soda ash but the duty on

imported soda ash was introduced for the benefit of Botswana.

Southern African Development Community

One other development which is likely to affect U.S. exports to South Africa, as well as to the other members of the Southern African Development Community (SADC) is the implementation of a SADC Trade Protocol, which should be implemented in early-to-mid 2000. The trade protocol calls for the establishment of a Free Trade Agreement within a time frame of eight years from implementation of the Protocol. The Trade Protocol limits ratifying countries' ability to raise tariffs against other SADC members or to impose new non-tariff barriers. The Protocol also calls for the harmonization of customs, trade facilitation, and general and phyto-sanitary standards.

Steel

Steel (carbon steels, ferro-alloys, stainless steels and down-stream products) has been identified by the DTI as a strategic growth industry for South Africa that will gradually fill the employment and foreign exchange earnings gap being created by the declining gold sector. This is of concern in light of the global overcapacity of steel production and recent steel import surges. Over the past year, there have been a number of U.S. anti-dumping, countervailing duty or safeguard actions against South African steel. An investigation is currently underway on South African line and pressure pipe, small diameter seamless.

U.S. countervailing concerns stemmed from South Africa steel producers' financial arrangements with the Industrial Development Corporation (IDC) (considered by some U.S. companies to provide subsidized interest rates) and from the government's fiscal incentives, namely Section 37E of the tax act, which allows for the rapid write-off of capital assets (considered by some to be at higher rates than the industry norm). The South African Government maintains that these "trade concessions" do not violate WTO obligations.

Specific concerns were raised relating to Saldanha steel, a mini steel plant designed to produce 1.2 million tons of steel when operating at full capacity. The South African Government has said that Saldanha's steel is for export only and should therefore not be a barrier to U.S. imports into South Africa, and that the involvement of the IDC in financial arrangements and as an equity partner in Saldanha Steel was based on normal commercial practices and terms. A U.S. company, however, argued that Saldanha steel will affect its ability to export to third countries (and to South Africa), and that the use of IDC financing and Section 37E of the tax act constitutes South African Government subsidization of the plant.

The Section 37E tax concession was phased out during 1992-1995. This concession was not sector specific but was generally available to all industries, including chemical, petro-chemical, motor and mining.
The IDC was established in 1940 to promote and develop the, then, small South African industrial base with emphasis on the upgrading of raw mineral products and job creation. To implement this mandate, the IDC frequently provided below-market-rate financing. This practice has been discontinued and the IDC now functions as a private sector project financing and development organization.