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TRADE SUMMARY

The U.S. trade deficit with Nigeria was $9.4 billion in 2003, an increase of $4.5 billion from $4.9 billion in 2002. U.S. goods exports in 2003 were $1.0 billion, down 2.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $10.4 billion, up 74.8 percent from 2002. Nigeria is the 56th largest export market for U.S. goods. The flow of U.S. foreign direct investment (FDI) in Nigeria in 2002 was $1.8 billion, up from $788 million in 2001. U.S. FDI in Nigeria is concentrated in the petroleum sector.

IMPORT POLICIES

Tariffs

Tariffs provide the Nigerian government with its second largest source of revenue after oil exports. In its last major tariff revision, in March 2003, the Nigerian government reduced duties on 230 tariff line items (mostly raw materials, base metals, and capital equipment) to as low as 2.5 percent, while raising them on 30 line items (largely plastic, rubber, and aluminum articles) to as high as 65 percent. Most increases were relatively small. The Nigerian government has announced similar cuts and increases in the past, often on the same items year after year, and will likely announce another round of tariff adjustments as part of its 2004 budget.

Frequent policy changes and uneven duty collection make importing difficult and expensive and create severe bottlenecks for commercial activities. The problem affects foreign and domestic investors alike and is aggravated by Nigeria's dependence on imported raw materials and finished goods. Because of these systemic problems, under-invoicing and smuggling are often used to avoid paying full tariffs.

Non-tariff Trade Barriers

The Nigerian government continues to pursue policies that are of questionable consistency with WTO prohibitions against certain non-tariff trade barriers. Bans on a variety of items – sorghum, millet, wheat flour, cassava, frozen poultry, vegetable oil (in bulk), kaolin, gypsum, mosquito repellent nets and coils, wax-printed fabrics, used clothing, and bagged cement – continued into 2003. A ban on used car imports also continued but was altered to prohibit the importation of vehicles more than eight (rather than five) years old. Food products such as fruit juice in retail packs, pasta, biscuits, confectionery and chocolate products, canned beer, and bottled water were added to the list of banned items in 2003. In January 2004, the Nigerian Government added additional food products to the list of banned items, including fresh fruit, pork, pork products, beef, beef products, mutton, lamb, and goat meat.

Customs Barriers

Nigeria's ports continue to present major obstacles to trade. Importers face inordinately long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. The Nigeria Customs Service (NCS) stepped up enforcement of its 100 percent physical inspection policy in 2001 in an attempt to reduce smuggling and under-valuation of imports, but officials admit they do not have the resources to inspect every incoming container. The NCS operates a pre-shipment inspection regime under which contracted inspection companies at ports of origin issue inspection reports that their Nigerian counterparts use to indicate items shipped, their value, and applicable customs duties.

The NCS planned to abandon its pre-shipment inspection regime for 100 percent destination inspections in 2002 and 2003, but introduction was delayed when importers protested that NCS officials might use their positions as sole valuation authorities to extract unauthorized facilitation fees. The Nigerian government has stated its hope to introduce destination inspections in early 2004, but NCS risk assessment and other databases are not fully operational.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although the Nigerian government currently does not have specific laws or policies on agricultural biotechnology, the government does have draft Biosafety Guidelines that, as of the end of 2003, had not yet been submitted to the National Assembly for enactment. The Guidelines reportedly portray biotechnology products as generally safe for animal and human consumption. They also reportedly require mandatory labeling of all biotechnology food products to protect "consumers' right to know." The Nigerian Government seems to be favorably disposed toward domestic development of agricultural biotechnology capacity, and there is a fair amount of research under way at universities and the International Institute on Tropical Agriculture located in Ibadan. Nigeria is a Party to the Cartagena Protocol on Biosafety.

Rules concerning sanitary and phytosanitary standards, testing, and labeling are relatively well defined, but bureaucratic hurdles slow the approval process. Regardless of origin, all food, drug, cosmetic, and pesticide imports must 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. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture. By law, items entering Nigeria must be labeled exclusively in the metric system. Products with dual or multiple markings are to be refused entry, though such items are often found in Nigerian markets.

High tariffs and erratic application of import and labeling regulations make importing high-value perishable products difficult. Disputes among 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 setbacks often result in product deterioration and significant losses for perishable goods importers.

The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency recently targeted the illegal importation of counterfeit and expired pharmaceuticals for special attention, particularly when imports are from the Far East and South Asia. NAFDAC's severely limited capacity for carrying out inspection and testing contributes to an occasionally heavy-handed or arbitrary approach to regulatory enforcement, and the agency has occasionally challenged legitimate food imports.

U.S. products do not appear to be subject to extraordinary or discriminatory restrictions or regulations, but the widespread use of fraudulent documentation by non-U.S. exporters may put U.S. exporters at a competitive disadvantage.

GOVERNMENT PROCUREMENT

The Obasanjo administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement and privatization. The initial stages of the tendering process tend to be transparent and even-handed, but as tenders move through the decision-making process, the process often becomes opaque. Allegations by unsuccessful bidders of corrupt behavior by senior government officials and foreign companies are common, but they rarely provoke substantive reactions.

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New procurement and contracting guidelines were issued in January 2001, and a due process office, the Budget Monitoring and Price Intelligence Unit, was established. The agency acts as a clearinghouse for government contracts and procurement and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurements worth more than 50 million naira (about $380,000) are subject to full due process. Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers. U.S. companies have won Nigerian government contracts in several sectors.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank (NEXIM) administer industrial export incentive programs that include tax concessions, export expansion grants, export development funds, capital assets depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs, and many people allege that only favored individuals and businesses benefit. Aside from these limited incentive programs, Nigeria's non-oil export sector does not receive subsidies or other significant support from the government.

In an effort to attract investment in export-oriented industries, the Nigerian government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export processing zones function. NEPZA rules dictate that at least 75 percent of production in the zones must be exported, but lower export levels are reportedly tolerated. The Nigerian government converted the Calabar export processing zone into a free trade zone in 2001, but it is unclear whether the new designation has improved its export performance.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon text). Legislation pending in the National Assembly may establish a legal framework for an IPR system compliant with WTO rules. Nigeria's current IPR laws afford protection that complies with most WTO provisions.

Despite Nigeria's active participation in international IP conventions, its reasonably comprehensive IPR laws, and growing interest among individuals in seeing their intellectual property protected, piracy is rampant. Counterfeit pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly throughout the country.

The Nigerian 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, and fraudulent alteration of IPR documentation is common. Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Companies rarely seek trademark or patent protection because they generally perceive Nigerian enforcement institutions as ineffective. Nonetheless, recent government efforts to curtail IPR abuse have yielded results. The Nigerian police, working closely with the Nigerian Copyright Commission, have raided enterprises producing and selling pirated software and videos, and a number of high-profile charges have been filed against IPR violators. Unfortunately, most raids appear to target small rather than large and well-connected pirates, and very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted. Most cases have been settled out of court, if at all.

Nigeria's broadcast regulations do not permit re-broadcasting or excerpting 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.

IPR problems in Nigeria's film industry worsened dramatically following the Nigerian government's 1981 nationalization of the country's filmmaking and distribution enterprises as part of its campaign to "indigenize" the economy. The legitimate film distribution market has yet to recover. Almost no foreign feature films have been distributed in the country in the last two decades, movie theaters have ceased to operate, and the widespread pirating of foreign and domestic videos discourages the entry of licensed distributors.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Regulations provide broad participation to foreign services providers, including in banking, insurance, and securities. Central Bank of Nigeria directives stipulate minimum levels of paid-in capital. At least two foreign banks have initiated operations in Nigeria in recent years, and several Nigerian banks have received infusions of foreign capital.

INVESTMENT BARRIERS

Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100 percent foreign ownership of firms outside the petroleum sector. 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 and ammunition and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The Decree prohibits nationalization or expropriation of a foreign enterprise by the Nigerian government except in cases of national interest.

Despite efforts to improve the country's investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Potential investors must contend with high business taxes, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. There is no tradition supporting the sanctity of contracts, and the court system for settling commercial disputes is weak and sometimes biased. Foreign oil companies are under pressure to increase procurement from indigenous firms. NAPIMS has set a target of 40 percent local content for oil-related projects; how that target is to be achieved remains nebulous and subject to negotiation on a project-by-project basis.

Nigerian government efforts to eliminate financial crimes such as money laundering and advance-fee fraud (or "419 fraud" after the relevant section of the Nigerian Criminal Code) have increased but have been largely ineffective. Fraud, theft, and extortion are rampant. With the encouragement and cooperation of U.S. law enforcement agencies, more "419" perpetrators are being prosecuted by the Nigerian government.

Corruption remains a serious problem. International watchdog groups routinely rank Nigeria among the most corrupt countries in the world. Some U.S. exporters believe sales are lost when they refuse to engage in illicit or corrupt behavior. Others say Nigerian businessmen and officials understand that U.S. firms must adhere to U.S. Foreign Corrupt Practices Act standards and ultimately believe these restrictions help minimize their exposure to corruption. Unfortunately, U.S. exports to Nigeria occasionally suffer from unfair trade practices by foreign competitors willing to accommodate requests for improper payments.

ELECTRONIC COMMERCE

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The growth of electronic commerce and telecommunications in Nigeria, albeit from a low base, offers opportunities for the provision of U.S. products and services. While there are no trade restrictions that discriminate against such U.S. products, high-technology industries suffer from the same constraints noted for other industries.