PAKISTAN

TRADE SUMMARY

The U.S. trade deficit with Pakistan was $1.1 billion in 2004, a decrease of $624 million from $1.7 billion in 2003. U.S. goods exports in 2004 were $1.8 billion, up 114.7 percent from the previous year. Corresponding U.S. imports from Pakistan were $2.9 billion, up 13.6 percent. Pakistan is currently the 49th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan in 2003 was $1.1 billion, up from $849 million inn 2002.

IMPORT POLICIES

Since 1998, Pakistan has progressively and substantially reduced tariffs. This effort culminated in June 2002 with the establishment of four maximum import tariff bands of 25 percent, 20 percent, 10 percent, and 5 percent. Generally, Pakistan's applied tariffs are below WTO-bound commitments, and the weighted average applied tariff is currently 16.0 percent, down from 56 percent in 1994. The tariff on most consumer goods was reduced to 25 percent, for most intermediate goods to 10 percent, and for most raw materials to 5 percent. In November 2000, Pakistan reached an agreement with the WTO Balance of Payments Committee to phase out quantitative restrictions on textile imports. The government removed all textile products from its "negative list," including woven cotton fabrics, woven synthetic fabrics, bed linens, curtains, certain knitted fabrics and apparel items, tents, carpets, and textile floor coverings. Many of these items are key Pakistani export products. All textile products can now be imported into Pakistan, although the tariff on certain synthetic fibers (scheduled to expire in 2008) remains relatively high.

Pakistan's trade policy in 2004 continued to ban the import of 30 items, mostly on religious, environmental, security, and health grounds. Effective July 1, 2004, Pakistan reduced duties on imported automobiles to between 50 percent and 100 percent from the previous range of 75 percent to 150 percent. The government exempted all domestically produced pharmaceutical-related inputs from its General Sales Tax (GST), a value-added tax, through a Statutory Regulatory Order issued in April 2002. Imported pharmaceutical inputs subject to a 10 percent customs duty rate are also exempt from payment of GST. This includes most, but not all, imported pharmaceutical inputs. In FY 2002, the government reduced duties on instant print film and instant print cameras to 10 percent from the 30 percent to 200 percent range in order to eliminate the incentive to smuggle subject to the higher rates.

The government reserves the power to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). In recent years, the use of SROs has

decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenue's website, www.cbr.gov.pk.

In January 2000, the government began implementing a transactional valuation system pursuant to which 99 percent of import valuation is based on invoice value, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent of imports are assessed duties pursuant to the transactional valuation system. However, a number of traders in food and non-food consumer products report experiencing irregularities and deviations in the application of that system.

STANDARDS TESTING, LABELING, AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. As of June 30, 2003, PSQCA had established over 21,000 standards for agriculture, food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products, including 15,500 ISO standards, an increase of 1,000 new ISO standards since 2003. However, no other new standards were approved in 2004. Testing facilities for agricultural goods are inadequate and standards are inconsistently applied, which industry contends has resulted in occasional discrimination against U.S. farm products. Generally, however, U.S exporters have not reported problems due to the restrictive application of sanitary, phytosanitary or environmental standards. Pakistan accepts most U.S standards.

Pakistan lacks biosafety guidelines for certain bioengineered agricultural goods, a policy gap that appears to have impeded introduction of U.S. bioengineered products that could significantly boost Pakistan's agricultural productivity, rural incomes, and overall GDP. Pakistan's Biosafety Commission has compiled draft biosafety guidelines, but Pakistan's Ministry of Environment has delayed approval of the guidelines for four years.

GOVERNMENT PROCUREMENT

Pakistan is not a member of the WTO Agreement on Government Procurement and has not made a commitment to begin accession negotiations. Work performed for government agencies, including the purchase of imported equipment and services, is often awarded through tenders that are publicly announced or issued to registered suppliers. The government established the Public Procurement Regulatory Authority in May 2002 to strengthen procurement practices. International tenders now are publicly advertised and sole source contracting using company-specific specifications has been eliminated. There are no "buy national" policies.

Political influence on procurement decisions, charges of official corruption, and long delays in bureaucratic decision-making have been common in the past. Investors have reported instances when the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules. Occasionally, the government reportedly has "disqualified" experienced and technically proficient bidders otherwise qualified under tender specifications. The government does not invite private tenders for the transportation of crude oil and requires all transport of crude oil to be conducted by the state-owned Pakistan National Shipping Corporation.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Subsidies in FY2004 were confined mostly to wheat and totaled roughly $76 million, according to the government sources. The government also provides freight subsidies to some products and these subsidies totaled close to $17 million in FY2004. On January 5, 2005, the government announced that its Export Development Fund would provide a 25 percent air and sea freight subsidy for leather garment exports for calendar year 2005. Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in Risalpur, Gujranwala, and Sialkot in Punjab Province and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports, exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts and packing material), indefinite loss carryforward, and access to Export Processing Zone Authority "One Window" services, including facilitated issuance of import permits and export authorizations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Pakistan's failure to adequately protect intellectual property constitutes one of its most severe barriers to trade and investment. The U.S. government had placed Pakistan on the "Special 301" Watch List every year from 1989 to 2003 due to widespread piracy, especially of copyrighted materials. Continuing IPR violations caused the U.S. Government in 2004 to move Pakistan from the Special 301 Watch List to the Special 301 Priority Watch List. In 2004, Pakistan was among the world's leading exporters of pirated optical discs and apparel. Pakistan does not adequately enforce patents, copyrights, and trademarks due the lack of a functioning central IPR regulatory and enforcement body, an underdeveloped judicial system, and corruption.

In response to longstanding local and international criticism and the need to implement its WTO TRIPS obligations, the Pakistani Cabinet in 2004 approved legislation creating the Pakistan Intellectual Property Rights Organization (PIPRO) to consolidate authority over trademarks, patents, and copyrights in one government body. However, the legislation has not yet been

approved by the parliament, and it has effectively been mothballed for many months. In addition, the Ministry of Commerce established an IPR Advisory Committee (IPRAC) with private sector and non-government organization participation. Unfortunately, IPRAC met once in January 2004 and has been dormant since that time. Although Pakistan has enacted five major new laws relating to patents, copyrights, trademarks, industrial designs and layout designs for integrated circuits in the past few years, the legislation and/or enforcement mechanisms remain lacking in several areas further described below. Pakistan is a party to the Berne Convention for the Protection of Literary and Artistic Works, and is a member of the World Intellectual Property Organization (WIPO). On July 22, 2004, Pakistan acceded to the Paris Convention for the protection of industrial property. Pakistan has not yet ratified the WIPO Copyright Treaty nor the WIPO Performance and Phonograms Treaty. A draft law concerning plant breeders' rights has not progressed because of a dispute over federal and provincial jurisdiction for the past two years.

Patents

Pakistan enacted a patent law in 2000 that protects both process patents and product patents in accordance with its WTO obligations. Under this law, both the patent-owner and licensees can file suit against those who infringe. Unfortunately, the 2002 Patent Ordinance weakened the 2000 Patent Law by eliminating use patents, restricting patent filings to single chemical entities, limiting protection for derivatives, introducing barriers to patenting biotechnology-based inventions. This generated great concern among pharmaceutical firms seeking to sell patented drugs in Pakistan. Pakistan fails to protect against unfair commercial use of test or other data. In addition, the government has authorized the sale of pharmaceuticals without requiring checks confirming that another firm does not hold an active patent on the compound. Although courts have issued injunction orders against firms licensed by the Ministry of Health, that sell drugs in violation of patent holder rights, such orders are not consistently enforced. Patent theft is exacerbated by the fact that it often takes one or two years to register drugs in Pakistan. During this registration process, the government also sets prices - often at a level that does not reflect the cost of developing the product.

Trademarks

Pakistan developed its Trademarks Ordinance in 2000, which provides for the registration and better protection of trademarks and for the prevention of the use of fraudulent marks. The ordinance has been enforced since April 2004 with the enactment of implementing rules. The government has eliminated the requirement that pharmaceutical firms label the generic name on all products with at least equal prominence as that of the brand name. Trademark infringement remains widespread.

Copyrights

According to the International Intellectual Property Association, calendar year 2003 copyright piracy rates in Pakistan stood at 95 percent for motion pictures, 100 percent for records and music, and 83 percent for business software (no figures were available for entertainment software). CD and DVD losses were estimated at $82 million. Pakistan has become a major exporter of pirated optical discs. Industry groups estimate that in 2004 there were ten firms which produced roughly 230 million illegal discs in 2004, up nearly 30 percent over 2003 levels. Industry analysts estimate that almost 90 percent of this production is exported.

This level of piracy occurs despite the current ban on the import and export of pirated materials. Pakistani law includes a maximum punishment of three years imprisonment and a fine of 100,000 rupees ($1,750). Enforcement, however, remains weak, characterized by sporadic raids at the retail level, few prosecutions, and inadequate penalties. In addition, no separate IPR enforcement bodies or IPR courts exist in Pakistan. For example, authorities have not inspected optical disk factories operating in Pakistan.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to provisions including a minimum initial capital investment of $150,000. Recent changes in the Investment Policy permit foreign investors to hold up to a 100 percent equity stake and allow 100 percent repatriation of profits. This 2004 change eliminates the $300,000 minimum initial capital investment requirement in the services sector with foreign investors required to accumulate 40 percent local equity within 5 years of initial investment. In addition, the repatriation of profits is no longer restricted to a maximum of 60 percent of total equity or profits.

Investment policy also allows foreign investors in services and other non-manufacturing sectors (including international food franchises) to remit technical fees and royalties, although conditions apply. In information technology services, including software development, foreign investors may hold a 100 percent equity stake. Investors in this field are not subject to the requirements for minimum initial investment.

Telecommunications

In the telecommunications sector the government of Pakistan permits 100 percent foreign equity with a minimum foreign equity investment of $150,000 in specific services, including electronic information services, card-pay telephone services, paging services, and voice mail services. This 2004 change eliminates the previous $300,000 minimum initial capital investment requirement in the services sector with foreign investors required to accumulate 40 percent local equity within 5 years of initial investment. In addition, the repatriation of profits is no longer restricted to a maximum of 60 percent of total equity or profits. Competition among service providers is already allowed in cellular telephony. In July 2003, the government announced a

telecommunications sector deregulation policy in order to comply with its WTO commitments. Implementation of this policy has ended the exclusive right of the majority state-owned Pakistan Telecommunication Company Limited (PTCL) to provide basic telephone services, and the government has issued 12 licenses to long distance telephone companies, 90 licenses to local loop regional telephone companies, and 70 licenses to wireless local loop companies. Some of these companies will commence operations in early 2005. Pakistan currently allows the cross-border provision of packet-switched data and Internet services. Roughly 70 private firms, including foreign invested companies, provide Internet services on competitive networks, and the government has issued licenses to 55 more companies. At present, the government does not issue exclusive licenses for voice-over-internet providers (VOIP). Long distance telephone license holders can also provide VOIP services.

Limitation on Foreign Films

The Government of Pakistan prohibits the importation of films that are deemed inconsistent with local religious and cultural standards. Films from neighboring India are routinely denied entry via cable transmission or video/digital media, but are widely available in pirated form.

Banking and Insurance

Pakistan improved its financial services commitments in the WTO Financial Services Agreement in December 1997. These commitments grant the right to establish new banks, as well as grandfathering acquired rights of established foreign banks and foreign securities firms. The State Bank of Pakistan (SBP, Pakistan's central bank) has changed its branch licensing policy and has eliminated restrictions on the number of branches for foreign banks. Currently, foreign banks, like local banks, have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank's net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population. Foreign brokers, like their Pakistani counterparts, must register with the Securities and Exchange Commission of Pakistan.

The government has opened the insurance market as one of its financial sector reforms. Government officials recently clarified that foreign investors are allowed to hold a 51 percent equity share of companies operating in the life and general insurance sectors. Foreign investors are also required to bring in a minimum of $2 million in foreign capital and raise an equal amount of equity in the local market. There are no restrictions on the repatriation of profits, and capital investment made in this sector can be repatriated with the permission of the SBP. Pakistan does not regulate insurance premiums. The government issued a new insurance law in 2000, raising capital adequacy standards and enhancing policyholder protections.

The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must use the state-owned Pakistan Reinsurance Company for a minimum of 10 percent of their reinsurance requirements. Market domination in

this sector may pose a substantial barrier to entry. The state-owned State Life Insurance Company holds over 80 percent of the life insurance market, while five major companies account for 78 percent of the general insurance market share.

Other Services

Foreign professionals can provide legal and engineering consultancy services with 100 percent equity participation. This 2004 change eliminates the prior requirement that Pakistanis hold 40 percent local equity for 5 years. The minimal capital requirement for these services was also reduced from $300,000 to $150,000 in 2004. A legal consultant need not be licensed to practice law in Pakistan. However, foreign lawyers may not appear in court or otherwise formally litigate cases, even if they work with local lawyers, unless licensed. The Islamabad-based Pakistan Bar Council licenses attorneys in Pakistan, and no *de jure* prohibition exists against the admission of foreign lawyers into the bar. Similarly, foreign doctors must register with the Pakistan Medical and Dental Council, and foreign engineers are required to register with the Pakistan Engineering Council in order to practice their respective professions in Pakistan.

INVESTMENT BARRIERS

Foreign investors are free to establish and own business enterprises in all sectors of the economy with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new nonindustrial alcohol plants. There is a minimum initial investment requirement of $300,000 in agriculture and in infrastructure and social services and a $150,000 minimum foreign equity investment requirement in certain services but no minimum investment requirement for manufacturing. Foreign ownership in agricultural investments cannot exceed 60 percent. The government's investment policy promises full repatriation of capital, capital gains, dividends, and profits with the approval of the State Bank of Pakistan. No requirements exist for technology transfer. The law provides for expropriations only upon adequate compensation, and it prohibits changes in benefits and incentives for the purpose of disadvantaging foreign investors.

The government of Pakistan has eliminated most but not all of the local content requirements that it reported to the WTO in 1995 under the Agreement on Trade Related Investment Measures (TRIMS). In 1999, Pakistan's "deletion" program (mandating the use of domestic inputs) encompassed 106 items. As of December 2004, 16 items in the auto and motorcycle industries remain. For these 16 items, Pakistan has petitioned for a three-year extension on its original December 31, 2003, deadline to eliminate all deletions. At the start of 2005, the United States and other WTO Members were still considering this request.

Although Pakistan has enacted a Monopolies and Restrictive Trade Practices Ordinance, and established a Monopoly Control Authority, parastatal firms are exempt from the provisions of this law, and regulatory oversight suffers from resource constraints. Thus, in the Pakistani market, where state-owned firms dominate several sectors, competition policy remains

incomplete. The state-owned Water and Power Development Agency (WAPDA) and Karachi Electric Supply Corporation (KESC) retain control of power transmission and distribution and continue to be highly subsidized. Privatization of KESC and Pakistan Telecommunications Company, Limited (PTCL) are scheduled to begin in early 2005. Bidding for PTCL will be held in the first quarter of FY2005-2006. The government plans to transfer management control of PTCL through the strategic sale of 26 percent of its shares, and it has already issued licenses to long distance and local telephone operators, as well as to cellular and wireless local loop operators, ending PTCL's monopolies. Two private airlines compete with state-owned Pakistan International Airlines and the government permits them to fly on the most desirable routes and to undercut PIA on fares. In retail food sales, the government has used pricing in its several hundred-unit Utility Stores Corporation chain to influence prices of essential foodstuffs. Market leaders in the cement and sugar industries are alleged to have formed cartels.

The United States and Pakistan recently initiated negotiations toward a Bilateral Investment Treaty (BIT), which would provide significant protections for U.S. investors in Pakistan. An informal discussion of BIT principles was held in preparation for the first negotiating session.

ELECTRONIC COMMERCE

Although there are no trade restrictions on electronic commerce, the government blocks certain websites that it deems as conflicting with Pakistani religious and cultural norms. Electronic commerce is, however, not well developed in Pakistan. In 2002, the government enacted an Electronic Transactions Ordinance that adopted international standards and provided for the establishment of a certification authority. The Certification Authority has not yet started functioning to implement the ordinance, so companies seeking certification have had to rely on foreign certification services. There are no duties and taxes on electronic commerce in Pakistan.

OTHER BARRIERS

Businesses operating in Pakistan have repeatedly called for strengthening law and order.
Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules and, most recently, the 1999 National Accountability (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and Provincial Anti-Corruption Departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended time-bound measures and reforms to combat corruption. The NACS also named the NAB as the sole anticorruption agency at the federal level.

Contract enforcement is difficult in Pakistan. A long-standing investment dispute between a major U.S. multinational company and a local partner has raised concerns about the sanctity of international arbitration awards under contracts between private parties. In 2004, Pakistan's

Cabinet approved Pakistan's joining the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards; however, its parliament has not yet enacted enabling legislation putting it into force. Pakistan's ranking in Transparency International's Corruption Perceptions Index dropped from 92 out of 133 countries in 2003 to 129 out of 145 countries listed in 2004.