SOUTHERN AFRICAN CUSTOMS UNION

TRADE SUMMARY

The U.S. goods trade deficit with Southern African Customs Union (SACU) countries was $3.8 billion in 2006, an increase of $1.1 billion from $2.7 billion in 2005. U.S. goods exports in 2006 were $4.6 billion, up 12.9 percent from the previous year. Corresponding U.S. imports from SACU countries were $8.5 billion, up 24.5 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries in 2005 was $3.7 billion, up from $3.5 billion in 2004.

OVERVIEW

The Southern African Customs Union links the trade regimes of Botswana, Lesotho, Namibia, South Africa and Swaziland. The South African economy dominates SACU, representing approximately 91 percent of SACU's 2003 gross domestic product of $175 billion. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana are members of the Common Monetary Area, with currencies pegged to the South African rand. Imports from outside SACU are subject to a common external tariff. The 2002 SACU Agreement, which became fully operational in 2004, provided for a more democratic structure that reduces reliance on South Africa for administrative decisions. The agreement set up a Council of Ministers (COM) as the supreme decision making body for SACU. The COM is supported by the Commission of Senior Officials (a group of technical experts) and a SACU Secretariat located in Windhoek, Namibia. A SACU Tariff Board formulates and implements tariff policy; it reports directly to the COM.

The United States began free trade agreement (FTA) negotiations with the five SACU countries in June 2003, but active negotiations were suspended in April 2006. As a way forward in the U.S.-SACU FTA negotiations, the United States has proposed the development of a new type of agreement (called a Trade and Investment Cooperation Agreement or "TICA"). The proposed U.S.-SACU TICA would be a framework for trade and investment promoting activities that could provide the "building blocks" for the future resumption of FTA negotiations, while allowing the United States and SACU to take meaningful interim steps towards improving their trade and investment relationship.

The U.S.-SACU TICA would establish a forum for consultative discussions on a wide range of trade and investment issues, including, but not limited to, FTA issues. The proposed TICA would establish a Consultative Council that would oversee the implementation of the TICA, set up working groups and monitor progress towards the negotiation of various trade- and investment-related agreements. The TICA provides an opportunity to address trade constraints on U.S. exports to SACU countries, including relatively high tariffs and import restrictions on certain U.S. exports; insufficient copyright protection for software, films and music; and barriers in telecommunications and other key service sectors. SACU countries have recently negotiated free trade agreements with MERCOSUR and the European Free Trade Association.

IMPORT POLICIES

Tariffs and Non-Tariff Barriers

Nearly all intra-SACU trade in goods is free of barriers. Imports from the rest of the world face a common external tariff and a common excise tax. Revenue flows into a common consolidated revenue fund controlled by South Africa. Since the completion of the World Trade Organization (WTO) Uruguay Round in 1994, SACU countries, led by South Africa, have reformed and simplified their common tariff structure. Tariff rates have been reduced from a simple average of more than 20 percent to 5.8 percent. Notwithstanding these reforms, importers have complained that the SACU tariff schedule remains complex and can create uncertainty. In addition, tariff rates mostly fall within eight levels ranging from zero percent to 30 percent, but some are higher, such as those for most apparel products. Many of South Africa's specific and composite duties were converted to *ad valorem* rates, with a few exceptions remaining in a limited number of sectors, including textiles and apparel products. In the Uruguay Round, South Africa agreed to a twelve-year phase-down of duties on textiles and apparel, but unilaterally moved to expedite its phase-down process. As of September 1, 2002, the following SACU rates, which are also the final phase-down rates, apply: apparel - 40 percent; yarns - 15 percent; fabrics - 22 percent; finished goods - 30 percent; and fibers - 7.5 percent. Tariff rates on cars, light trucks, and vans are still at the high level of 36 percent, while the rate of duty on new automobile parts is 28 percent.

Country-specific information on the five SACU Members follows.

1. SOUTH AFRICA

IMPORT POLICIES

The International Trade Administration Commission (ITAC) is tasked with administering South African trade laws. Its specific responsibilities include:

- Tariff Administration: ITAC administers tariff-related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). In addition, interested parties may petition ITAC to review tariffs with the purpose of reducing or increasing them;

- Trade Remedies: ITAC administers the antidumping and countervailing duty and safeguard laws. The textiles and apparel industry was the first to utilize the ITAC safeguard procedures introduced in 2004 when it filed petitions for protection against rising Chinese imports. In response, the government imposed a quota system limiting certain Chinese textile and apparel imports, which became effective January 1, 2007; and

- Import and Export Control: ITAC issues import and export permits for certain items designated by the Minister of Trade and Industry under the authority of the International Trade Administration Act of 2002 (which replaced the Import and Export Control Act of 1963).

Tariffs

ITAC continues to receive requests for tariff protection from a number of industries, and U.S. companies have cited protective tariffs as a barrier to trade. Under SACU, 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 that are subject to duties. One example is soda ash imported from Botswana at a zero duty, while soda ash from the United States faces a 5.5 percent duty. If tariffs on U.S. soda ash were removed, U.S. industry estimates that U.S. exports of high quality soda ash to South Africa could increase from less than $8 million to $25 million, closer to its historical level. The soda ash duty benefits Botswana, the only producer of soda ash within SACU. A longstanding complaint from this Botswana producer to South Africa's Competition Commission law could result in a prohibition of U.S. exports of soda ash. Initially, the Competition Commission accepted the complaint as a "per se" offense, but a recent decision by the South African Supreme Court of Appeal remanded the case to the Competition Commission to confirm that U.S. exports have actually damaged the South African market. The Commission's appellate division will proceed on the merits of the case following a procedural hearing.

Non-Tariff Measures

The Minister of Trade and Industry may, by notice in the Government Gazette, prescribe that no goods of a specified class or kind be imported into South Africa, except under the authority of and in accordance with the conditions stated in a permit issued by ITAC. The main categories of controlled imports are as follows:

- Used goods: ITAC may require import permits on used goods or substitutes if such goods are not manufactured domestically, thus creating a *de facto* ban on most used goods. While designed to protect the domestic manufacture of clothing, motor vehicles, machinery and plastics, these restrictions limit imports of a variety of low-cost used goods from the United States and Europe;

- Waste, scrap, ashes and residues;

- Other harmful substances;

- Goods subject to quality specifications: This restriction permits the monitoring of manufacturing specifications that enhance vehicle safety (such as in the case of tires) or protect human life.

Other often-cited non-tariff barriers to trade include port congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, IPR violations, an inefficient bureaucracy and excessive regulation.

ANTIDUMPING AND COUNTERVAILING DUTIES

The government promulgated antidumping regulations in 2003, and countervailing duty regulations in 2005. Although South Africa initiated 22 antidumping investigations in 2005, it has only initiated three new antidumping investigations in 2006. Exports from China, India and Korea are most frequently involved in South African investigations, while there have been nine investigations of U.S. exports since 1995. Transparency and due process remain issues regarding the actions of the ITAC and its administration of South Africa's antidumping laws and regulations.

During 2006, ITAC initiated an antidumping investigation into the alleged dumping of white self-copy paper imported from the United States. ITAC also completed a sunset review of antidumping duties on frozen chicken meat portions imported from the United States, which resulted in the continuation of the antidumping duties imposed on this product. In addition to frozen chicken meat portions, South Africa imposes anti-dumping duties on U.S.-origin suspension PVC, roller bearings, l-lysine feed supplements and acetaminophenol.

Free Trade Agreement with the European Union

In 2000, South Africa and the European Union (EU) began to implement provisions of their Trade, Development, and Cooperation Agreement (TDCA). Under the TDCA, South Africa and the EU agreed to establish a free trade area over a transitional period of up to 12 years for South Africa, and 10 years for the EU. The agreement provides for the reduction and eventual elimination of duties on approximately 85 percent of the products imported by South Africa from the EU, and 95 percent of the products exported by South Africa to the EU. The agreement exempts certain agricultural products from liberalization. Some U.S. businesses exporting to South Africa are concerned that their products will be less competitive because of preferences for EU products that the TDCA provides. An example includes the tariff differential between EU and U.S. bottled and bulk distilled spirits; another example is automobiles.

In November 2005, South Africa and the EU completed a work program on automobile trade as part of the TDCA. The EU agreed to phase out all tariffs on South African automotive imports by 2010. South Africa agreed to reduce tariffs on European car imports from 25 percent to 18 percent by 2012. Currently, 51 percent of South Africa's vehicle and component exports go to the EU.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The South African Bureau of Standards (SABS) often adopts European Union standards rather than U.S. or other international standards. The U.S. Government is working with SABS to consider standardization policies, which would allow for adoption of standards that continue market access for U.S. products.

Apparel, Textiles, Shoes and Leather Goods

The Minister of Trade and Industry published regulations in 2005 that would have prohibited the importation or sale of textiles, apparel, shoes and leather goods in South Africa unless they are labeled in such a way that it is clear which country produced the goods. These regulations would have required the inclusion of the South African importer's registration code on the label of each item. U.S. industry members found this regulation to be particularly burdensome and submitted comments to the World Trade Organization (WTO) to this effect. Due in part to U.S. industry concern and intervention, South Africa revised its original labeling regulation. The new regulation, published on December 14, 2006, no longer requires a permanent label identifying the importer registration code for imported goods.

Biotechnology

The South African government generally supports biotechnology: transgenic varieties of cotton, corn and soy are approved for commercial planting and account for approximately 92 percent of South Africa's cotton, 29 percent of its corn and 59 percent of its soybeans.

U.S. agricultural interests in South Africa are wide-ranging and diverse. Wheat is the main U.S. export, followed by many other bulk, intermediate and consumer-ready products. Those affected by biotechnology issues are corn, soybeans and seeds (corn, cotton and soybeans). Food aid passage through South Africa to other destinations can also be affected by South Africa's genetically-modified organism (GMO) policies.

South African biotechnology regulatory matters are discussed and decided by an Executive Council with representatives from eight departments. An Advisory Committee consisting of experts from around the nation carry out risk analysis on biotechnology products and give their recommendations to the Council for the final approval of any biotechnology product, e.g. opposition to the use of genetically modified

grapes at Stellenbosch University. The Advisory Committee and the Council do not meet frequently, so decisions are often delayed. Still, the regulatory structure in general is very progressive and several genetic transformation events have received approval for commercial planting. However, recently there have been some public objections from groups opposed to biotechnology products. These groups are demanding unscientific information from the GMO Registrar's office of the National Department of Agriculture and have effectively slowed the process for new approvals.

South African farmers plant biotechnology products such as corn, cotton and soybeans. According to the International Service for the Acquisition of Agri-Biotech Application (ISAAA), South Africa's acreage of biotechnology product crops rose to 500,000 hectares in 2005, placing the country third among the top fifteen growers of biotechnology products varieties. The plantings for 2006 are expected to be between 700,000 and 1million hectares.

Industry analysts estimate that cotton has seen the highest rate of adoption with 92 of the local crop now utilizing biotechnology. South African industry was also quick to adopt a new genetically modified (GM) cotton seed with traits of both insect resistance and herbicide tolerance that was approved in September 2005. Those varieties constituted 40 percent of the cotton planted last year, while varieties with only insect resistance constituted 39 percent and those with herbicide tolerance 13 percent.

U.S. grain producers raised concerns about the treatment of "stacked events" when it comes to import approval for biotechnology products. Although the U.S. Government considers products containing a combination of two previously approved genetic modifications (such as for insect resistance and herbicide tolerance) as "conventional," only encouraging producers to notify the U.S. Government of such "stacked events," South Africa – like the EU – considers "stacked events" to constitute a completely new event, thus requiring a *de novo* review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities.

The South African government has not approved U.S. yellow corn for importation because many more yellow corn biotechnology events have been approved for use in the United States than in South Africa. As it stands, if yellow corn were in short supply in South Africa, importers would have to apply to the government for a special waiver to import it, with the guarantee that the corn would be milled near the port to ensure that seeds from such imports could not be planted.

South African cultivation of biotechnology corn increased from 14.6 percent of total maize planted in 2005 to 29.4 percent in 2006. Of this, 72 percent was corn with insect resistance, with herbicide-tolerant maize making up the remaining 28 percent. Actual hectares planted with modified corn increased by 11 percent to 455,287 hectares despite the total maize area decreasing by 45 percent. White biotechnology maize increased dramatically from 8.6 percent in 2005 to 28.8 percent in 2006, while the yellow biotechnology maize area planted grew from 24 percent to 30.5 percent. About 59 percent of the local soy bean crop is biotechnology.

A South African product manager for a U.S. biotechnology company in South Africa reports that about 8,000 commercial and about 2.4 million subsistence farmers in South Africa currently plant GM corn and will continue to do so.

In September 2003, countries of the Southern African Development Community (SADC), including South Africa, developed common guidelines on the regulation of products resulting from biotechnology. The guidelines conclude that the region should develop common policy and regulatory systems based on either the Cartagena Protocol or the African Model Law on Biosafety. The leaders of SADC member states also agreed to develop national biotechnology policies and strategies, and to increase their efforts to

establish national biosafety regulatory systems. Leaders urged member states to commission studies on the implications of biotechnology for agriculture, the environment, public health and socio-economics.

South Africa can play a vital role as other countries in Africa develop biotechnology policies because it has the most resources, such as scientific expertise and financial support, as well as a progressive regulatory system. Without the South African government's leadership role in the region, the progress in agricultural biotechnology could advance more slowly or be stifled.

Agricultural Standards

The South African government requires prospective importers to apply for an import permit for certain controlled products. Public health officials still ban the importation of irradiated meat from any source. U.S. horticultural producers have complained about various South African sanitary or phytosanitary barriers when it comes to the importation of apples, cherries and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of these fruits to South Africa could potentially reach $25 million in annual sales. U.S. producers have also expressed concern about unnecessary sanitary and phytosanitary requirements for some grains, pork, poultry, and horticultural products.

In September 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service sponsored a trip by two inspection officials from the South African Department of Agriculture (DOA) to the Pacific Northwest to visit orchards and packing houses in order to liberalize the DOA's requirements for importing U.S. apples.

To fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the National Department of Agriculture (NDA) published the rules and procedures regarding the application for market access permits for agricultural products on October 24, 2003. The NDA issues permits to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for agricultural products listed in the Table of Import Arrangements. Ten percent of such permits are reserved for "new importers" (those who have not imported within the past three years), and 10 percent are reserved for small, medium and micro-enterprises.

In response to the Bovine Spongiform Encephalopathy case in Washington State announced by the USDA on December 23, 2003, South Africa banned all ruminant animals and products originating in the United States. By January 15, 2004, South Africa, in accordance with World Organization for Animal Health (OIE) standards, exempted non-risk products such as hides, skins, wool and mohair from the ban. On May 8, 2006 the Chief Veterinary Officer of the USDA sent his South African counterpart a full report detailing USDA's surveillance program.

GOVERNMENT PROCUREMENT

Government purchases are by competitive tender for goods, services and construction contracts. The government uses its position as both buyer and lawmaker to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) policy.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and set forth a formula for evaluating tenders on government contracts. To augment this, the DTI has been working on regulations to clarify the Framework Act and to incorporate the intentions of the Broad-Based BEE Act of 2003. The new regulations give greater preference to bidders according to their compliance with BEE objectives. The

regulations include BEE thresholds for tender qualification. Companies bidding on procurement valued up to 1 million rand earn 80 percent of their points from their bid price and 20 percent from their commitment to BEE objectives. For tenders valued over 1 million rand, companies earn 90 percent of their points from their bid price, and 10 percent from their commitment to BEE objectives.

The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Codes of Good Practice on Procurement. The Codes will help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's National Industrial Participation Program (NIPP) program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment or services with an imported content equal to or exceeding $10 million (or the rand equivalent thereof) to an industrial participation obligation. 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 total goods purchased or leased under government tender. The intent of the program is to benefit South African industry by generating new or additional business.

In August 2004, the Minister of Finance issued the BEE Code of Good Practice for Public Private Partnerships (PPPs). The Code sets out BEE targets for PPPs and provides greater clarity for private sector participants. In October 2005, the Minister of Trade and Industry issued final Codes of Good Practice on BEE Equity and BEE Management. The remaining Codes of Good Practice were promulgated in the Government Gazette in February 2007.

South Africa is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

South Africa is a member of the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and is a party to the UPOV Convention and the WIPO Convention. South Africa is a signatory to the Trademark Law Treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Legal Regime

South Africa's intellectual property laws and practices generally conform to those of developed countries, except in the area of geographical indications where there are notable deficiencies. There are, however, issues with enforcement and in guaranteeing the protections afforded under these laws. The U.S. Government has raised its concerns with the South African government. The United States has also provided training on IPR enforcement to South African government and private sector representatives.

In 2001, the South African government introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government appointed more inspectors, designated more warehouses for counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, there are concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings.

Under South African law, complainants can take both civil and criminal action against IPR offenders. In 2006, the number of arrests for trading in pirated or counterfeit goods was double that of 2005. South Africa has taken some positive steps with the creation of the Department of Trade and Industry's enforcement unit and the establishment of Commercial Crime Courts in several cities. The appointment of two senior prosecutors focusing on intellectual property offenses and operating within the Commercial Crime Court also increases the capacity to prosecute intellectual property cases. However, a 2006 decision within the Commercial Crime Court called into question the police's power of arrest under the Counterfeit Goods Act. The decision is currently on appeal to the South African High Court.

Despite efforts to improve IPR enforcement, monetary losses from trademark counterfeiting and copyright piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries and other on-campus venues. U.S. industry has also expressed concern about Internet piracy, advertisements of "burn-to-order" services and the unwillingness of South African Internet Service Providers (ISPs) to shut down infringing sites or access thereto. In addition, counterfeit medicines are also a growing problem. U.S. industry reports that South Africa is also becoming a transshipment point for pirated and counterfeit goods into the rest of Africa, adding that South African Customs has the power to interdict such shipments and should exercise that power.

U.S. firms have complained that South Africa does not adequately protect safety and efficacy studies (also called "registration data") submitted to national authorities with applications for product approval. U.S. firms have claimed that these studies are unfairly "referenced" by competitors for the purposes of registering competing products.

Software/Audio Visual IPR Issues

Software piracy still occurs frequently in South Africa. In 2006, the Business Software Alliance (BSA) estimated that the piracy rate was 35 percent and that U.S. industry in South Africa lost an estimated $119 million in sales.

Piracy in the video and sound industry also continues to be a concern. In 2004, piracy rates in the audiovisual industry were 40 percent; with estimated losses of $35 million. According to the industry, the market share of pirated DVDs in 2005 continued to grow and exceeds 50 percent.

SERVICES BARRIERS

Telecommunications

Despite South Africa's WTO commitments to the reference paper on pro-competitive regulatory principles and market access commitments for value-added telecommunications and basic telecommunications services, South Africa's main telecommunication provider, Telkom, continues to maintain a monopoly on these services, presenting difficulties in this sector. Many businesses have complained about high telecommunications prices, many of which are a result of control of the underlying network by Telkom. In 2004, Telkom was cited by the South African Competition Commission for anticompetitive conduct with respect to Value Added Network Services (VANS). A new complaint was filed by the South African Internet Service Provider Association alleging further abusive practices by Telkom. In addition to such practices, one U.S. company has pursued extensive legal remedies against Telkom to honor the results of binding arbitration regarding a multi-million dollar contract. Instead of honoring the arbitrator's findings, Telkom took steps to block the arbitral award and appealed the award to a local trial court. In November 2006, the South African Supreme Court of Appeal found in favor of the U.S. company; an arbitration panel is to decide the actual payment in 2007. By March 2005, Telkom

had parlayed its market dominance into $1.7 billion in operating profits on $6.5 billion in sales. In 2005, the Department of Communications (DOC) sponsored two colloquiums to discuss measures to lower telecommunications prices. At the conclusion of the second colloquium the DOC promised to release an action plan in early 2006, but that plan has not been produced.

In its WTO commitments, South Africa committed to license a second national operator (SNO) to compete in long-distance, data, telex, fax and privately leased circuit services no later than January 1, 2004. The Minister of Communications conditionally approved a license for the SNO in September 2004, but disagreements among SNO shareholders over operational control and allocation of equity stakes delayed the launch until 2006. The result has been that Telkom has enjoyed monopoly privileges well beyond its period of exclusivity, which ended in May 2002. The SNO was licensed by ICASA (Independent Communications Authority of South Africa) in December 2005. It began operations on August 30, 2006 under the name "Neotel", which is 26 percent owned by Videsh Sanchar Nigam (controlled by Indian industrial giant Tata). Neotel has also entered the business-to-business market and plans to enter the residential market in April 2007.

Some of the problems facing VANS and Internet service providers may be addressed by new telecommunications policies and regulations. On February 1, 2005, the Minister of Communications implemented sweeping liberalization in the telecommunications sector. Because of this liberalization, mobile operators are allowed to use any fixed lines in the provision of their service, VANS can be offered through infrastructure other than that which is owned by Telkom, and VANS providers are allowed to employ Voice-Over-Internet Protocols. In addition, private telecommunications network operators are allowed to sell spare capacity. On May 20, 2005, the Minister approved additional regulations for the licensing of VANS.

While a new direction in telecommunications may resolve some of the shortcomings in this sector, some of the problems relate to legislative efforts dating back to 2003. In that year, the DOC released a draft Convergence Bill that industry analysts hoped would simplify the existing legislative framework, empower the regulator, and open the telecommunications industry to greater competition. Comments received during a public comment period were highly critical of the draft bill and, as a result, the DOC revised the bill. In 2005, the DOC released for comment its modified version, the Electronic Telecommunications Bill. In December 2005, the bill was sent to the president for signature. He refused to sign it, citing that the bill gave too much control to the DOC at the expense of ICASA. The president requested a constitutional review of the bill and its companion legislation, the ICASA Amendment. Ultimately, the bill and amendment passed in June 2006 in a compromise that allows ICASA to maintain some independence. DOC, however, maintains a strong grip on ICASA, as it approves ICASA funding. Critics believe that ICASA should be strengthened to better carry out its regulatory mandate. Three of the seven ICASA councilors left in July 2006 and four out of five senior manager positions are vacant. The U.S. Federal Communications Commission provided two rounds of technical consultations in 2005/2006 in an effort to strengthen the regulator's capacity. A third round is planned for early 2007.

Other Services

The U.S. and the South African governments met in August 2005 to discuss a possible Open Skies Agreement. Open Skies agreements allow air carriers to make decisions on routes, capacity and pricing based on commercial, market-based considerations, as well as to liberalize operating conditions for aviation activities, including code-sharing opportunities. At the talks, South Africa argued for incremental liberalization of the existing 1996 bilateral Air Transport Agreement. At this time, the two sides have no discussions scheduled.

U.S. financial services providers have expressed ongoing concerns about the implementation of the Black Economic Empowerment (BEE) charter for the financial services sector. In 2003 and 2004, several of these providers participated in the negotiations with government, labor, and industry stakeholders that resulted in the drafting of the BEE Financial Services Charter. Since then, the Department of Trade and Industry (DTI) has released generic scorecard targets, including a 25 percent equity ownership target. In February 2007, DTI published a revised Financial Services Charter in the Government Gazette, which permits foreign financial institutions to substitute equity ownership with financing and/or investing in BEE companies or projects.

INVESTMENT BARRIERS

Uncertain Implementation of the BEE Act

In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment (BEE) Act of 2003, giving the force of law to the government's Black Economic Empowerment strategy. The intention of black economic empowerment is to move the historically disadvantaged majority population in South Africa into the mainstream of the economy. U.S. businesses strongly support the goals of BEE, and many have a long history of instituting human resource management, procurement, and enterprise development policies in South Africa that are consistent with BEE objectives. These U.S. businesses hope BEE implementation will allow them to continue these policies and to participate fully in South Africa's economy. However, the government's BEE strategy has been evolving slowly. Twenty-nine industry charters have been negotiated or are being negotiated with the government in areas such as accounting, agriculture, chemicals, cosmetics, clothing and footwear, construction, engineering services, financial services, forestry, health, information and communications technology (ICT), liquid fuels, mining, property, tourism, marketing, transportation, liquor, and wine. Conflicting provisions among these charters and questions about implementation and verification programs have created considerable uncertainty for both local and foreign firms.

The BEE Act directs the Minister of Trade and Industry to develop a national strategy for BEE, issue implementing guidelines in the form of Codes of Good Practice, encourage the development of industry-specific BEE charters, and establish a National BEE Advisory Council to review progress in achieving BEE objectives. Codes of Good Practice, formulated by the DTI, are intended to harmonize existing and future industry BEE charters. On October 31, 2005, the Minister released the final version of the first-phase Codes of Good Practice for Broad-Based Black Economic Empowerment. These include codes on the BEE framework, BEE in equity ownership, and BEE in management. The codes include a new generic scorecard with suggested BEE targets for equity ownership, management, purchasing, and employment. Questions remain about the interpretation of the codes and the measurement and verification of BEE adherence. The draft Codes of Good Practice on multinational companies and BEE purchasing were distributed in December 2005, along with draft Codes of Good Practice on employment equity, skills development, and enterprise development. Companies submitted comments on the draft Codes, and in February 2007, DTI published in the Government Gazette new Codes of Good Practice that incorporated some of those comments.

Because of their corporate structure, most U.S. businesses cannot easily transfer equity to BEE shareholders. U.S. firms are concerned that mandatory equity transfers could – for very practical reasons – put the future of their South African operations in doubt and/or deter further investment. U.S. businesses also have concerns about aspects of the implementation of BEE, especially with regard to the issue of equity ownership. U.S. Government agencies and the U.S. Embassy in Pretoria have been closely monitoring the ongoing development and implementation of South Africa's BEE policies and have maintained a continuous dialogue with the South African government and U.S. industry on BEE.

ANTICOMPETITIVE PRACTICES

Ownership Patterns

There is a historical legacy of concentrated ownership in some sectors of the South African economy. Between 1961 and 1994, the apartheid government prevented a large portion of the South African population from participating actively in the economy by disallowing them the opportunity to gain higher education and managerial experience or to take advantage of entrepreneurial and investment opportunities. Apartheid policies also prohibited successful companies such as South African Breweries, Anglo American, DeBeers, and SASOL from investing abroad. Therefore, these enterprises expanded their businesses domestically in horizontal and vertical conglomerates. As a result, major South African companies entangled themselves into complex ownership structures and a series of crossholdings that resulted in the concentration of considerable power in the South African marketplace. This situation has changed considerably since 1994, as many of the major players have disentangled their businesses, focused on core businesses, expanded internationally, and even listed on foreign stock exchanges. Together with more effective competition laws and BEE initiatives to enlarge the share of black participation in the economy, South Africa's business environment has become more transparent, more competitive, and more open to new entrants (including U.S. companies) than it was ten years ago. The exceptions have been the energy, transportation, and telecommunications sectors, which are still dominated by state-owned or state-controlled monopolies.

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law, effective July 31, 2002, governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but may instead increase the regulatory burden and introduce an unacceptable level of uncertainty for some businesses. The law requires government accreditation for certain electronic signatures, takes government control of the ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

The South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment by February 28, 2006. The South African Law Reform Commission held a series of workshops on the legislation in February 2006. Numerous public submissions were received, and the Commission is currently preparing its report with recommendations on the draft legislation. Legislation may negatively impact the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data.

OTHER BARRIERS

Transparency, Corruption and Crime

South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, dismissal from government employment, or deportation (for foreign citizens). South Africa has no fewer than ten agencies engaged in anti-corruption activities. Some, like the Public Service Commission, Office of the Public Protector, and Office of the Auditor-General, are constitutionally mandated to address corruption as only part of their responsibilities. Others, like the South African Police Anti-Corruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions"), are dedicated to combating crime and corruption. High rates of violent crime, however, are a strain on capacity and make

it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts.

During the last few years, crime has been a far more serious problem than either corruption or political violence when it comes to being an impediment to or raising the cost of doing business in South Africa. The South African Police have not been effective or well accepted in many communities because of their historical role in enforcing minority rule. The lack of training and internal crime and corruption within the police force has only compounded the situation. Although statistics show a decline in violent crime in recent years, the perception that crime is a serious problem remains high. The level of crime has deterred some U.S. companies from doing business in South Africa.

New laws, such as the Promotion of Access to Information Act, signed into law in February 2000, have helped to increase transparency in government during the last few years. The Public Finance Management Act, which became effective on April 1, 2000, helped to raise the level of oversight and control over public funds and to improve transparency in government spending, especially with regard to off-budget agencies and state-owned enterprises. These efforts notwithstanding, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

On April 28, 2004, President Mbeki signed The South African Prevention and Combating of Corrupt Activities Act (PCCAA) into law. The PCCAA, *inter alia*, defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims. This continues to receive some political attention.

Immigration Laws

For a number of years, U.S. and other foreign companies have complained that South African immigration legislation and the application of the law made it extremely difficult to get work permits for their foreign employees. Previously, South Africa relied on the apartheid-era Aliens Control Act, which did not take into account international developments and the opening up of the South African market. A new immigration law entered into force on May 31, 2002. The legislation establishes yearly quotas for granting work permits to foreigners. Local businesses have criticized the new law for creating uncertainty because the quota system sets limits on the number of skilled people that may enter the country in particular categories. Under a separate dispensation, corporate investors may make blanket applications for the people they need. It is not clear whether these corporate permits fall within the quota system. The Minister of Home Affairs has said that the new law is an enormous improvement over previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

On July 1, 2005, the Immigration Amendment Act Number 19 came into effect. The new law was expected to produce a quota system that promoted importation of workers with needed skills. The Minister of Home Affairs released the quota category schedule for skill in February 2006. Following workshops and consultation with the business community the Minister agreed that the current quota schedule should be adjusted to match the critical skills most needed in South Africa. A revised quota skill schedule, drafted in coordination with Department of Labor and Department of Trade and Investment, is expected to be published in early 2007.

2. BOTSWANA

IMPORT POLICIES

Tariffs

Botswana is a member of various regional and international economic and trade bodies including the WTO and Southern African Development Community (SADC). Botswana uses the Harmonized System of Classification and applies the SACU common external tariff (CET).

Non-Tariff Measures

Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and are obtainable from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. The import permits are not transferable and are usually granted upon request.

Prohibited imports include habit-forming drugs and objectionable literature (pornographic magazines and videotapes). Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining an import permit from the Department of Trade and Consumer Affairs. Imports of fresh pork are banned, but processed pork products may be imported. Imports of beef and beef products are banned. Although poultry imports are permitted when there is a domestic market deficit, the Botswana poultry sector has met all domestic demand throughout 2006. Imports of some vegetables and dairy products are seasonally banned when domestic supply is determined to be adequate, regardless of price. The government "discourages" the importation of used clothing, although there are no written regulations to this effect. The importer of used clothes is required to apply for an import permit which may be issued for a duration of six months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required.

GOVERNMENT PROCUREMENT

To comply with the Public Procurement and Asset Disposal Act of 2002, the Public Procurement and Asset Disposal Board (PPADB) was created in 2003 as an independent parastatal to take over the functions of its predecessor organization, the Central Tender Board. The PPADB is responsible for the award of all government contracts. The tender process is open. Lobbying of the PPADB or its members is strictly prohibited. The Independent Complaints Review Committee of the PPADB, established in November 2004, reviews the Board's decisions subject to challenge by stakeholders (e.g., contractors and procuring entities). Since December 2003, the PPADB has published its decisions concerning awarded tenders, prequalification lists and newly registered contractors. The PPADB Act empowers the government, under its economic and social objectives, to introduce from time to time reservation and preference schemes for the benefit of citizen and local companies. Preferences are also applied on production inputs sourced locally from qualifying firms. The government reserves certain tenders for 100 percent Botswana-owned companies, including all contracts valued at P300,000 ($50,000) or less. The PPADB has stated that it considers these schemes within the context of Botswana's obligations under the WTO, the Southern African Development Community (SADC), and SACU. Botswana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1998, Botswana became a member of both the Berne and Paris Conventions. Botswana is also a party to the Patent Cooperation Treaty, the Madrid Protocol, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Botswana's legislation is now largely in line with international IPR standards, but there are notable deficiencies with respect to geographic indications and integrated circuits, and enforcement of intellectual property rights remains a challenge. The government of Botswana has conducted comprehensive workshops on Intellectual Property in coordination with the U.S. Patent and Trademark Office.

SERVICES BARRIERS

The government is continuing to reorganize and restructure some ministries and departments to improve the efficiency and effectiveness of services delivery. It is moving towards privatizing a number of parastatal businesses, although the pace of this process is viewed by some observers as overly deliberate. One reform requires the government to establish autonomous authorities or boards, working largely on commercial principles. One such authority is the Public Enterprise Evaluation and Privatization Agency (PEEPA), which was established in 2000 to oversee the implementation of the Privatization Policy. PEEPA will ultimately determine the extent of foreign participation in the privatization process and the mechanics that will be used to promote citizen participation. The government intends to use privatization as a tool to increase foreign direct and portfolio investment in the country. The Ministry of Finance and Development Planning, to which PEEPA reports, welcomes foreign investment, but has stated that local investors may be given preference in privatization initiatives in some instances. Negotiations that are nearing completion for the privatization of Air Botswana and Botswana Telecommunications Corporation (BTC) will begin soliciting private sector bids in early 2007.

The telecommunications market was liberalized in 1996 following the adoption of the Telecommunications Policy of 1995 and enactment of the Telecommunications Act (Act No. 15 of 1996), which abolished BTC's monopoly in some segments of the market and established an independent regulator, the Botswana Telecommunications Authority (BTA). The BTA was created to safeguard competition and inter-connection to the public network. Market segments liberalized so far are mobile telephones, data communications, payphones, sale of telecommunications equipment, and Internet services. Competition in the cellular phone industry is dominated by two international firms, Mascom (Portuguese) and Orange (French), who compete for the bulk of the local market share. Voice-Over-Internet Protocol (VOIP) is not allowed (except over private networks). Universal licenses are in the process of being granted for all licensed telecommunications corporations, opening the cell phone market to parastatal BTC (although this also opens landline to Mascom and Orange, it is unlikely that these corporations will enter this shrinking market). Botswana did not participate in the WTO extended telecommunications and financial services negotiations.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to register a company in Botswana in accordance with the Companies Act and to comply with other applicable legislation; transfer technology to Botswana, as appropriate; transfer skills to citizens of Botswana by promoting their involvement and participation in positions in the supervisory, middle and senior management levels of companies; and ultimately replace expatriate employees with Botswana citizens within an agreed period, though there are often exceptions to this rule in practice.

The Botswana Export Development and Investment Authority (BEDIA), founded in 1998, is an autonomous organization established to promote investment in Botswana with a special emphasis on export-oriented manufacturing industries. The Authority is designed to serve as the primary government contact point for both domestic and foreign investors. BEDIA maintains a One Stop Service Center to help investors secure all clearances and approvals as quickly as possible. Unfortunately, the acquisition of land, work permits, and business licenses remain encumbered by significant bureaucratic and political constraints.

ELECTRONIC COMMERCE

Internet usage is on the rise, but nationwide usage remains extremely low. According to the government, less than 10 percent of the population uses the Internet. There is a growing number of Internet Service Providers and Internet cafes, but due to the high cost of fixed-line phone charges associated with dial-up service, the cost of accessing the Internet remains prohibitive for the majority of the population.

OTHER BARRIERS

The legal system is sufficient to conduct commercial dealings, and foreign and domestic parties have equal access to, and standing under, the judicial system. Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of cases has seriously impeded international companies that have won government procurement contracts, which have subsequently been challenged in court. There is a growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

3. LESOTHO

IMPORT POLICIES

Tariffs

Lesotho applies the SACU Common External Tariff. Additional charges include clearing fees ranging from M750 to M1,000 (approximately $130 to $175). Lesotho is a Member of the WTO, the Southern Africa Development Community (SADC), and the Africa, Caribbean and Pacific-European Union (ACP-EU) Cotonou Trade Agreement.

Non-Tariff Barriers

Lesotho applies a permit system for all imports from non-SACU members. The system is applicable to all consignments imported by individual consumers and investors. Manufacturers are accorded preferential treatment through which a "Blanket Permit" is allowed with a validity of 12 months and an additional grace period of 3 months.

In recent years, the government of Lesotho (GOL) has undertaken agricultural sector structural reforms including the removal of price subsidies and import controls on maize and wheat produce in favor of market-determined prices. The 1967 Agricultural Marketing Act, however, continues to control the importation of bread, legumes, sugar, eggs, meat, dairy products, fruits, and vegetables.

With the exception of eggs, sugar and legumes, the import restrictions allow a limited exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors the level of production of these commodities and issues

import licenses in the event of short supply. However, national production has never met local demand. As a result, import permits are issued as a matter of course. Non-automatic licenses apply to import used clothing. In practice, no licenses for used clothing are issued, constituting a de facto ban.

The Ministry issues permits for the import of used vehicles from outside the SACU area.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Lesotho does not have a national standards body. The Standards and Quality Assurance section of the Ministry of Trade and Industry, Cooperatives and Marketing functions as the focal point for standards and quality assurance. No national standards have been developed to date. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards facilities and quality assurance schemes. Local exporters have relied on traditional export markets and have developed their standards according to technical and quality requirements of importing countries, importing firms, or international standards.

Lesotho participates in a regional program on Standardization, Quality, Accreditation and Metrology for the SADC. The program aims to harmonize standards for adoption by all member states. Efforts are also underway to develop a regional accreditation authority.

GOVERNMENT PROCUREMENT

Lesotho is not a signatory to the WTO Agreement on Government Procurement.

Government procurement rules do not give Lesotho nationals preference when bidding on goods and services contracts. The Ministry of Trade and Industry encourages joint ventures.

Lesotho is working on a procurement policy intended to conform to SACU and WTO standards. New procurement guidelines are being considered which, among other things, would authorize the publication of tender notices on the Internet to increase their visibility.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Lesotho's Industrial Property Order (1989), Copyright Order (1989) and the Industrial Property Regulations (1989) are the basis for legal protection of intellectual property rights. Patents, valid for 15 years from the date of application, have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Lesotho is a member of WIPO, the Berne and Paris Conventions, and the Regional Intellectual Property Organization, and is a party to the Patent Cooperation Treaty and the Madrid Protocol.

SERVICES BARRIERS

Foreign participation is not restricted in the service sector. The banking and telecommunications sectors are largely controlled by foreign ownership, in particular by South African institutions.

The Trading Enterprises Order of 1996 restricts foreigners from participating in small trading activities that are reserved for nationals only. These include butcheries, barbershops, general cafes, and hair salons.

INVESTMENT BARRIERS

Lesotho welcomes foreign investment. Foreign investors have participated in the country's privatization program without discrimination. According to the International Finance Corporation, however, it takes 73 days to start a new business in Lesotho – a consequence of significant bureaucratic impediments and inefficiencies. However, Lesotho has reduced the time needed to start a business by over 20 percent over the last year.

ELECTRONIC COMMERCE

The government of Lesotho adopted Lesotho's National Information and Communication Technology Policy in 2005. This introduced a regulatory framework for electronic commerce into Lesotho's legal system. The Ministry of Communications, Science, and Technology is responsible for its implementation.

Electronic commerce has not widely penetrated the country due to the low speed and high expense of Internet access. Telecom Lesotho, the sole fixed line Internet service provider, also holds a monopoly for international Internet access. There is no national exchange point, and peering is via South Africa, using expensive bandwidth for intra-national communication. Telecom Lesotho objects to the use of wireless connections by local Internet providers.

OTHER BARRIERS

Corruption

Business people state that solicitation of bribes in connection with government services does not occur. The government has received international accolades for its prosecution of multinational companies for corruption related to the awarding of contracts for construction of the Lesotho Highlands Development Project. In cases that have been upheld by the Lesotho Court of Appeals, the former Chief Executive of the Lesotho Highlands Development Authority (LDHA) and three multinational corporations have been convicted for fraud and bribery.

The government has established a Directorate on Corruption and Economic Offenses that continues to prosecute cases regarding the LHDA project, as well as others involving embezzlement and bribery.

4. NAMIBIA

IMPORT POLICIES

Namibia is a member of various regional and international economic and trade bodies including the WTO and the Southern African Development Community (SADC). Namibia applies the SACU common external tariff (CET).

The Directorate of International Trade of the Ministry of Trade and Industry (MTI) is responsible for coordinating the country's trade polices and overseeing Namibia's participation in international trade bodies. The Directorate is responsible for managing import/export procedures. Importers must have an import permit from the Ministry of Trade and Industry. Namibia is a party to the WTO Agreement on Import Licensing. Most non-agricultural imports require a permit issued by MTI. A limited number of products are subject to non-automatic import licensing: medicines; chemicals; frozen, chilled, fish and meat; live animals and genetic materials; controlled petroleum products; firearms and explosives;

diamonds, gold and other minerals; and seemingly all second-hand goods such as clothing and motor vehicles. In practice, however, MTI does not issue licenses for imports of used clothing, resulting in a *de facto* ban on this product. In January 2005, Namibia introduced a new regulation to ban the importation of used vehicles older than five years from non-SACU countries, as well as left-hand drive vehicles.

With respect to agricultural trade, the Namibian Agronomic Board issues permits for the import, export, and transit of controlled agronomic crops (i.e., wheat and wheat products and corn and corn products). Imports of agronomic crops and derivatives, as well as all plants and plant products, also require the issuance of a phytosanitary certificate by the Ministry of Agriculture, Water and Rural Development. The Namibian Meat Board regulates the import and export of live animals (cattle, sheep, goats and pigs) and derivative meat products. Importers of live animals and meat products must demonstrate compliance with the country's animal health standards by obtaining a veterinary import permit from the Directorate of Veterinary Services.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. To meet its international commitments, the government has drafted new legislation – the Biosafety Bill – which will regulate the importation, sale and use of products of agricultural biotechnology and will establish new regulatory and administrative structures. It will impose new registration obligations on facilities that use or produce agricultural biotechnology products and will require persons and companies to receive authorization prior to importing such products. It will require biotechnology products to be clearly labeled and identified for purposes of traceability. A Cabinet committee has approved the draft Biosafety Bill, which is expected to be tabled in Parliament in the near future. Pending passage of the Biosafety Act, the government has imposed a moratorium on the importation of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Most government transactions, including the awarding of contracts and the purchase of supplies, are made through the Tender Board of Namibia. The Board is comprised of representatives from various government ministries and appointed by the Minister of Finance. Government procurement tender notices are publicized in the local media. The Tender Board gives preference for goods manufactured and/or assembled in Namibia. Namibia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Since independence in 1990, the government has pursued policies to diversify its economy and to create employment. To achieve that goal, the government has put in place tax and non-tax incentives to attract manufacturers and export-oriented businesses. The Offshore Development Company administers the country's Export Processing Zone (EPZ) regime. Companies granted EPZ status can set up operations anywhere in Namibia. There are no restrictions on the industrial sector as long as the exports are destined for markets outside the SACU region. Benefits of the EPZ regime include no corporate tax, no import duties on the importation of capital equipment or raw materials, and no VAT, stamp or transfer duties. Non-residents operating in an EPZ may hold foreign currency accounts.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Namibia is a member of the World Intellectual Property Organization, the Berne and Paris Conventions, and is a party to the Madrid Protocol and the Patent Cooperation Treaty. Namibia is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The responsibility for IPR protection is divided between two government ministries. The Directorate of Internal Trade of MTI oversees industrial property and is responsible for the registration of companies, private corporations, patents, trademarks and designs. The Ministry of Information and Broadcasting manages copyrights.

The government is in the process of updating copyright legislation to bring it in line with the TRIPS Agreement and the WIPO Treaties on Performance and Phonograms and Copyrights. A draft bill that was scheduled to be considered by the Namibian Parliament in 2006 has yet to be tabled, and the government is still working on incorporating proposed changes. Absent new legislation, Namibia lacks adequate legal and enforcement mechanisms to address the problems associated with piracy and copyright infringement.

SERVICES BARRIERS

Services account for nearly 60 percent of Namibia's gross domestic product, with government services representing the largest single component. Foreign participation in the services sector is generally unrestricted. Due to historical links between the two economies, South African companies dominate many commercial services in Namibia, particularly in the retail and financial sectors. Other services -- including telecommunications, water, electricity and most major transport services -- are dominated by Namibian parastatals. Many of the 41 recognized parastatals operate as "commercialized" entities, meaning they are profit-seeking and are not maintained on the national budget. There is currently little U.S. participation in the Namibian service sector.

Under the Namibia National Re-insurance Act of 1998, insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation (NamibRe). In 2001, the government and private insurers reached an agreement in which the mandatory cessions clause would not be enforced for five years, though this agreement has yet to be signed.

INVESTMENT BARRIERS

Namibia's Foreign Investment Act of 1990 provides for equal treatment of domestic and foreign investors and provides non-discriminatory access to all sectors. The government guarantees foreign investors access to foreign currency, repatriation of capital, and dispute settlement through international arbitration. There are few restrictions on the establishment of private businesses or the size of an investment. The Namibian Investment Centre, which was created by the 1990 Act, is responsible for implementing the country's investment promotion policies.

There is no local participation requirement for foreign investments, but the government actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, there has been a concerted campaign to "Namibianize" existing investments.

Land reform is at the forefront of public debate. The Namibian Constitution provides for the government-initiated purchase of private property in the public interest subject to the payment of "just" compensation under a "willing buyer-willing seller" system, and the government has begun to implement this program as prescribed by the Constitution. Domestic groups have criticized Namibia's government recently for

the slow pace of acquiring commercial farmland and resettling Namibia's landless population. The government considers foreign-owned and non-productive farmland primary targets for expropriation. The government introduced a land tax at the beginning of April 2005 in an effort to raise money for land acquisition. Absentee landowners are subject to higher tax rates per hectare than resident farmers.

ELECTRONIC COMMERCE

Electronic commerce is still relatively unknown to Namibian consumers. Only a small percentage of Namibians enjoy access to the Internet. The government is in the early stages of formulating policies to regulate electronic commerce. MTI's Directorate of Internal Trade has included a section on electronic commerce in the new 2004 Companies Act. Implementation of the new Act is expected in 2007 after adoption of several amendments in November 2006.

OTHER BARRIERS

According to recent surveys, there is a growing public perception that official corruption is on the rise. Several presidential commissions have been established in recent years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

Despite the growing perception of corruption, similar studies have shown that Namibians retain confidence in government institutions to address the problem. Anti-corruption was the centerpiece of President Pohamba's election campaign, and it is a top priority of his administration along with the elimination of mismanagement and fraud. Anti-corruption legislation is in place to combat public corruption. President Pohamba's government is actively investigating several widely publicized corruption cases, a welcomed departure from previous administrations.

Anti-corruption bodies include the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anti-Corruption Bill was passed that provides for the establishment of an independent Anti-Corruption Commission. In 2005, Prime Minister Angula appointed two candidates to head the Anti-Corruption Commission, which President Pohamba inaugurated on February 1, 2006. The challenge remains for the Commission to effectively investigate cases of corruption that culminate in successful prosecution. A few initial cases have been brought to trial. In addition, a large court backlog continues to cause lengthy delays of trials.

5. SWAZILAND

IMPORT POLICIES

Tariffs

Swaziland is a Member of the World Trade Organization (WTO), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Swaziland's continued retention of its COMESA status is uncertain as the COMESA Heads of State and government continue to give Swaziland a one-year derogation. The derogation, it is hoped, will enable Swaziland to engage its Southern African Customs Union (SACU) partners with a view to joining the COMESA Free Trade Agreement (FTA).

As a member of SACU, Swaziland applies the SACU common external tariff (CET). Swaziland has at times exercised its right under the SACU Agreement to protect infant industries such as cement and beer by applying tariff rates higher than those in the CET.

Non-Tariff Measures

There are no restrictions on imports into Swaziland and no prohibited imports (except illicit drugs, pornography and arms). Permits are required for certain imports, including all agricultural products, mineral fuels, used clothes, mineral oils, motor vehicle parts, used cars, medicinal drugs, and electrical appliances. Licensing permits issued by the Ministry of Finance are generally easy to obtain and are valid for one shipment. Goods consigned to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU.

Another cited non-tariff barrier to trade is the recently introduced Southern African Development Community (SADC) form known as a Single Administrative Document 500 (SAD 500). The Form is supposed to regularize the number of forms needed for transporting goods between SADC countries. The private sector finds the form too detailed and cumbersome.

Other non-tariff barriers to trade commonly cited are levy charges and sales tax on some products like agricultural products, mineral fuels, electronic equipment, etc.

GOVERNMENT PROCUREMENT

Although the government accords local business a 15 percent price preference in the tendering process for government contracts, it appears that this preferential treatment is not always granted. Firms from South Africa and other southern African countries fill a large portion of government contracts. However, for small- and medium-sized tenders, bidding companies must be registered in Swaziland. The government inspects the premises of all suppliers prior to awarding the tender. The government has also introduced, under Legal Notice 150 of 2005, a withholding of 10 percent tax on payments to resident contractors, subcontractors, persons supplying goods or services to government and Parastatals.

The government issues tender notices 7 days to 30 days before tenders are due, depending on the size of the contract. Potential suppliers must pay a fee to obtain tender documentation and participate in government procurements. Tenders are returned to the Central Tender Board and suppliers are invited for the opening of the tenders. In some instances, a Ministry can apply for a waiver-of-tender procedure if there are too few companies supplying a particular commodity.

In April 2006, government amended the Stores Regulations Act and included a member of the Federation of Swaziland Employers/Chamber of Commerce as the chamber's representative on the Central Tender Board.

Swaziland is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swazi legal protection for patents, trademarks, and copyrights is inadequate. Swaziland has an intellectual property rights regime inherited from the colonial era, under which copyrights, patents, and trademarks were more or less protected under various acts promulgated by the colonial authorities.

Patents are currently protected under a 1936 act that automatically extends patent protection upon proper application to products that have been patented in either South Africa or the United Kingdom. Updated patent legislation has not yet undergone all the necessary steps for enactment. Under the new legislation, the government would grant patents with technical assistance from the African Regional Industrial

Property Organization in Harare. Protection would be extended to pharmaceutical and agricultural chemical products. Swaziland is a member of the Paris Convention for the Protection of Industrial Property and is a party to the Patent Cooperation Treaty.

Copyright protection is addressed under four statutes, enacted in 1912, 1918, 1933 and 1936. According to the Registrar General for the Ministry of Justice, the statutes have yet to be implemented and copyright protection in Swaziland is "limited." The Ministry of Justice is in the process of drafting an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model. Swaziland is a member of the Berne Convention for the Protection of Literary and Artistic Works.

In 2006, according to the Ministry of Justice and Constitutional Affairs, Swaziland began the process of accession to the WIPO Internet treaties. Swaziland is also a party to the Madrid Protocol and is a signatory to the Trademark Law Treaty.

SERVICES BARRIERS

The government of the Kingdom of Swaziland (GKOS) places some restrictions on foreign participation in the services sector. The Swaziland Royal Insurance Corporation had a monopoly on insurance in the country. The Insurance Act together with the Retirement Fund Act obtained royal assent in December 2005, which removed the monopoly of the insurance industry. These acts will give direction to the deployment of institutional funds which may impact positively on capital markets development in the country.

The only mobile phone provider, MTN Swaziland, is still enjoying a monopoly. The GKOS gave MTN a 10-year monopoly that ends in 2008. There is talk of removing the monopoly at the end of the 10-year period.

Swaziland Posts and Telecommunications is the sole provider of fixed-line telephone service.

INVESTMENT BARRIERS

Swaziland does not have an investment code. Policy statements by the government and by individual ministers play a larger role in the promotion of foreign investment than do investment-related laws, regulations, and public institutions. Calls for more concerted action on investment policy have intensified in the last few years, as Swaziland has suffered from drought and economic recession.

Major legislation to support a solid investment climate is lacking in Swaziland. A Securities Bill has been proposed but has not yet been passed. A related proposal, the Financial Services Regulatory Authority Bill, has not reached Parliament. This legislation will bring under one regulatory system all non-bank financial institutions such as insurance providers, retirement funds, building societies, capital markets, and other financial intermediaries.

Companies are governed by the outdated Companies Act of 1912. A proposed Bill to replace the Companies Act would regulate the incorporation, registration, management, administration, and dissolution of companies. While foreign businesses currently operating in Swaziland complain about the lack of regulations, some also emphasize that it would be a mistake to decide against investing in Swaziland for this reason alone.

There are no formal policies or practices that discriminate against foreign-owned investors and companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy. Certain sectors

are closed to foreign investment. Pineapple canning, the cellular telephone network, the landline phone network, electricity, and water are all state-sanctioned or state-owned monopolies. According to the Ministry of Enterprise and Employment, Parliament is considering a Trade and Business Facilitation Bill that would impose Swazi ownership requirements in certain sectors and encourage small-scale entrepreneurship in rural areas.

The Cabinet has approved the Privatization Policy and steps are now being taken to implement it. The privatization process will involve the creation of a Public Enterprise Agency to ensure that public enterprises manage their affairs efficiently and are not a drain on the nation's resources. The Swazi Post and Telecommunications Corporation (SPTC) and the Swaziland Electricity Board Key are two parastatals that are targeted for privatization, with the possibility of becoming joint ventures involving foreign investors. The Swaziland Dairy Board, the Royal Swazi National Airways, and the Swaziland Railways are regulatory bodies whose commercial activities have been privatized. The Swaziland Railways managed to raise its level of efficiency, making profits after partial privatization. A team of consultants is examining restructuring options, including the possibility of offering railway concessions to private operators.