SACU (SOUTHERN AFRICAN CUSTOMS UNION)

TRADE SUMMARY

The U.S. goods trade deficit with SACU countries was $2.7 billion in 2005, a decrease of $901 million from $3.6 billion in 2004. U.S. goods exports in 2005 were $4.1 billion, up 22.7 percent from the previous year. Corresponding U.S. imports from SACU countries were $6.8 billion, down 2.1 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries in 2004 was $5.0 billion, up from $3.8 billion in 2003.

OVERVIEW

The Southern African Customs Union (SACU) 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 GDP 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 reports directly to the COM and formulates and implements tariff policy.

The United States began free trade agreement (FTA) negotiations with the five SACU countries in June 2003. Through an FTA, the United States would seek 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 (EFTA).

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 WTO's

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 to 30 percent, but some are higher, such as for most apparel items. 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 textile 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. Although introduced in 2004, safeguard procedures have not been used. The textiles and clothing industry is reportedly preparing several petitions in light of rising Chinese imports; 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 standing 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. As of late 2005, the Competition Commission indicated a willingness to settle the case and avoid further litigation.

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 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: The objective of import controls on these goods is to protect human health and the environment under the Basel Convention;

- Other harmful substances: Imports of substances such as ozone-depleting chemicals under the Montreal Convention and chemicals used in illegal drug manufacturing under the 1988 United Nations Convention are controlled for environmental, health, and social reasons; and

- 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

The government promulgated antidumping regulations in 2003. In 2003 and 2004, local industry filed twelve antidumping petitions. In 2005, South Africa initiated 22 new antidumping investigations involving eleven industries and ten different countries. China was the object of the largest number of new investigations involving five different products. Transparency and due process also remain issues regarding the actions of the ITAC and its administration of South Africa's antidumping laws and regulations.

ITAC initiated an antidumping investigation into the alleged dumping of L-Lysine Sulphate imported from the United States. ITAC also initiated a sunset review of antidumping duties on frozen chicken meat portions from the United States, and completed a sunset review of acetaminophenol imported from the United States. In addition to frozen chicken meat portions and acetaminophenol, South Africa imposes anti-dumping duties on U.S.-origin suspension PVC, roller bearings, and lysine feed supplements.

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 EU preferences 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 the 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. Given strong U.S. presence in the EU market, U.S. companies are divided on whether they are disadvantaged by the TDCA.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Apparel, Textiles, Shoes, and Leather Goods

The Minister of Trade and Industry published regulations that prohibit the importation of or the 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 came into force on May 23, 2005, and required the inclusion of the South African importer's registration code on the label of each item.

U.S. industry reports that special production runs are necessary to comply with these regulations, as labels are typically attached during the manufacturing process. Therefore, the regulations make exporting those products more costly. The South African Revenue Service (SARS) is working to establish clear guidelines and procedures that are less onerous and, in the meantime, is not enforcing the regulations.

Biotechnology

There has been an active debate in South Africa about agricultural biotechnology. The Genetically Modified Organisms Act ("the GMO Act"), entered into force in 1999, aims to ensure that all activities involving the use of agricultural biotechnology (including production, import, release, and distribution) will be carried out in such a way as to limit possible harmful consequences to the environment. Since 1999, some retail groceries have promoted a limited range of biotech-free products and a few consumer groups have urged the Department of Health to introduce compulsory labeling of biotech products.

Based on work by the Department of Health's Directorate of Food Control, the South African government issued labeling regulations on biotech products in early 2004. The regulations mandate labeling foods containing agricultural biotechnology in certain cases, including when allergens or human/animal proteins are present and when biotech food products differ significantly from a non-biotech equivalent. The rules also require validation of enhanced-characteristic claims for food containing agricultural biotechnology. The regulations do not address labeling claims that products are biotech-free. Biotechnology advocates are concerned about this omission, noting it could lead to fraudulent claims. Trade organizations seem satisfied with the regulations, which follow internationally recognized, scientific guidelines (under CODEX). South Africa's CODEX representative comes from the Directorate of Food Control.

In November 2004, the government published draft changes to the GMO Act to bring it into compliance with the Cartagena Biosafety Protocol. The government solicited public comments on the draft changes and, as of late 2005, was still evaluating those comments.

In June 2001, the South African government published the National Biotechnology Strategy for South Africa, a document that articulated the South African government's intent to stimulate industries based on biotechnology. The document states that biotechnology can make an important contribution to achieving national priorities, particularly in the areas of human health, food security, and environmental sustainability. Environmental groups continued to exert pressure on the South African government in 2005 to examine the safety of foods derived from agricultural biotechnology.

The government approved for commercial production biotech soybeans that are tolerant to herbicides, as well as cotton, yellow maize, and white maize that are resistant to insects. Farmers are enthusiastically adopting the new technology, planting biotech crops on 500,000 hectares in 2004 and on an estimated 700,000 to one million hectares in 2005. The use of these products is widespread in the food processing industry.

U.S. grain producers raised concerns about the treatment of "stacked events" when it comes to import approval for biotech 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 of its treatment of "stacked events" for approval purposes. 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 it cannot be planted.

In 2004, Biowatch, an environmental lobby group, took legal action against the National Department of Agriculture (NDA) to obtain information on how it made licensing decisions on biotech crops. The local courts ruled in favor of the NDA, allowing it to continue protecting certain information on a business proprietary basis.

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 assert 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.

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 each of these fruits to South Africa could increase by $5 million to $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.

To fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the 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 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. At the end of 2005, the ban on ruminant meat products was still in place. The South African Department of Agriculture was impressed with USDA's surveillance program, but wanted to see a full report with data from the surveillance program before lifting the ban.

GOVERNMENT PROCUREMENT

Government purchases are by competitive tender for project, supply, and other 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 and its implementing regulations created the legal framework and set forth a formula for evaluating tenders on government contracts. To augment this, the Department of Trade and Industry has been working on regulations to clarify the Framework Act and 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 Department of Trade and Industry to align preferential procurement regulations with the BEE Codes of Good Practice on Procurement, which DTI released in December 2005 for comment by March 31, 2006. The Codes will help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's Industrial Participation (IP) 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 IP obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value if 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.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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.

The U.S. software industry has cited three principal deficiencies in South Africa's 1978 Copyright Act:

- *Lack of criminal penalties for end user piracy.* South African law currently provides that the sale of infringing software is a criminal offence, but there is no criminal penalty for end users;

- *Lack of presumptions relating to copyright subsistence and ownership*. Amending the law to add ownership and subsistence presumptions would reduce the procedural burden on rights holders in proving their cases; and

- *Non-deterrent civil damages.* Amending the law to introduce statutory damages and to ensure that monetary damages serve as a deterrent would improve IPR protection. According to the U.S. software industry, neither the current provisions on damages nor the application of these provisions are sufficient to serve as a deterrent to future infringement.

Until the government amends existing legislation, the lack of evidentiary presumptions in the law will continue to complicate enforcement of individual copyright claims.

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. In 2004, there were 100 convictions for people arrested with counterfeit DVDs and computer games, compared to 14 in 2003. Figures for 2005 will be available in March 2006. Despite these efforts, 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 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. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, there are concerns about laxity in enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings. . Complainants can take both civil and criminal action against offenders. U.S. industry reports that South Africa is 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.

South Africa is a member of the World Intellectual Property Organization (WIPO), but has yet to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. South Africa has acceded to the Stockholm Text of the Paris Convention for the Protection of Intellectual Property.

Software/Audio Visual IPR Issues

Software piracy still occurs frequently in South Africa. In 2005, the Business Software Alliance estimated that the piracy rate was 36 percent and that U.S. industry in South Africa lost an estimated $110.5 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 losses of $35 million (2005 figures were not yet available at the time of this report).

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 anti-competitive 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 company has pursued extensive legal remedies against Telkom to honor the results of binding arbitration to honor 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. The appeal is ongoing. By March 2005, Telkom had parlayed its market dominance into $1.7 billion in operating profit on $6.5 billion in sales. In 2005, the Department of Communications (DOC) sponsored two colloquiums to discuss measures to lower telecommunications prices. DOC intends to release an action plan in early 2006.

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 effected sweeping liberalization of 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. These developments should help resolve past complaints by ISPs and VANS providers that Telkom has limited their access to Telkom's network.

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 between SNO shareholders over operational control and allocation of equity stakes have 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.

While new direction in telecommunications may resolve some of the shortcomings in this sector, some of the problems are related to legislative efforts dating back to 2003. In that year, the DOC released a draft Convergence Bill that industry analysts hope will 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, entitled the Electronic Telecommunications Bill. South Africa's Parliament is currently debating the revised bill and amendments. Critics charge that the bill will increase the authority of DOC at the expense of ICASA (the regulatory body) and, therefore, the bill is likely to incorporate greater political bias in future regulatory decisions. Critics believe that ICASA should be strengthened to better carry out its regulatory mandate.

One U.S. company withdrew from the South African market in 2005 after having made a substantial investment in an earth station for mobile satellite services. The U.S. company cited ICASA's demands for an excessively high license fee as its reason for withdrawing.

Other Services

The United States and the South African government met in August 2005 to discuss a possible Open Skies Agreement. Open Skies agreements provide for open route rights, capacity, frequencies, designations, and pricing, as well as opportunities for cooperative marketing arrangements, including code-sharing and airline alliances. At the talks, South Africa argued for incremental liberalization of the existing 1996 bilateral Air Transport Agreement. South African Airways (SAA), the national airline wholly owned by the state-owned enterprise Transnet, had previously registered its concern about U.S. airlines exercising "fifth-freedom rights" in Africa (i.e., carrying passengers to and from countries other than the United States and South Africa), which could impinge on SAA's strategic regional market. At this time, the two sides have no plans to re-engage on an Open Skies agreement.

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. It is unclear whether this will affect the Financial Services Charter, which currently permits foreign financial institutions to substitute equity ownership with financing and/or investing in BEE companies or projects. DTI wants to finalize all BEE Codes of Good Practice, including those on multinational corporations, by the end of 2006.

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 force of legislation 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 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, through a series of policies on human resource development, management, procurement, enterprise development (investment in black-owned firms), and equity ownership. Twenty-nine industry charters have been negotiated or are being negotiated with government in such areas 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 precepts 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 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. DTI wants to promulgate the new Codes of Good Practice in the Government Gazette by the end of 2006.

Because of their corporate structure, most U.S. businesses cannot easily transfer equity to BEE shareholders, and 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 have concerns about some of the uncertainties in the implementation of BEE, especially with regards 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, AngloAmerican, 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 accumulation 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, got back to basics, 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 has submitted draft legislation and discussion documents on privacy and data protection for public comment by February 28, 2006. The South African Law Reform Commission plans to hold a series of workshops on the legislation in February 2006. 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 anticorruption 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 on violent crime have declined 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 improve transparency in government spending, especially with regard to off-budget agencies and state-owned enterprises. Notwithstanding these efforts, 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 is now receiving 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. The Minister for Trade and Industry and the Minister of Finance have suggested that the South African government may need to revise the law to acquire critically needed skills in South Africa.

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 illicit 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 the 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. Poultry imports are permitted only when there is a domestic market deficit. Imports of some vegetables and dairy products are seasonally banned. The government "discourages" the importation of used clothing, although there are no written regulations to this effect. The importer is required to apply for an import permit which may be issued for a duration of 6 months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required.

GOVERNMENT PROCUREMENT

The Public Procurement and Asset Disposal Board (PPADB) was created in 2003 under the Public Procurement and Asset Disposal Act of 2002 as an independent parastatal. The PPADB took 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. 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 contracts, prequalification lists and newly registered contractors.

Government procurement practices do involve some preference schemes and some contracts are reserved for 100 percent citizen-owned companies, including all contracts valued at P300,000 (approximately $54,000) or less. The PPADB has stated that it considers these schemes to be consistent with Botswana's obligations under the WTO, 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, the international baseline intellectual property rights agreements. The Botswana Copyright Law, enacted in 2000 but not yet fully implemented, is intended to improve standards of protection for rights in literary, artistic, dramatic, and cinematographic works, computer programs, and sound recordings, as well as the rights of broadcasting organizations. To further enhance copyright protection, the Parliament is scheduled to consider the Copyright and Neighboring Rights (Amendment) Act of 2005, which is aimed at updating the 2000 Act legislation to enhance protection of artistic and literary works. Botswana's legislation is now generally in line with international standards, but there are notable deficiencies with respect to geographic indicators and integrated circuits, and enforcement of intellectual property rights remains a challenge.

SERVICES BARRIERS

The Government of Botswana is continuing to reorganize and restructure some ministries and departments to improve the efficiency and effectiveness of services delivery, and it is moving towards privatizing a number of parastatal businesses. 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.

The telecommunications market was liberalized in 1996 following the adoption of the Telecommunications Policy of 1995 and the enactment of the Telecommunications Act (Act No. 15 of 1996), which abolished Botswana Telecommunication Corporation's (BTC) monopoly in some segments of the market and established an independent regulator, the Botswana Telecommunications Authority (BTA). Botswana did not participate in the WTO extended telecommunications and financial services negotiations.

The BTA was created to safeguard competition and inter-connection to the public network, yet the state-owned BTC still maintains a monopoly as the sole licensed supplier of fixed-line voice services, including international calls. Market segments that have been liberalized so far include 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), which compete for the bulk of the local market share. Voice Over Internet Protocol (VOIP) is not allowed (except over private networks). This prevents licensed Internet providers, as well as suppliers of international data transmission through very small aperture terminals (VSATs), from offering voice services in competition with BTC.

BTC must operate any new telecommunications services as subsidiaries or associated entities to allow sufficient accounting separation from its fixed-line operations (BTC Act and 1996 amendments). BOTSNET, a BTC subsidiary, for example, is competing in Internet services with 21 other licensed providers. The BTA Amendment Act of 2004, however, undermined BTA's autonomy as the regulator by transferring final authority for licensing and fee decisions to the Minister of Communications, Science and Technology, thereby re-establishing the operators of the government-owned BTC as the regulators of the industry.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to register a company 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 acquisition of land, work permits, and business licenses are all encumbered by significant bureaucratic and political constraints.

In March 2005, the government adopted a Privatization Master Plan that identified potential parastatal companies for privatization on a phase-in basis. However, these recommendations lack the authority of legislation and no timeframe for execution has been established. The government passed a competition policy in August 2005 to regulate the development of industries in Botswana and encourage competition, and the government is now in the process of developing a Competition Law that will allow for enforcement and protection against anti-competitive business practices. The government is also formulating a foreign direct investment strategy, which is scheduled to be completed by March 2006. These new initiatives are all geared towards attracting foreign investment by clarifying the rules and regulations for participation in the Botswana economy.

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. A backlog of cases, however, 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.

The agricultural sector has witnessed some structural reforms involving 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 minimum 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 imported used clothing. In practice, no licenses are issued, constituting a de-facto ban.

The Ministry issues permits for the import of used vehicles from outside the SACU area, Japan being a popular source for Lesotho.

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 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 in bids for goods and services. The Ministry of Trade and Industry encourages joint ventures.

Lesotho is working on a procurement policy intended to conform with 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 and the African Regional Intellectual Property Organization.

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.

ELECTRONIC COMMERCE

The Ministry of Communications, Science and Technology is circulating a National Information and Communication Technology policy paper which proposes the introduction of electronic commerce and the formulation of related regulatory mechanisms.

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 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 uses the Harmonized System of Classification and 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. A limited number of products is 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, the Ministry of Trade and Industry does not issue licenses for imports of used clothing, with the effect of a *de facto* ban on this product. Most non-agricultural imports require a permit issued by MTI. 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.

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.

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 is drafting new legislation – the Biosafety Act – 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. 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 PROMOTION

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 operation anywhere in Namibia. There are no restrictions on the industrial sector so 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 responsibility for IPR protection is divided between two government ministries. The Directorate of Internal Trade of the Ministry of Trade and Industry 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 is scheduled to be tabled in Parliament in 2006. 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 GDP 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. However, only a limited number produce annual reports on a regular basis. 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. The government-industry agreement will be re-evaluated in 2006.

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. The process has been criticized recently for the slow pace of acquiring commercial farmland and resettling Namibia's landless. 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 an updated version of the Companies Act, which is awaiting Parliamentary action.

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. Prime Minister Angula recently appointed two candidates to head the Anti-Corruption Commission, which President Pohamba inaugurated on February 1, 2006. In addition, a large court backlog continues to cause a lengthy delay of trials.

5. SWAZILAND

IMPORT POLICIES

Tariffs

Swaziland is a member of the WTO, the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). 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 fertilizer, 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 illegal drugs 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. A bill of entry must be completed and submitted to customs along with copies of the supplier's invoices and a Swaziland import permit.

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. A large portion of government contracts is filled by firms from South Africa and other southern African countries. 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 issues tender notices 7 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 if there are too few companies supplying a particular commodity.

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. The Ministry of Justice, responsible for these concerns, has been working on improved laws.

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 Great Britain. Updated patent legislation has been approved by the Cabinet, passed by both houses of Parliament, and is now awaiting the King's royal assent. Under the new legislation, patents would be granted by the government with technical assistance from the African Regional Industrial Property Organization in Harare. Protection would be extended to pharmaceutical and agricultural chemical products.

Copyright protection is addressed under four statutes, enacted in 1912, 1912, 1918, and 1933. 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 not Party to the WIPO Internet treaties.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted, except for the insurance industry. Swaziland Royal Insurance remains the sole insurer in the country.

INVESTMENT BARRIERS

Although Swaziland’s government strongly encourages foreign investment, and has done so for the past 15 years, the results have been limited. Swaziland does not have an investment code. The emphasis on foreign investment is more a matter of policy statements by the government and individual Ministers than a matter of laws and institutions to support such policy. Calls for more concerted action on this policy have intensified in the last few years, as Swaziland has suffered from drought and general economic recession.

Major legislation to support a solid investment climate is lacking in Swaziland. There is a need for a Securities Code to support investors who buy shares in the securities market. A Securities Bill has been proposed but not yet passed. Companies are governed by the outdated Companies Act of 1912, which is retooled from an 1889 South African law. A bill replacing the Companies Act has been drafted and will regulate incorporation, registration, management, administration, and dissolution of companies. The Minister of Enterprise and Employment has said he will take the bill to Parliament in 2006. 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; however, investors should be aware of state-run or state-sanctioned monopolies. Pineapple canning, cellular telephone network, landline network, electricity, water, and insurance are all state-sanctioned or state-owned monopolies. A Trade and Business Facilitation Bill, drafted in 2001, limiting certain sectors to some degree of Swazi ownership and encouraging small-scale entrepreneurship in rural areas, had not been passed by Parliament as of December 2005.

Privatization of parastatals has become an issue in Swaziland. Key parastatals are targeted for privatization, with the possibility of joint ventures for foreign investors. Swazi Post and Telecommunications Corporation (SPTC) is one such potential opportunity. Parastatals successfully privatized include the Swaziland Dairy Board and Royal Swazi Airways, which formed a joint venture with South African Airways to form Swazi Airlink.