NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $22.6 billion in 2005, an increase of $7.9 billion from $14.7 billion in 2004. U.S. goods exports in 2005 were $1.6 billion, up 3.9 percent from the previous year. Corresponding U.S. imports from Nigeria were $24.2 billion, up 48.9 percent. Nigeria is currently the 53rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria in 2004 was $955 million, down from $1.1 billion in 2003. U.S. FDI in Nigeria is concentrated largely in the mining, and wholesale sectors.

IMPORT POLICIES

Nigeria's high tariffs and numerous import bans have been a concern to many U.S. businesses and were also raised in the context of Nigeria's May 2005 Trade Policy Review in the World Trade Organization.

Tariffs

Tariffs provide the Nigerian government with its second-largest source of revenue after oil exports. In its last major tariff revision, in October 2005, the government implemented the Economic Community of West African States (ECOWAS) Common External Tariff, reducing the number of tariff bands in Nigeria from twenty to five. The five tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 50 percent duty on goods in the industries that the government seeks to protect. The 50-percent tariff would cover many items currently subject to import bans. Items deemed to be necessities such as anti-retroviral drugs for the treatment of patients with HIV/AIDS will now be imported duty free. This duty-free status will be reviewed after one year to assess its impact on the Nigerian economy and its stakeholders. The recent reforms are an effort to harmonize the trade environment in the sub-region while at the same time improving Nigeria's own trade and investment environment.

Frequent policy changes and inconsistent duty collection make importing difficult and expensive and occasionally create severe bottlenecks for commercial activities. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods, which affects both foreign and domestic manufacturers. Many importers resort to under-valuing and smuggling to avoid paying full tariffs.

Non-Tariff Trade Barriers

The United States continues to have serious concerns about the Nigerian government's use of non-tariff barriers to trade. Bans on the importation of a variety of items – sorghum, millet, wheat flour, cassava, frozen meat and poultry products, biscuits, bottled water, fruit juice in retail packs, beer, mosquito repellent coils, most textile and apparel products, used clothing, and cars more than eight years old – continued into 2005. Products added to the list of banned items in 2005 include maize, cocoa butter, disinfectants and germicides, diaries, greeting cards, calendars, and facial tissues. Items removed from the list in 2005 include certain textile products (such as nylon tire cord, conveyor belts, trimmings and linings, gloves for industrial use, elastic bands, mosquito nets, motifs), chocolates, white cement, linseed oils, castor oils, hydrogenated vegetable fats used as industrial raw materials, all raw materials for the manufacture of soap and detergents, safety shoes used in the oil industry, sports shoes, stadium chairs and fittings, accessories used in furniture making, and prefabricated buildings. Overall, the government has reduced the number of items on its import prohibition list and has stated its intention to rescind all import bans by January 2007, but new import bans, such as an announced ban on rice imports starting in 2006, are inconsistent with the government's stated intentions.

Customs Barriers

Nigerian port practices continue to present major obstacles to trade. Importers face long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. Customs exemptions granted to U.S. firms as a concession for setting up operations in Nigeria have not always been honored. In December 2005, the government released import guidelines for the implementation of a physical destination inspection regime. Under the destination inspection scheme, all imports will be inspected on arrival into Nigeria. These guidelines will be implemented by the Destination Inspection Service Providers, which is a team comprised of the Customs Service and three firms that provide scanning services.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Rules concerning sanitary and phytosanitary standards, testing, and labeling are well defined, but bureaucratic hurdles slow the import-approval process. Regardless of origin, all food, drug, cosmetic, and pesticide imports must be accompanied by certificates of analysis from manufacturers and appropriate national authorities, and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture and other relevant federal or state agencies. By law, items entering Nigeria must be labeled exclusively in the metric system. The Nigerian Customs Service is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

High tariffs and uneven application of import and labeling regulations make importing high-value perishable products into Nigeria difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. These factors can contribute to product deterioration and may translate into significant losses for perishable-goods importers.

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

U.S. products do not appear to be subject to extraordinary or discriminatory restrictions or regulations.

GOVERNMENT PROCUREMENT

The Obasanjo administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement. Procurement and contracting guidelines are implemented by a "due-process" office in the Budget Monitoring and Price Intelligence Unit. "Due process" certification aims at ensuring that the procurement process for public projects adheres to international standards for competitive bidding. The unit acts as a clearing house for government contracts and procurement and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira (about $385,000) is subject to "due process" review.

Foreign companies incorporated in Nigeria receive national treatment and government tenders are published in local newspapers. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty getting them funded, usually as a result of delays in the national budget process, and some companies that won contracts for which funds were allocated have had trouble getting paid. Nigeria is not a signatory to the WTO Agreement on Government Procurement.

EXPORT PROMOTION

The Nigerian Export Promotion Council and the Nigerian Export-Import Bank administer export incentive programs that include tax concessions, export development funds, capital assets depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs. In 2005, the government of Nigeria (GON) rescinded all export subsidies, because it claims that the Common External Tariff (CET) it implemented in October 2005 automatically favors manufacturers through its lower tariffs on capital goods and raw materials.

The Nigerian Export Processing Zone Authority (NEPZA) is responsible for attracting investment in export-oriented industries. Of the five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export-processing zones are operational, with some difficulties reported. The Calabar export-processing zone also functions as a free trade zone. NEPZA rules dictate that at least 75 percent of production in the zones be exported, but lower export levels are tolerated.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a member of the World Intellectual Property Organization (WIPO), a party to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention for the Protection of Industrial Property, and has signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation pending in the National Assembly is intended to establish a legal framework for an IPR system compliant with WTO rules.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. Fraudulent alteration of IPR documentation is common. Despite Nigeria's active participation in the conventions cited above, its reasonably comprehensive IPR laws, and growing interest among Nigerians in seeing their intellectual property protected, piracy is rampant in Nigeria. Counterfeit auto parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly throughout the country, and intellectual property infringers from other countries appear increasingly to be using Nigeria as a base for the production of pirated goods. In 2004, U.S. industry reported a growth of optical disk manufacturing plants, some of which may be contributing to the production of pirated optical disk products. Additionally, book piracy remains a problem.

Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Nonetheless, recent government efforts to curtail IPR abuse have yielded results. The Federal High Court of Enugu, Nigeria, issued an interim injunction on November 23, 2004 against several firms infringing a Honeywell International trademark for spark plugs. The court warned all distributors, dealers, and retailers in Nigeria that the unauthorized use of Honeywell's "Autolite" trademark is illegal and constitutes an offense punishable by fine or imprisonment.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally respected, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Almost no foreign feature films have been legally distributed in the country in the last two decades. Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission launched an anti-piracy initiative named "Strategy Against Piracy" (STRAP). The Nigerian police force, working closely with the Nigerian Copyright Commission, has raided enterprises producing and selling pirated software and videos, and a number of high-profile charges have been filed against IPR violators. Unfortunately, most raids appear to target small rather than large and well-connected pirates, and very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Regulations provide for 100 percent foreign access in many service sectors, including banking, insurance, telecommunications, and securities. Central Bank of Nigeria directives stipulates minimum levels of paid-up capital. At least three foreign banks operate in Nigeria and several Nigerian banks have foreign shareholders.

Professional societies in engineering, accounting, medicine, and law define minimum professional requirements. Nigeria imposes quotas on expatriate employment based on the issued capital of firms. Quotas are especially strict in the oil and gas sector and may apply to both production and service companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians; certain geoscience and management positions may be filled by expatriates with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its expatriate worker allotment with NAPIMS. Significant delays in the approval of this allotment, and in subsequent approval of visas for expatriate personnel, present serious management challenges to the energy industry's efforts to acquire the necessary personnel and maintain their legal immigration status in Nigeria.

NAPIM's approval is required for all procurement in the energy sector above $500,000. Approval processes are slow and can significantly escalate the time and cost required for a given project, as well as providing opportunities for corruption and favoritism.

INVESTMENT BARRIERS

Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100-percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a “negative list” (such as manufacturers of firearms, ammunition, and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree prohibits nationalization or expropriation of a foreign enterprise, except when necessary to protect the national interest. Despite efforts to improve the country’s investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Potential investors must contend with poor infrastructure, complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. The sanctity of contracts is often violated, and Nigeria’s court system for settling commercial disputes is weak and sometimes biased.

Foreign oil companies are under significant pressure to increase procurement from indigenous firms. NAPIMS set a target of 40 percent local content for oil-related projects by 2005 and 60 percent by 2010. Oil companies and NAPIMS appear to be working together cooperatively to meet these goals, but the extent of and mechanisms for enforcement of local content regulations remain unclear. In many cases, sufficiently trained personnel and physical infrastructure do not currently exist to meet the government's local content targets. The Nigerian National Petroleum Corporation (NNPC) is working toward identifying and certifying indigenous firms with specific skill sets through the Joint Qualification System (JQS). Although many indigenous firms possess adequate technical expertise, managerial and financial capabilities are often lacking.

OTHER BARRIERS

The Nigerian government has increased its efforts to eliminate financial crimes such as money laundering and advance-fee fraud (or "419 fraud," named after the relevant section of the Nigerian Criminal Code). With the encouragement and cooperation of U.S. law enforcement agencies, the Nigerian government is now prosecuting more "419" perpetrators. But fraud, theft, and extortion remain rampant.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. While sales of U.S. goods and services to public-and private-sector enterprises are not restricted, some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their exposure to corruption.