NIGERIA

TRADE SUMMARY

In 2000, the U.S. trade deficit with Nigeria was $9.8 billion, an increase of $6.1 billion from the trade deficit of the previous year. U.S. exports to Nigeria were $718 million in 2000, up $90 million from 1999. In 2000, Nigeria was the United States' 59th largest export market. U.S. imports from Nigeria were $10.5 billion, an increase of $6.2 billion from 1999. In 1999, the stock of U.S. foreign direct investment in Nigeria, largely concentrated in the petroleum sector, was $1.4 billion, a decrease of 23.1 percent from 1998.

IMPORT POLICIES

In 1996, the Nigerian government announced a three-year phase-out of its import prohibition list. Since then, most items subject to prohibition have been removed from the list. Following the inauguration of a democratically-elected government in mid-1999, numerous Nigerian interest groups lobbied vociferously for reduction of Nigeria's high tariffs on raw material inputs, machinery, and finished goods. Their efforts were rewarded in late 2000 when the government slashed duties to as low as five percent on many raw materials and capital goods such as textile and knitting machinery, non-combed cotton, synthetic filament and yarn, newsprint, and chemicals. In slashing tariffs on these items, the government demonstrated a serious desire to catalyze domestic export-led growth. Import duties were also reduced dramatically on a range of consumer products such as refrigerators and vehicles.

However, the government concurrently sought to protect domestic agriculture by raising tariffs on a variety of agricultural commodities while relieving VAT payment obligations on domestic producers. Although the Nigerian government lifted its longstanding import ban on maize (corn), it placed a 70 percent duty on this grain (including surcharges and other taxes, the effective duty on imported corn is over 80 percent.) Nigeria remains the most important sub-Saharan African market for U.S. wheat, primarily hard red winter wheat. However, U.S. wheat exports continued their decline in 2000 following a doubling of the import duty from 7.5 to 15 percent. On the other hand, the import duty on durum wheat flour, not a major Nigerian import, was halved from 60 percent to 30 percent. The government hiked the effective import duty on rice by one-third to approximately 80 percent. Many Nigerian businesses routinely benefit from "tariff avoidance" on high tariff items, giving them a strong competitive edge in the market.

High duties remain on many other agricultural and manufactured products. During 2000, duties on frozen chicken and turkey parts skyrocketed from five to 75 percent. Soybeans, sunflower and cottonseed oil, apples, eggs for hatching, fruit juices and cereals also face stiffer duties ranging from 45 to 65 percent. Other duties in place include 20 percent for cosmetic products and bleaching creams and 40 percent on wines, beer, and other fermented beverages.

The government removed gypsum from its list of prohibited imports, however, a duty of 65 percent was imposed on this item. The government has also ordered that cement must be imported in bulk of not less than 10,000 metric tons or the full capacity of the carrying vessel entering Nigeria.

In an effort to curtail transshipped imports from neighboring countries, the government of Nigeria announced at the beginning of 2001, a policy that all shipping containers and vehicle imports must now enter the country through Nigerian ports. With this new regulation, the National Port Authority (NPA) also launched a public relations campaign to promote Nigeria's generally unloved ports. The NPA effort highlighted reforms taken recently at the ports to speed up import clearance procedures and make the ports more "user-friendly."

The port changes emphasized by NPA include a downward shift in port taxes/levies,

removal of various “administrative" obstacles, the elimination of some redundant port security agencies, and the implementation of expedited customs clearance procedures (a result of computerization of customs offices). The customs office at the port in Lagos, Nigeria’s most important entry point for imports, now assures importers that, assuming proper documentation, their goods can be cleared within 48 hours. Pre-shipment import inspection by foreign contractors, abolished in 1999, was later restored. While port users cautiously welcome these reforms, most remain convinced that not enough has yet been done to reduce demonstrably the notorious bureaucracy and corruption at Nigeria’s ports.

GOVERNMENT PROCUREMENT

During 2000, the Obasanjo administration made limited progress on its pledge to practice open and competitive contracting for government procurement. The fight against corruption remains an integral component in the government’s procurement program, although allegations of corrupt practices still emerge from unhappy contract seekers. Foreign companies incorporated in Nigeria receive national treatment and government tenders are published in local newspapers for prospective contractors. According to government sources, approximately five percent of all government procurement contracts are awarded to U.S. companies. In early 2001, the Government of Nigeria was engaged in an extensive round of licensing offshore oil blocks. As expected when large monetary sums are at stake, the licensing process has been highly charged.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank administer export incentive programs. These schemes include a duty drawback program, an export development fund, tax relief, capital asset depreciation allowances, and a foreign currency retention program. In practice, however, these programs generally benefit favored individuals and businesses. Under the duty drawback program, a “negotiable duty-free certificate,” currently set at 20 percent of total export proceeds, may be earned by an exporter to utilize as a duty offset against imported inputs. It remains unclear whether the duty drawback program actually replaces the government’s manufacturing in-bond program, allowing duty free imports of raw material inputs to produce goods for export, contingent on the issuance of a bank guarantee. Under the manufacturing in-bond program, a performance bond is discharged upon evidence of product export and repatriation of foreign exchange earnings.

Although intended to promote industrial exports, these schemes remain burdened by inept management, vaguely defined policy guidelines, and corruption. In some cases where manufacturers and exporters have attempted to utilize these programs, financial losses may have occurred.

In an effort to attract investment in export-oriented industries, the Nigerian government in 1992 established the Nigerian Export Processing Zone Authority (NEPZA). Of the five zones established under NEPZA authority, the Calabar and Bonny Island export processing zones are the only two functioning. Just six companies have located in the Calabar zone and only one of those by the end of 2000 had generated exports. The NEPZA rules dictate that at least 75 percent of production in the zones must be exported, although lower export levels are reportedly being tolerated.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria is considered Africa's largest market for pirated products. Losses from inadequate intellectual property rights (IPR) protection, though difficult to quantify, are very substantial.

As a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon Text), Nigeria is a party to important IPR-related international agreements. However, despite active participation in international conventions and apparent interest in IPR issues, government efforts generally have been ineffective in curtailing the widespread production and sale of pirated tapes, videos, computer software, and books. Very few cases involving copyright infringement of non-Nigerian materials have been successfully prosecuted in Nigeria and most copyright cases have been settled out of court.

In 1999, Microsoft Nigeria, with the aid of Nigerian police and the Nigeria Copyright Commission (NCC), carried out raids on suspected computer software companies copying and selling Microsoft software. The court case is still pending. Similar raids have been carried out on video rental shops.

Statutes governing IPR in Nigeria include the Copyright Act of 1988 (amended in 1999); the National Film and Video Censors Board Act of 1993, reinforcing the measures of the Copyright Act; and the Nigerian Film Policy Law of 1993, encouraging the development of the Nigerian film industry. The 1988 Act makes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner a criminal offense. The NCC is tasked to regulate all aspects of IPR protection. Under the NCC, a police anti-piracy task force carries out raids on suspected IPR violators. Unfortunately, despite the occasional raid on IPR pirates and video shops, enforcement of these laws remains notoriously weak, particularly in the patent and trademark areas. The task force suffers from low morale, poorly trained personnel and limited resources. Following the advent of democracy in 1999, Nigerian artists including writers, film makers, and musicians mounted a campaign calling for more effective copyright protection and the amendment of existing copyright law to give it more teeth.

Under the Patents and Design Decree of 1970, the Nigerian Standards Organization is responsible for issuing Nigerian patents, trademarks, and copyrights. Once conferred, a patent provides the patentee the exclusive right to make, import, sell, or use a product, or to apply a patented manufacturing process. The Trademarks Act of 1965 governs the registration of trademarks. Registration of a trademark provides the trademark holder the exclusive right to use the registered mark for a specific product or class of products.

Deregulation of Nigeria’s electronic transmission market, once reserved only for official stations, began in 1995. By 2000, ten private television stations and twenty-four satellite/cable television companies had been established throughout the country. Similarly, four private stations have entered the radio market in Lagos alone. Many stations utilize large satellite dishes and decoders to pull in transmissions for rebroadcast, providing unfair competition for legitimate public and private television stations. The National Broadcasting Commission (NBC) was established in 1992 to monitor the broadcast industry and provide administrative redress to copyright owners. In 1999, a Nigerian artist instituted a copyright infringement case against the national television authority. Nigerian IPR lawyers believe that successful prosecution of this case will deliver a strong message to IPR infringement violators.

Nigeria's IPR problems in the film industry worsened dramatically following the government's 1981 nationalization of Nigeria's film making and distribution enterprises, part of its campaign to "indigenize" the economy. With the subsequent emergence of the pirated video market, Nigeria's legitimate film distribution market all but disappeared. Moreover, many

foreign film distributors failed to receive contractual compensation following industry indigenization, despite government promises, or were unable to repatriate their assets from Nigeria. Cinema houses essentially vanished and almost no movies have been distributed in the country. However, some in Nigeria continue to fight against the IPR pirates. In the early 1990s, Nigeria's filmmakers formed the Proteus Entertainment Agency to challenge copyright infringement and promote stronger copyright laws and law enforcement in the music, video, and film sectors.

Lawyers active in IPR issues formed the Industrial Property Law Interest Group (IPLIG) to educate the public and lobby on behalf of industrial IPR issues. IPLIG has sponsored several copyright conferences throughout Nigeria and credits itself for initiating an intellectual property rights course at the law school in Lagos.

SERVICES BARRIERS

Market restrictions on non-Nigerian participation in services do not appear to exist in Nigeria. Regulations provide 100 percent access to all service sectors including banking, insurance, and securities. Share capital of naira 500 million (approximately $4.8 million at year end 2000) is required of existing banks. Monetary policy amended in late 2000 stipulates that new banks must have a paid-in capital floor of naira 2 billion (about $19 million). Two foreign banks have started operations in Nigeria in the last three years, and other banks received infusions of foreign capital during 2000.

INVESTMENT BARRIERS

As Africa's most populous nation with an estimated 120 million people, Nigeria potentially offers investors a low-cost labor pool, abundant natural resources, and the largest domestic market in sub-Saharan Africa. However, Nigeria's poorly-maintained infrastructure and difficult bureaucracy contribute to a very challenging investment climate. Because of Nigeria's inadequate services in power supply, telecommunications, and other services, investors must compensate with additional measures. The "premium" or additional costs to investors of maintaining such measures is generally estimated to be about 25 percent above the total standard cost of production.

The Nigerian Investment Promotion Commission (NIPC) is tasked to encourage foreign investment through the liberalization of Nigeria's foreign investment regime. One hundred percent foreign ownership is permitted in any enterprise except those involved in oil and gas production. Non-Nigerians may purchase stock in any Nigerian firm listed on a Nigerian stock exchange, except in businesses specifically listed by the government (for example, firms producing firearms, ammunition, narcotics, and military and paramilitary apparel). Nigeria does not have quotas on expatriate employment, except, once again, in the oil and gas sector. Nigerian law prohibits nationalization or expropriation of a foreign enterprise by the Nigerian government. No case of either nationalization or expropriation of foreign investment has occurred since the democratically-elected government was inaugurated in 1999.

The Nigerian government's efforts to eliminate money laundering and fraud have been sporadic and often ineffectual. Fraud committed by Nigerian criminal elements against investors is a chronic problem both within Nigeria and throughout the world. Advance-fee fraud, or "419 fraud" (named after the section of the Nigerian criminal code dealing with the activity) targets unwary businesses and individuals through a variety of scams often comprising fictitious corporations and government agencies. In addition, Nigerian criminal groups exploit soft international telecommunications, postal, and Internet security to attack financial assets far afield from Nigeria. While some 419

perpetrators have been caught by Nigerian law enforcement agencies, prosecution of offenders has been both slow and ineffectual.

Despite the government's efforts to refurbish its image, the scope of 419 financial fraud continues to bring international notoriety to Nigeria and constitutes a serious disincentive to commerce and investment. Companies and individuals seeking to conduct business with a Nigerian firm or individual should use appropriate due diligence to ascertain they are not the victims of 419 crime. U.S. law enforcement authorities estimate that U.S. businesses and citizens lose an estimated $1 billion annually to fraud, scams, and corruption of various kinds linked to Nigerian criminal elements. International watchdog groups regularly rank Nigeria among the most corrupt countries in the world.

Foreign Exchange

Nigeria's foreign exchange market has undergone significant liberalization in the last two years. Foreign exchange transactions require documentation as stipulated by the Central Bank of Nigeria's (CBN) guidelines.

Nigeria's inter-bank foreign exchange market (IFEM) is now the country's sole "official" foreign exchange mechanism, following the abolition of Nigeria's dual exchange rate in early 2000. Under IFEM, banks can freely transact foreign exchange at a market determined rate with the CBN, other banks, oil companies, and individuals. CBN policy seeks to narrow the spread between the premium earned by foreign exchange operators in the formal currency and informal parallel "street" markets and serves to widen available sources for foreign exchange for potential investors. While the CBN intended that the IFEM rate be market driven, occasional CBN intervention to stabilize the naira exchange rate through its open market operations (OMO) and enforcement of prudential guidelines on participating banks has placed the IFEM under greater CBN control.

In late 2000, the CBN began allowing banks to source travelers checks from outside the CBN in an attempt to reduce the spread between the retail price of travelers checks and the buy-sell rate of IFEM-denominated foreign currency. Some banks, however, reportedly resell travelers checks (purportedly meant for their customers) to the parallel market at a higher premium (a practice known as "round tripping"). As a result, Nigeria's foreign exchange market has occasionally exhibited high volatility.

In November 2000, the Nigerian Money Market Association (NMMA), an association of bank treasury officers, established a foreign exchange futures market called the Nigerian Inter-Bank Foreign Exchange Fixing (NIFEX). If NIFEX functions as designed, it will serve as a foreign exchange futures market, facilitating market transparency and depth and leading to the emergence of financial derivatives in the Nigerian economy. By creating opportunities to price naira against global currencies, NIFEX could facilitate foreign investment. Companies may hold domiciliary accounts in private banks and have unfettered use of their funds. Foreign investors may bring capital into the country to service foreign loans and remit dividends without prior finance ministry approval.

Parastatals

In July 1999, newly-elected president Obasanjo announced a three-phase plan for privatizing Nigeria's state enterprises. The first phase entailed government sale of its corporate interests in the cement, oil marketing, and banking sectors. The second phase included hotels and vehicle plants. The third phase comprised the Nigerian electricity power authority, Nigerian Telecommunication Limited, Nigeria Airways, Nigeria's four oil refineries, and the national fertilizer company. Because the largest, most important parastatals were

placed within the third phase, investor enthusiasm for the government's privatization efforts has significantly dampened. Progress in the privatization program has been slow and each step controversial.

Since 1999, the Nigerian government has repealed or amended eleven decrees that inhibited competition or conferred monopoly powers on public enterprises in the petroleum, telecommunications, power, and mineral sectors. Several private telecommunications companies and Internet service providers have begun profitable operations. Nigeria's highly publicized general system of mobile communication (GSM) licences were awarded in January 2001. The state-owned cellular company received a huge government grant for expansion of its facilities prior to utilizing its GSM license, an act which earned serious criticism from both the private sector and the world bank.

Security

In Nigeria, local activists continue to see U.S. companies not only as visible symbols of wealth and power, but as convenient proxies for a federal government which is remote and unresponsive to local needs and exploits local resources. U.S. oil companies continue to experience persistent violence, vandalism and sabotage of their facilities, occasional oil platform takeovers, and kidnaping of workers. Though U.S. companies in the region have spent millions of dollars on community development, tribal leaders continue to accuse U.S. companies of not doing enough to compensate the Niger Delta's inhabitants.

Contract Sanctity Violations

Contract sanctity violations have emerged as a serious problem in U.S.-Nigerian commercial relations. Four major cases involving U.S. companies have occurred over the past twelve months. These cases involved arbitrary rescindment of contract, renegotiation of contract under duress, and attempts to include additional services and/or conditions to the contract free of charge after the contract signing. All U.S. Government attempts to engage the Government of Nigeria in reversing these decisions have been unsuccessful.