NIGERIA

TRADE SUMMARY

In 2001, the U.S. trade deficit with Nigeria was $7.8 billion, an improvement over the 2000 deficit of $9.8 billion. U.S. goods exports to Nigeria were $957 million in 2001, an increase of 32.6 percent from 2000. U.S. goods imports from Nigeria were $8.8 billion in 2001, a decrease of almost 16.7 percent from 2000. Nigeria is the United States' 56th largest export market in 2001.

In 2000, the stock of U.S. foreign direct investment in Nigeria was $1.3 billion, an increase of about 12 percent from 1999.

IMPORT POLICIES

Tariffs

Tariffs provide the Nigerian government with its second largest source of revenue after oil exports. There are frequent complaints that Nigeria is not fully compliant with its WTO obligations. During the last few years, tariffs in aggregate have gradually been reduced. However, the pattern of reductions for various products is inconsistent. The seemingly arbitrary nature of Nigeria's tariffs and the uneven application of customs collection efforts causes the import process to be a severe bottleneck for commercial activities, including those of foreign investors. High duties create the incentive to avoid tariff payments. Common illicit practices include under-invoicing imports, "round-tripping" foreign exchange, and smuggling. The gap between the official exchange rate for the Naira (used for most imports) and the parallel market's discounted rate (between 16 and 20 percent during most of 2001) accentuates the demand for foreign exchange and encourages corruptive practices that are difficult to eliminate. In general, most leading Nigerian importers of high tariff items successfully avoid payment of full tariffs.

In its last major tariff revision in January 2001, the Nigerian Government reduced a wide range of tariffs on raw materials, capital equipment, and finished goods with a view to encouraging development of an export sector. Nigerian tariffs were reduced significantly or eliminated on such items as agricultural machinery and tractors, soybeans and soybean meal, non-combed cotton, synthetic filament yarn, newsprint, textile and industrial machinery, vehicles, and chemicals.

In early 2001, the government also raised tariffs significantly on a variety of agricultural commodities and other consumer items. Although the longstanding import ban on maize (corn) was lifted, a 70 percent duty was imposed. Including surcharges and other taxes, the effective duty on corn is over 80 percent. The effective import duty on rice is approximately 85 percent. Nigeria's import duty on wheat doubled to 15 percent. Duties on branded vegetable oil were increased from 35 percent to 60 percent, and on hatchable eggs from 50 percent to 80 percent. Apples, fruit juices, and frozen poultry also faced increased tariffs following the January 2001 changes.

Amendments to Nigeria's tariff schedule are often contained in the yearly government budget, and passage of the 2002 budget, anticipated early in the year, could contain additional tariff revisions.

Non-tariff trade barriers

Despite the elimination in recent years of a number of non-tariff trade barriers, the importation of specific commodities and products remains prohibited or restricted. For example, cement must be imported in bulk of not less than 10,000 metric tons or the full capacity of the carrying vessel entering Nigeria. The government has prohibited the importation of vegetable oil in bulk form. Other banned items include sorghum, firearms, day-old chicks, retread/used tires, and matches made with white phosphorous.

To attack chronic tariff avoidance through illicit under-invoicing and under-valuation of imports, the Nigerian Government in mid-2001 implemented 100 percent inspection of all goods entering the country. In addition, pre-shipment inspection (PSI) by foreign contractors on goods entering Nigeria remains in effect. Imports are assessed a one-percent surcharge to cover the cost of inspection. Several U.S. exporters have complained about delays and incorrect valuation of goods under the current PSI regime. This redundant system encumbers trade with costly and time-consuming procedures. To curtail the transshipment of imports through neighboring countries, the Government mandated that all containers and vehicles must now enter the country through Nigerian ports.

Concurrent with implementation of 100 percent inspection, the National Port Authority (NPA) launched a campaign to promote the use of Nigeria's ports. NPA's effort highlighted reforms taken at the ports to speed up clearance procedures and make the ports more "user-friendly."

Nigeria's ports continue to be a major hindrance for importers. While some domestic manufacturers applaud the 100 percent inspection regime, for most the new system has delayed the already notoriously slow customs clearance process further. The Government has announced that it intends to continue the 100 percent inspection regime indefinitely, eventually discontinuing the pre-shipment inspection system. Importers bemoan excessive clearance procedures, petty port corruption, extremely high berthing and unloading costs, labor unrest, and arbitrary application of Nigerian regulations. The 100 percent inspection program has apparently reduced the underinvoicing of cargo.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The combination of high import duties and uneven application of import and labeling regulations makes legal importation of high value perishable products problematic. Nigerian agencies often interpret regulations differently, causing import delays. The aggressive application of new customs guidelines hampers expeditious movement of goods through the port of Lagos and can result in product quality deterioration and losses.

The National Agency for Food and Drug Administration and Control (NAFDAC), which is charged with protecting the Nigerian consumer from fraudulent or unhealthy products, has targeted for special attention the illicit importation of counterfeit and expired pharmaceuticals, particularly from the Far East and South Asia. However, NAFDAC has also on occasion challenged legitimate, processed food imports, including those from U.S. exporters. NAFDAC's severely limited institutional capacity to carry out inspection and testing contributes to an occasionally heavy-handed or arbitrary approach in regulatory enforcement.

Not only do products enter Nigeria without full payment of tariffs, many imports do not fulfill the country's health, labeling, and sanitary standards. Nigeria's rules concerning labeling, testing, and sanitary and phytosanitary standards are relatively well defined. Regardless of origin, all food, drug, cosmetic, and pesticide imports must be accompanied by a certificate of analysis from the manufacturer and appropriate national authority. Specified animal products, plants, seeds, and soils must possess sanitation certificates. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture. By law, items entering Nigeria must be labeled exclusively in the metric system; products with dual or multimarkings will be refused entry. However, products not meeting these criteria can be found throughout Nigeria's markets.

While U.S. products do not appear to be subject to extraordinary restrictions or regulations, the widespread use of fraudulent documentation by non-U.S. exporters can prejudice the access for U.S. exporters. When the level of illicit, undocumented imports for particular products such as frozen chicken exceed that of legal imports, meeting stipulated Nigerian standards does not necessarily ease access to the Nigerian market.

GOVERNMENT PROCUREMENT

Since 1999, the Obasanjo Administration has made notable progress on its pledge to practice open and competitive contracting for government procurement. The Nigerian Government has succeeded in reducing the most blatant forms of corruption in government procurement. But it has met with less success in eradicating back-room maneuvers which bias decisions. Particularly in the initial stages of the tendering process, the Nigerian Government has demonstrated transparency, even-handedness, and, at times, even excessive meticulousness in weighing competitive bids. However, as the bid process proceeds through the decision-making system, the process often becomes more opaque. Allegations from unsuccessful bidders regarding corrupt behavior by senior government officials and foreign companies are common.

In January 2001, the Government issued new procurement and government contract policy guidelines. The guidelines clarify competitive tendering and decision-making procedures, define bid security and mobilization fee rules, and provide for an audit process. Foreign companies incorporated in Nigeria receive national treatment and government tenders are published in local newspapers. According to Nigerian Government sources, approximately five percent of all government procurement has been awarded to U.S. companies.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank (NEXIM) are charged with administering export incentive programs. These schemes include a duty drawback program, an export development fund, tax relief, capital assets depreciation allowances, and a foreign currency retention program. In reality, however, these programs function poorly, and only favored individuals and businesses have derived any benefit from them. Developed to promote industrial exports, Nigeria's export promotion programs are characterized by inept administration, confusion among industrialists, and corruption.

Nigeria's non-oil export sector does not receive subsidies or other significant support from the government. Recognizing that Nigerian exporters were penalized by the official exchange rate, in late 2001 the government agreed to permit exporters to repatriate their earnings at an exchange rate slightly higher than the official rate, but lower than the parallel market rate. Foreign oil companies face some of the stiffest restrictions and fee structures of any oil producing country in the world.

In an effort to attract investment in export-oriented industries, the Nigerian Government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA Authority, only the Calabar and Bonny Island (Onne) Export Processing Zones are functioning. NEPZA rules dictate that at least 75 percent of production in the zones must be exported, although lower export levels are reportedly being tolerated. In 2001, the Government converted the Calabar Export Processing Zone into a free trade zone, although it is unclear whether the new designation will significantly improve export performance.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria may be Africa's largest market for pirated products, with substantial financial losses for copyright, patent and trademark holders. 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 the important international intellectual property rights (IPR) protection agreements.

Despite Nigeria's active participation in these conventions and its reasonably comprehensive domestic IPR protection laws, IPR piracy thrives throughout the country. Nigerian-produced pirated materials are throughout Nigeria and all of West Africa. Copyrighted material piracy affects most pharmaceuticals, most software, and virtually 100 percent of Nigerian recordings and home videos. Companies rarely seek trademark or patent protection because it is generally perceived as ineffective.

The legislative framework is improving. For example, although not yet fully WTO compliant as of January 1, 2002, Nigeria's trade-related intellectual property rights (TRIPS) legislation is moving towards full conformity. But law enforcement, particularly in the patent and trademark areas, remains weak, and the judicial process is slow and subject to corruption.

Recent government efforts to curtail IPR abuse have yielded some results. A number of high profile actions have been taken against IPR violators. The Nigerian Police, working closely with the Nigerian Copyright Commission (NCC), have occasionally raided enterprises allegedly producing and selling pirated software and videos. However, most raids appear to be conducted against small-scale pirates, and not the large, well-connected IPR infringement enterprises. Moreover, very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted, and most cases have been settled out of court, if any final resolution occurs at all.

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 amendment to existing law. During 2001, the Nigerian branch of the Business Software Alliance (BSA) was launched to promote IPR protection in information technology. One important priority for BSA is to reform the Nigerian Government itself, an extensive user of infringed software. In late 2001, Microsoft Nigeria did successfully prosecute a copyright infringement case, and the company is actively going after financial institutions that use non-licensed software. The success of Microsoft and others may signal that Nigeria no longer tolerates copyright violators.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcing IPR. The key Nigerian institutions suffer from low morale, poor training, and limited resources. Neither the Trademarks Office in the Ministry of Commerce nor the National Agency for Food and Drug Administration and Control, two agencies responsible for significant IPR protection, are computerized. Fraudulent alteration of IPR documentation is reportedly common, even in government offices.

Nigeria's public and private broadcasters can now monitor foreign broadcasts using satellite technology, but the government's broadcast regulations do not permit re-broadcasting or excerpting foreign programs unless the station has an affiliate relationship with the foreign broadcaster. This regulation is generally respected. Some cable providers do, however, illicitly transmit foreign programs. The National Broadcasting Commission (NBC) monitors the industry and is responsible for punishing infractions.

IPR problems in Nigeria's film industry worsened dramatically following the government's 1981 nationalization of the country's film-making and distribution enterprises, part of its campaign to "indigenize" the economy. Many foreign film distributors failed to receive contractual compensation, despite government promises, or were unable to repatriate assets. The legitimate film distribution market has yet to recover. Almost no feature films have been distributed in the country in two decades and the widespread pirating of foreign and domestic videos appears to have discouraged the entry of licensed distributors in this medium as well. Nigerian film-makers formed the Proteus Entertainment Agency to challenge copyright infringement and promote stronger copyright laws and law enforcement.

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 and initiated an IPR course at the Lagos Law School.

SERVICES BARRIERS

Foreign participation in service sectors is generally not restricted, and regulations provide 100 percent access to service sectors including banking, insurance, and securities. Central Bank of Nigeria (CBN) directives stipulate minimum levels of paid-in capital. At least two foreign banks have initiated operations in Nigeria over the last three years and other Nigerian banks have received infusions of foreign capital. Professional bodies in engineering, accounting, medicine and law define the minimum personal qualifications required for participation. Nigeria does not impose limits on expatriate employment, except in the oil and gas sector.

INVESTMENT BARRIERS

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 the Nigerian Stock Exchange. Full repatriation of capital including dividends, royalties, and profits is allowed. Nigerian law prohibits nationalization or expropriation of foreign enterprises. No cases of either nationalization or expropriation of foreign investment have occurred since 1999.

Despite extensive government efforts led by NIPC to improve the country's investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Among the hurdles to overcome: high business taxes, confusing land ownership laws, activist labor unions, arbitrary application of regulations, corruption and extensive crime. Investment protection also suffers from the lack of sanctity of contracts and bias in the courts. Local content restrictions are encroaching upon the oil sector; foreign oil companies are under pressure to increase procurement from indigenous firms.

Government efforts to eliminate financial crime such as money laundering and advance-fee fraud (or "419 fraud" after the relevant section of the Nigerian Criminal Code) have grown in recent years but are largely ineffective.

Meanwhile, fraud, theft, and extortion are endemic. With the help of U.S. law enforcement agencies, “419" perpetrators are being prosecuted by the government. International watchdog groups routinely rank Nigeria among the most corrupt countries in the world. Yet, Nigeria is now beginning to show signs of reversing decades of corruption and economic neglect. In general, U.S. investors remain very cautious about conducting business in Nigeria.

The sale of U.S. goods and services to either public or private sector enterprises is not restricted. However, anticompetitive behavior throughout the Nigerian economy is endemic, affecting U.S. products and services. The export of U.S. goods and commodities to Nigeria also suffers from unfair trade practices by foreign competitors who are often willing to accommodate Nigerian requests for improper documentation and payments. Sales may be lost when U.S. exporters are reluctant to engage in illicit or corrupt behavior.

ELECTRONIC COMMERCE

The growth of electronic commerce and telecommunications in Nigeria, albeit from a low base, offers opportunities for the provision of U.S. products and services. While there are no trade restrictions that discriminate against U.S. products, high technology industries suffer from the same constraints noted for more traditional industries.