

SOUTHERN AFRICAN CUSTOMS UNION (SACU)

TRADE SUMMARY

The U.S. goods trade deficit with Southern African Customs Union (SACU) countries was \$4.2 billion in 2008, a decrease of \$158 million from \$4.3 billion in 2007. U.S. goods exports in 2008 were \$6.9 billion, up 19.4 percent from the previous year. Corresponding U.S. imports from SACU countries were \$11.0 billion, up 9.5 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries was \$4.9 billion in 2007 (latest data available), up from \$4.1 billion in 2006.

OVERVIEW

The SACU links the trade regimes of Botswana, Lesotho, Namibia, South Africa, and Swaziland. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana are members of a common monetary area, with currencies pegged to the South African rand. Imports from outside SACU are subject to a common external tariff. SACU members share in a common revenue pool consisting of all customs, excise and additional duties collected in the common customs area. These duties and taxes are paid into South Africa's national Revenue Fund, and subsequently distributed among SACU members according to a revenue-sharing formula.

Under the 2002 SACU Agreement, the SACU Council of Ministers is the supreme decision-making body for SACU. The Council 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, expected to be established in 2009, will be responsible for making recommendations to the Council on issues related to customs; anti-dumping; countervailing and safeguard duties on goods imported from outside SACU; and rebates, refunds, or duty drawbacks. It is to be an independent institution consisting of experts drawn from the SACU Member States and will report directly to the Council.

All SACU Member States are also members of the Southern African Development Community (SADC) and participate in the SADC Free Trade Area, which was launched in August 2008.

SACU Member States have been engaged in negotiations with the European Union (EU) on an Economic Partnership Agreement (EPA) which would ultimately cover trade in goods, trade in services, and issues such as investment, competition, government procurement and trade facilitation. In December 2007, all SACU members except South Africa initialed interim bilateral EPAs with the EU covering goods, sanitary and phytosanitary issues, technical barriers to trade, and trade facilitation. The EU and these four SACU countries also agreed to conclude negotiations on services and investment by the end of 2008, although those negotiations were still ongoing in early 2009. South African officials have voiced reservations about elements of the EPAs but, as of late 2008, had not ruled out some type of participation in an EPA with other SACU and SADC members. South Africa's trade with the EU is now governed by a Trade, Development, and Cooperation Agreement signed in 1999.

In July 2008, the United States and the five SACU member countries signed a Trade, Investment, and Development Cooperative Agreement (TIDCA). The TIDCA establishes a forum for consultative discussions, cooperative work, and possible agreements on a wide range of trade issues, with a special

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focus on customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and trade and investment promotion. The TIDCA is designed to build on and potentially capture some of the progress made in the free trade agreement (FTA) negotiations between the United States and the SACU countries, which were suspended in 2006, largely due to divergent views on the scope and level of ambition for an FTA.

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 and the Duty Credit Certificate System. In addition, interested parties may petition ITAC to review tariffs with the purpose of reducing or increasing them.
- **Trade Remedies:** ITAC administers SACU's antidumping and countervailing duty measures. ITAC also administers SACU's safeguard laws, which have recently been adopted by South Africa. The SACU Tariff Board is to assume responsibility for these matters once it is established, which is expected to occur in 2009.
- **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.

Tariffs

ITAC continues to receive requests from a number of industries for tariff protection, and U.S. companies have cited protective tariffs as a barrier to trade in South Africa. In a few cases, products that are duty-free from SACU partners compete directly with U.S. goods that are subject to duties. One example is soda ash imported from Botswana at 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 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.

Several years ago, the Botswana soda ash producer filed a complaint with the South African Competition Commission alleging that the American Natural Soda Ash Corporation (ANSAC, the U.S. export sales marketing arm of U.S. soda ash producers) engaged in price-fixing with respect to export sales to South Africa. The case was settled in November 2008, with ANSAC agreeing to pay a fine and to cease export sales to South Africa within six months of the effective date of the settlement, though individual ANSAC members will be free to market to South Africa on an independent basis.

In August 2007, the Department of Trade and Industry (DTI) released its National Industrial Policy Framework and Industrial Policy Action Plan. The Framework's objective is to promote value added industries in four key sectors and four priority sectors under the South African government's Accelerated and Shared Growth Initiative for South Africa (ASGI-SA) including: capital and transport equipment; automotive goods and components; chemicals, plastic fabrication, and pharmaceuticals; forestry, pulp, paper and furniture; business process outsourcing; tourism; biofuels; and clothing and textiles. The Framework sets out specific mechanisms to assist these sectors, including a comprehensive review of

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import duties (now under way) and a potential reduction of selected import duties on downstream products and components.

Nontariff Measures

The Minister of Trade and Industry is authorized to prohibit imports, by notice in the Government Gazette, of goods of a specified class or kind 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:

- Used goods. ITAC requires import permits on used goods or substitutes if such goods are manufactured domestically, thus creating a *de facto* ban on most used goods, including used clothing;
- Waste, scrap, ashes, and residues;
- Other harmful substances; 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 nontariff barriers to trade include port congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, intellectual property violations, inefficient bureaucracy, and excessive regulation.

Antidumping and Safeguard Measures

Transparency and due process remain issues regarding the actions of ITAC and its administration of South Africa's antidumping laws and regulations.

As of the end of 2008, South Africa maintained antidumping duties on four U.S. products from the United States: chicken meat portions, L-lysine-HCL, suspension polyvinyl chloride (PVC), and acetaminophenol.

In September 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the five-year expiration date of antidumping duties imposed on A4 paper imported from Indonesia and that, as a result, authority to impose duties had expired prior to the initiation of the sunset review for that product. ITAC subsequently announced its intention to terminate antidumping duties on several imported products because the sunset review of those duties had not been initiated before the expiration of the five-year period as calculated under the court's interpretation of South African law. At the same time, ITAC indicated its intention to seek court permission to retain and "regularize" antidumping duties on 16 products, including chicken meat portions and L-lysine-HCL from the United States, because, although the sunset reviews were initiated after the five-year lapse date, ITAC found that dumping and injury were likely to continue or recur. It is not yet known whether the Court will allow ITAC to retain the dumping duties on these products or whether it will rule that ITAC is required to terminate the duties.

In May 2007, ITAC announced the initiation of a safeguarding investigation on L-lysine products imported from all countries. On the same day, it imposed a 160 percent provisional safeguard duty on all L-lysine products. This was the first time that ITAC opted to utilize a global safeguard remedy. The

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Pretoria High Court overturned ITAC's provisional safeguard duties on the grounds that ITAC failed to provide proper notice and an opportunity for all interested parties to comment. In December 2007 the South African authorities imposed a final definitive duty of 27 percent, which was reduced to 18 percent on May 11, 2008, in accordance with the court ruling. The duty is to be further reduced to 9 percent on May 11, 2009.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Biotechnology

The South African government generally supports the use of biotechnology products. Transgenic varieties of cotton, corn, and soybeans are approved for commercial planting and account for a significant portion of South Africa's cotton, corn, and soybean production. Agricultural biotechnology holds wide appeal for South African farmers as they recognize the financial benefits of fewer inputs and potentially higher yields. However, proposed legislation that would mandate the labeling of biotechnology foods could disrupt trade in biotechnology foods and have a negative impact on domestic development of biotechnology crops. Furthermore, these regulations are likely to be impracticable for unpackaged food products, including staple crops such as corn and sorghum.

Agricultural biotechnology regulations in South Africa are managed by an Executive Council with representation from seven government departments: the Department of Agriculture, the Department of Science and Technology, the Department of Environment and Tourism, the Department of Trade and Industry, the Department of Health, the Department of Water Affairs and Forestry, and the Department of Arts and Culture. The Executive Council has decision-making authority over agricultural biotechnology approvals and is assisted by an Advisory Committee of independent experts which provide scientific recommendations. Unfortunately, a lack of transparency makes the final stages of the decision-making process unclear.

South Africa requires an additional approval document for any plant that combines two or more approved biotechnology traits (stacked events), such as herbicide tolerance and insect resistance. This requirement means that companies need to start from the beginning of the approval process for these stacked events, even if the individual traits have already been approved. Although a few stacked events have been approved, U.S. exporters have sometimes found the process for obtaining approval for stacked events to be unduly burdensome.

The South African government has granted import permits for several U.S. biotechnology products. However, since some varieties of biotechnology yellow corn produced in the United States have not yet been approved for use in South Africa, no import permits for U.S. yellow corn have been approved to date.

Sanitary and Phytosanitary Measures

The South African government requires an import permit for certain controlled products, including irradiated meat from any source.

U.S. horticultural producers have complained about a range of South African sanitary and phytosanitary (SPS) import requirements that affect South African imports of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of these fruits to South Africa could increase by as much as \$15 million annually. U.S. producers have also expressed concern about allegedly unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

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In September 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) sponsored a visit by two South African National Department of Agriculture (NDA) inspection officials to the U.S. Pacific Northwest to visit orchards and packing houses in order to liberalize the NDA's SPS requirements for importing U.S. apples. Since the visit, letters have been exchanged and, in June 2008, NDA proposed mitigation measures that would allow the import of U.S. apples. In November 2008, APHIS thanked NDA for its agreement on mitigation measures for four pests of concern, provided comments on the three remaining pests of concern, and asked NDA for a response to the USDA proposal for mitigation measures related to these pests.

The NDA issues import permits for agricultural products listed in the Table of Import Arrangements. Applicants for such permits must be registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI). 10 percent of such permits are reserved for "new importers" (those who have not imported within the past 3 years), and 10 percent are reserved for small, medium, and micro-enterprises.

In response to the Bovine Spongiform Encephalopathy (BSE) case in Washington State in December 2003, South Africa banned the import of all ruminant animals and products originating in the United States. The ban remains in effect on the majority of ruminants and ruminant products, including beef and beef products. In a September 2008 letter to USDA/APHIS, NDA requested an audit of U.S. facilities that could pave the way for removing the BSE-related restrictions. USDA is preparing its response. The United States continues to urge South Africa to fully reopen its beef market to U.S. beef and beef products consistent with World Organization for Animal Health guidelines on BSE.

Functional Foods

New regulations pertaining to "complementary and alternative medicines" were promulgated in August 2008. U.S. exporters of functional food products falling in this category have expressed concerns that aspects of the regulations related to packaging, product registration, and disclosure of proprietary formulas could unduly restrict their operations in South Africa.

GOVERNMENT PROCUREMENT

Government purchases are made through competitive tenders for goods, services, and construction. South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) strategy. See the section on Investment Barriers for more details on BEE.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. To augment this, the Department of Trade and Industry (DTI) has been working on regulations to clarify the Framework Act and to incorporate the objectives of the Broad-Based Black Economic Empowerment Act of 2003. These regulations would give preferences to bidders who comply with BEE objectives and would include BEE thresholds in tender evaluations. In procurement valued up to 1 million rand (about \$100,000), 80 percent of the tender evaluation would be based on the bid price and 20 percent on the supplier's commitment to BEE objectives. For tenders valued over 1 million rand, companies would earn 90 percent of their points from their bid price and 10 percent from their commitment to BEE objectives. The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Code of Good Practice on Procurement in order to help standardize how firms are evaluated on their compliance with industry BEE scorecards.

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South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment or services with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

South Africa is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the International Union for the Protection of New Varieties of Plants (UPOV) Convention. South Africa is also a signatory to the Trademark Law Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty.

Legal Regime

Enforcement of intellectual property rights in South Africa presents challenges. The United States has provided training assistance on IPR enforcement to South African government and private sector representatives.

In recent years, the South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, some members of the business community have expressed concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings. There have been some concerns that the customs service interpreted a 2004 court ruling as limiting its ability to seize potentially infringing goods that are marked for transshipment through South Africa. This interpretation is still being debated within the South African government.

Under South African law, complainants can take both civil and criminal action against IPR offenders. The number of arrests for trading in pirated or counterfeit goods continued to increase in 2008. According to the South African Federation Against Copyright Theft, there were 449 such arrests in the first three calendar quarters of 2008, more than double the number of arrests in the corresponding period in 2007. In addition, South Africa has taken steps to improve enforcement further, such as the creation of DTI's enforcement unit, which has expanded its number of investigators to 47, and the establishment of Commercial Crime Courts in several cities. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination on IPR enforcement. SARS has launched a public awareness campaign about the seriousness and impact of IPR crimes, and DTI is working with universities to incorporate IPR awareness into college curricula.

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Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries and other on-campus venues. U.S. industry has also expressed concern about software and Internet piracy, the growing number of burner labs, advertisements of "burn-to-order" services, and the unwillingness of South African Internet service providers to shut down infringing sites or access thereto. In addition, counterfeit medicines are also a growing problem. U.S. industry reports that South Africa is becoming a transshipment point for pirated and counterfeit goods into the rest of Africa, noting that it is unclear whether South African Customs has the authority to interdict such shipments.

There is no direct legal protection for local distributors against parallel imports. However, in 2008 several members of the Motion Picture Association of America, acting individually, successfully obtained a civil injunction against a major DVD rental chain that was parallel importing their product. The Cape High Court awarded costs against the importer, who is appealing the decision.

SERVICES BARRIERS

Telecommunications

State-controlled Telkom, South Africa's main telecommunications provider, continues to dominate the market for value added and basic telecommunications services. Many businesses have complained about high telecommunications prices, which are partly a result of Telkom's control of the underlying network. Telkom enjoyed a protected monopoly status prior to the Electronic Communications Act (ECA) of 2005, which created a more competitive market for telecommunications services.

The telecommunications regulator, the Independent Communications Authority of South Africa (ICASA), has the responsibility for implementing the ECA, which removed monopoly elements from old licenses and ensured that licensees have no special privileges over one another. The ECA also tasked ICASA with issuing new licenses to mobile operators and Internet Service Providers (ISPs), but ICASA missed its original deadline to issue these licenses, mainly due to interference from the Department of Communications (DOC). A 2006 ICASA Amendment Bill provided ICASA greater independence but required DOC approval of the regulator's funding, which opens up potential for further political interference.

Despite legislative efforts to increase competition and ICASA independence, the DOC has attempted to pursue a policy of "managed liberalization." In October 2008, the Pretoria High Court rejected the DOC's efforts to impose an invitation-only application process for Value Added Network Services (VANS) licensees. In response, the DOC announced that it would allow ICASA to complete its licensing process by January 19, 2009, as required under the ECA. ICASA requested all interested VANS licensees to submit applications by December 5, 2008. ICASA has also promised potential licensees that it will complete the spectrum allocation process for these licenses by the end of the first quarter of 2009. If it succeeds, the telecommunications market is expected to become more competitive.

ICASA is currently in the process of determining the number and size of new VANS licenses to award. It has 120 megahertz of spectrum to allocate for this purpose and is deciding between awarding 6 licenses for 20 megahertz each or 4 licenses for 30 megahertz each. Potential licensees have complained that 20 megahertz would not be sufficient to build a national network and have noted that Telkom possesses about 50 megahertz of spectrum that it does not utilize. ICASA also planned on requiring 51 percent Black Economic Empowerment (BEE) equity ownership for new licenses, which could create market-entry challenges for foreign investors.

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The government recently supported UK-based Vodafone Group's offer to purchase a 15 percent stake in mobile operator Vodacom, which will end the relationship between Telkom and Vodacom. The transaction will also allow for the unbundling and listing of Telkom's remaining 35 percent shareholding in Vodacom, free both Telkom and Vodacom from their current restrictive shareholders agreement, and allow them to pursue independent growth strategies. This is expected to reduce costs and increase competition in the sector and lead to increased consumer offerings, including wireless solutions in underserved areas.

The United States-led SEACOM undersea fiber-optic cable project will provide the first true broadband connectivity for countries on Africa's eastern seaboard. South Africa is currently 100 percent reliant on expensive satellite and fiber-optic cable solutions provided by Telkom. SEACOM expects to finish the project in June 2009. Privately owned satellite firm Intelsat and a South African investment consortium also plan to build and launch a new \$250 million satellite that is expected to enter service in early 2011.

Liberalization policies implemented by the DOC in recent years have addressed some of the problems facing VANS and ISPs. As a result, more mobile operators may now use fixed lines to provide their service, VANS providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity.

Broadcasting

ICASA maintains local content regulations for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is presently capped at a maximum of 20 percent.

INVESTMENT BARRIERS

In February 2007, the DTI published Codes of Good Practice in the Government Gazette that included a new generic scorecard to measure a company's level of black economic empowerment (BEE) in areas such as equity ownership, management, employment, procurement from black-owned companies, and development of black-owned enterprises. The Codes permit multinational corporations to earn BEE equity ownership "points" for empowerment actions in non-equity areas, provided the DTI approves and provided the multinational has a global corporate policy of owning 100 percent of the equity in its subsidiaries. Many U.S. companies had pressed for the right to use such "equity-equivalent" mechanisms. Although completion of the Codes of Good Practice has cleared up much of the uncertainty that surrounded BEE, they are complex documents and much about their interpretation and implementation remains unclear.

Several "transformation charters" have also been negotiated by stakeholders in sectors such as financial services, mining, and petroleum. These charters are intended to promote accelerated empowerment within particular sectors, and it is expected that many of these charters will be converted into binding sector codes. There is uncertainty as to whether equity-equivalent plans approved by DTI under the Codes of Good Practice would automatically satisfy equity requirements imposed by transformation charters. For example, in at least one case, a DTI-approved equity-equivalent plan was determined not to satisfy the requirements of the Information and Communications Technology charter.

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ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law 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 South Africa's ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

In early 2006, the South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment and held a series of workshops on the draft legislation. This legislation, which was brought before the National Assembly in 2008, may negatively impact the ability of South African and foreign companies to receive and send transborder flows of personally identifiable data.

OTHER BARRIERS

Ownership Patterns

Although South Africa's business environment has improved dramatically in the post-apartheid era, the energy, transportation, and telecommunications sectors are still dominated by state-owned or state-controlled monopolies.

Transparency, Corruption and Crime

Laws such as the Promotion of Access to Information Act and the Public Finance Management Act, both enacted in 2000, have helped to increase transparency in government. The 2004 Prevention and Combating of Corrupt Activities Act 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.

South Africa has no fewer than 10 agencies engaged in anticorruption activities. Some, like the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as only part of their responsibilities. However, high rates of violent crime are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. In October 2008, Parliament voted to disband the South African Police Anticorruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions") and fold its jurisdiction into the National Police.

Immigration Laws

For a number of years, U.S. and other foreign companies have complained about difficulties in obtaining temporary work permits for their skilled foreign employees.

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2. BOTSWANA

IMPORT POLICIES

Tariffs

Botswana's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Botswana uses the Harmonized System of Classification and applies the SACU common external tariff.

Nontariff Measures

Imports are governed by the Control of Goods, Prices and Other Charges Act. Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and can be obtained from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. Import permits are usually granted upon request and are not transferable.

Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining an import permit from the Department of Trade and Consumer Affairs. The Ministry of Agriculture issues import permits for certain agricultural products, including plants and live animals. Imports of fresh and frozen pork are banned, but processed pork products may be imported. Imports of beef and beef products are also banned. Although poultry imports are permitted when there is a domestic market deficit, the Botswana poultry sector met all domestic demand in 2008. Imports of some vegetables and dairy products are seasonally banned when domestic supply is determined to be adequate, regardless of price. The government allows for importation of used clothing except for undergarments. The importer of used clothes is required to apply for an import permit, which may be issued for a duration of six months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required. For petroleum products, import permits are issued by the Department of International Trade after the applicant satisfies licensing requirements maintained by the Department of Energy.

GOVERNMENT PROCUREMENT

The Public Procurement and Asset Disposal Board (PPADB), an independent parastatal, is responsible for the award of all government contracts. The tender process is generally open. The Independent Complaints Review Committee of the PPADB reviews the Board's decisions, which are subject to challenge by stakeholders (*e.g.*, contractors and procuring entities). The PPADB has published its decisions concerning awarded tenders, prequalification lists, and newly registered suppliers. The PPADB Act empowers the government in accordance with its economic and social objectives to introduce, from time to time, reservation and preference schemes for the benefit of citizens and local companies. Preferences are also applied to production inputs sourced locally from qualifying firms. The government reserves certain tenders for 100 percent Botswana-owned companies, including all contracts valued at P300,000 (\$50,000) or less. On large tenders, the relevant ministries review the finalists selected by the PPADB and exert some degree of influence in the final award. The PPADB has stated that it considers these schemes to be in conformance with Botswana's obligations under its international and regional trade agreements. Botswana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Botswana is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of

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Industrial Property, the Patent Cooperation Treaty, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Botswana's legislation, including the 2006 Copyright Act, is intended to conform to international IPR standards, but there are notable deficiencies with respect to geographic indications and integrated circuits, and enforcement of intellectual property rights has not been a priority.

SERVICES BARRIERS

Although the telecommunications market has been largely liberalized, fixed-line telephony remains as a monopoly of the Botswana Telecommunications Corporation (BTC). Competition in the cellular phone industry is dominated by two international firms, which compete for the bulk of the local market. Voice-Over-Internet Protocol is not allowed, except over private networks. Universal licenses have been granted for all licensed telecommunications corporations, opening the cell phone market to parastatal BTC.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to transfer technology to Botswana in certain circumstances; 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. There are often exceptions to this rule in practice.

While the government is moving towards privatization of some parastatal businesses, the process appears to be moving slowly. In 2000, the Public Enterprise Evaluation and Privatization Agency (PEEPA) was established to oversee implementation of Botswana's privatization policy. PEEPA will ultimately determine the extent of foreign participation in the privatization process. The Ministry of Finance and Development Planning, to which PEEPA reports, has stated that local investors may in some instances be given preference in the privatization process.

None of the government of Botswana's recent privatization efforts has met with success. For example, the long-awaited privatization of Air Botswana collapsed in 2007, due to the government challenging technical aspects of the successful bid that was certified by the Public Procurement and Assets Disposal Board. The Botswana government has now shifted its attention to privatization of the BTC. Legislation that would formally privatize BTC was progressing through Parliament as of late 2008.

The acquisition of land, work permits, and business licenses remains encumbered by significant bureaucratic and political constraints.

OTHER BARRIERS

Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of court challenges has adversely affected international companies that have won government contracts. In some instances even companies that have won these challenges have had to rebid due to the length of time (in one case over four years) for the court to render a decision. There is a growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

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3. LESOTHO

IMPORT POLICIES

Tariffs

Lesotho's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Lesotho applies the SACU Common External Tariff and other SACU import policies. Additional charges include clearing fees ranging from M1,300 to M1,750 (approximately \$130 to \$175).

Nontariff 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 and granted a "blanket import permit" with a validity of 12 months and an additional grace period of 3 months. Lesotho has yet to submit its Import Licensing Questionnaire to the WTO.

In recent years, the government of Lesotho has undertaken agricultural sector structural reforms including the removal of price subsidies and import controls on maize and wheat products 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, import restrictions allow a limited exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors the level of local production of consumer goods and issues import licenses for goods that are in short supply. National production has never met local demand. As a result, import licenses are issued as a matter of course.

Non-automatic licenses apply to imports of used clothing. In practice, licenses for used clothing are not issued, constituting a *de facto* ban. The Ministry issues permits for the import of used vehicles from outside the SACU area.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Lesotho does not have a national standards body, and no national standards have been developed. 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. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards 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 and firms or based on international standards.

GOVERNMENT PROCUREMENT

In 2007, the government adopted new public procurement regulations. The Central Tender Board under the Ministry of Finance and Development Planning is responsible for the award of all government contracts. Standard government procurement in Lesotho is conducted through open competition. However, some preferences are given to locally owned companies in the government bidding process. Procurement regulations require the government to advertise online in order to conform to SACU

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standards. Lesotho's Ministry of Trade and Industry encourages foreign companies to bid on public tenders as joint ventures with local firms.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Lesotho is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Patents have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Although the law protects patents, industrial designs, trademarks, and copyrights, we are not aware of enforcement of intellectual property laws with regard to copyrighted music or films.

SERVICES BARRIERS

The Trading Enterprises Order of 1996 restricts foreigners from participating in small-scale trading activities that are reserved for nationals only. These include butcheries, barbershops, certain cafes, and hair salons. Otherwise, foreign participation is not restricted in the service sector. The banking and telecommunications sectors are largely foreign-owned, primarily by South African institutions. The Lesotho Telecommunications Authority (LTA) acts as an independent regulator of the telecommunications industry. The LTA sets the conditions for the entry of new competitive operators, although it maintains Lesotho Telecom's monopoly on fixed-line and international services.

Telecom Lesotho is the sole fixed-line Internet service provider and also holds a monopoly for international Internet access. Telecom Lesotho does not allow the use of wireless connections by local Internet providers.

INVESTMENT BARRIERS

Foreign investors have participated in the country's privatization program without discrimination. However, according to the International Finance Corporation, it takes 73 days to start a new business in Lesotho, a consequence of significant bureaucratic impediments and inefficiencies. In response, the government of Lesotho has embarked on a private sector development initiative, funded in part with resources from the U.S. Millennium Challenge Corporation, to improve the nation's investment climate.

4. NAMIBIA

IMPORT POLICIES

Namibia's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Namibia applies the SACU common external tariff.

Most imports require a permit issued by the Ministry of Trade and Industry (MTI). Products subject to specific import licensing requirements include medicines and related substances; chemicals; frozen or chilled fish and meat; live animals and genetic materials; controlled agronomic products; controlled petroleum products; firearms and explosives; diamonds, gold, and other minerals; and seemingly all second-hand goods, including clothing and motor vehicles. In practice, however, MTI does not issue

FOREIGN TRADE BARRIERS

licenses for imports of used clothing, resulting in a *de facto* ban on this product. Namibia bans the importation of left-hand-drive vehicles and used vehicles older than five years from non-SACU countries.

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. Retailers of fruits, vegetables, and other crop products must purchase 27.5 percent of their stock from local farmers. The Namibian Meat Board regulates the import and export of live animals 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.

EXPORT SUBSIDIES

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Namibia Standards Institute (NSI), formally launched in September 2007 with the assistance of the South African Bureau of Standards (SABS), currently undertakes standardization functions in Namibia. SABS continues to perform the role of Official Technical Inspection body for fish and fish products while assisting NSI in formulating and developing technical capacity in the areas of standards, quality assurance, and metrology.

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. In an effort to meet its international commitments, the government passed, but has not yet fully implemented, the Biosafety Act of 2006. The Act 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 also require biotechnology products to be clearly labeled and identified for purposes of traceability. Pending implementation 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 tender notices are published in the local media. The Tender Board gives preference to goods manufactured or assembled in Namibia as well as by historically disadvantaged Namibians.

FOREIGN TRADE BARRIERS

The Tender Board has come under scrutiny in recent years for not always adhering to its own policies, especially in the awarding of contracts to foreign companies. In 2007, two local construction companies challenged the Tender Board in court for awarding a tender to a Chinese company (for construction of a government building) that allegedly failed to comply fully with Namibian labor law and work permit regulations. The High Court rejected the application to stop work on the building, but the case is still being pursued in the courts.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Namibia is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty. Namibia is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty but has not yet ratified or implemented these treaties.

In January 2009, the Ministry of Trade and Industry circulated a draft industrial property bill that would establish an Industrial Property Office to handle administration of patents, marks and designs. The law has not yet been passed.

The Ministry of Information and Broadcasting has drafted amendments to the Copyright and Neighboring Rights Protection Act of 1994 with the aim of bringing it in line with the TRIPS Agreement and the WIPO treaties. However, the new law still needs to be passed and enacted. It aims to improve standards of IPR protection and include new aspects such as satellite, traditional knowledge, and folklore issues. Two copyright organizations, the Namibian Society of Composers and Authors of Music (NASCAM) and the newly established Namibian Reproduction Rights Organization (NAMRRO), are the key driving forces behind the government's anti-piracy campaigns. NASCAM administers IPR for authors, composers, and publishers of music while NAMRRO protects all other IPR including literary, artistic, broadcasting, satellite, traditional knowledge, and folklore.

Constraints to combating IPR abuses include a shortage of trained IPR lawyers and the lack of IPR courses available at local universities.

SERVICES BARRIERS

Although government-owned Telecom Namibia dominates the telecommunications sector, foreign investors are involved in both of the country's mobile operators. The government of Namibia retains a share in both companies. The government pledged not to issue further licenses in the mobile phone market for the next five years, but then granted Telecom Namibia a license and allowed it to introduce a mobile service. In response to criticisms of this decision, the government has restricted Telecom's mobile service from providing its customers "roaming" capabilities. This has limited Telecom's market penetration, as many customers prefer a service that can work anywhere (and across carriers) in the country. The government of Namibia is in the process of drafting a new bill on telecommunications that aims to pave the way for new technology services and increased competition in the communications sector. The government has placed a moratorium on issuing new telecommunications licenses pending the passage of the new telecommunications act.

FOREIGN TRADE BARRIERS

Insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation. In 2006, the government and private insurers reached an agreement in which mandatory cession would not be enforced for five years.

INVESTMENT BARRIERS

There are few restrictions on the establishment of private businesses or the size of an investment.

The Foreign Investment Act generally does not require equity participation by local investors in foreign investments. The government may require local participation before issuing licenses to exploit natural resources. The government also actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, investors complain of a concerted campaign to "Namibianize" existing investments.

Land reform is at the forefront of Namibian public debate. The 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. Namibian law also allows for expropriation, with just compensation, of land in the public interest. To date, land acquisition and expropriations have been undertaken legally and upon payment of compensation. Domestic groups have urged the government to accelerate the acquisition of commercial farmland and the corresponding resettlement of Namibia's landless population. The government considers foreign-owned and nonproductive farmland primary targets for expropriation. In April 2005, the government introduced a land tax to raise money for further land acquisition.

OTHER BARRIERS

According to recent surveys, there is a growing public perception that official corruption is on the rise. Anticorruption bodies include the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anticorruption Bill was passed and the government later established an independent Anticorruption Commission, though the Commission has yet to investigate a case of corruption that culminated in successful prosecution. Only a few initial cases of relatively low-level corruption have been brought to trial. In addition, the government has yet to take action on reports and recommendations from several presidential commissions that were established in past years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

A large court backlog continues to cause lengthy delays of all types of trials.

5. SWAZILAND

TARIFFS

Swaziland's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Swaziland applies the SACU common external tariff. Swaziland applies a 14 percent sales tax for goods coming across its borders, regardless of the country of origin.

In addition to SACU, Swaziland is also a member of the Common Market for Eastern and Southern Africa (COMESA). With special permission from COMESA and Swaziland's fellow SACU Members, goods from Swaziland are given preferential access on a non-reciprocal basis in the COMESA market. Swaziland's simultaneous membership in SACU and COMESA could pose a challenge in the future, especially given COMESA's plans to launch a Customs Union in 2009.

FOREIGN TRADE BARRIERS

NONTARIFF MEASURES

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 imported to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU.

In October 2008 Swaziland introduced usage of the Automated Systems for Customs Data (ASYCUDA) at all border posts. Although ASYCUDA is a significant improvement from the previous system, it does not communicate with South Africa's Customs system, requiring traders bringing in goods from South Africa to declare their goods twice.

SADC's Single Administrative Document 500 form is used for multiple border crossings and is supposed to standardize the number of forms needed for transporting goods between SADC countries. Many members of the Swazi business community find the form cumbersome and have registered complaints about it with the Federation of Swaziland Employers and Chamber of Commerce.

Among the nontariff barriers to trade commonly cited by traders are levy charges and sales tax on some agricultural products, mineral fuels, and electronic equipment.

GOVERNMENT PROCUREMENT

Although the government may accord local businesses a 15 percent price preference in tendering for government contracts, it appears that this preferential treatment is not always granted. Vendors from South Africa and other southern African countries are selected for a large portion of government contracts. However, for small and medium-sized tenders, suppliers must be registered in Swaziland in order to submit a tender. The government inspects the premises of all suppliers prior to awarding the tender.

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

The Ministry of Finance has drafted a new Public Procurement law that would establish a public procurement regulatory authority and other public procurement institutions and provide regulation and control of practices in respect of public procurement of goods, works, and services by procuring entities. As of late 2008, the Ministry was consulting with stakeholders on the draft bill.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swaziland is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty. Swaziland is a signatory to the Patent Law Treaty and the Trademark Law Treaty but has not yet implemented these treaties.

FOREIGN TRADE BARRIERS

Swaziland needs to substantially revise its laws related to IPR protection. Updated patent legislation has been in draft form for the past four years. When the new legislation is passed and enacted, the African Regional Industrial Property Organization is expected to help Swaziland with technical assistance in granting patents.

The Ministry of Justice and Constitutional Affairs has drafted an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model. The draft was still being reviewed within the Swazi government at the end of 2008.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. In 2007, the government ended an effective monopoly in the insurance sector, and a number of insurance companies now operate in the country.

MTN Swaziland, a joint partnership of the MTN Group and the state-owned Swaziland Posts and Telecommunications Corporation, is the only mobile telecommunications provider. The government awarded it a 10-year monopoly that ended in 2008. While the market is now open to competition, no other mobile phone company has yet received a license.

The Swaziland Post and Telecommunications Corporation is the monopoly provider of fixed-line telecommunications services.

INVESTMENT BARRIERS

Swaziland does not have an investment code. Calls for the streamlining of procedures to start a business have gone unheeded, and major legislation needed to support an improved investment climate has been slow to proceed. A Securities Bill to protect investors in Swaziland's equity market has been proposed but not yet passed. Related legislation, known as the Financial Services Regulatory Authority Bill that would bring all nonbank financial institutions under one regulatory authority has not yet reached Parliament. A new Companies' law to replace the outdated Companies Act of 1912 was passed by parliament in 2008 but awaits the King's signature.

There are currently no formal policies that discriminate against foreign investors or foreign-owned companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy. However, pineapple canning, cellular and fixed line telecommunications, and water distribution are all state-sanctioned activities or subject to state-owned monopolies. The Trade and Business Facilitation Bill, drafted in 2001 but still awaiting parliamentary action, would require that companies in certain specified sectors maintain a certain degree of Swazi ownership.

The Cabinet has approved a privatization policy that the government is now taking steps to implement. The process will create a Public Enterprise Agency charged with ensuring that public enterprises are managed efficiently and are not a drain on the nation's resources. A key parastatal being targeted for privatization, possibly through a joint venture with foreign investors, is the Swazi Post and Telecommunications Corporation. The government is also required by a 2007 law to divest its shares in the Swaziland Electricity Board.

FOREIGN TRADE BARRIERS

Land acquisition is a barrier to investment in Swaziland. Large plots of land that are not designated as Swazi Nation Land are difficult to find, making it difficult for companies, especially those in agribusiness, to expand their operations.