NIGERIA

TRADE SUMMARY

The U.S. trade deficit with Nigeria was $14.7 billion in 2004, an increase of $5.3 billion from $9.4 billion in 2003. U.S. goods exports in 2004 were $1.6 billion, up 52.6 percent from the previous year. Corresponding U.S. imports from Nigeria were $16.2 billion, up 56.3 percent. Nigeria is currently the 52nd largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Nigeria in 2003 was $2.1 billion, up from $1.8 billion in 2002. U.S. FDI in Nigeria is concentrated largely in the petroleum sector.

IMPORT POLICIES

Tariffs

Tariffs provide the Nigerian government with its second-largest source of revenue after oil exports. In its last major tariff revision in March 2003, the Nigerian government cut duties on 230 tariff line items (mostly raw materials, base metals, and capital equipment) to as low as 2.5 percent, while raising them on 30 line items (largely plastic, rubber, and aluminum articles) to as high as 65 percent. Tariffs on agricultural products such as corn and rice were raised to 70 percent and 100 percent, respectively. President Obasanjo announced in October 2004 that Nigeria will begin harmonizing its tariff structure with that of the Economic Community of West African States in January 2005, for implementation in July 2005. Items banned would remain so until sometime in 2007, when the bans would be replaced by tariffs.

Frequent import regime changes and uneven duty collection make importing difficult and expensive, and occasionally create severe commercial bottlenecks. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods, which affects both foreign and domestic manufacturers. Many importers resort to under-invoicing and smuggling to avoid tariffs or bans.

Non-Tariff Trade Barriers

The United States continues to have concerns about the Nigerian government's use of non-tariff trade barriers. Bans on a variety of items – sorghum, millet, wheat flour, cassava, frozen meat and poultry products, vegetable oil (in bulk), biscuits, pasta, bottled water, fruit juice in retail packs, cookies, confectionery and chocolate products, beer, kaolin, gypsum, mosquito repellent coils, printed fabrics, used clothing, cars more than eight years old, and bagged cement – continued into 2004. Products added to the list of banned items in 2004 included men's footwear, leather bags and plastic bags (excluding ladies purses), all textiles and yarn, furniture, toothpaste, household plastic ware, soap and detergents, fresh and plastic flowers, and fresh fruits. In November 2004, the Nigerian government agreed to exempt from the import ban certain U.S. textile and yarn products entering under a special “Manufacturers In Bond” scheme

Customs Barriers

Nigerian port practices continue to present major obstacles to trade. Importers face long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. The Nigeria Customs Service (NCS) stepped up its enforcement of a 100 percent physical inspection program in an attempt to reduce smuggling and under-valuation of imports, but officials admit they do not have the resources to inspect every incoming container. The NCS operates a preshipment inspection regime under which contracted inspection companies at ports of origin issue inspection reports (sampling inspections) that Nigerian customs officials use to determine the value of items shipped and applicable customs duties.

The NCS had planned to replace its preshipment inspection regime with physical inspection at the port of importation in 2002 and 2003, but the change was deferred after importers protested that NCS officials might use their positions as sole-valuation authorities to extract unauthorized fees. The NCS hopes to introduce a physical inspection regime in early 2005; however, NCS risk assessment and other databases were not yet fully operational at the end of 2004. Therefore, it is unlikely the NCS will begin its physical inspection regime as expected, in early 2005.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

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

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

U.S. products do not appear to be subject to extraordinary or discriminatory restrictions or regulations, but the alleged widespread use of fraudulent documentation by non-U.S. exporters may put U.S. exporters at a competitive disadvantage.

GOVERNMENT PROCUREMENT

The Obasanjo administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement and privatization. The initial stages of the tendering process tend to be transparent and even-handed, but as tenders move through the decision-making process, the process often becomes less transparent. Allegations by unsuccessful bidders of corrupt behavior by senior government officials and foreign companies are common, but they rarely provoke substantive reactions.

New procurement and contracting guidelines were issued in January 2001, and a due-process office, the Budget Monitoring and Price Intelligence Unit, was also established. The unit acts as a clearing house for government contracts and procurement and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira (about $385,000) is subject to "due process" review. (Due process certification aims at ensuring that the procurement process for public projects adheres to international standards for competitive bidding.) In December 2004, the Government submitted a bill to establish a Bureau of Public Procurement to the National Assembly.

Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty getting them funded, and some companies that won contracts for which funds were allocated have had trouble getting paid.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council and the Nigerian Export-Import Bank administer export incentive programs that include tax concessions, export development funds, capital assets depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs. Since many businessmen alleged that only favored individuals and businesses benefit, the government suspended indefinitely the export-expansion grant program in 2004 until government investigations into corrupt practices associated with its implementation are concluded. Aside from these incentive programs, Nigeria's non-oil export sector does not benefit from subsidies or other significant support from the government.

To attract investment in export-oriented industries, the government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export-processing zones function. NEPZA rules dictate that at least 75 percent of production in the zones be exported, but lower export levels are tolerated. The Nigerian Government converted the Calabar export-processing zone into a free-trade zone in 2001. It is unclear whether the new designation has improved its export performance.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is 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 for the Protection of Industrial Property. Legislation pending in the National Assembly may establish a legal framework for an IPR system compliant with WTO rules. Nigeria's current IPR laws afford protection that is intended to comply with WTO provisions.

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

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

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

IPR problems in Nigeria's film industry worsened following the government's 1981 nationalization of the country's filmmaking and distribution enterprises as part of its campaign to "indigenize" the economy. The legitimate film distribution market has yet to recover. Almost no foreign feature films have been distributed in the country in the last two decades, and only one multiplex movie theater operates in Nigeria. Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors.

The Nigerian police force, working closely with the Nigerian Copyright Commission, has raided enterprises producing and selling pirated software and videos, and a number of high-profile charges have been filed against IPR violators. Unfortunately, most raids appear to target small rather than large and well-connected pirates, and very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted.

SERVICES BARRIERS

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

Professional societies in engineering, accounting, medicine, and law define minimum professional requirements. Nigeria imposes quotas on expatriate employment based on the issued capital of firms. Quotas are especially strict in the oil and gas sector. Oil companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human relations are almost exclusively reserved for Nigerians; certain geoscience and management positions may be filled by expatriates with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its expatriate worker allotment with NAPIMS.

INVESTMENT BARRIERS

Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100-percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a “negative list” (such as manufacturers of firearms, ammunition, and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree prohibits nationalization or expropriation of a foreign enterprise except when necessary to protect the national interest.

Despite efforts to improve the country’s investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Potential investors must contend with poor infrastructure, complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. The sanctity of contracts is often violated, and Nigeria's court system for settling commercial disputes is weak and sometimes biased. Foreign oil companies are under significant pressure to increase procurement from indigenous firms. NAPIMS has set a target of 40 percent local content for oil-related projects by 2005 and 60 percent by 2010. It is not clear whether this local content target will be based on the value of a contract or the nature of the goods and services used, or whether partnering with a Nigerian firm will be sufficient, regardless of the origin of equipment or raw materials.

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

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

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 against such U.S. services, the high technology industry suffers from the same constraints affecting other industries.