Global Elements

Individual Reports on International Trade

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Executive Summary

International trade is a field in economics that seeks to examine and explain how global efficiency can be increased through free trade, taking into account the underlying assumptions of the prevailing trade theories with a view of introducing remedies for altering trade patterns, and to explore how businesses/industries determine whether international trade takes place in as pure a form as possible.

For the purpose of this paper, we are viewing the subject of international trade from the point of view of the potential and actual effects of governmental interference with the free movement of goods between Pier 1, based in the United States, and the proposed countries of South Africa and Turkey. We are looking at existing governmental policies in each country, emphasis on the Tariff barriers, Non Tariff barriers, and Dispute Resolution, which all have considerable impact on international business in general. And by focusing on these issues we hope it will increase understanding of the kinds of trade policy issues that will be encountered and try to predict how this might affect Pier 1's decision to venture in these two primed markets.

Tariff Barriers in Turkey – by Walter Josephs

Executive Summary

According to the World Bank, the elimination of trade barriers on all goods and services could lift more than 300 million people out of poverty. Other claims are that the greatest benefits to developing countries, such as Turkey, would come from liberalization of trade with member states and the international community on a whole, as they could realize collectively, income gains of more than $500 billion from duty-free trade. Over the past 10 years, developing countries have gone along with this more rapid pace of international trade liberalization persuaded by arguments that it would make their industries and economies stronger and more competitive, and that it would open a wider international market to them.

But, towards the latter part of 1990s, after the first blush of steep tariff reductions and quota eliminations had run their course, many developing countries were faced with a an almost naked landscape with many vital and vulnerable industries pushed to the edge or destroyed. And being wary of competition and eager to protect their own markets, fragile states like Turkey have responded cautiously in countless rounds of negotiations to remove trade barriers.

Introduction

Free Trade can be defined as the ability to trade freely between and among nations without any form of barriers (tariff or non-tariff) hindering the process. It is generally agreed that nations which engage in free trade benefit from doing so. In a simplistic world, the concept of comparative advantage would have facilitated free trade perfectly for resources would have been allocated efficiently and the world would have been a better place. But, the world is not perfect. In the face of rapidly growing imports and intensification of competition, many industries are finding it difficult to expand and increase profits. In fact, many are experiencing declining sales, falling profitability, and are on the verge of closure and bankruptcy.

Tariff Barriers

Tariffs are a tax on goods applied on imported items at point of entry. Commonly referred to as Customs Taxes and Duties, tariffs play a key role in trade policy, particularly in labor intensive manufactured goods such as those provided by Pier 1. These import restraints or tariff barriers primarily serves as a means of raising the price of imported goods so that competitively produced domestic goods will gain a relative price advantage. They are also a means of protecting domestic manufactures from foreign competition; but, the inverse is that products for exports become less competitive as a result of this imposition of tariff barriers. According to the conventional view and studies on the growth and trade restrictions, trade restrictions have an “adverse association between trade barriers and growth.” There are two main forms of tariff barriers: Ad Valorem and Specific.

Ad valorem (*Latin for according to value*) tariffs are levied as a fixed percentage of the value of the commodity imported. Customs taxes/duties were established mainly for the purpose of obtaining financial revenue, once a major source of revenue for nation states. But it is gradually losing its significance with the enormous growth of government finance and its well-organized tax collection system throughout the world, and so economists argue that these policies are regressive. For developing nations such as

Turkey this is important because it is able to have more control over ascertaining quantity and types of goods passing across its borders. From a health point of view, ad valorem taxation has the advantage that it automatically takes account of inflation, as taxes increase automatically in proportion to the price. Ad valorem tariffs have the disadvantage that cheap goods are possible due to the combined effects of very low production costs and proportional taxation.

Specific tariffs on the other hand are levied as a fixed charge per unit of imports. Occasionally both a specific and an ad valorem tariff are levied on the same product simultaneously. This is known as a two-part tariff. However, some economists will argue that in a competitive environment ad valorem and specific tariffs are entirely equivalent, as specific tariffs can be replaced by ad valorem (and vice versa). They are of the view that they both raise an equal level of revenue and leads to the same consumer and producer prices.

There are arguments against the imposition of tariff barriers in Turkey, particularly as it relates to Pier 1, for the main reason that past protectionist policies have encouraged an inward-looking and inefficient manufacturing sector, ill-suited to the challenge of competing in an increasingly globalized economy. The European Union, for which Turkey is subscribing to be a member, has a common tariff level for all forest products. On most forest products the tariff level is zero, with the exception of some manufactured goods, such as builders joinery and carpentry wood (2.1 percent), boards (4.9 percent) and plywood (7.0 percent), and also live trees (8.4 percent).

Value Added Tax

As with any other state, the Turkish authority, except in special circumstances, imposes other duties/taxes on imported goods such as the customs taxes (previously mentioned) and general consumption tax. The latter, referred to as the Value Added Tax (VAT), is a tax charged on most business transactions. The Customs Department collects duties and other taxes imposed on cargoes declared for import, and conduct inspection of importers for proper tax imposition; as well as collects tonnage duty and special tonnage duty from most ships and vessels which are involved in international trade.

The application of exportation tax was cancelled. There is not any other tax applied to the exportation of some domestic products than the applicable shipping charges.

But there are now mechanisms in place called “Escape Clause,” instituted by the World Trade Organization (WTO), which act as a means of ensuring: "Emergency action on imports of particular products" (GATT, 1994, Article XIX). This permits the use of restrictive measures against imports if they cause or threaten to cause serious injury to domestic producers of competing products. It provides short-term protection for the domestic industries. But one might ask: Why does the WTO allow protection when its major objective is to lower tariff barriers and promote free trade? The clause enables a WTO member state to restrict imports of a product temporarily if its domestic industry is injured or threatened with injury caused by a surge in imports. The injury must be as a result of unforeseen circumstances in executing an obligation such as lowering tariffs. The emergency safeguard mechanism permits the use of higher tariffs, tariff quotas, or quantitative restrictions. They act as a form of “safety valve” providing relief for a domestic industry facing intensified international competition.

The WTO rationale for this measure is to give the affected domestic industry time to prepare itself for, and adjust to, increased import competition inevitably resulting from liberalization. It is seen as useful to the overall liberalization process by providing policy flexibility to respond to unanticipated challenges of intensified competition.

Safeguard Regulations

It should be noted that the reliance on legal protection in the form of rules restricting imports should not be confused with reliance on economic protection where artificially high prices perpetuate inefficiencies. Legal protection under the “Escape Clause” previously mentioned, requires an adjustment plan to improve efficiency and competitiveness. The objective is to enhance, not limit trade and competition. Similarly, these measures are a clear recognition that free trade does not always yield the expected outcome. Not just injury but severe injury may result.

To better prepare for free trade the business community in Turkey has been building strategic alliances with government negotiators both in the Foreign Ministry and Regional Negotiating Machinery. The private sector perceives this alliance as critical as governments do not trade but must negotiate favorable market access for businesses. To this end, the trade officials are represented on the Trade Policy Committee of the private sector agency responsible for creating the environment which facilitates the dialogue and consultative process.

Conclusion

Despite the fifty years of the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO) and nine trade rounds, it is the view of many learned professionals and practioners that no state has opened its market completely to international trade, despite the potential benefit of doing so. Nonetheless, Turkey, as defined in the Article 24 of General Agreement on Tariffs and Trade (GATT), eliminated the taxes on imports from the European Union (EU) and adopted of the EU's common customs tariff for imports from third countries (including the United States). Consequently, Pier 1 would be exempted from the high tariff rates normally imposed on agricultural products. The applicable weighted rate of protection for products deriving out of the United States would be four point six percent.

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Non-Tariff Barriers in Turkey – by Mobola Kadiri

Executive Summary

After 1980, Turkey shifted its emphasis in trade policy from strictly limiting imports to actively encouraging exports. In March 1985, Turkey signed the General Agreement on Tariffs and Trade (GATT), which committed the country to abolishing most export subsidies over a three-year period. In January 1993, in accordance with its commitments under the GATT agreement, Turkey consolidated and reduced most import charges.

Turkey and the EC entered into an association agreement on December 1, 1964, with the aim of full membership for Turkey after the implementation of a customs union, which the Turkish government hoped would occur in 1995. Turkey's record in meeting the European body's tariff-reduction schedule has undergone several permutations. It was adhered to until 1976, when it was abandoned, only to be reinstituted in December 1987. Several Turkish industries--in particular the automobile industry--fear total integration, whereas the EU in the mid-1990s fears the competitive strength of the Turkish textile industry.

As a member of the World Trade Organization (WTO), Turkey is obligated to deal with the reduction of tariff and tariff limitations to members of the organization. Increasingly non-tariff barriers are becoming a means by which foreign trade and investment are restricted as a result of demands, primarily from the domestic business sector, for protection from import competing industries and countries.

Both the tariff and non tariff restrictions will pose a problem to Pier 1. Because Pier 1 imports its goods from different countries in order to provide a sense of uniqueness to its customers, it will need to look into both tariff and non tariff barriers that may present a problem in entering the new market. The challenges are primarily in the areas of Import regulations on permits and licensing, standard labeling of goods and packages, Regulatory Approvals and implementation, economy stability as it relates to Turkey's economy, telecommunications and Ethics & corruption.

Non Tariff Barriers in Turkey that may affect Pier 1's entrant

World Trade Organization is responsible for governing body regulating world trade and foreign investments. Turkey has been a member of WTO since 26 March 1995, and as a result has reduced much of its tariffs as its condition for entry into the WTO, where member countries may still introduce tariffs, but only temporarily and never as part of protectionist measures.

As a result of its 1996 customs union with the European Union (EU), Turkey applies the EU's common external customs tariff to third-country (including the United States) non-agricultural imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries.

Increasingly non-tariff barriers are becoming a more common means by which foreign trade and investment are restricted. Non-tariff barriers are composed of other measures other than tariffs that restrict import or export of products.

Turkey continues to make efforts to stabilize both its political and economic environment in order to make it more attractive to foreign investors. Turkey has made several reforms in the past and continues to do so to strengthen its economy. Below are some of the laws that Turkey has passed in order to increase its FDI (foreign direct investments). Pier 1 needs to look into these to see how it may be impacted.

WTO Issues Trade Policy Review of Turkey

The Trade Policy Review Body of the World Trade Organization (WTO) has recently issued its third Trade Policy Review (TPR) of Turkey. The TPR states that Turkey’s economic reforms could be strengthened by continued structural adjustment, including privatization, and by the improvement of its multilateral commitments, both in goods and services. The report notes that such reforms would enhance Turkey's ability to attract foreign investment and the predictability of its trade regime.

The report notes that since 1998, Turkey has implemented four stabilization programs but they are yet to show full and sustainable effects. The economic situation remains fragile and the country’s vast potential for attracting investment remains largely untapped, in part because of politico-economic instability, high external indebtedness, slow progress in the implementation of its privatization program and restrictions on foreign direct investment. The report also calls for further simplification of the tariff which remains complex, and the extension of the binding commitments to ensure further integration of Turkey into the multilateral trading system.

Turkey's New Regulations on Imports

According to (http://www.traveldocs.com/tr/economy.htm), Turkey's new Foreign Direct Investment Act (Law No. 4875) took effect on June 5, 2003. It replaces legislation that governed foreign direct investment practices in Turkey since 1954 and takes significant steps forward in harmonizing Turkey's legal framework for FDI with international standards. The new FDI law and other reforms resulted at least in part from a study by the Foreign Investment Advisory Service of the World Bank (FIAS) begun in 2001 at the invitation of the Turkish Government. One of the key recommendations of the FIAS was for an improved legal framework for FDI, and the resulting legislation has been characterized by FIAS as "close to best practice."

According to the report that was submitted by Turkey representatives to the Advisory Committee on International Economic Policy in November 2003, the law, and revisions to the Turkish Commercial Code passed separately, make progress by: eliminating legal restrictions on FDI; Assuring national treatment and equal rights and obligations for foreign and domestic investors; Simplifying the steps and procedures required to facilitate foreign investments; Allowing investors freely to transfer profits, dividends, fees and royalties; Prohibiting expropriation and nationalization of foreign investments without prompt, adequate and effective compensation; and removing restrictions on the sectors in which investments can be made.

We can infer that the new laws reflect some encouragement of FDI. However, the new FDI law is not all-encompassing; it leaves open many questions of implementation.

The law, without actual implementation will not remedy all of the problems related to Turkey’s low levels of foreign investment. Because implementation of law takes a while in turkey, real improvement in the climate for FDI will occur only if reforms promised by the new law are put into practice by the Turkish government in an effective manner, and the international investor community perceives that there has been a significant change in the investment environment that represents commitment to a stable policy favoring FDI. This regulation definitely seems attractive; however Pier1 will need to perform extensive research as to the clarity of the regulations as well as how soon it will be actually implemented. Pier 1 will need to develop constant and open communication with both Turkey officials and the Advisory Committee on International Economic Policy to understand the implementation process of the established laws.

Regulatory Approvals

According to 2002 World Bank data, 13 procedures were required to start a business in Turkey, taking 53 days and costing US $1,222. In this area, Turkey compared well in terms of time and cost with Hungary, widely viewed as one of the most successful East European economies in attracting investment (65 days and US $3,048), but poorly in terms of number of procedures (Hungary required only 5). The new FDI law takes steps to address concerns expressed by investors of excessive bureaucracy and uncertain and complicated regulatory and legislative environments: Investors are no longer required to obtain permission or authorization from administrative authorities in order to invest; International investors are free to make direct investments in Turkey and are subject to equal treatment with Turkish investors; Restrictions on changing the shareholder percentages of foreign investors have been eliminated; Amendments made separately to the Turkish Commercial Code reduce the number of steps required for forming companies in Turkey.

Despite the fact that the regulatory approval process in Turkey compares well with that in its peer countries, and the new FDI law contains the means for further improvement, one cannot simply assume that issues concerning regulatory approvals have been laid to rest by the new FDI law. First, the law itself is not self-implementing; the degree and effectiveness of improvements will be determined by the implementing directive in the first instance, and by the practice of each regulatory agency having authority over the process in the final instance. Moreover, transparency of the regulatory approval process will be important in building investor confidence. (http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file738_4801.pdf).

Import Licenses and Other Restrictions

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., photocopiers, ADP equipment, and diesel generators) require licenses, as do distilled spirits. There is the lack of transparency in Turkey's import licensing system, which can result in costly delays, demurrage charges, and other uncertainties that stifle trade for many products. Because most of turkey's imports are agricultural products, many examples refer to the agricultural industry.

For the previous four years, the Ministry of Agriculture and Rural Affairs (MARA), through its quarantine service, has stopped issuing import licenses for rice and corn prior to the harvest. After the harvest these restrictions were lifted. However, in 2004 the Turkish government failed to remove the import restrictions on rice that were levied in late 2003, significantly disrupting rice imports. Though this is not a direct concern for Pier 1 as it relates to agricultural products, however it implies that the clarity of the licensing system in Turkey, regardless of what industry is not very specific nor is it well communicated to the foreign investors. (http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file738_4801.pdf)

Another concern is the restrictive effects of the licensing system, as well as export and consumer subsidies, on Turkey's imports. In concert with its unpredictable licensing system, Turkey has also recently implemented import quota programs for rice and corn. Import quotas, often tied to procurement of domestic crops, tend to fluctuate throughout the marketing year, making it very difficult for commercial traders to plan their import programs.

Turkey is in the process of rewriting its import regulations in order to comply with EU regulations. However, some new regulations do not appear to be fully consistent with those of the EU. For many products, no written standards exist, for example, for red meat and wine imports. Industries have also complained that Turkey applies discriminatory price controls for imported pharmaceuticals. (http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file738_4801.pdf)

Pier 1 needs to get an in-depth understanding of all regulations as it affects not only its industry but the importing and licensing regulation as a whole. Ambiguity of the regulations should be discussed and looked into before proceeding with its expansion into Turkey.

Standards, Testing, Labeling, AND Certification

The Turkish government has a poor track record of notifying WTO members of proposed technical regulations and sanitary requirements, and implementation appears to be arbitrary. Importers report increasing difficulty in obtaining information on sanitary and sanitary certifications. The Turkish government often requires laboratory testing on items not normally subject to testing by trading partners, allegedly without any scientific basis.

The government requires laboratory tests and certification that quality standards are met for the importation of foods, human and veterinary drugs, and medical equipment and appliances intended for use by humans.

U.S. CE-marked products, particularly medical devices, are often detained by Turkish customs authorities for inspection. In some cases, U.S. products apparently have been subject to additional tests, despite their CE marks, while EU CE-marked products gain immediate entry to the Turkish market. Certification of spare parts for automobiles under the Turkish Decree for Standardization in Foreign Trade remains a problem; even though the decree is no longer formally in place, automakers are still subject to several of its provisions.

The Turkey government in compliance with International Standards for Phytosanitary Measures (ISPM), from January 1, 2005 has decided that all wood packaging materials entering Turkey must be:

- Stripped of bark;
- Heat-treated or fumigated with methyl bromide; and
- Marked in accordance with ISPM 15 standards.

If the wooden materials do not comply with these requirements then the cargo will be destroyed, fumigated, heat-treated, or returned to the origin port of loading. (http://www.ukpandi.com/ukpandi/infopool.nsf/HTML/LPBulletin394). Pier 1 needs to conform to this rule and ensure that all its suppliers are aware of the rule in order to avoid any unnecessary destruction or detainment of its products.

Again, some of these examples may not directly relate to Pier 1's industry, however, it reflects the issues that current foreign investors in Turkey face. Because Pier1's products come from a variety of countries, it is important for Pier 1 to find out if those countries are WTO or EU members in order to understand the applicable standards and marking for every product that is imported into Turkey. Pier1 also needs to ensure that such regulations are implemented and discussed with Turkey officials in order to avoid unnecessary detainment of its goods.

Telecommunications Services

State-owned Turk Telecom currently provides voice telephony and most value-added and basic telecommunications services. In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005, and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. In 2000, the Turkish government passed a law unilaterally accelerating the opening of the market for basic telephone services to 2004. A 2001 law provides for liberalization of areas under the Turk Telecom monopoly once the state's share in that company falls below 50 percent; however, the Turkish

Government has not yet issued implementing regulations. These laws also created an independent regulatory body - the Telecommunications Authority (TK) - and made licensing criteria publicly available. U.S. firms complain that the licensing process still lacks transparency and that revenue sharing with Turk Telecom is required where competition is permitted. Due to a well publicized merger and a government seizure in February, 2004, there are now two private GSM cellular operators in Turkey, with a third (Telsim) currently owned by the Turkish Government.

In November 2004, the Privatization Administration announced the tender for a block sale of 55 percent of Turk Telecom. Law 5189 of 2004 lifted the limit on foreign ownership of Turk Telecom. Turkey has offered to bind this accelerated liberalization in the current WTO services negotiation, and fully adopt the WTO Reference Paper on regulatory principles. While a welcome improvement, Turkey has failed to address either in domestic law or in its revised WTO offer the key outstanding market access barrier, the 49 percent foreign equity restriction for this sector. (http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file738_4801.pdf)

Because Pier 1 relies heavily on electronic communications its trading partners, it should look into an effective telecommunication means and work with one of the private companies to implement a reliable communication link. It could also work with other regulatory officials and private business owners to ensure that the appropriate regulation is implemented in order to establish an effective line of communication with its trading partners.

Ethics & Corruption:

Ethical issues and concerns remain a significant issue when organizations look into expanding into foreign markets and the question remains should an international company pay bribes to corrupt government officials to gain access to a foreign company? While some countries have implemented laws that prohibit such acts, there exist others who just simply don't follow those rules are don't have it in place.

"Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large, particularly in government procurement. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree. American companies operating in Turkey have complained about contributions to the community solicited, with varying degrees of pressure, by municipal or local authorities. Parliament continues to probe corruption allegations involving senior officials in previous governments, particularly in connection with energy projects. Turkey ratified the OECD anti-bribery convention, and passed implementing legislation providing that bribes of foreign officials, as well as domestic, are illegal and not tax deductible". (http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file738_4801.pdf)

The Foreign Corrupt Practice Act prohibits United State companies from making "corrupt" payments to foreign officials although there are some exceptions to the rule, it is generally a criminal offense to bribe foreign official.

According to a World Bank study, 62% of foreign-invested enterprises report that an illicit payment is required to obtain business licenses and permits. This will definitely impact Pier1's ethical standards because while such payments may be treated as a cost of doing business by local firms, for Pier 1, the need to make such payments may be a serious impediment to establishment of a business. (http://www.wto.org/english/tratop_e/tpr_e/tp83_e.htm.)

The OECD Working Group on Bribery report evaluates whether the legal texts through which Turkey has implemented the Anti-Bribery Convention meet the standard set by the Convention. The report also highlights actions to implement the 1997 Revised Recommendation. The Working Group found that overall Turkish implementing legislation conforms to the standards under the Convention. But concerns remain regarding simplification and clarification of elements of the foreign bribery offence, applicable sanctions and tax deductibility. This is definitely an area of concern for Pier 1. Pier 1 would need to adopt and disseminate a code of conduct policy of zero tolerance of bribes and corruption, and implement a whistle-blower protection program so that people can be encouraged to report such unethical conduct.

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Dispute Resolution In Turkey - by Daniel Landry

Executive Summary

The dispute resolution process in Turkey is comparable to other nations, such as Hungary and the United States. Unfortunately, it still suffers from past years of abuse. Most notably, Turkey has a history of failing to protect the property rights of foreign investors. This is due in large part to the fact that the legal system in Turkey has a great deal of autonomy and, therefore, is difficult to change. Turkey did pass a law in 2003 aimed at reforming many of the problems that foreign investors faced. The most significant changes were the recognition of international arbitration and expanded protection for property rights. Turkey now has representation in the International Chamber of Commerce and acknowledges rulings made by the International Court of Arbitration. Despite all these changes and progress, Turkey is still a somewhat risky investment option for Pier 1 Imports because it is still in the process of reform.

Introduction

Turkey is a country in the middle of an important national reform. The country is trying to overcome years of corruption and an international perception that foreign investors had little protection. The biggest step in this reform was the passage of the Foreign Direct Investment Act of 2003 (Law No. 4875). This law enacted sweeping changes, establishing a formal and internationally recognized dispute resolution process, bringing objectivity, fairness, and property protection to foreign investors, and recognizing international arbitration, making it much safer for firms to invest in Turkey. These are important factors for Pier 1 Imports to be aware of while considering expanding retail investment into Turkey.

Legal System

The legal system in Turkey is independent from other national branches of government and is overseen by a high council of judges and public prosecutors (Government and Politics, 2005). Turkey's judicial system had a historical reputation of favoring local interests over foreign litigants, which made Turkish laws and regulations governing commercial activity ambiguous (ACIEP, 2003). This condition made it difficult to invest with confidence in business operations in Turkey. It also brings into question the efficiency, neutrality, objectivity, enforceability, fairness, recognition, and property protection of the Turkish legal system.

The Foreign Direct Investment Act of 2003 made several key changes to the legal process regarding foreign investors in Turkey. The law eliminates legal restrictions on foreign direct investment, assures national treatment and equal rights and obligations for foreign and domestic investors, simplifies the steps and procedures required to facilitate foreign investments, allows investors to freely transfer profits, dividends, fees, and royalties, prohibits expropriation and nationalization of foreign investments without prompt, adequate, and effective compensation, provides that investors may seek national or international arbitration, and removes restrictions on the sectors in which investments can be made (ACIEP, 2003). This language clarifies the laws and regulations that oversee commercial activity, making Turkey a safer investment. The law also assures the efficiency, neutrality and objectivity of the legal system by guaranteeing an investor the opportunity to have disputes heard by an unbiased, international body such as the International Chamber of Commerce (ICC).

By assuring the national treatment and equal rights and obligations for foreign and domestic investors, the law strengthens the enforceability and fairness of Turkish court findings as well as ICC findings and guarantees the reciprocity and recognition of judgments. The law also prohibits expropriation and nationalization of foreign investments without prompt, adequate, and effective compensation, which essentially protects the property rights of investors (ACIEP, 2003 & Property Rights, 2005). In light of these considerable changes, the legal atmosphere in Turkey is slowly becoming more attractive and secure for foreign investors. This is reassuring, given the relatively unstable history of the legal system in Turkey.

Despite these positive changes, there are several drawbacks to the current system. Unfortunately, the law does little to strengthen the due process of the legal system. In fact, sixty-two percent of foreign invested companies state that they were required to make illicit payments to acquire a business license and permit (ACIEP, 2003). In addition, this law is only two years old and many judges and prosecutors are still in place from the old system, so there is still reason to proceed with caution. The law also fails to address non-investment commercial disputes between a foreign investor and a domestic Turkish company (ACIEP, 2003). Due to the above drawbacks, partnering with a local business would be a good strategy for Pier 1 Imports to follow, should the company decide to make an initial entrance into the Turkish market.

Dispute Resolution in Turkey

In Turkey dispute resolution involves eighteen procedures, taking a minimum of one hundred five days at a cost of about five percent of Gross National Income per capita

(ACIEP, 2003). In comparison, Hungary requires seventeen procedures, taking three hundred sixty-five days at a cost of about five percent of Gross National Income per capita and the U.S. requires seventeen procedures, taking one hundred sixty-three days and costing less that half of one percent of Gross National Income per capita (ACIEP, 2003). Compared to Hungary and the U.S., Turkey appears to have an acceptable dispute resolution procedure.

Despite the comparability of Turkey to Hungary and the U.S., there is still an international perception that Turkish courts have not recognized international arbitration decisions. The Turkish government, by implementing the Foreign Direct Investment Act of 2003 (Law No. 4875), has begun to build more confidence in the Turkish dispute resolution process (ACIEP, 2003). The new law guarantees that investors may seek national or international arbitration and that Turkish courts will abide by their findings (ACIEP, 2003). This measure will go a long way to rebuilding the trust and confidence of foreign investors.

Confidence and trust are not earned quickly in international business, however. The rebuilding process will be slow and only after several international businesses go through the Turkish dispute resolution process and are treated fairly and predictably, will more investors be attracted to Turkey. In the mean-time, Turkey will remain a riskier investment market because of the perception that the process of dispute resolution is not fair or predictable.

Arbitration in Turkey

The International Chamber of Commerce outlines rules for arbitration that member nations adopt and follow to ensure fair international trade practices (ICC Website, 2005). Turkey is represented on the ICC Board of Directors by Rona Yircali (ICC Website, 2005) and on the ICC finance committee by Guler Manisali Darman (ICC Website, 2005). Such representation lets the world know that Turkey takes its obligation to fair international trade seriously and that companies that invest in Turkey can expect to operate in and will be protected under internationally accepted business practices and policies. The ICC has established policies in the areas of anti-corruption, arbitration, banking technique and practice, business in society, commercial law and practice, competition, customs and trade regulations, E-business, taxation, and trade and investment policy to name a few (ICC Website, 2005). The ICC also operates an International Court of Arbitration to resolve international disputes (ICC Website, 2005). This court has a great deal of experience, as it has resolved more than 13,500 disputes since its inception in 1923 (ICC Website, 2005). Turkey's membership in the ICC will help build investor confidence and attract new foreign investment. This active role in the ICC will help reverse the perceptions outlined above regarding Turkish courts.

Pier 1 Imports can expect, should a conflict or dispute arise, that they will be able to seek guidance and a resolution through the ICC. Turkey is committed to the ICC, participates in its' governance, and abides by its' rulings. Turkey's Foreign Direct Investment Act of 2003 (Law No. 4875) stipulates that local and national Turkish courts must abide by findings of the ICC (ACIEP, 2003).

Conclusion

Turkey offers many attractive features to foreign investors, such as a large internal market, a skilled and cost-effective workforce, an excellent location, a customs union with the European Union, and excellent regional trading relationships (ACIEP, 2003). There are also several drawbacks that can not be overlooked, however. Turkey has only recently passed a law making it more secure and lucrative for foreign investment, and consequently, the government is still in the process of implementing the law. Turkey is in the midst of reforming the international perception of its legal system which has specific implications for dispute resolution. Turkey is headed in the right direction, but there are still dispute resolution risks inherent to investing in Turkey that Pier 1 Imports should consider carefully.

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Tariff Restrictions in South Africa – by Khang Vanky

Executive Summary

Global Elements needs to analyze the tariff restrictions that exist in order to import unique goods into the South African market. Pier One Imports will face tariffs that will end up increasing the cost of products to South African consumers. These tariff restrictions include Value-Added taxes and anti-dumping duties. The South African Customs Union is a cooperative effort between five countries in Africa that promote free trade between members and provides ongoing negotiations with other countries within the World Trade Organization.

It is the recommendation from Global Elements that Pier One Imports understands which regions of the world have free trade agreements with South Africa in order to avoid the high cost of tariffs that they would impose otherwise.

South Africa – Tariff Barriers

South Africa's economy has struggled for decades, with the majority of its citizens living below the poverty line. The country lifted strict tariff restrictions in 1994 in order to create more jobs and to improve the economy (Katzenellenbogen, 2004). The government's goal was to create growth by allowing more countries to invest within South Africa. The outcome was more of the financing of mergers and acquisitions by foreign direct investors, rather than the creation of new businesses. Unfortunately, this did not create the new job opportunities that the South African government had hoped.

According to data provided by The World Bank Group, the annual percentage of gross domestic product was 3.7 percent in 2004 versus 4.2 percent in 2002. The same source states that foreign direct investments declined in 2004 ($819.6 million) from 2002 (968.8 million). The fact that there are few new foreign investments is most likely due to the country's high crime rate, the AIDS epidemic, and the small market of middle class and elite high class consumers. These reasons have swayed new, job-creating investments from foreign businesses.

According to the 2005 edition of the Political Risk Yearbook for South Africa, even though tariff reductions have been implemented, the tariff schedule is still complex. This causes a lot of hesitations for business that want to import into South Africa. However under the Uruguay Round, South Africa has simplified its prior 80 tariff level lines to six levels (MBendi Information Services, 2000). These six levels are 0 percent, 5 percent, 10 percent, 15 percent, 20 percent and 30 percent.

South African Customs Union

The Southern African Customs Union (SACU) is composed of five South African countries, which are South Africa, Lesotho, Namibia, Botswana and Swasiland. The member countries have an agreement to trade amongst one another tariff-free. However they charge tariffs for external countries (MBendi Information Services, 2000).

Negotiations on a trade agreement between the US and the SACU are pending, which will allow the tariff free exports of nearly 6,000 goods in Africa (Economist, 2004). Tariffs will always be a hindrance to free trade, yet the biggest bottle neck to that is the politics that are involved in trade agreements. The Southern Africa Monitor (2005) states that negotiations between the US and South Africa has stalled because there are different goals between both parties. The SACU is focused on trades and tariffs, while the US insists on discussing labor laws and environmental protection. The same source states that the US is concerned over South Africa's quota that protects black businesses owners. The US feels that this is counter-productive to a fair and competitive market environment and free trade. Indeed if the agreements were judged off of a set quota that was based on minority status, this will give Pier One a limited opportunity to market their unique furnishings that minority-owned companies may not provide to the South African market.

Value Added Tax

A form of duty that South Africa imposes is the Value Added Tax (VAT). The rate as of April 1993 is 14 percent. The group that ultimately pays for this form of duty is the consumer. The vendor would have to initially pay for the VAT, but then passes on this cost to the consumers that purchase the goods. In this case, Pier One Imports in South Africa will purchase vases imported into the country and pay 14 percent more for the VAT. Then the South African citizens will pay 14 percent more for these imported goods, than they would for a domestic good. If during a certain tax period, the vendors do not completely cover its input of the VAT, then they are eligible for a refund of such differences (MBendi Information Services, 2000).

Anti-Dumping Duties

Another tax that is imposed on imported goods is anti-dumping duties. This form of duty is defined as taxes on imported goods from a specific country for the main purpose to reduce the potential harm when a foreign country “dumps” into the imported country. In the trading industry, the term “dump” occurs when for example the US imports widgets into South Africa at a price that is lower than the value it would be in the US. South Africa would therefore levy anti-dumping duties to these widgets. Anti-dumping duties exist for the main purpose of protecting the local (South African) industry from foreign competitors.

South Africa’s Anti-Dumping system allows local vendors to file a complaint if they believe that imports pose a hazard to their survival in the industry. Brink (2005) state that there are many fallacies in the anti-dumping system; among these are no defined processes and confidentiality in the Commissions' decisions on complaints. A specific situation is that the Commission does not adhere to their decisions, such as the case where a future decision would contradict one that had precedence. This could potentially cause uncertainty should Pier One be involved in a settlement case and be perceived as unfair.

Pier 1 Imports Import Methods

Since Pier One Imports buys their merchandise in over 50 countries, the selection of the products in South Africa stores will vary depending on South Africa's trade agreement with each country Pier One purchases and imports into the country. The SACU defines the value of an imported good based on the FOB price, which is defined as the price where the goods were exported. The transactional value is the price paid. Most imported goods are taxed based on an ad valorem, which is defined as a fixed percentage of the goods' value at the time of import (International Trade Theory and Policy Lecture, 2003).

A regulation that Pier One would have to take advantage of is the tax deduction on Value-Added Tax, however they must be registered vendors (Country Commerce, 2005). Pier One is also allowed to defer duties and Value-Added Tax provided that the imported goods are placed in a warehouse that has been bonded. Duties are then made when they are ready to be shipped en route to the stores and sold to the South African market.

The most logical method for Global Elements to reduce the cost of tariffs would be to concentrate importing products from countries that the US has bilateral trade agreements with. South Africa currently has set a free trade agreement with the Europe

Union. South Africa also signed a free trade agreement with India in 1994 and China in 1996. Other countries that have tariff free trade status with South Africa are Malawi, Mozambique and Zimbabwe (MBendi Information Services, 2000).

Conclusion

South Africa has made significant efforts to stimulate its economy by lifting import tariffs to major countries around the world. The SACU is also keen on protecting its fragile domestic economy by implementing VAT and Anti-dumping duties on imports for selected countries. Hill (2005) describes South Africa's stance in these trade-related situations as factor endowment, which is a country's current state as it relates to labor output. The country's high crime and low literacy rates greatly affect its potential to compete in the international market. The government should stay focus on advancement in education and skilled labor. South Africa must carefully balance the pendulum between imports, exports, and the political and economic challenges that affect its citizens.

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Non-tariff Barriers in South Africa – by Caroline Adams

According to EIU ViewsWire, South Africa has a relatively open economy, with foreign trade (imports plus exports) accounting for more than 50 percent of gross domestic product. Its largest trading partners are the European Union (EU), the United States and Japan. The free-trade agreement with the EU signed in 1999 went into effect in January 2000, and will enable South Africa to open 86 percent of its imports from the EU after 12 years. The African, Caribbean and Pacific states (ACP) and the EU are aiming for a free-trade area compatible with the World Trade Organization by 2018-20.

Against this backdrop, we examined some of the non-tariff barriers and challenges that Pier 1 will face as it prepares to establish a presence in South Africa. The challenges are primarily in the areas of labor, fraud and corruption, import permits, marking of goods and packages, foreign exchange, and telecommunications.

Labor

Labor-related issues will undoubtedly constitute the most severe challenge for Pier 1, for three reasons: (i) the rampant prevalence of HIV/AIDS, its impact on the workforce and the hiring company; (ii) labor regulations; and (iii) the government's Black Economic Empowerment (BEE) policy.

South Africa has the highest number of HIV/AIDS infected people of any country in the world, with 11 percent of the population infected, and projected to increase to 20 percent in the near future. The most infected groups are unskilled workers and middle managers. The best advice for companies doing business in South Africa is to accept corporate responsibility for infected workers (Van Wyck and Custy, 2004). Pier 1 should explore best practices of comparable firms, such as those that have successfully implemented antiretroviral programs for their employees, and developed prevention and medication programs. Pier 1 management needs to master the Medical Schemes Act in order to avoid discrimination against workers that are HIV-negative, but suffer from other serious illnesses and have no medical insurance. All employees need to be registered for unemployment insurance (UIF), workers compensation (WC), and in certain industries to the relevant Industrial Council which is a medical aid scheme (Van Wyck). Many multinational companies established in South Africa spend about 10 percent to15 percent of their budgets on non-market issues such as HIV/AIDS and human rights, adding about 5 percent to operating costs (Grobler et al). Pier 1 needs to factor these costs into its operating projections and sales prices, and prepare to adhere to the multiple labor regulations and bureaucratic requirements.. More importantly, it needs to be sensitive to a serious and widespread health issue that it does not contend with (to such a degree) in the U.S. workplace.

South Africa's labor market regulations are very rigid, making it hard to employ people. According to The World Bank, South Africa is three times worse than East Asian countries in terms of ease of firing and hiring. South Africa's president, Thabo Mbeki, has admitted that his country's labor laws might have had "unintended consequences" (The Economist, May 2005). Businesses have complained for a long time about the over-regulation of labor (EIU ViewsWire). The country has a complicated minimum wage structure which has been growing faster than worker productivity, and firing employees is so cumbersome that companies try to minimize hiring. Centralized collective bargaining allows large companies and trade unions to agree on working and pay conditions, and then impose them on smaller first in the same industry. This impacts and burdens the small and medium businesses, many of which try to ignore them. The rigid labor laws which push people out of formal employment contributed to the increase in labor brokers, short-term contracts and black-market labor. However, the trade unions are resisting change (van Wyck). The Department of Labor is looking into the labor laws and their effect on job creation, which in turn affects small business and the appeal to foreign investors. Without a labor market reform the projected rate of growth of the economy may not materialize. In July 2005, President Mbeki appointed a team to find a recipe to quicken GDP growth and to cut unemployment (EIU ViewWire). Pier 1 needs to familiarize itself with the labor regulations by hiring a legal firm specializing in this issue, to ensure compliance with and advice on how to minimize its labor liabilities.

The government's Black Economic Empowerment (BEE) policy addresses the issues of economic growth and populist demands for redistribution of wealth. The BEE sets targeted quotas for black empowerment in businesses and industry sectors within a ten-year period. The quotas relate to equity ownership, employment equity including increased managerial control, affirmative procurement, and skills development. This policy will have to be factored into Pier 1's search for capable and experienced employees.

According to Nkomo (2003), to show how they are addressing some of the above issues, every company should report at least annually, on the nature and the extent of its social transformation, ethical, safety, health and environmental management policies and practices. Companies should disclose information on: (a) adoption of appropriate HIV/AIDS strategy plan and policies to address and manage the potential impact of

HIV/AIDS on the company; (b) development of formal procurement policies that take into account black economic empowerment; and (c) development and implementation of a set of standards and practices based on a clearly articulated code of ethics.

Fraud and Corruption

The business community in South Africa is vulnerable to crimes including fraud, extortion, theft of inventory, and the personal safety of employees (robberies, assault) (van Wyk, Custy). This high level of crime deters many potential investors. It poses a problem particularly for a company such as Pier 1 which has its shelves stocked with small items that would be relatively easy to be stolen either by customers or by employees. The company, therefore, would need to provide physical and electronic security at the workplace, hire a trusted security firm, screen employees and train them on in-store crime awareness.

Corruption in South Africa is rampant, and needs to be dealt with through measures such as improved parliamentary oversight of budgetary spending, ensuring adherence to WTO procurement rules, and training in business ethics (van Wyk et al). Pier 1 would need to adopt and disseminate a policy of no tolerance of bribes and corruption, and take action against any employee who commits an ethical crime, while protecting whistleblowers. Employees should be trained to identify and encouraged to report bribes and theft.

The fraud and corruption problems exacerbate an already difficult labor problem for firms establishing a presence in South Africa. The HIV/AIDS issue, strict labor laws and the rampant theft will make it challenging for Pier 1 to retain capable, trustworthy, healthy employees who are motivated to do their job well for a long time. High turnover is something that Pier 1 may need to be prepared to contend with, at least initially.

Import Permits

Since the mid-1990s, as it has opened up its economy to increase growth, South Africa's policy of import substitution has been liberalized considerably. It started phasing out both export and import controls, with the import permit requirements used mainly to collect information rather than to limit trade. Import licenses and access to foreign exchange are fairly easy to obtain, because under its recent policy of minimal intervention, the government has reduced the list of restricted goods requiring import permits. Where required, permits are obtainable from the Director of Import and Export, and must be obtained prior to the date of shipment of the goods. Failure to produce a permit could result in penalties. The list of goods requiring import permits is issued each year in the annual Import Control Program; permits are only issued to registered importers. Based on the current list, it is unlikely that any of the household goods to be imported by Pier 1 would require a permit. However, because Pier 1 has such a wide array of household products, and it renovates its product mix continuously, it would need to be vigilant to changes to the authorized list.

The South African International Trade Administration Commission (ITAC) came into operation in June 2003 (EIU ViewsWire, 2005). Its responsibility is to establish an efficient and effective system for the administration of trade, including: (i) The right to foreign exchange which is automatically granted if an import permit is granted; and (ii) Mandatory inspection of imported goods. This mandatory inspection requirement could slow down the import process for Pier 1, which will be bringing goods from multiple countries, many of which are typically not import-export partners for South Africa.

Letters of Credit (LC) are the customary way to finance imports into South Africa. All credits issued are subject to exchange control regulations. South African exchange control regulations stipulate that payment of imports can only be made by authorized banks against submission of documentary proof, stamped by South African customs, that the goods were imported. An exception is when South African banks have opened documentary import letters of credit in favor of foreign exporters. Pier 1 should take this route, and open a bank account with an authorized and trustworthy bank with a solid reputation and financial standing.

Marking of Goods and Packages

According to Van Wyck, Dahmer, Custy, all goods shipped to South Africa must conform to the metric International System of Limits. Packages should carry the consignee's mark, including port mark, and they should be numbered unless the shipment is such that the contents of the packages can be readily identified.. Special marking regulations are required for textile goods containing sheep's wool. Labels must be in English or Afrikaans, and some items may require both languages. Packaging made from natural materials and fibers must be accompanied by an official certificate stating that the material has been fumigated. Given the types of products coming from so many countries, these are extremely important requirements for Pier 1 to bear in mind. The company needs to find out which items would require both languages on the packages, and pay attention to the regulation on the sheep's wool content of textiles, since this may well apply to some imports.

Foreign Exchange

All traders in South Africa are subject to exchange control approval, administered by the South African Reserve Bank (SARB) through commercial banks that are authorized to deal in foreign exchange. All international commercial transactions must be accounted for through these authorized foreign exchange dealers.

According to EIU the payment process for foreign-trade liabilities is not complex, but is slow. Remittances of foreign exchange (for example for Pier 1 to pay its vendors abroad) may be made only through authorized foreign-exchange dealers. Requests for foreign currency must be accompanied by import invoices and import permits as necessary. Bills of lading (proving that goods have arrived in South Africa) are required to support requests for most large foreign payments. Because Pier 1 will be dealing with many partner countries from whom it purchases its merchandise, the pace of the payment process could result in delays, which in turn could cause vendors to delay shipments. Pier 1 will need to negotiate some type of blanket import permit for the majority of its goods and the largest supplier countries, to see if that expedites the foreign payments it will need to make for its products.

Foreign companies may freely invest in South African shares, bonds, money-market instruments and other portfolio investments. Profits and dividends declared from current earned profits may be remitted overseas unless the company's local borrowings outstanding exceed the borrowing formula of the South African Reserve Bank. Royalties and fees arising from the licensing of local firms may be remitted freely if the agreement existed before May 8, 1958. Otherwise, licensing and know-how agreements require the approval of the Department of Trade and Industry and the South African Reserve Bank. Once these clearances have been obtained, payments of royalties and fees present no problems (EIU). There are no apparent barriers for Pier 1 in the area of remittances.

Telecommunications

Another challenge for any business trying to operate in South Africa is the price of telecommunications. Broadband internet services are expensive. Telkom, South Africa's biggest telecommunications company, was privatized in 1997 with a monopoly over fixed lines. International calls have become cheaper, but the cost of local calls increased by over 25 percent each year until 2003. Through new legislation, competition has finally been introduced, in recognition of the fact that high-priced telecommunications are hindering investment and growth. An independent regulator has imposed a cap on Telkom price increases, but the company still retains its monopoly on undersea cables transporting data and voice to the outside world. This will pose another cost obstacle for Pier 1; as an import firm it will rely very heavy on electronic communications with headquarters in the U.S. and its trading partners throughout the world., to view merchandise virtually, to place and track orders. It should therefore work with other businesses to put appropriate pressure on government agencies to address the Telkom monopoly.

Conclusion

Pier 1 will face several non-tariff barriers as it prepares to establish itself in South Africa, but they are all surmountable and should enable to company to sell its products with an acceptable profit margin. It will need to assume corporate social responsibilities, and should partner with other organizations to address head-on the HIV/AIDS and corruption issues, not only to safeguard the sustainability of Pier 1 in South Africa, but in order to contribute to the growth of this dynamic country.

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Dispute Resolution In South Africa – by Corey Mcdougle

Executive Summary

As stated by Grant (1991), assessing the political environment in which a firm will potentially operate is a critical component of any business decision. The laws and regulations passed by any level of government can affect the success of a firm's ability to conduct its operations in the host country. To that end, it is necessary for Team Global Elements to analyze the legal structure of The Republic of South Africa in its attempt to expand the operations of Pier 1 Imports to that country. South Africa currently utilizes the English common law system and actively supports the use of arbitration and dispute resolution through its involvement with the ICC, AFSA, and the NEDLAC. Despite its transitional issues due to apartheid, South Africa is making a great deal to progress in its pursuit of global business activity in the face of a number of challenges to include racial and financial disparities. Pier 1 Imports will be lucky in that South Africa has a number of similarities to the US legal system.

Background

On June 21, 2005 in a speech to the members of the 4th Congress of the World Chambers Federation, South African President Thabo Mbeki quoted a portion of Thomas Friedman's "The World is Flat" to describe the varying degree of advancement and interdependence (cultural, economic, and political) of the world's many nations. In reference to Africa, he stated, "What if regions of the world were like the neighborhoods of a city? What would the world look like? I'd describe it like this: Africa, sadly, is that part of town where the businesses are boarded up, life expectancy is declining, and the only new buildings are health care clinics." (Friedman, 2005) This statement adequately describes the challenges that face South Africa including the need to create vibrant diversified economies, consolidating the country's multi-party democracies, instilling good governance and respect for human rights, while ensuring higher, consistent rates of economic growth.

While South Africa has by far the most developed free market economy in Africa (it represents 40 percent of all industrial output and 25 percent of the gross domestic product), its society remains deeply divided and its government faces huge socio-economic challenges in its efforts to reverse the massive inequalities due to four decades of apartheid (Werksmans, 2003). Roughly 50 percent of the population is unemployed with marked differences in classification: "a small white population (less than 25 percent) with living standards similar to that of Spain" and a "chronically underdeveloped three quarters of the population that is black with a standard of living similar to that of Congo-Brazzaville" (Mbeki, 2004). As discussed by the Centre for Conflict Resolution (2004), the economy of South Africa is experiencing continued jobless growth in many industries due, partly, to the state having a serious lack of governance capacity. The economy is still largely controlled by its white minority population and the government's "neo-liberal" economic policies and focus on foreign investment have also been criticized as being ineffective in creating jobs.

Due to the previously stated challenges, South Africa is obviously in the middle of a transitional phase as it attempts to strengthen its democratic political system that was introduced in 1994 at the end of apartheid. A new Constitution which includes a bill of rights entrenching basic human rights and the protection of property rights was instituted in February 1997. A benefit to Pier 1 Imports' expansion efforts will be that despite the aforementioned challenges, South Africa's financial, commercial, and industrial practices (to include regulatory law) should prove very familiar to investors of the United States.

Although free enterprise is the norm, there are a number of important economic sectors (i.e. transport, telecommunications, electricity, and water) that continue to be wholly or partly government-owned and controlled. Fortunately, the government (to include the legal system) has committed to commercializing, restructuring, and privatizing a number of these sectors. (Werkmans, 2003)

Relationship of the Government and Business

The government is committed to providing facilities and opportunities to the communities that were disadvantaged by the apartheid system, and to enabling those communities to share equitably in the resources of the country and its global economic activity. The government's Macroeconomic Strategy for Growth, Employment, and Redistribution is based on promoting the free market and financial and fiscal discipline, and aims at economic growth, job creation, and the development and distribution of basic services to all South Africans. Additionally, the National Economic Development and Labour Council (NEDLAC) facilitates discussions to reach a consensus between the government, organized business (both local and foreign), organized labor, and organized community groups on various issues of social and economic policy (Werkmans, 2003).

Business organizations like the Chamber of Mines, The South African Chamber of Business (SACOB), the Black Business Council, the National African Federated Chamber of Commerce (NAFCOC), the Afrikaanse Handelsinstituut (AHI), the Foundation for African Business and Consumer Services (FABCOS), the South African Foundation and foreign chambers of commerce in South Africa regularly liaise with the government and comment on draft business-related legislation. Currently, the SACOB, AHI, and NAFCOC are undergoing negotiations to unify their missions to better represent global and local business interests (Werksmans, 2003). Additionally, South

Africa is a founder member of the World Trade Organization (WTO) and is amending its tariff structure to match the WTO rules.

Also, South Africa has become a significant player on the global political stage with involvement in the IMF, World Bank, and the United Nations. South Africa's foreign policy is to seek to prevent conflicts and promote the peaceful resolution (to include the use of arbitration) of disputes, promote democratization, disarmament and respect for human rights, and sustainable development. According to the State Department, the South Africa has established diplomatic relations with 164 countries while participating in more than 70 international agencies.

The South African Legal System

South African law consists of the common law—previous decisions of the superior courts and rules established by English-Roman-Dutch authorities of the country's prior rulers—and statutory law—acts of the national and provincial legislatures and governmental regulations. As stated by Grant (1991), "Legal scholars show that the commercial legal systems (for example, company security, bankruptcy, and contract laws) of most countries did not indigenously develop but rather was transplanted from one of several legal origins." South Africa is no different as it received its legal foundation through colonization and conquest. The law is not codified like English Common Law and must be sought in court decisions and individual statutes. While some of its law is contained in legislative enactments, much of South African law is based on common law sources which include case law and the decisions of the aforementioned Roman-Dutch jurists (Werksmans, 2003). Many view the legal system as a truly hybrid system with many legal doctrines and the arrangement of the law in general traced to a civilian heritage and court procedures of the common law tradition with adversarial trial format, detailed case reports, and adherence to precedent. This is of importance to Pier 1 Imports in that the US legal system, comparatively, rests upon the same traditional legal principles found in English Common Law. Grant (1991) asks, “Why is the English common law system more protective of investors than the French civil law system?” This is due to the state historically playing a more active role in regulating economic activities and being more protective of property rights in common law countries. Therefore, as time progressed, English common law became more protective of property owners, and over time investors.

As previously stated, the Constitution of the Republic of South Africa has been the supreme law since 1997, thus making the country a constitutional state with a supreme constitution and a Bill of Rights. Like the US Constitution, the South African Constitution Act 108 of 1996, with elements of federalism, provides for the separation of the government into three branches—legislative, executive, and judicial. The nine provinces may pass laws on certain matters, however, the national legislature retains overarching legislative power and may override provincial legislation in the event of a conflict. The Constitutional Court has jurisdiction throughout South Africa as a court of final instance over all matters related to the interpretation, protection, and enforcement of the provisions of the Constitution. Commercial matters involving significant monetary value are heard in a High Court’s Commercial Court. The Commercial Court’s judges have expertise in commercial matters and special rules and procedures are available to facilitate and expedite the handing down of decisions. (Werksmans, 2003)

Recently, a number of acts have been instituted that will be of importance to the established corporate governance of foreign businesses like Pier 1 Imports who look to conduct business in South Africa. These include:

- The Promotion of Access to Information Act which makes it possible for individuals to obtain certain information or records in the possession or under the control of a private body (like a company) which is similar to the US's Freedom of Information Act. Additionally, this act requires private bodies to prepare manuals to facilitate access to that company's information by 31 August 2005 (Werksmans, 2003). Fortunately, Pier 1 is able to meet this requirement with the publishing of its Annual Report.
- The Promotion of Administrative Justice Act sets provisions to ensure that everyone has a right to reasonable and procedurally fair administrative action. For Pier 1 Imports, this means that the company will need to ensure that its Human Resources division provides detailed guidance in compliance with this act so that managers from the corporate down to the store levels are capable of giving adequate, written reasons for administrative actions.
- The Electronic Communications and Transactions Act provides legal certainty regarding electronic communications and transactions and to develop a secure environment for consumers and businesses to conduct business transactions. For Pier 1 Imports, this means that the company will need to ensure business practices that make provisions for legal recognition for electronic signatures (credit card payments are a perfect example) and various consumer protection provisions (i.e. cooling off periods after the receipt of goods ordered electronically).
- The Protected Disclosures Act aims to promote the eradication of criminal conduct in public and private organizations by protecting whistle blowers. This act makes it possible for Pier 1 Import employees to be protected in the instance

that they feel compelled to disclose information publicly about unlawful or irregular conduct on the part of the company's management or other employees.

- The King Code on Corporate Governance for South Africa is not prescriptive, but it does provide recommended principles and practices that should be generally accepted and followed by corporate entities to promote transparent, accountable, and responsible management. This is similar to the US Sarbanes-Oxley Act in that it outlines standard reporting procedures and the US GAAP that are used to shape general corporate governance. This will force Pier 1 Imports to ensure that it not only adheres to US guidance, but also seamlessly adheres to the guidance of South Africa.

Arbitration and Dispute Resolution

According to Griffin & Pustay (2003), the resolution of international disputes is an important dimension of the legal structure of any country. Due to the high costs involved with international litigation, many firms often attempt to resolve disputes through dispute resolution techniques like arbitration. Fortunately for Pier 1 Imports, arbitration, mediation, and other alternative dispute resolution procedures are widely used as an alternative to the High Courts. As discussed by Werksmans (2003), a non-governmental body called the Arbitration Foundation of Southern Africa (AFSA) is often used particularly to settle commercial disputes in South Africa. Also, arbitration clauses are often incorporated in commercial contracts. According to the International Court of Arbitration under the International Chamber of Commerce (ICC), the African continent is becoming increasingly more fertile for arbitration following recent national and international initiatives like the aforementioned AFSA. A major point is South Africa's membership to the United Nations Convention on the Recognition and Enforcement of

Foreign Arbitral Awards along with 26 other African states. In 2000, 89, or 6.4 percent the ICC's cases were of African origin.

According to the South African Law Commission (1997), there has been a wide perception that the formal system of justice in the country before the commencement of the present Constitution suffered from the effective exclusion of most South Africans from the forming and execution of legislation. For many of the disenfranchised immediately after apartheid, the Western legal system was seen to be superimposed on an already intuitive, indigenous legal system. The law was largely perceived by blacks (the majority of the population with the least amount of education or finances) to be oppressive. Therefore, the goals of dispute resolution in South Africa can be described as follows:

- To relieve court congestion, as well as prevent undue cost and delay
- To enhance community involvement in the dispute resolution process
- To facilitate access to justice
- To provide more effective dispute resolution

The new Constitution of South Africa, with its Bill of Rights, is based on the principle that all people are equal before the law (just like the US). However, the country is undergoing a similar issue that the US underwent when it declared segregation unconstitutional—that the equality will be more of a facade than a reality if people are still excluded because, due to past injustices like apartheid, slavery, and segregation, they are not afforded the economic, social or cultural ability to make use of those rights or to meaningfully participate in the administration of justice. As discussed by the SALC (1997), "it is however also true that, quite apart from the problems experienced by those previously disenfranchised, or otherwise powerless, the justice system in South Africa is under constant scrutiny and criticism from various interest groups (business, labour, religious groups, cultural groups or community groups) continually looking for more speedy, more effective, less cumbersome, less expensive and often less conflicting ways of resolving disputes and problems." As I stated with my example of the US post-segregation, this is the case in most advanced countries even those with very sophisticated judicial systems.

Interestingly, modern developed Western countries have become much more appreciative of justice through alternative dispute resolution techniques in the last twenty years, this form of justice has always been part of African traditions where harmonizing solutions were seen to be to the advantage of all. According to the SALC (1997), traditional forms of dispute resolution have long existed in rural South Africa. Unofficial dispute resolution has furthermore been the norm in metropolitan areas for as long as these areas have existed. Furthermore, commercial arbitration has long been part of the dispute resolution framework in South Africa and in other Western countries. It is well established in South Africa. The Alternative Dispute Resolution Association of South Africa (ADRASA) and the aforementioned AFSA have been significant attempts to institutionalize private commercial arbitration and mediation.

According to the Association of Arbitrators, arbitration in South Africa is regulated by Arbitration Act 42 of 1965—concerning the arbitration procedure and the relationship between arbitration and the courts of law—and by the Act 40 of 1977 which governs the recognition and enforcement of foreign arbitral awards. Accordingly, the South African Law Commission has prepared an International Arbitration Act which adopts for international arbitrations in South Africa the 1985 UNCITRAL Model Law on Arbitration, reinforces Act 40 of 1977 with the implementation of the 1958 United

Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and provides implementation legislation for the 1965 Washington Convention for Settlement of Disputes Between States and Nationals of Other States (the so-called ICSID Convention). This legislation was enacted sometime in 1999. Additionally, in reference to international guidance, the aforementioned International Court of Arbitration of the International Chamber of Commerce is represented in South Africa via ICC SA.

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