POLAND

In 1996, the U.S. trade surplus with Poland was $341 million, an increase of $228 million from the U.S. trade surplus of $113 million in 1995. U.S. merchandise exports to Poland were $968 million, an increase of $192 million (24.7 percent) from the level of U.S. exports to Poland in 1995. Poland was the United States' fifty-third largest export market in 1996. U.S. imports from Poland were $627 million in 1996, a decrease of $37 million (5.6 percent) from the level of imports in 1995.

IMPORT POLICIES

Tariff Barriers

In 1990 and early 1991, Poland took bold steps to stimulate its private trading sector through an open trade regime with low or suspended tariffs. Poland then reversed course by raising a large number of its general tariffs prior to granting duty reductions for certain European Community (now European Union (EU)) goods under the European Community-Poland Association Agreement on March 1, 1992.

As a result of agreements concluded with the World Trade Organization (WTO), the EU, and the members of the Central European Free Trade Agreement (CEFTA), the overall tariff level has decreased steadily since 1992, from an average duty level of 14 percent to 5.8 percent in 1997, with average rates of 4.8 percent for industrial goods and 14.1 percent for agricultural products. A temporary surcharge of 5 percent imposed by Poland on all imports in 1993 was lowered to 3 percent in January 1996 and eliminated in January 1997.

Poland's association agreement with the EU has made U.S. exports relatively more expensive vis-a-vis similar European products. This has disadvantaged U.S. high-growth sectors such as computer-related products, capital goods and equipment such as machinery, refinery and gas pipeline equipment, products such as certain processed food, spirits, wine, citrus fruit, fruit juices, rice, sugar-containing products, and dried fruit, as well as industrial commodities such as soda ash. While overall U.S. exports to Poland have continued to rise, it is difficult to estimate the loss in potential exports caused by such preferential arrangements, particularly for agricultural products. The 1992 agreement granted EU products a 10 percent reduction in most-favored-nation (MFN) tariffs. In 1995, Poland cut customs rates on most goods from EU and EFTA countries by 20 percent and granted additional tariff preferences to the EU for sugar-containing products and wine. In 1996, Poland reduced duties on EU and EFTA industrial goods by an additional 20 percent and on agricultural products by 10 percent. In January 1997, customs rates on most industrial goods from the EU once again decreased by 20 percent; industrial duties on CEFTA-originated products dropped to zero.

In late 1994, in light of Poland's Generalized System of Preferences (GSP) status, USTR launched a review of Poland's reverse tariff preferences to the EU, as mandated by a statement of administrative action

attached to the Uruguay Round Agreements Act. The review did not establish enough evidence to determine that Poland's preferential treatment of EU imports has had an adverse effect on U.S. commerce.

In July 1995, Poland implemented its Uruguay Round agricultural commitments for about 20 percent of imported products, including those previously subject to variable levies and quantitative limitations, by establishing tariff rate quotas with out of-quota rates at or below WTO ceiling bindings. Products subject to tariff rate quotas include beef, pork, poultry meat and live poultry, milk and cream, sugar, eggs, honey, strawberries, apples, pears, juices and extracts, cucumbers, processed or fresh tomatoes, spices, rapeseed and mustard oil, wheat and rye flour, sugar beet seeds, malt extract, gelatin, sauces, hops, wine, cut flowers, and certain tobacco products. Complaints from Polish importers suggest that administration of the quotas may not be equitable.

Poland has imposed a number of restrictions on imports of U.S. bovine genetic material but has few other import requirements. It eliminated all quantitative restrictions on imports in 1990. Any firm or individual registered as a business may participate in foreign trade. Some U.S. exporters have experienced problems with the Polish customs administration due to overworked officials, an outdated system, and slow communications between Warsaw and the borders. The Polish Parliament is now considering comprehensive reform of the customs law and service.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Poland has its own extensive system of certification and approvals of products which is not harmonized with international standards. U.S. companies have complained about the length of time for product certification, the need to leave the product at a Polish lab for the entire process, the need to have spare parts tested, the necessity of having the products tested in Poland, inappropriate standards for new products, vague information on costly testing fees, and a non-transparent appeals system.

The most-often cited Polish regulation adversely affecting U.S. exports is a requirement that many products obtain a safety (or "B") certification from the Center for Testing and Certification (PCBC) or one of the fifteen institutes supervised by the PCBC. Because of the need to gain separate certification, U.S. exports meeting international standards might not receive Polish approval, pending appeals on technical grounds.

In consultation with the EU and the United States, Poland is currently reforming its product certification system, which does not automatically recognize international product standards and does not accept manufacturer self-certification. New product liability and safety laws should be implemented in early 1998, allowing for acceptance of producer declarations and third party issuances of the "CE" mark. As a result of these difficulties, Poland has agreed to suspend final implementation of the "B" system, which includes the levying of fines up to 100 percent of the value of the goods sold in instances when product fails to receive "B" certification, through January 1, 1998.

Phytosanitary Standards

Poland maintains a list of quarantined weeds which are not allowed to be in imported grain and other plant products. Among the weed seeds on the list are several varieties of a common weed known as ambrosia

or ragweed. The current regulations are not consistent with the requirements of other grain trading countries throughout Europe and the rest of the world. Although a bilateral protocol between the U.S. Department of Agriculture (USDA) and the Polish Plant Quarantine Service has allowed trade to continue, Polish grain importers face restrictions in the distribution of U.S. grain once it enters Poland and are sometimes required to undertake costly cleaning measures. Strict application of regulations would result in the loss of what is, in some years, a substantial market for U.S. grains. Amending the regulations to reflect EU phytosanitary standards would, in most cases, resolve a great deal of the problem.

The Plant Quarantine Inspection Service issues a mandatory phytosanitary import permit for all imports of live plants, fresh fruits, and vegetables. The Veterinary Department issues mandatory import permits for live animals and meat.

GOVERNMENT PROCUREMENT

Poland's new government procurement law came into effect in January 1995 at the national level and January 1996 at the regional (Gmina) level. It is modeled on the UN Model Procurement Code and is based on competition, transparency, and public announcement. It does not, however, cover purchases by state-owned enterprises. The only single source exceptions to the stated preference of unlimited tender are for reasons of state security or national emergency. The law established a Central Policy Office of Public Procurement listing all tenders over 20,000 ECU. The bulletin is available in English on the World-Wide Web: http://www.urm.gov.pl//uzp/ indexuzp.htm/. Poland has indicated its intention to join the WTO's Government Procurement Agreement (GPA) in 1997.

There are two elements of domestic preference in the procurement law. First, there is a 50 percent domestic content requirement for all goods and services provided; for construction, it is 50 percent of both raw materials and labor. In addition, domestic bidders are given a 20 percent price preference. According to implementing regulations, companies with foreign participation organized under the Joint Ventures Act of June 14, 1991, may qualify for "domestic" status under procurement laws. There is also a protest/appeals process for tenders viewed as unfairly awarded.

EXPORT SUBSIDIES

With its accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland also plans to join the OECD Shipbuilding Agreement but is negotiating a five year restructuring transition period. Poland has eliminated past practices of tax incentives for exporters, but it permits drawback of levies on raw material imports from EU and EFTA countries which are processed and reexported in finished products within thirty days. A recent law restructuring the sugar refining industry essentially creates export subsidies for sugar financed out of high domestic prices. Most Polish coal, whether sold domestically or abroad, is sold below mining cost. A number of politically powerful state-owned enterprises continue to enjoy special tax breaks--the largest source of subsidies left for Polish industry.

Poland

LACK OF INTELLECTUAL PROPERTY PROTECTION

The Polish Government has made major strides in improving protection of international property rights. The United States and Poland signed a bilateral Business and Economic Relations Treaty in 1990 which contains provisions on the protection of U.S. intellectual property. It came into force in 1994, when Poland passed a new copyright law containing significant improvements over its former law.

Poland adheres to the Berne Convention (Paris Text, 1971) and the Rome Convention but has refuse to join the Geneva Convention. As a WTO member, Poland must also implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), but has indicated that it may take until 2000 to do so. Poland's 1993 patent law, in all other ways adequate, did not provide the 20 years of pipeline protection favored by the pharmaceutical industry.

Piracy of U.S. copyrighted works in Poland has decreased significantly in recent years. Most of the pirated or faked items currently available in Poland are imported from abroad rather than being manufactured in Poland. Industry associations estimate that 1996 levels of piracy in Poland were 20 percent in sound recordings, 10 percent in books and video, and 80 percent in computer software.

While enforcement has improved noticeably, remaining difficulties, particularly in the prosecution of intellectual property rights (IPR) cases, allow for continuing, if reduced, levels of piracy and trademark infringement. Due to a lack of manpower and resources, Polish authorities often rely on rights holders to provide preliminary evidence of violations. In one important 1996 case, a large U.S.-based firm successfully defended several trademarks by employing local counsel, working closely with police and prosecutors, and pursuing the case under the unfair competition clause in Poland's criminal code (Article 24) rather than under the trademark provisions of the civil code (Article 57).

SERVICES BARRIERS

In the recently concluded WTO negotiations on basic telecommunications services, Poland made commitments on all basic telecom services, with phase-in of some commitments. It will provide market access and national treatment for all services by 2003. It adopted the reference paper on regulatory commitments. Poland retained a 49 percent foreign investment limit for international and domestic long-distance services, including cellular.

While Poland permits foreign banks to establish subsidiaries in Poland, either wholly-owned or as joint ventures, the National Bank of Poland (NBP) has indicated foreign banks must bail out an ailing Polish bank in order to receive their own banking licenses. Under its OECD accession agreement, Poland agreed to allow unlimited bank and insurance branches as of January 1, 1999. It has not issued any such branch bank licenses since it granted two in 1991; all insurance firms, foreign and domestic, currently must be established as joint-stock companies.

Article 44 of Poland's 1994 association agreement with the EU provides for national treatment and full rights of establishment for subsidiaries, branches, and agencies, with a five year phase-in period (until

February 1, 1999), along with a "no new restrictions" clause. Poland pledged to the OECD that all such liberalization measures would also be extended to all OECD members.

INVESTMENT BARRIERS

Polish accession to the OECD in 1996 accelerated changes facilitating foreign investment, including national treatment, easing capital flow restrictions, and allowing foreigners to purchase small parcels of land without need for governmental approval (up to 400 square meters of urban land or one hectare of rural land). Polish law permits foreign ownership of up to 100 percent for most corporations (partnerships and sole proprietorships are not allowed; the legal form requirement will remain through January 1, 1999).

The Polish Government sometimes retains a significant minority interest in enterprises being privatized. On occasion, the Polish Government has used its equity interest in a company to influence managerial decisions. In the case of a U.S. company's investment in a joint venture with the Polish Telephone Company (TPSA), TPSA used its equity position (51 percent) in a manner that induced the U.S. company to sell its investment to the other joint venture partners.

Certain controls remain on foreign investment. Broadcasting legislation restricts foreign ownership to 33 percent stake; this forced a U.S. cable company to abandon its plans for a broadcasting operation in Poland in favor of transmitting by satellite programming produced in Hungary. The management of seaports and airports requires a special permit from the Minister of Privatization, and foreign stakes in air and maritime transport, as well as fisheries, are capped at 49 percent. The government has proposed auto assembly/manufacturing regulation changes which would encourage operators to increase employment and move towards full manufacturing operations.

ANTICOMPETITIVE PRACTICES

On October 1, 1996, an Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office (PIH). This office is empowered to fine state-owned monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding its authority, thereby strengthening its ability to act.

U.S. and other foreign telecommunications companies have complained of strong-arm tactics on the part of the state telecommunications monopoly, TPSA, in regard to telephone interconnection agreements. As a result of this and other anti-competitive actions by TPSA, the Antimonopoly Office has levied fines against TPSA, disallowed planned TPSA rate increases, ruled that the new GSM licensees could not be barred from using other telephone networks (e.g., the railway telephone system), and announced its intention to continue close scrutiny of the telecommunications sector.