POLAND

In 1997, the U.S. trade surplus with Poland was $473 million, an increase of $132 million from the U.S. trade surplus of $341 million in 1996. U.S. merchandise exports to Poland were nearly $1.2 billion, an increase of $203 million (20.9 percent) from the level of U.S. exports to Poland in 1996. Poland was the United States' fifty-third largest export market in 1997. U.S. imports from Poland were $698 million in 1997, an increase of $71 million (11.3 percent) from the level of imports in 1996.

IMPORT POLICIES

In 1990 and early 1991, as part of the economic policies associated with transition from a Communist economy, Poland took bold steps to stimulate its trading sector through an open trade regime with low or suspended tariffs. Poland, however, did raise a large number of its most-favored-nation (MFN) tariffs prior to granting duty reductions for European Community (now European Union (EU)) goods under the European Community-Poland Association Agreement, which went into effect March 1, 1992.

Since then, Poland has generally lowered its tariff levels. As a result of agreements concluded in the World Trade Organization (WTO), with 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 6.7 percent in 1997, with average rates of 4.9 percent for industrial goods and 19.8 percent for agricultural products. In some sectors, such as processed foods and alcoholic beverages, U.S. exporters face particularly high tariffs. 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. The abolition of this surcharge was accompanied by upward adjustments in applied custom duties. At the beginning of 1997, the Polish Government decided to change the suspension level of customs duties from 0 percent to 3 percent. At the same time, most suspensions of customs duties were lifted on commodity items for which, in 1997, the customs rate was lower than 3.9 percent.

Poland's association agreement with the EU has made many U.S. exports relatively more expensive vis-a-vis similar European products due to the preferential rates most EU products receive. This has disadvantaged U.S. high-growth sectors such as capital goods; 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 agreement with the EU phases in lower tariffs; the tariffs for EU products are expressed as a declining percentage of the most favored nation rate. Agricultural products are only partially covered. Poland also maintains a preferential agreement with CEFTA countries; in January 1997, industrial duties on CEFTA-originated products dropped to zero. Since January 1998, zero duties are applicable to industrial products imported from Lithuania.

By the end of 1998, tariff protection applicable to industrial products imported from the EU, EFTA and CEFTA countries will be abolished. Tariffs on imports from other countries will be reduced by 38 percent by the end of 2001. This excludes goods that will be protected longer under restructuring clauses (products of crude oil processing until 2001 and some metallurgical products, e.g., steel, until 1999 at the latest). In accordance with worldwide trade liberalization trends under WTO auspices, 1997 saw progress in trade liberalization in the fields of information technology products (Poland's share of the worldwide technology market is 0.2 percent); financial services; and basic telecom services (as a result of February 1997 negotiations, the opening of the Polish market of long-distance and international telephone calls will occur by January 1, 2003 at the latest).

In 1995, USTR reviewed Poland's reverse tariff preferences for the EU, as mandated by an attachment to the Uruguay Round Agreements Act. The review did not find enough evidence to determine that Poland's preferential treatment of EU imports had an adverse effect on U.S. commerce. Since that time, however, some U.S. companies, including firms producing automobiles, aircraft, power generation and mining equipment, have complained that the preferential tariffs have made their products less competitive or uncompetitive on the Polish market.

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 and cut flowers. Complaints from Polish importers suggest that administration of the quotas may be neither transparent nor equitable. Several U.S. exporters have also expressed concerns about possible Polish plans to eliminate tariff rate quotas for EU products, but not those originating outside of the EU.

Poland eliminated all quantitative restrictions on industrial 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, outdated rules, alleged corruption, and poor communication between Warsaw and the border. A new customs code went into effect on January 1, 1998. This law and associated legislation brought Polish customs rules closer to EU standards, but did not overhaul the customs service itself. The new law also eliminated some technical barriers and introduced strict sanctions against smuggling. It should lead to substantial improvements in the functioning and efficiency of customs officials.

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 testing standards for new products, vague information on costly testing fees, and a non-transparent appeals system.

The most-often cited Polish regulation, which adversely affects 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. Product testing is also required for building products at the Building Technical Institute (ITB). The Polish product certification system does not automatically recognize the EU's "CE" mark or other international product standards, and it does not accept manufacturer self-certification in place of the "B" mark.

Since 1995, the Council for Certification has allowed companies simply to register in order to start the process to receive "B" mark certificates and avoid possible fines. This exemption is temporary and needs to be extended on a yearly basis by the Certification Council. It has been extended for 1998.

The Ministry of Agriculture along with the Ministries of Environment and Health is currently formulating regulations concerning genetically modified organisms (GMOs) and products containing GMOs. These new regulations could affect access of U.S. agricultural products to the Polish market. They are set to go into effect on January 1, 1999.

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. In February 1997, Poland passed a new law on plant protection which reaffirmed a zero tolerance policy for many weed seeds which are common in grain and oilseeds imported from the United States. Prior to April 1997, a bilateral protocol was in effect between the U.S. Department of Agriculture and the Polish Plant Quarantine Service (PPQ) which allowed trade to continue. Even if U.S. shipments met the requirements established in the protocol, the PPQ required imports to be cleaned and placed limitations on inland distribution, increasing the risk and cost of U.S. grain and oilseeds to Polish importers. After the latest protocol expired in April 1997, the weed seed tolerance reverted to zero. The zero tolerance policy could result in the loss of what is, in some years, a substantial market for U.S. grains. Moreover, the weed seeds apparently present no threat to Polish agriculture. Amending the regulations to reflect EU phytosanitary standards would resolve 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. U.S. exporters have expressed concerns that Poland's new animal breeding law could potentially restrict access of U.S. animal genetic products.

GOVERNMENT PROCUREMENT

Poland's government procurement law came into effect in January 1995 at the national level and in January 1996 at the local (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. This office's worldwide web page is available at: http://www.uzp.gov.pl. Poland is an observer to the WTO Committee on Government Procurement.

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 an appeals process for tenders viewed as unfairly awarded.

EXPORT SUBSIDIES

With its accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland has eliminated past practices of tax incentives for exporters, but it permits drawback of tariffs on raw material imports from EU and EFTA countries which are processed and reexported in finished products within thirty days. WTO-approved quotas for sugar export subsidies have been fully utilized in the past two years. Poland interpreted the WTO approval for sugar export subsidies as to allow unused quota from previous years to be carried over for use in the past two years, significantly expanding the amount of sugar which was eligible for export subsidies. Export subsidies for sugar are financed out of high domestic prices. Most Polish coal, whether sold domestically or abroad, is sold below mining cost. Some state-owned enterprises receive direct and indirect subsidies (e.g., nonpayment of taxes).

LACK OF INTELLECTUAL PROPERTY PROTECTION

The Polish Government has made important strides in improving protection of intellectual 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. The Treaty came into force in 1994, after Poland passed a new copyright law significantly improving the level of protection of copyright in the country.

Poland adheres to the Berne Convention for the Protection of Literary and Artistic Works (Paris text, 1971) and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Poland has implemented most of the requirements of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Polish legislation must be fully compatible by the year 2000. Poland's 1993 patent law, in all other ways adequate, does not provide the 20 years of pipeline protection favored by the pharmaceutical industry, but the pipeline provisions do comply with the requirements of the bilateral Business and Economic Relations Treaty.

Piracy of U.S. copyrighted materials in Poland has decreased in recent years due to improved enforcement; U.S. industry has noted downward trends in piracy of video and sound recordings but not in computer software piracy and has also noted cross-border sales of pirated products as a continuing problem. Among the reasons piracy remains a problem is a lack of manpower and resources as well as technical barriers to prosecution. The police tend to rely on rights holders to provide preliminary evidence of violations. Most counterfeit trademarked items are not of Polish origin, but are imported from other source countries.

SERVICES BARRIERS

In the WTO agreement on basic telecommunications services that went into effect on February 5, 1998, Poland made commitments on all basic telecom services, with a 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 is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General

Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998. Poland retained a 49 percent foreign investment limit for international and domestic long-distance services, including cellular. Poland has also issued a tender for an advisor on the privatization of Telekomunikacja Polska SA (TPSA), the state-owned telephone company which may involve a strategic investor.

Under its OECD accession agreement, Poland agreed to allow banks and insurance companies from OECD countries to have branches and representative offices in Poland as of January 1, 1999. Poland bound this commitment in its WTO Financial services offer and also made market access and national treatment commitments to allow 100% foreign owned insurers, established as joint-stock companies, to provide the full range of insurance services (with the exception of pensions). On the banking side, the National Bank of Poland (NBP) has not issued any branch bank licenses since it granted two in 1991.

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 to EU companies, 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.

In November 1997, the Polish National Radio and Television Council adopted a regulation imposing a European content majority quota on all broadcasters, effective in 1998. The language of the Polish decree lacks the flexibility of the EU Broadcast Directive, which provides for content quotas to be applied "where practicable" and "as appropriate."

Some American law firms have expressed concern about two provisions of the new Law on Advocates and Legal Advisors: (a) that foreign law firms must switch from limited liability companies to partnerships and (b) that Polish advocates and legal advisors will only be able to cooperation with foreign firms if (1) they are admitted as partners in the foreign law firm and (2) the home jurisdiction of the foreign law firm offers reciprocity with respect to Polish lawyers wishing to practice in such jurisdiction. The first provision entails time and expense to comply with a requirement for which no justification has been offered the legal community. The second provision requires drastic and swift restructuring of firms to remain in business in Poland, since it would be impossible to operate in Poland without the assistance of Polish advocates and legal advisors.

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 of most corporations. Foreign investors may conduct business in the form of limited liability companies or joint stock companies, as stipulated by Poland's commercial law.

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 Telekomunikacja Polska SA, the Polish company 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 a 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 from Hungary. The management of seaports and airports requires a special permit, and foreign stakes in air and maritime transport, as well as fisheries, are capped at 49 percent. The government has tried in various ways to encourage higher domestic value added (e.g., content requirements for the "special economic zones," and licensing requirements for auto assemblers that would have required welding and painting facilities), but these attempts have been stopped by outside pressures, including from the United States Government.

ANTICOMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office. This new 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) with regard to telephone interconnection agreements. As a result of such anti-competitive actions by TPSA, the Antimonopoly Office levied fines against it, 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.