BULGARIA

TRADE SUMMARY

The U.S. trade deficit with Bulgaria was $355 million in 2004, an increase of $49 million from $286 million in 2003. U.S. goods exports in 2004 were $172 million, up 11 percent from the previous year. Corresponding U.S. imports from Bulgaria were $507 million, up 14.9 percent. Bulgaria is currently the 104th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bulgaria in 2003 was $186 million, up from $142 million in 2002.

IMPORT POLICIES

Tariffs

Bulgaria's trade policies are shaped primarily by its World Trade Organization (WTO) membership and by its status as a candidate for EU membership. Bulgaria has a preferential trade agreement with the European Union (EU) under its Europe Agreement, and free trade agreements with the European Free Trade Area (EFTA) countries. It also has free trade agreements with its Central European neighbors (CEFTA), Turkey, Macedonia, Estonia, Israel, Lithuania and Latvia, as well as with Albania, Serbia and Montenegro, Bosnia and Herzegovina and Moldova. Upon accession to the EU, Bulgaria will be required to align its tariffs with those of the EU.

For 2005, Bulgaria's average import tariff is 11 percent; the average level for industrial goods is 8 percent and the average level for agricultural goods is 22 percent. The maximum *ad valorem* level for agricultural goods, which is applied on 0.38 percent of tariff positions, is 75 percent. Bulgaria has eliminated all tariffs on industrial imports from the EU under its association agreement with the European Union. Industrial exports to Bulgaria from the rest of the world face tariffs ranging from zero percent to 26.8 percent.

Bulgaria's agricultural trade regime is characterized by high MFN tariffs, particularly for red meat and poultry, and by preferential agreements with the EU and CEFTA. *Ad valorem* duties and minimum customs charges of more than 100 percent serve as incentives to importers for smuggling and fraud. Cargoes are often improperly identified, and falsely labeled and declared in an effort to avoid customs charges. The Bulgarian customs service also uses minimum import prices, which appear to be applied arbitrarily, to calculate customs duties, particularly on poultry shipments.

Bulgaria provides the EU with preferential tariff rates and reciprocal duty elimination on numerous agricultural products, as well as on wine. These preferences are hurting U.S. agricultural exporters who face higher MFN rates. In particular, the high import tariffs favor Bulgaria's inefficient domestic chicken and pig meat industries. Import tariffs on U.S. chicken are 68 percent, with frozen cut parts subject to a 74 percent tariff.

The U.S. Government is currently reviewing Bulgaria's continued eligibility for the U.S. Generalized System of Preferences (GSP) program in view of the preferential treatment it affords to the EU. The U.S. has urged the Bulgarian government to lower MFN tariffs on a range of items to reduce the tariff differential and its negative effect on U.S. commerce.

Non-tariff Barriers

In general, customs regulations and policies are reported to be cumbersome, arbitrary and inconsistent. Problems cited by U.S. companies include excessive documentation requirements, slow processing of shipments, and corruption. The Customs Agency requires invoices even for equipment transfers from offices of the same company located in other countries to Bulgaria. Bulgaria uses the single customs administrative document used by EU members.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The registration processes for pharmaceutical products and for drug pricing and reimbursement, including the process by which the National Health Insurance Fund classifies drugs, are cumbersome and non-transparent. Newer drugs are often arbitrarily classified with their older, generic versions for pricing purposes, thereby limiting companies' ability to recover their research and development costs.

GOVERNMENT PROCUREMENT

Bulgaria is an observer but not a signatory to the WTO Agreement on Government Procurement (GPA). In its accession to the WTO, Bulgaria committed to accede to the GPA and to submit an offer by June 1997 and complete negotiations by December 1997. However, the Bulgarian government did not initiate the process for GPA accession until 2000, and has not yet submitted an offer. Upon its accession to the European Union, Bulgaria will be required to comply with the GPA. Although Bulgaria's government procurement legislation underwent a substantial reform in 2004 to align the system with WTO and EU rules, bidders still complain that tendering processes are unclear - and subject to irregularities and corrupt practices. Even though the goal of the 2004 Public Procurement Law was to introduce a more efficient, transparent and accountable system for public procurement, the business community considers it deficient.

The Bulgarian government's lack of institutional support for the Public Procurement Agency inhibits that Agency's ability to perform its monitoring functions. Bulgaria's purchasing process would benefit from improved communications between the Bulgarian government, including bodies such as the National Audit Office and the judiciary, businesses, and from training in public procurement for officials from non-central government entities such as hospitals, universities, and municipalities.

Defense procurement activities are subject to a lack of transparency and corrupt influences, and fail to comply with international standards.

The purchasing, pricing, and reimbursement processes for drugs under Bulgaria's national health system are not transparent. The government can use the price-approval mechanism to regulate the market for any product, and bureaucratic barriers can limit patients' access to new products. Bulgaria's bureaucratic reimbursement process requires multiple approvals, lacks objective criteria, and does not provide for an appeals process. Some members of parliament have publicly advocated a policy of protectionism for Bulgarian-manufactured pharmaceuticals.

Government procurement practices in the energy sector appear to disadvantage foreign insurance companies. All Bulgarian energy entities are now insured by Energiya - a joint venture between the state-owned National Electricity Transmission Company (50 percent), Allainz Bulgaria (25 percent) and other private shareholders (25 percent) established in 1992-1993. According to U.S. industry, procedures for awarding insurance contracts for companies within the energy sector are not transparent.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In May 2004, Bulgaria was placed on the Special 301 Watch List for the first time in five years. Over the past few years, there has been a steady resurgence of piracy, mainly in the sale of pirated optical disc media (ODM). Recording industry associations estimate that 80 percent of all musical compact discs (CDs) sold in Bulgaria today are pirated. Furthermore, Bulgaria is still widely used for transshipment of pirate CDs from Ukraine and Russia to the Balkans, Greece, and Turkey.

CD-R piracy has been increasing significantly, and the local music business in particular is feeling the brunt of this phenomenon. The possibility that Bulgarian blank CD-R (and inevitably blank DVD-R) production plants are contributing to, or generating, piracy has not been adequately recognized or addressed by Bulgarian authorities.

Although Bulgarian IPR legislation is generally adequate—it includes modern patent and copyright laws and criminal penalties for copyright infringement—industry representatives believe effective IPR protection requires improvements in certain pieces of legislation, including the Penal Code, Penal Procedure Code, and the governmental Decree on the Border Measures for Protection of IPR.

The Council of Ministers has presented a new Draft Law on Administrative Control over the Manufacture and Distribution of ODM, which includes suggestions by IFPI/BAMP. The longdelayed adoption of this optical disc control legislation is currently stalled at the parliamentary level by the ruling coalition. The proposed law is opposed by MPs citing "the independence of Bulgarian producers." Domestic producers have complained about the requirement in the proposed legislation to put a Secure Identification (SID) code on blank discs (in order to track origin), claiming this will put Bulgaria at a disadvantage against Taiwan and other producers.

The government lacks sufficient institutional capacity and will to effectively address major enforcement problems, especially in combating and prosecuting organized crime groups. Many industrial groups currently have intellectual property disputes before the government.

Software piracy continues to be a serious problem, although an industry legalization campaign has made noticeable gains against unauthorized software. Local software industry representatives report that, along with good cooperation from Bulgarian law enforcement authorities, the campaign has brought down the piracy rate to approximately 71 percent of the products in the market. The lack of actual prosecutions and court decisions has kept the piracy rate at a high level. Only five percent of all criminal cases that have been initiated over the last five years have reached a court verdict. Distribution of unlicensed software on computers continues and it is becoming increasingly difficult to effectively address this problem as computer resellers install unlicensed software at the customers' premises. Also, the domestic market offers enormous amounts of illegal CD-ROMs containing a full range of different pirated software. Internet distribution of illegal software is also a growing problem.

The Bulgarian government included in its 2003 drug law a provision to provide protection for confidential test data submitted for marketing approval by pharmaceutical products companies. The law, however, links data protection to a valid patent. Bulgaria joined the European Patent Convention on July 1, 2002 and has obtained observer status in the Administrative Council of the European Patent Organization.

Industry has told us that the Bulgarian government's inability to protect trademarks is a significant barrier to investment and legitimate domestic economic development. U.S. businesses have noted significant difficulties in obtaining relief against trademark infringement. Even if courts understand the law and issue orders, the entities charged with enforcement often cannot be relied upon to carry out the court judgment. Under Bulgarian law, legal entities cannot be held criminally liable. Therefore, the criminal penalties for copyright infringement and willful trademark infringement are limited.

Implementation of "special border measures" for copyright enforcement has created problems for legitimate exporters and importers and further changes are necessary to clarify the law and to better train customs officials. There is no provision for the use of bonds from a complainant to protect the legitimate importer or exporter of goods that are stopped in transit under "special border measures."

There is evidence of significant counterfeit production in Bulgaria and illegal import of counterfeited U.S. brand distilled alcoholic spirits. Some spirits companies have estimated that almost 10 percent of the products sold in the Bulgarian market may be counterfeit.

SERVICES BARRIERS

As in other EU candidate countries, Bulgaria's 1998 Radio and Television Law requires a "predominant portion" of certain programming to be drawn from European-produced works and sets quotas for Bulgarian works within that portion. This requirement, however, is only to be applied to the extent "practicable." Foreign broadcasters transmitting into Bulgaria must have a local representative, and broadcasters are prohibited from entering into barter agreements with television program suppliers.

INVESTMENT BARRIERS

The U.S.-Bulgaria Bilateral Investment Treaty (BIT) took effect in 1994 and provides guarantees for U.S. investors of both national and MFN treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to binding international arbitration. In 2003, to address several actual and potential incompatibilities between BIT obligations and EU law, the United States exchanged interpretive notes with the governments of Bulgaria and seven other European countries expected to join the EU over the next few years. The United States and the prospective EU Member States also agreed to make several narrow amendments to the texts of the relevant BITs. Both the United States and Bulgaria have ratified the BIT amendments, but the amendments will not enter into force until Bulgaria joins the EU.

The proposed constitutional amendment to lift the existing ban prohibiting foreigners to buy land in Bulgaria favors EU over U.S. investors. While EU citizens and entities will be allowed to acquire property directly by virtue of Bulgaria's accession treaty, all other foreigners will be able to do so only on the basis of an international agreement ratified by the Bulgarian Parliament. In the meantime, the constitutional prohibition against ownership of land by foreign individuals remains in force. However, foreign-owned companies registered in Bulgaria are considered to be Bulgarian persons. U.S. owned companies that register in Bulgaria therefore may acquire land in Bulgaria. Local companies in which foreign partners have controlling interests must obtain prior approval (licenses) to engage in certain activities: production and export of arms/ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and acquisition of property in certain geographic areas. There are neither specific export-performance requirements nor specific restrictions on hiring expatriate personnel, although residence permits are often difficult to obtain.

A recent Bulgarian law eliminated the withholding tax on dividends for European investors, but U.S. investors face a withholding tax of 15 percent.

New insolvency rules in Bulgaria's Commercial Code and its Law on Public Offering of Securities have greatly improved the legislative protection for minority shareholders. However, enforcement of the law's provisions is inadequate and corporate governance remains weak.

In 2003, Parliament approved a new Telecommunications Law which increases institutional and regulatory liberalization of the Bulgarian telecommunications sector but focuses more on institutional issues and the protection of state interests than on greater market liberalization. The new Telecommunication Act extended until December 2005 the Bulgarian Telecommunications Company's (BTC) control over the sole telecommunication network.

A June 1999 law regulating gambling imposes additional requirements on foreigners organizing games of chance. Foreigners can receive a license to establish a casino in a hotel only if they satisfy one of the following conditions: (1) purchase or construction of a hotel rated four-star or higher; or (2) investment of at least $10 million and employment of at least 500 workers in economic activities unrelated to gambling.

According to U.S. businesses, other steps needed to improve the environment for foreign investment include improved creditor rights through improvements to bankruptcy law and procedures; reform of the judicial system; improved accounting standards and risk assessment; reform of the energy sector; and transparency and accountability in public policy to reduce the perception of corruption.

ELECTRONIC COMMERCE

Bulgaria's Law on the Electronic Document and Electronic Signature went into effect in 2001. Three implementation ordinances for this law aimed at improved access to information services and promotion of electronic commerce were approved in 2002: Ordinance on Requirements for Algorithms for Advanced Electronic Signature; Ordinance for Activity of Certification-Service-Providers, Termination Procedure, and Requirements for Provision of Certification Services; and Ordinance for the Order of Registration of Certification-Service-Providers.

OTHER BARRIERS

Selective enforcement

Foreign investors complain that tax evasion by private domestic firms combined with the failure of the authorities to enforce collection from large, often financially-precarious, state-owned enterprises places the foreign investor at a disadvantage.

The multiplicity of Bulgarian licensing and regulatory regimes, their arbitrary interpretation and enforcement by the bureaucracy, and the incentives this creates for corruption, have long been seen as an impediment to investment, private business development and market entry. The 2003 Restriction of Administrative Regulation and Control of Economic Activity Act is expected to considerably lighten the potential of regulatory abuse at all levels of government, and when implemented, should improve the overall business environment.

Execution of judgment

Bulgarian and foreign observers caution that the proceedings for the execution of judgments under the Code of Civil Procedure remain slow and unpredictable. Further reform of the legal framework and its implementation will be needed. The U.S. does not currently have reciprocity with Bulgaria, so Bulgarian courts are not obliged to honor decisions of U.S. courts. In practice, execution of judgments is subject to delays, sometimes resulting from corruption and inefficiency in the judicial system.

Access to international arbitration

Companies that are not registered in Bulgaria, but that are involved in a business transaction in Bulgaria, can conduct arbitration in another country. However, a 2001 law that allows for an international arbiter when a foreign-owned, Bulgarian-registered company is involved requires the arbitration to take place in Bulgaria. The official language of the arbitration will be Bulgarian.

Textiles and apparel

As of January 1, 2002, Bulgaria eliminated all tariffs for industrial imports from the EU under its association agreement with the European Union, including textiles and apparel. Under Protocol One on Textile and Clothing Products of the European Agreement, the EU eliminated quotas on textile and clothing products originating in Bulgaria on January 1, 1998, and eliminated tariffs on textile and clothing products on January 1, 1997. Bulgaria levies tariffs on textile and apparel from the United States, but does not impose any quantitative restrictions (quotas) on imports from the United States.