BULGARIA

TRADE SUMMARY

The U.S. goods trade deficit with Bulgaria was $185 million in 2005, a decrease of $150 million from $335 million in 2004. U.S. goods exports in 2005 were $268 million, up 56 percent from the previous year. Corresponding U.S. imports from Bulgaria were $454 million, down 10.5 percent. Bulgaria is currently the 91st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bulgaria in 2004 was $191 million, up from $186 million in 2003.

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, Turkey, Macedonia, Albania, Serbia and Montenegro, Bosnia and Herzegovina, Israel and Moldova.

As a result of a petition filed by the Distilled Spirits Council of the United States, the U.S. Government is reviewing Bulgaria's continued eligibility for the U.S. Generalized System of Preferences (GSP) program in view of the preferential tariff treatment it affords to the EU. The U.S. has urged the Bulgarian government to lower most-favored-nation (MFN) tariffs on a range of items to reduce the tariff differential and its negative effect on U.S. commerce.

Upon accession to the EU, Bulgaria will align its external tariffs with those of the EU. The average MFN tariff rate, for example, would come down from its current level of 11.55 percent to an average of 6.5 percent. For 2005, Bulgaria's average import tariff for industrial goods is 8.6 percent and the average level for agricultural goods is 22.9 percent. The maximum *ad valorem* level for agricultural goods, which is applied on 0.38 percent of tariff lines, is 75 percent. Bulgaria has eliminated all tariffs on industrial imports from the EU under its Association Agreement with the European Union.

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 Central Europe. High *ad valorem* duties serve as incentives 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 hurt U.S. agricultural exporters who face higher MFN rates. Import tariffs on U.S. chicken are 68 percent, with frozen cut parts subject to a 74 percent tariff.

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 Bulgarian government's drug supply mechanism constitutes a major market access barrier to U.S. pharmaceutical exports. Under the new drug legislation, pharmaceutical companies are required to commit to pay damages when a distributor fails to supply the right medicine. Thus, the burden of responsibility for distributors is being shifted from the government to the pharmaceutical industry.

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 in the WTO Committee on Government Procurement, 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. The Bulgarian government, however, did not initiate the process for GPA accession until 2000, and has not yet submitted an offer. Upon its accession to the European Union (EU), Bulgaria automatically will become subject to the GPA as a Member State of the European Communities.

Although Bulgaria's government procurement law 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, and that court appeals are long and cumbersome. The Bulgarian government has prepared amendments to the 2004 Public Procurement Law in order to incorporate new European public procurement directives and further streamline the national procurement process. The law, however, offers little reform in the area of court appeals and has yet to be approved.

Defense procurement activities lack transparency, are subject to corrupt influences, and do not 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.

Government procurement practices in the energy sector appear to disadvantage foreign insurance companies. 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 2004, Bulgaria was placed on the Special 301 "Watch List" for the first time in five years and remained on the "Watch List" in 2005 due to a steady resurgence of piracy, mainly in the sale of pirated optical disc (OD) media. Today, the level of open and massive music piracy and copyright crime on Bulgaria's domestic market is unacceptably high and enforcement at all levels is inadequate. Although forensic evidence collected by the copyright industry indicates that pirate facilities are operating once again in Bulgaria, Bulgarian authorities have not adequately recognized or addressed the possibility of piracy production. Furthermore, Bulgaria is still widely used for the transshipment of pirated compact discs (CDs) from Russia to the Balkans, Greece, and Turkey. CD piracy has been increasing significantly, and the local music business in particular is feeling the brunt of this phenomenon.

In September 2005, Parliament approved the long awaited Law on Administrative Control over the Manufacture and Distribution of Optical Disc Media, which now requires source identification code on blank optical discs produced in Bulgaria and strengthens the import/export regime for raw materials and equipment involved in OD production. The new law, however, does not allow the rights holders' organizations and their representatives to participate in the inspections and excludes from the registration regime goods in transit, setting the stage to transform Bulgaria into a transit and dispatch center of pirated production from manufacturing countries (e.g. Russia, and other countries) to other territories.

The new law further weakens enforcement by restricting the authority of state officials. State control bodies are not allowed to require inspection of the manufacturing facilities in operation or to seize documents, samples, raw materials, manufacturing equipment, or matrices for the purpose of establishing facts and circumstances related to the inspection.

Despite some successes by individual agencies, enforcement greatly suffers because of the lack of overall coordination between agencies, inadequate resources, and legal loopholes. The government lacks sufficient institutional capacity and will to address major enforcement problems effectively, especially in combating and prosecuting organized crime groups. The Council of Intellectual Property Protection (a recently formed high-level, interagency group) may help the government strengthen its efforts.

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 the good being covered by a valid patent, even though confidential test data is itself a separate, protected form of intellectual property. Bulgaria joined the European Patent Convention on July 1, 2002 and has obtained observer status in the Administrative Council of the European Patent Organization.

The U.S. pharmaceutical industry has reported that Bulgaria is effectively shortening the patent life of innovative products, creating a barrier to U.S. industry's exports to Bulgaria and their investments. The industry is concerned that generic copies of the original drugs have been granted marketing authorizations, a registered retail price and applied for (or received access to) reimbursement prior to expiration of the patent of the original pharmaceutical product.

U.S. companies report 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 and noted that, even with court orders, the entities charged with enforcement often cannot be relied upon to carry out the court judgment.

There is evidence of significant counterfeit production in Bulgaria and illegal importation of counterfeit 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), which entered into force in 1994, includes obligations that protect U.S. investors, such as national treatment 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 potential incompatibilities between BIT obligations and EU law, the United States and eight prospective EU members 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 2005 property rights constitutional amendment will come into effect on January 1, 2007. The amendment will lift the existing prohibition on the purchase of Bulgarian land by foreigners and 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 international agreements ratified by the Bulgarian Parliament. In the meantime, the constitutional prohibition against ownership of land by foreign individuals remains in force. Foreign-owned companies registered in Bulgaria, however, 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, including: 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. But enforcement of the law's provisions is inadequate and corporate governance remains weak.

In 2003, Parliament approved a new Telecommunications Law that 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 the gaming industry 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.

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.