POLAND

TRADE SUMMARY

The United States registered a trade deficit of $283 million with Poland in 2000, compared with a $12 million surplus in 1999. Poland was the United States' 57th largest export market in 2000. In 2000, U.S. exports to Poland were $757 million, a $68 million (8.2 percent) decrease from 1999. U.S. imports from Poland were $1.04 billion in 2000, an increase of $227 million (27.9 percent) from 1999. The stock of U.S. foreign direct investment in 1999 was $1.9 billion, a 12.8 percent increase from 1998.

IMPORT POLICIES

Tariffs

Poland's current trade policies are shaped primarily by its World Trade Organization (WTO) commitments and - increasingly - by the prospect that Poland will become a full member of the European Union (EU) sometime after 2003. Poland's trade regime during the 1990s was marked by an overall trend towards lower tariffs, although the government did impose an import surcharge from 1993-1996. The past decade has also seen Poland conclude a number of preferential trade agreements, including its Europe Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries, the Central European Free Trade Agreement (CEFTA) countries, the Baltic states, Israel and Turkey.

As a result of its preferential trade agreements, most of Poland's imports enter duty-free. In 2000, 77 percent of Poland's total industrial imports were free of tariffs, 23 percent (including those from the United States) fell under MFN tariffs, and three percent were subject to GSP tariffs applied to products from developing countries. Under Poland's Europe Agreement, tariffs on industrial products from EU member states will be completely phased out by the end of 2001. Also, the aforementioned preferential trade agreements provide for reduced tariff rates on non-industrial products on a selective basis. U.S. products, which are subject to Poland's MFN rates, often encounter a significant tariff differential when competing against products from EU member states, which enter duty-free or at a preferential rate. U.S. exporters in many sectors have expressed concerns regarding this disadvantage. These sectors include: automobiles, auto parts, tractors, distilled spirits, wine, durum wheat, lumber and wood products, animal feed supplements, chocolate and non-chocolate confectionery products, small aircraft, electrical generating equipment, mining equipment, sporting goods, cosmetics, soybean meal, peanut butter, and grapefruit.

Poland's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates. Upon joining the EU, Poland will adopt the generally lower CXT rates, which will benefit exporters of U.S. industrial goods. Adopting the CXT would likely have a negative impact on some U.S. agriculture exports because some of the CXT rates exceed Poland's MFN rates. The U.S. has been urging Poland to reduce its high MFN tariff rates to CXT levels prior to joining the EU. The U.S. and Poland are engaged in discussions aimed at addressing this tariff differential problem, but there was little progress in 2000. Poland has responded to individual U.S. exporters' complaints about automobiles and soybean meal by unilaterally granting a reduction in customs duties on large engine (3.0 liters and above) automobiles and soybean meal, although these measures have not fully satisfied the exporters involved.

In September 2000, Poland and the EU reached agreement on liberalizing trade for agricultural products. The so-called "zero-for-zero agreement" will end EU agricultural subsidies on goods exported to Poland in return for the elimination of Poland's tariffs on most EU agricultural products. Under this arrangement, each party will have greater access to each other's market for agricultural commodities. Over 500 non-sensitive agricultural products are covered under the agreement, which entered into force on January 1, 2001. As a result, many U.S. agricultural products will be put at a further disadvantage relative to products from EU member states.

Non-Tariffs

In past years, Poland used trade restrictions as a limited protective measure. Since 1998, Poland commenced antidumping procedures and safeguards to protect its markets against X-ray films from Germany; saltpeter from Russia; gas lighters from China, Taiwan, Vietnam, and Indonesia; and polyester cables and synthetic fibers from Belarus. Recent safeguard actions have resulted in a temporary prohibitive tariff on saltpeter and an antidumping duty on gas lighters. In 2000, the government approved new regulations on safeguards and antidumping procedures intended to conform to WTO standards, which the Ministry of Economy reports should be passed into law in the first half of 2001. Firms wishing to import wine products containing more than 22 percent alcohol by volume must obtain a special license.

U.S. exports to Poland are hampered by the Pan-European Cumulation system, particularly the removal of the availability of customs duty drawback on products originating in the U.S. and other non-participants in the "cumulation system." Under this recently introduced system, customs duties on U.S.-origin inputs used in the production of goods subsequently exported under preferential trade agreements involving the EU, Poland, and other countries are no longer refunded. In addition, under the pan-European cumulation system, content from any participant in the system can accumulate to qualify for preferential treatment under Poland's Europe Agreement, even though other participants in the "cumulation system" are not party to this Europe Agreement.

Poland's customs procedures impede the efficient operations of air express services. The procedures are cumbersome and unclear; the rules do not provide for pre-arrival processing of shipments and the *de minimis* level for the value of packages, set at ten euros, is far too low.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Exporters of U.S. products to Poland continue to complain about the complexity and lack of transparency that surround standards and certification matters. Some U.S. firms have reported that Poland's extensive system for the certification, testing and approval of products is extremely burdensome, that its requirements are arbitrary, and that it represents a significant obstacle to doing business in the Polish market. For example, U.S. lumber and wood products industry associations stated that Poland's Institute of Building Technology, which has responsibility for product, code and standard approval, is predisposed against wood frame construction. This has hindered U.S. exports of new wood products for use in construction. Likewise, the classification of products, which determines the applicable custom duty and VAT, is often applied arbitrarily and sometimes even retroactively.

In February 2001, the EU announced that it had concluded Protocols to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products ("PECA") with Hungary and the Czech Republic and would soon begin negotiations with Poland and other EU candidate countries. Under the PECA, the EU and the EU candidate country agree to recognize the results of one another's designated conformity assessment bodies/notified bodies, thereby eliminating the need for further product testing of EU products covered by the PECA agreement upon their importation into the candidate country. It appears that among the PECA-covered products being exported to the candidate countries, only those which are of EU country origin, and certified by an EU notified body with the "CE" mark illustrating compliance with EU standards, will benefit from the provisions of the PECA, thereby eliminating the need for further product testing. Because of the EU origin requirement, it appears that products originating in the United States would not benefit from the PECA even if they have been tested certified and bear the "CE" mark. The U.S. will monitor closely how the PECAs are implemented and also has begun consultations with the candidate countries and the EU on this issue in multilateral and bilateral settings.

Poland's application of sanitary and phytosanitary standards has, on occasion, seriously disrupted trade. Most notably, the strict enforcement of a zero tolerance policy on certain weed seeds, including ambrosia or ragweed seeds, which is common in imported U.S. grains and oilseeds, has prevented the export of substantial quantities of U.S. wheat, corn and soybean products. Import permits are still required for live plants, fresh fruits, vegetables, meat, and live animals. Approval procedures for importation of new varieties of plants and livestock genetics have created difficulties for U.S. firms.

The EU prohibits the use of anti-microbial treatments in poultry production. Adoption of this policy by Poland would jeopardize U.S. poultry exports, which exceeded $25 million in 1999. The EU published an opinion in 1998 on anti-microbial treatments, which recommends that anti-microbial treatment should only be used as part of an overall strategy for pathogen control throughout the whole production chain. Although some forms of treatment such as tri-sodium phosphate (TSP) and lactic acid were deemed more acceptable, the use of chlorinated water, the primary means employed in the United States to assure safety of poultry products from microbial contamination, was rejected by the study.

In 1999, the Polish government adopted new regulations on genetically modified organisms (GMOs). The regulations require any product containing GMOs to be labeled, but they provide no minimum tolerance levels for foods containing GMOs. However, because Polish officials have not been enforcing these regulations, imports of GMO products, particularly soybean meal, have continued. Poland is expected to approve the first registration of a GMO product for domestic use in early 2001. Once approved, GMO soybeans and soybean products would be able to enter Poland in accordance with government regulations. Approval would alleviate some of the concerns importers have about future enforcement of the GMO regulations, which could begin at any time.

GOVERNMENT PROCUREMENT

Poland's procurement law is modeled on the United Nations' procurement code and is ostensibly based on competition, transparency, and public announcement. The law does not cover most purchases by state-owned enterprises. Problems with procurement and tenders are common, and many U.S. firms have complained about the lack of transparency in the process. Single source exceptions to the stated preference of unlimited tender are allowed only for reasons of national security or national emergency. The domestic performance section in the law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Companies with foreign participation organized under the Joint Ventures Act of 1991 may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. The law established a Central Policy Office of Public Procurement, which lists all tenders valued at over 30,000 euros. Poland has the status of an observer to the WTO's Government Procurement Agreement (GPA), but is not yet a signatory. It will have to become a signatory when it becomes a member of the EU. The government has been developing a new public procurement law, but amendments required for conformity with EU regulations have delayed its implementation.

EXPORT SUBSIDIES

With its 1995 accession to the WTO, Poland ratified the Uruguay Round Subsidies Code and eliminated earlier practices of tax incentives for exporters. Some politically powerful state-owned enterprises continue to receive direct or indirect production subsidies to lower export prices. The Agency for Agricultural Markets (AAM) is responsible for supporting the milk procurement price through intervention purchases of butter and export subsidies for Non-Fat Dried Milk (NFDM). In the summer of 2000, the AAM announced two tenders for export subsidies of NFDM. Export firms were bidding on lowest subsidy. As a result of the tenders, export firms signed contracts with the AAM for export of 37,000 tons of NFDM. Poland exports sugar using WTO-allowed export subsidies that account for one-third of exports primarily to the former Soviet Union and the Middle East. Quotas for subsidized exports have been gradually reduced over the past several years. The government will limit 2001 subsidized exports to 104,400 tons (113,482 tons raw sugar equivalent).

In 1999, the Polish government announced its intention to amend laws and regulations governing export promotion. These steps, taken in 2000, are designed to both improve Poland's export performance and bring Polish regulations fully into compliance with EU regulations and practices in other OECD countries. Poland's export insurance agency has limited resources and rarely guarantees contracts to high-risk countries such as Russia, placing Polish firms at a disadvantage to most western counterparts. However, the agency announced in 2000 that it would expand the availability of contract insurance for trade with Poland's eastern neighbors. Poland also committed in October 2000 to provide $85 million in loans to finance environmentally friendly investments by Polish firms in China.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Poland has made major strides in improving the legal framework of intellectual property rights protection. The U.S.-Polish Bilateral Business and Economic Treaty contains provisions for the protection of U.S. intellectual property. It came into force in 1994 after Poland passed a new Copyright Law offering strong criminal and civil enforcement provisions and covers literary, musical, graphical, software, and audio-visual works, as well as industrial patterns. Amendments to the Copyright Law, designed to help bring it into compliance with Poland's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), were enacted in July 2000. The amendments provide full protection of all pre-existing works and sound recordings. Parliament also passed a bill on patents and trademarks, but the President has not yet signed it. This bill contains troublesome provisions concerning compulsory licensing and exhaustion of remedies, which may raise issues about consistency with TRIPS obligations.

Despite this legal foundation, Poland still suffers from high rates of piracy. Most pirated materials available - particularly CDs and CD-ROMs - are produced in the former Soviet Union. Industry associations estimate 2000 levels of piracy in Poland to be: 30 percent for sound recordings, 25 percent for motion pictures, nearly 55 percent for business software, and 85 percent for entertainment software. Cable television piracy has not been a major problem because broadcasters could lose their licenses for violation of the law. While enforcement has improved in recent years, the cumbersome judicial system remains an impediment. Criminal penalties increased and procedures for prosecution were somewhat simplified when the amendments to the Copyright Law took effect. Anti-piracy organizations report generally good cooperation with law enforcement authorities, but note the inadequate level of government resources dedicated to IPR protection. Poland is currently on the "Special 301 Watch List" due to ineffective copyright enforcement and inadequate patent protection.

Separately, pharmaceutical firms are affected by inadequate data exclusivity and patent protection for their products. Test data submitted to the government to register a drug generally receive only three years of data exclusivity. Moreover, in a number of cases firms have been allowed to register drugs based on test data submitted by a different firm less than three years previously. To join the EU, Poland will have to change its laws to provide for supplemental protection certificates (patent extensions) and 6-10 years of data exclusivity. However, issues related to harmonizing Poland's patent protection system with EU directives are being negotiated as a part of Poland's accession process.

SERVICES BARRIERS

Poland has made progress in opening its services sector, but many barriers remain, especially in the audio-visual, financial services, and telecommunications sectors. In 1997, the government enacted a rigid 50 percent European production quota for all television broadcasters, raising concerns about certain liberalization commitments made by Poland upon joining the OECD. However, legislation passed by the parliament in 2000 requires broadcasters to meet the 50 percent quota only where practical, thereby bringing Polish regulations into line with the EU broadcast directive. In late 2000, the government was considering amendments to the law in order to remove the flexibility given broadcasters to meet the quota requirement.

As of February 2001, Poland had not yet ratified its commitments under the 1997 WTO Financial Services Agreement, but has enacted almost all of the legislation necessary to conform its financial services laws with its commitments under that agreement. The Finance Ministry intends to seek an amendment to the Law on Public Trading in Securities in order to provide firms from WTO members the right to establish brokerage houses in Poland. The law currently extends this right only to firms from OECD members. Once the legislation is enacted, the government intends to submit its commitments under the WTO Financial Services Agreement to parliament for ratification. As a condition of its accession to the OECD, Poland has amended its laws to allow firms from OECD countries to open branches and representative offices in the insurance and banking sector.

The government began privatizing TPSA, the state telecommunications monopoly, in October 1998 and sold a 35 percent share to a French-Polish consortium in 2000. The government agreed to open domestic long-distance service to competition in 1999 and international services in 2003. TPSA currently retains a monopoly over interconnection and international long distance. A number of competitors now provide local phone service and are also licensed to provide domestic long-distance. However, some firms say the lack of transparent criteria for interconnection agreements and TPSA's preferential treatment of certain service providers have blocked them from utilizing their domestic long-distance licenses. An independent telecommunications regulatory office is currently being established, but it is uncertain how well it will be able to regulate TPSA. TPSA still imposes high interconnection charges, which are not based on cost as called for in the WTO Reference Paper, and thereby significantly impedes other firms' ability to compete in the telecommunications sector.

INVESTMENT BARRIERS

Polish law permits 100 percent foreign ownership of most corporations. However, some obstacles remain for foreign investment in certain "strategic sectors", such as mining, steel, defense, transport, energy, and telecommunications, while certain controls remain on other foreign investment. Broadcasting law still restricts foreign ownership to 33 percent (although proposed legislation would allow EU-based firms to purchase a 100 percent stake), while foreign ownership of air and maritime transport, fisheries and domestic long-distance telecommunications is confined to 49 percent. The cap on foreign ownership in telecommunications, however, was lifted on January 1, 2001. Foreign investment is currently not allowed in gambling. The privatization of energy, steel, and telecommunications sectors envisions significant foreign investment, as does a restructuring plan for the defense industry. As a result of OECD accession, foreigners in Poland may purchase up to 4,000 square meters of urban land or up to one hectare of agricultural land without a permit. Larger purchases, or the purchase of a controlling stake in a Polish company owning real estate, require approval from the Ministry of Interior and the consent (not always automatic) of both the Ministries of National Defense and Agriculture.

ANTI-COMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection (OCCP) was established out of the former Anti-Monopoly Office and State Trade Inspection Office. This new office is empowered to fine state-owned as well as privately-owned firms that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding this authority, thereby strengthening its ability to act. The OCCP on its own initiative has been reviewing the activities of TPSA, the predominant telephone company, and has imposed fines several times due to TPSA's anti-competitive actions.

ELECTRONIC COMMERCE

In Poland, sales through the Internet are unrestricted. Normal Value Added Tax (VAT) fees do apply to merchandise purchases through the Internet. Customs duties and VAT apply to imported software. The Ministry of Finance and Customs Office are at the initial stages of considering tax regulations for software purchased and delivered via the Internet. High interconnection charges have hindered the development of electronic commerce in Poland.

The government is currently working to pass a law on electronic signatures, which is required for EU membership.

OTHER SIGNIFICANT BARRIERS

Poland's slow, inefficient, and unreliable court system can impede the ability of exporters and investors to conduct business there. U.S. firms frequently complain that the understaffed and underfunded court system is an ineffective tool for protecting their legal rights and business interests. Commercial court cases can continue for years without resolving the dispute or penalizing the infringing party. The result is lost business opportunities for U.S. firms, insufficient deterrence of unfair competitive practices, and limitations on a firm's ability to enforce the terms of its contracts with its business partners.