BULGARIA

TRADE SUMMARY

The United States registered a trade deficit of $226 million with Bulgaria in 2001, which was an increase of $105 million from 2000. Bulgaria was the United States' 107th largest export market in 2001. In 2001, U.S. goods exports to Bulgaria were $110 million, a 3.6 percent decrease from 2000. U.S. imports from Bulgaria were $336 million in 2001, an increase of $100 million (42.6 percent) from 2000.

The stock of U.S. foreign direct investment in 2000 was $33 million, a 50 percent increase from 1999.

IMPORT POLICIES

Tariffs

Bulgaria's trade policies are shaped primarily by its World Trade Organization (WTO) membership (accession was in December 1996) and by its continued progress as a candidate for EU membership. In 2001, Bulgaria signed new free trade agreements with Croatia, Lithuania, Estonia and Israel. Previously, Bulgaria had signed preferential trade agreements with the European Union, the European Free Trade Association (EFTA) countries, Turkey and the Former Yugoslav Republic of Macedonia. Bulgaria also acceded to the Central European Free Trade Agreement (CEFTA).

The U.S.-Bulgaria bilateral trade agreement, in place since 1991, provides mutual most-favored-nation (MFN) status. The United States gave Bulgaria unconditional MFN treatment in October 1996.

On December 20, 2001, the Council of Ministers approved Decree No. 289, which introduced and incorporated into the Bulgarian Customs Tariff two key EU instruments of customs policy - (a) the Combined Nomenclature and (b) the Integrated Customs Tariff. According to the 2002 Customs Tariff:
the average overall import tariff is 11.29 percent (down from 12.42 percent in 2001); the average tariff for industrial goods is 8.51 percent (down from 10.00 percent in 2001); and the average tariff for agricultural goods is 20.59 percent (down from 21.93 percent in 2001).

As of January 1, 2002, Bulgaria eliminated all tariffs for industrial imports from the EU under its association agreement with the European Union, EFTA, Turkey, and Estonia. It lowered the average tariff for industrial imports from Macedonia to 1.2 percent and liberalized over 85 percent of its trade in industrial goods with Israel. Industrial tariffs between Bulgaria and CEFTA were eliminated in the beginning of 2001. In contrast, most U.S. industrial exports to Bulgaria have tariffs of 10 percent to 30 percent. For example, U.S. pharmaceutical products face a 7.5 percent to zero percent tariff, while the EU enjoys a lower to zero tariff.

To protect domestic producers, Bulgaria has introduced specific duties on poultry (chickens, ducks, and turkeys). In July 2000, an EU-Bulgaria agreement came into force, reducing duties on some EU farm products to zero. Bulgarian customs officials continue, as they have for five years, to apply minimum import prices for levying import duties and VATs covering all major imported agricultural products, such as poultry, meat, dairy, and soybean meal. This policy is in conflict with Bulgarian customs legislation, and encourages illegal trade and smuggling, but it benefits local producers and brings higher revenue for the Government of Bulgaria.

In particular, high import tariffs favor Bulgaria's inefficient domestic chicken and pork industries, which are not otherwise subsidized, and have a negative impact on U.S. poultry exports. Import tariffs on chicken are 68 percent, with frozen cut parts at 74 percent, which encourages smuggling of chicken products. The high tariffs also leads to false origin labeling and improper product identification.

Non-tariff barriers

U.S. exports to Bulgaria are hampered by the Pan-European Cumulation system, particularly the removal of the availability of customs duty drawback on products originating in the United States and other non-participants in the cumulation system. Under this recently introduced system, customs duties on U.S.-origin inputs which are used in the production of goods subsequently exported under preferential trade agreement involving the EU, Bulgaria 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 Bulgaria's Europe Agreement, even though other participants in the "cumulation system" are not party to the Europe Agreement.

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 corporate offices in other countries to Bulgaria. Bulgaria uses the single customs administrative document used by EU members.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Bulgaria is making an effort to harmonize its national standards with international and EU standards. Bulgaria is a participant in the International Organization for Standardization (ISO) and the International Electro-technical Commission (IEC). However, in 2000, the Ministry of Environment and Waters enacted regulations that prohibit the use of U.S.-made space heaters designed to burn used oil, despite the fact that these products are widely approved for sale and use in the United States and the European Union.

All imports of goods of plant or animal origin are subject to European Union phytosanitary and veterinary control standards, and relevant certificates should accompany such goods. However, Bulgarian authorities have modified their national regulations to accept U.S. Department of Agriculture certificates.

The registration processes for pharmaceutical products and for drug pricing and reimbursement are cumbersome and non-transparent. In particular, the procedure for registering products is tied to the procedure for registering prices. Thus, if the Ministry of Health does not approve the price, the product can be blocked from entering the market.

GOVERNMENT PROCUREMENT

Bulgaria is not a signatory to the WTO Agreement on Government Procurement (GPA), but has observer status. In the WTO accession process, Bulgaria committed to submitting an offer by June 1997; it declared its intention to complete negotiations by December 1997. Bulgaria has recently submitted information on its implementing legislation for procurement to the GPA Committee. Bulgaria would have to join the GPA in order to become a member of the European Union.

In June 1999, parliament adopted new procurement legislation. This legislation defines terms and conditions for public orders and aims for increased transparency and efficiency in public procurement. In December 2001, the Council of Ministers approved draft amendments to the Law on Public Procurement, which envisages the establishment of a state agency on government procurement under the authority of the Council of Ministers. Bulgarian companies and producers could enjoy an effective 10 percent discount, new bidding and appeal procedures, and sanctions options - if their bids have at least a 50 percent Bulgarian content and/or represent potential for creating employment in Bulgaria.

The newly-proposed amendments to the Public Procurement Law would give priority to Bulgarian manufacturers of generic drugs if the price of the foreign pharmaceutical product is not at least 10 percent lower. Some members of parliament have publicly advocated a policy of protectionism for Bulgarian-manufactured pharmaceuticals. Draft regulations stipulate a variety of mechanisms for unfair protection of Bulgarian drugs in the future. In addition, the purchasing, pricing, and reimbursement processes for drugs under Bulgaria's national health system are not as transparent as they could be.

The Bulgarian Public Procurement Register contributes to transparency improvements. However, there is still much progress to be made in terms of improving public knowledge of public procurement operations, and the current control system needs to be strengthened to ensure prevention of possible corruption in the awarding of public contracts. Many companies, especially foreign firms, have complained about the nature of public procurement transactions. The complaints review procedure is burdensome and time-consuming and should be improved.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Bulgarian intellectual property rights (IPR) legislation is generally adequate, with modern patent and copyright laws and criminal penalties for copyright infringement. Bulgarian IPR legislation is considered to be among the most modern in Central and Eastern Europe. In 2000, amendments to the Law on Copyright and Neighboring Rights extended copyright protection to 70 years and introduced a new neighboring right for film producers, provisional measures to preserve evidence of IPR infringement and special border measures.

Bulgaria does not provide for data exclusivity of drug manufacturers as provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) or for supplementary patent protection pursuant to the EU Association Agreement. The lack of data exclusivity thereby permits rival makers of the same drug free access to the expensively produced data of foreign companies for purposes of testing, documentation, and regulation.

U.S. businesses complain about lack of enforcement against trademark infringement. Inability to protect trademarks is a significant barrier to investment and legitimate domestic economic development. Even if courts understand the law and issue orders, the companies cannot trust that those charged with enforcement will carry out the court judgement. Implementation of "special border measures" for copyright enforcement has created problems for legitimate exporters and importers, according to the Bulgarian Industrial Association; further changes are necessary to clarify the law and to better train customs officials. There is no provision for a bond from the complainant to protect the legitimate importer or exporter of goods that are stopped in transit under "special border measures."

Until 1998, Bulgaria was the largest source of compact disk and CD-ROM piracy in Europe and was one of the world's leading exporters of pirated goods. For this reason, Bulgaria was placed on the U.S. Trade Representative's

Special 301 Priority Watch List in January 1998. Enforcement improved considerably with the introduction of a CD-production licensing system in 1998. In recognition of the significant progress made by the Bulgarian Government in this area, the U.S. Trade Representative removed Bulgaria from the Special 301 Watch List in April 1999.

Industry reports that software piracy continues to be a serious problem, although an industry legalization campaign, which began in 1999, has made noticeable gains against unauthorized software. Local software industry representatives report that, with good cooperation from Bulgarian law enforcement authorities, the campaign has begun to lower the piracy rate of products in the market. The Bulgarian Government has signed agreements with major software companies committing the state administration to license all company products.

Due to improvements in enforcement and the legal regime, audiovisual piracy has also decreased since 1998. Industry sources estimate the piracy rates for videotapes, optical discs, satellite television programs and the Internet in Bulgaria at 15 percent to 20 percent.

SERVICES BARRIERS

As in other countries aspiring to membership in the EU, 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. However, this requirement will only 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

A Bilateral Investment Treaty (BIT) with the United States took effect in 1994. The BIT includes guarantees for U.S. investors of the better of either national or MFN treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to international arbitration.

Foreign persons cannot own land in Bulgaria because of a constitutional prohibition, but foreign-owned companies registered in Bulgaria are considered to be Bulgarian persons. Foreign persons may acquire ownership of buildings and limited property rights, and may lease land. Local companies where 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, but residence permits are often difficult to obtain. Bulgaria’s Commercial Code has provisions that do not adequately protect minority shareholders.

The Bulgarian Telecommunications Act and draft amendments - although increasing institutional and regulatory liberalization of the Bulgarian telecommunications sector - demonstrate a tendency to focus on institutional issues and the protection of state interests at the expense of greater market liberalization. Such an approach may foster insecurity among potential investors and deter new participants from competing in a rapidly expanding economic sector and increasingly complex marketplace. Companies note problems with issues of funding, licensing, interconnectivity and leased lines, dispute resolution, rights of use, and universal service.

According to U.S. businesses, other steps needed to improve foreign investment include improved creditor rights through a law on improved bankruptcy 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 perception of corruption.

ELECTRONIC COMMERCE

In January 2001, Parliament ratified the WIPO "Internet" treaties - the Copyright Treaty and the Performance and Phonograms Treaty.

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. Many business representatives contend that unnecessary licensing and administrative inefficiency continue to hinder private business development and market entry.

Although the Bulgarian Government has achieved some successes in the fight against organized crime and corruption, many observers believe that corruption and political influence in business decision making and in the judicial system continue to be significant problems in Bulgaria's investment climate. The problems range from the demand for petty bribes for government licenses and permits to non-transparent privatizations of major state enterprises. Automobile theft - mainly targeting late-model, high-end vehicles and sometimes perpetrated in cooperation with corrupt law enforcement officers - adds to the financial burden and emotional cost of doing business in Bulgaria.

Government Anti-Corruption Strategy

As part of Bulgaria's tasks for integration into the European Union, the Bulgarian Council of Ministers has directed the State Administration Ministry to draw up a plan to implement the "National Anti-Corruption Strategy," which was adopted in October 2001.

Access to International Arbitration

During 2000-2001, the Bulgarian Foreign Investment Agency (BFIA) tried unsuccessfully to have the law amended to allow businesses that are registered in Bulgaria, but are owned in whole or substantial part by foreign persons or entities, to go to arbitration outside Bulgaria. Thus, companies that are not registered in Bulgaria, but are involved in a business transaction here, can have an arbitration venue outside of Bulgaria, whereas businesses that are registered in Bulgaria must arbitrate in Bulgaria. If the company is "an enterprise with predominant foreign participation," the panel of arbitrators can include arbitrators who are not Bulgarian citizens. The parties to arbitration may, with certain limitations, select the rules for arbitration procedure.

Textiles and Apparel

As of January 1, 2002, Bulgaria eliminated all tariffs for industrial imports from the EU, including textile and apparel, under its association agreement with the European Union. 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 tariffs on textile and clothing products were eliminated 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.