HUNGARY

TRADE SUMMARY

The United States registered a trade deficit of $2.3 billion with Hungary in 2001, an increase of $132 million from 2000. Hungary is the United States' 61st largest export market. In 2001, U.S. goods exports to Hungary were $687 million, a 20.7 percent increase from 2000. U.S. imports from Hungary were $3.0 billion in 2001, an increase of $249 million (9.2 percent) from 2000. The stock of U.S. foreign direct investment in Hungary in 2000 was $1.0 billion, down 29 percent from 1999.

IMPORT POLICIES

Tariffs

Hungary's trade policies are shaped primarily by its World Trade Organization (WTO) commitments and its efforts to accede to the European Union (EU). Hungary's average most-favored-nation (MFN) import duties have fallen from 13.6 percent in 1991 to 8 percent in 1998. Customs duties on textile products range from 3 percent to 13 percent. Hungary has concluded a preferential trade agreement with the EU (Europe Agreement) and free trade agreements with the European Free Trade Area (EFTA) countries, its Central European neighbors (CEFTA), Turkey, and Israel.

Hungary's progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Hungary has not yet acceded to the WTO Information Technology Agreement, but will have to do so upon accession to the EU.

Under its Europe Agreement, Hungary completely eliminated tariffs on industrial products from the EU as of January 1, 2001. U.S. products, however, are subject to Hungary's MFN rates, and often encounter a significant tariff differential when competing against EU products. Some U.S. exporters have expressed significant concern over the disparity between rates imposed on EU products and MFN rates. These differentials between tariffs on EU goods and U.S. goods disadvantage U.S. exporters.

In 2000, Hungary and the EU reached agreement to further liberalize agricultural trade. The so-called "zero-for-zero agreements" end EU agricultural subsidies for goods exported to Hungary. In return, Hungary has eliminated tariffs on most EU agricultural products. As a result, U.S. agricultural products are disadvantaged relative to EU products.

To address the tariff differential issue, on January 30, 2002, the United States and Hungary signed a trade package that will reduce tariffs on approximately $180 million annually in U.S. exports to Hungary as of April 1, 2002. The products include the following: steam and gas turbines, large engine autos, auto and tractor parts, automatic data processing machines, office machine parts, beauty products, various chemicals, plastics, medical instruments and equipment, laser disks, telephone equipment, almonds, pecans, grapefruit and bovine semen. In most cases, Hungary agreed to reduce the tariff to the EU CET. Hungary renewed for 2002 a waiver of import duties on the leasing or purchase of non-EU aircraft, parts and engines by state-owned Malév Hungarian Airlines.

Non-Tariff Barriers

About 96 percent of imports (by value) no longer require an import license and the number of product categories under quota constraints is decreasing on a yearly basis. For consumer goods, import licenses are required only from non-WTO countries for footwear, apparel, dry goods and fish. Under WTO rules, Hungary must phase out quotas on textiles and apparel by 2004. As a result of the WTO Agricultural Agreement, Hungary has progressively replaced quotas on agricultural products and processed foods with tariff-rate quotas. In October 2000, Hungary resolved a long-standing trade dispute with the United States over Hungary's Uruguay Round commitments on beef imports. As a result, Hungary increased its annual quota on high quality North American beef to 200 metric tons in 2001. However, public and official concerns over bovine spongiform encephalopathy(BSE) and foot and mouth disease (FMD) outbreaks, and a weak distribution system for this kind of beef have meant that U.S. beef exports have yet to fill the quota.

U.S. firms producing in Hungary, especially auto parts manufacturers, complain that the refund of the customs duties and fees paid on these "imports for reexport" are reimbursed slowly, resulting in the tying up of large sums of money. Furthermore, other U.S. exports to Hungary, such as lumber and veneer products, are hampered by the Pan-European 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, Hungary and other countries are no longer refunded.

STANDARDS, TESTING, LABELING AND CERTIFICATION

On February 26, 2001, Hungary and the EU signed a Protocol to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products (PECA) to facilitate trade in designated product sectors. The agreement took effect on June 1, 2001. The agreement eliminates the need for further product testing and certification of EU-origin products covered by the PECAs. Products originating in countries not party to PECAs, including products tested and certified to EU requirements, may not benefit from these agreements. During 2001, the United States raised concerns, both bilaterally and in the WTO, that the rule of origin provision in these agreements unjustifiably discriminates against non-EU origin products and is inconsistent with WTO obligations. The European Commission proposed in late 2001 that the problematic origin provision be dropped from current and future agreements. We will continue to monitor this issue.

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. These regulations include requirements that all bovine semen that enters Hungary be purchased through domestic animal inspection centers—and only after a 30-day in-country quarantine. According to U.S. industry estimates, potential sales without these restrictions would be less than $10 million. In January 2001, Hungary suspended import licenses for U.S. beef, bovine genetics, and pet food products in response to the BSE outbreak in Europe. This action was described as a precautionary suspension while the Hungarian government consulted with the EU, and was undertaken in order to prevent problems for Hungary's exports to the EU. Hungary reopened imports of bovine semen and non-ruminant protein pet food in February 2001. In January 2002 Hungary introduced new "EU harmonized" certificate requirements for meat, bovine semen and pet food without notifying the affected foreign countries and the WTO Sanitary and Phytosanitary Committee of these actions.

In 1998, Hungary adopted legislation governing genetically modified organisms (GMOs) in agriculture. These laws, in line with EU law, impose import restrictions that primarily affect new plant varieties. The Ministry of Agriculture requires a multiyear registration procedure. Final approval for field trials rests with a mixed committee that includes scientists and environmentalists. The market for seed imports is relatively small (estimated $18 million in 1998), however U.S. firms in Hungary also produce seed and plant stock for other markets. U.S. industry estimates that full liberalization of the GMO policy would mean additional U.S. exports of $10 million - $25 million.

GOVERNMENT PROCUREMENT

Hungary is not a signatory to the WTO Agreement on Government Procurement (GPA). Hungary has the status of an observer to the GPA, and it will be required to accede to the GPA upon EU accession. Hungary cosponsored, with the United States and Korea, a proposed agreement on Transparency in Government Procurement Initiative submitted to the WTO Secretariat in 1999.

The total value of public procurement in 2001 was 606.9 billion Hungarian forints ($2.23 billion), a 16 percent increase over 1999. Of these, 77.6 percent were open tenders, up from 76.2 percent in 2000. Foreign companies were awarded eight percent of the value of over 3800 tenders. Eight hundred thirty complaints came before the Public Procurement Arbitration Court in 2001; of these, 325 were found to have merit.

Foreign access to government-funded construction and service/supply contracts is regulated by the 1995 Public Procurement Act. Tenders must be invited for the purchase of goods in excess of Hungarian forints (HUF) 10 million ($35,000) and for the purchase of services in excess of HUF five million ($17,500). Three provisions of the current law allow preferential treatment of Hungarian companies. The first allows governmental institutions, some 20,000 in number, to issue tenders that explicitly exclude foreign firms, but is rarely invoked. The second provision allows these institutions to award contracts to bids with at least 50 percent Hungarian content even if the price is 10 percent higher than majority-foreign bids. A third provision allows tenders to require the participation of local subcontractors or local labor. Purchases related to state security, as well as purchases of gas, oil, and electricity remain exempt from these regulations. These provisions are expected to remain in place until EU accession. Some U.S. firms have expressed concern about non-transparency and procedural irregularities in government tenders. The Hungarian government announced that online government procurement will be available starting in April 2002.

EXPORT SUBSIDIES

Hungary did not renew agriculture export subsidy legislation in 2002. In accordance with a 1997 agreement with the United States and other petitioning members of the WTO, Hungary’s WTO waiver concerning support for agricultural exports expired on January 1, 2002. As a result, Hungary’s legal export subsidy opportunities dropped to $106 million for sixteen designated groups of products. As this level is fairly low, and as Hungary had already agreed to cut support to agricultural exports to the EU (the primary destination of such exports), the importance of export supports to the agriculture sector had already diminished and the government decided not to renew the legislation.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With one major exception (the protection of confidential pharmaceutical test data), Hungary’s intellectual property rights (IPR) laws are adequate, but insufficient resources, court delays and relatively light penalties hamper enforcement. Copyright industries report that piracy of audiovisual works and computer software has decreased, but remains at unacceptably high levels.

Data Exclusivity

In May 2001 the Office of the United States Trade Representative announced that it had upgraded Hungary to the Special 301 Priority Watch List because Hungary does not adequately protect confidential test data submitted by pharmaceutical companies seeking marketing approval. This deficiency is contrary to Hungary's obligations under Article 39.3 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which took effect on January 1, 2000. On April 12, 2001, the Hungarian government issued a ministerial decree to provide this data exclusivity protection, but the decree does not take effect until January 1, 2003. Furthermore, the decree only provides protection for test data submitted on products granted marketing authorization on or after April 12, 2001. The Hungarian government claims that its unfair competition legislation is adequate to prevent generic drug manufacturers from using data submitted by multinational research pharmaceutical firms, but examples exist where generics have actually come to market prior to or very soon after the original product. The U.S. pharmaceutical industry estimates it would increase sales by up to $100 million annually if Hungary rectified the data exclusivity problem and other weaknesses in its patent protection regime. The United States has taken every opportunity to urge Hungary to remedy this situation.

Patent Protection

Despite having strengthened its patent protection following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993, the patent protection system needs improvement. Specifically, persistent problems in the Hungarian judicial system hinder protection of patent rights. U.S. interests have tried unsuccessfully to get the Hungarian judicial system to reverse the burden of proof in patent infringement cases, and have not been able to obtain injunctive relief prohibiting the marketing of products that the courts have deemed infringing. The lack of relevant technical expertise in the courts can result in such cases taking three or more years to reach conclusion. Penalties awarded in such cases are considered to be too low to act as effective deterrents.

Copyright Protection

Hungarian copyright laws conform in large part with international standards, but piracy is still a serious problem because of lack of enforcement. Video and cable television piracy is widespread; local television and cable companies regularly transmit programs without authorization. U.S. industry estimates total losses due to piracy at $55.6 million. Most recent U.S. industry statistics indicate that in Hungary, 40 percent of videotapes, 20 percent of records and music, 51 percent of business software applications, 86 percent of entertainment software and 4 percent of books are pirated copies. In addition, the estimated level of unauthorized cable programming is 45 percent and the level of pay television signal theft is 60 percent.

The 1999 Copyright Act strengthened Hungary's copyright laws and has helped to drive piracy of audiovisual works and transmissions underground. The Copyright Act, however, does not expressly provide for civil *ex parte* searches, although the Hungarian government asserts that such measures are available under the Civil Procedure Act. The U.S. software industry is now testing whether these alternative procedures provide an adequate means for obtaining civil *ex parte* searches. In 2000, the Criminal Code was amended to impose more severe penalties, including eight years imprisonment for video piracy and two years for signal theft. In 2001, the Budapest Police Economic Crime Unit initiated almost 7,500 criminal investigations involving piracy (slightly up over year 2000), and closed some long-pending cases.

SERVICES BARRIERS

For domestic political reasons Hungary has not yet implemented an amendment to the 1996 Media Law, which would harmonize Hungary's broadcast regime with EU directives on television content and quotas. Current draft legislation would require that over 50 percent of both public and private TV broadcasting be European programming, "where practicable." In the meantime, the more restrictive original law, which requires 70 percent European content, still governs. The Media Act revision would also limit any single cable provider to one-sixth of the household market. The Unified Communications Act passed in 2001 eliminated the long distance and international monopoly of the formerly state-owned telecommunications company MATAV on December 23, 2001. Hungary's local telephone market is scheduled to be fully open by November 2002.

In 1998, Hungary introduced restrictions on foreign lawyers and law firms. Hungary requires foreign lawyers to associate with local lawyers to practice in Hungary. This has led to the conclusion of so-called "cooperative agreements" between Hungarian and U.S. firms to provide clients both Hungarian and international legal advice. Foreign lawyers cannot provide legal advice on foreign or international law without being licensed in the practice of Hungarian law.

Only a Hungarian-certified accountant may conduct audits, but this individual may work for a foreign-owned firm. Foreign nationals may be licensed as architects and engineers, but they must first have their degrees examined for equivalence by Hungarian authorities, and may be required to sit for qualifying exams in some cases. They must then be registered locally and join the local chamber of architects and engineers.

A 1998 decree that the government has never enacted would restrict the distribution of products by direct marketing. This decree prohibits the direct sale of certain products, such as therapeutic substances not classified as pharmaceutical products and foodstuffs. It also imposes a requirement that distributors obtain a vocational training degree. Direct marketers are currently operating in Hungary, but under the threat that the government may enact the restrictions.

Although U.S. firms now provide direct air cargo services to Hungary, the provision of air courier services is hindered by Hungary's difficult and non-transparent documentation and customs procedures. There is no pre-arrival processing or regular review of the *de minimis* value regime for packages. Customs procedures often create unnecessary delays, which increase costs and decrease efficiency for express courier operators.

INVESTMENT BARRIERS

Hungary's commitment to privatization of large state enterprises has made it a leading recipient of foreign direct investment in Central Europe. Hungary has progressively reduced state ownership in "strategic" enterprises from 50 percent to 25 percent to a single golden share, with veto rights retained in some cases.

Under the present Media Law, a broadcaster must be at least 26 percent Hungarian-owned, and no entity – foreign or domestic – may hold in excess of 49 percent of the company. Further, the Media Law prohibits a person or firm from holding a controlling interest (25 percent or more) in both a national newspaper and a national broadcaster. Similar restrictions limit cross-ownership in regional newspapers. Cable TV operators are also limited to serving no more than one sixth of Hungary's market, which translates into almost 700,000 households.

Government delays in approving energy price increases have repeatedly prevented U.S. and other foreign firms from realizing the eight-percent returns guaranteed in energy privatization contracts. The Hungarian government has limited energy prices to consumers in line with predicted inflation levels of six percent per year, despite actual inflation in 2000 of almost 10 percent. Beginning in 2001, state-owned electricity wholesaler and grid company MVM raised electricity prices to private distributors by 13 percent, but restricted the distributors' increases to end users to six percent. The energy sector will begin liberalization on January 1, 2003.

In December 2001, the Ministry of Transport, Communication and Water Management issued a decree, which discontinued the rights of a foreign partner who held a minority share in the management of Budapest Ferihegy airport as part of a reorganization plan for airport operations. The airport corporation, privatization agency and foreign partner have begun talks on settling the issue.

ANTICOMPETITIVE PRACTICES

For the most part, privatization and the entry into the Hungarian market by multinational companies have greatly increased competition in many sectors. Some key infrastructure monopolies (e.g., broadcast transmitter Antenna Hungaria, electricity wholesaler MVM, and state railways MAV), remain state-owned.

ELECTRONIC COMMERCE

The Hungarian Government has signed and ratified the two WIPO “Internet” treaties - the Copyright Treaty and the Performance and Phonograms Treaty.

Hungary has only recently begun to deal with electronic commerce issues. The Internet penetration rate is relatively low but is growing (about 17 percent of households). The low rate is due to high connection charges, low credit card acceptance and a lack of good delivery companies. The Hungarian parliament passed electronic commerce legislation governing information disclosure for online sales in December 2001, which included provisions banning unsolicited e-mail. The electronic signature law took effect on September 1, 2001.

Sales via the Internet are unrestricted, but subject to taxation. Internet purchases delivered from abroad are subject to customs duties as well as value-added tax (VAT), and VAT is also collected on purchases if delivered from within Hungary. The Customs Office assesses and collects VAT on software imported on physical media and/or installed on hardware. No customs duty payment is required in case of software purchased and delivered via the Internet; however, the VAT is to be paid after the purchase on a self-assessment basis.

Hungary has agreed in principle with the U.S. goal of an indefinite extension of the current moratorium on customs duties on electronic transmissions. The ease, and potential for abuse, inherent in software sales via the Internet may make this a target of scrutiny in the future since this is a potential source of unlicensed software in Hungary.

The Hungarian government has delayed online public procurement until mid-2002.

OTHER BARRIERS

Although the incidence of bribery does not appear to be worse than in other parts of Europe, transparency remains an issue in business dealings. Some U.S. firms complain about inappropriate influences in government tenders.

Firms operating in Hungary are sometimes surprised by shifts in government policy. There is no established mechanism for government consultation with business interests. In other cases, the exceptional autonomy of the judicial system and of the National Radio and Television Board (both products of Hungary's transition to democracy) sometimes leads to decisions inconsistent with an overall government policy of promoting economic openness. In addition, complaints have been registered with the U.S. Government concerning inconsistent implementation of customs regulations and procedures when exporting to Hungary.