# POLAND

## TRADE SUMMARY

The U.S. trade deficit with Poland was $414 million in 2002, an increase of $249 million from $165 million in 2001. U.S. goods exports in 2002 were $687 million, down 12.8 percent from the previous year. Corresponding U.S. imports from Poland were $1.1 billion, up 15.6 percent. Poland is currently the 61st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Poland in 2001 was $3.0 billion, up from $2.7 billion in 2000.

## IMPORT POLICIES

Poland's tariff policy reflects a trend toward liberalization in accordance with its WTO commitments and a strong bias in favor of its regional free trade partners (EU, EFTA, CEFTA, Estonia, Latvia, Lithuania, Israel, Turkey, Croatia, and the Faeroe Islands). In 2002, almost three-quarters of Poland's total industrial imports arrived duty free (from Poland's free trade partners), one quarter (including those from the United States) were subject to most favored nation (MFN) tariffs, and about three percent were subject to preferential tariff rates under the Generalized System of Preferences (GSP) for developing countries. On January 1, 2002, Poland eliminated all tariffs on industrial products from the EU. Poland and the EU liberalized trade of about 500 non-sensitive agricultural goods in 2001 (grains and meat not included) and are expected to implement a follow-up agreement covering more sensitive products in 2003. The reduction or elimination of tariff and non-tariff barriers with other free trade partners is also continuing. Upon joining the EU, Poland will implement the EU's common external tariff (CXT) policy toward all non-EU trading partners.

U.S. exporters in a broad range of industry sectors have complained that the growing differences between MFN tariffs applied to U.S. goods and preferential tariffs applied to goods from the EU and Poland's free trade partners have diminished their business prospects and ability to compete in the Polish market. Specifically, U.S. exporters of automobiles, auto parts, small aircraft, electrical generating equipment, mining equipment, lumber and wood products, pistachios, distilled spirits, wine, sporting goods, cosmetics, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections, and grapefruit have been disadvantaged. While giving the EU and its free trade partners preferential access, Poland has maintained MFN tariffs at levels that often exceed the EU CXT rates that Poland will implement upon joining the EU. Thus far, Poland's approach to early CXT implementation has been piecemeal. As a result, many U.S. firms face a bigger competitive disadvantage selling into Poland than into the EU. The U.S. and Polish Governments have been engaged for some years in an effort to address this and other bilateral trade issues. In June 2001, the two sides agreed to a package of measures, including the suspension beginning in 2002 of Polish tariffs on a limited range of industrial and agricultural goods of interest to U.S. exporters, continued U.S. support for Poland's participation in the GSP program until it joins the EU, and the creation of a formal dialogue for addressing bilateral trade concerns. These measures went into effect in September 2002.

Certain agricultural products imported under import quotas are permitted entry only by individual import permits, whereas annual import quotas for some items are split equally into three-month quota amounts. Such import permits limit amounts to various maximum levels per permit; for example, 1,500 tons for wheat, 100 tons for pork and poultry, and 20 tons for processed tomatoes. These requirements hamper import prospects for certain bulk products that might otherwise be shipped in larger quantities on ocean-going vessels.

Poland will fully implement, at least 3-6 months prior to EU accession, veterinary certificates required by the EU for all red meat and poultry products entering Poland. Given the EU's restrictive sanitary procedures, which the United States actively disputes, U.S. exports of the aforementioned goods will be effectively blocked from entering Poland once Poland implements EU veterinary certificates. U.S. exports of these goods to Poland were worth $59 million in 2001.

Poland requires import permits and certificates of disinfection abroad for imports of used clothes. There is a 20-ton minimum on individual shipments of used clothes, which largely excludes small importers from the market. These regulations remain in force until the end of 2002. In 2003, there will be automatic registration for imports of used clothes, but the disinfection requirements will be stricter.

Poland applies very high duties of 75 percent to 105 percent *ad valorem* on imported alcoholic beverages (and nearly 370 percent for imports beyond the quota) and 30 percent to 452 percent

*ad valorem* duties on chocolate and confectionery products. Poland plans to reduce tariffs by 30 percent on some alcoholic beverages from EU-member countries in 2003. Additionally, Poland's sugar law, effective since late August 2001, requires the use of Polish-grown agricultural resources (grain) in domestic isoglucose production.

Due to the heavy state involvement in financing and delivering healthcare, Poland has a highly regulated pharmaceutical market with significant barriers to market access. Research-based pharmaceutical firms cite three main impediments: 1) a pharmaceutical policy overwhelmingly focused on cost cutting and the promotion of local industry; 2) unexplained delays in the registration of innovative drugs; and 3) the government's failure since 1998 to add new, innovative medicines to the list of drugs it will reimburse.

While it initiated no safeguard or antidumping procedures in 2001, Poland launched several new cases in 2002. The increased activity may result from the introduction in 2001 of amended safeguards and anti-dumping procedures (the law on protection against excessive import of goods to Poland, and its counterpart for textiles and apparel, and the antidumping law). In 2002, Poland commenced antidumping procedures and safeguards against imports of: carbide (*erga omnes*); synthetic rubber (SBR) from the Czech Republic, Russia and Romania; some steel products (*erga omnes*); and shoes from China. Safeguard actions generally result in temporary and prohibitive import tariffs or antidumping duties. Application of measures connected with technical or environmental protection requirements is increasing in Poland.

The new regulations on safeguards and antidumping procedures that entered into force in 2001 and 2002 conform to WTO standards. Under the new act, proceedings to protect the domestic market from a surge of imported products will be swifter. Restrictions imposed cannot violate international trade agreements concluded by Poland. Protective measures will be imposed only for a limited time and in the form necessary to remedy the injury done to the Polish industry. The Economy Minister's decision regarding the restrictions cannot be appealed in the administrative courts. The Ministry expects to complete the process of notification in WTO in the first half of 2003.

Finally, the classification of products, which determines the applicable custom duty and value added tax (VAT), is often done inconsistently, arbitrarily, and sometimes even retroactively.

## STANDARDS, TESTING, LABELING AND CERTIFICATION

Harmonization of standards, certification, and testing procedures with those of the EU, including greater reliance on voluntary standards, is now the main objective of Polish standards policy. Under the 1997 European Conformity Assessment Agreement, Poland agreed to introduce a EU-compatible certification system; to gradually align its regulations and certification procedures with those of the EU; to eliminate mandatory certification for products free from certification requirements in the EU; and to automatically provide a "B" safety certificate to EU products subject to mandatory certification. However, there have been delays in implementing these commitments. Currently, products manufactured in Poland or imported into Poland for the first time that can be of potential danger or serve to protect or save health, life or environment, are subject to certification with a reserved safety mark of the Polish Research and Certification Center or with a manufacturer's declaration of compliance. A Polish "B" safety certificate has been required since 1997 for imports and domestic products and affects about 30 percent of all products marketed in Poland. Poland does not automatically accept the EU "CE" mark or international product standards. Non-acceptance of many international standards, certification, and conformity testing procedures are associated with long delays, involving expensive testing processes.

Poland's arbitrary application of sanitary and phytosanitary standards has, on occasion, seriously disrupted trade. The most notable discriminatory practice has been the strict enforcement of a policy of zero tolerance of certain weed seeds that are common in imported U.S. grains and oilseeds (including ambrosia or ragweed seeds), despite the fact that Poland has ragweed and does not have a meaningful eradication program in place. This policy has resulted in substantial export losses for U.S. grains, oilseeds and products. Import permits are still required for seeds, meat, and live animals. Approval procedures for the importation of new varieties of plants and livestock genetics have also created difficulties for U.S. firms.

In February 2001, Poland banned imports of meat and bone meal (MBM) from all countries due to concerns about Bovine Spongiform Encephalopathy (BSE). Previously, Poland had imported annually around 300,000 tons of MBM

worth $100 million, mainly from the EU. Poland refused to permit imports of U.S. MBM as an alternative, despite the fact that the United States had no reported cases of BSE, unless U.S. MBM undergoes costly heat and pressure treatments outlined in European Commission Decision 96/449/EC. Poland also banned imports of gelatin of bovine origin from all countries in February 2001. Despite these policies, Poland had its first confirmed case of BSE in May 2002 followed by three more before the end of the year.

A new EU-compliant law on labeling of packaged goods (found in Dziennik Ustaw 193 dated November 22, 2002) went into effect January 1, 2003. This new regulation contains EU required provisions concerning product names, label content, and sizes and measurements that must be used in label descriptions.

New laws concerning genetically modified organisms (GMOs) were adopted in mid-2001. These regulations, which fundamentally mirror those of the EU, require labeling of food products when GMO content exceeds one percent. Since December 2001, the government has been considering amending current GMO law to add traceability and stricter labeling requirements similar to those of the EU. In early 2001, a variety of GMO soybeans became the first genetically modified item registered for domestic use in Poland. New GMO product import requirements, under which each importer of GMO soybean meal or corn is required to apply for a Ministry of Environment approved import permit, went into effect in 2002. Such import permit applications were approved upon the recommendation to the Ministry of Environment by Poland’s GMO Commission. The import authorization permits could be valid for up to 10 years.

Poland's Ministry of Health published new regulations concerning food additives on February 5, 2001. These regulations are more compatible with current EU regulations and less restrictive than the former Polish food additives law.

**GOVERNMENT PROCUREMENT**

Problems with the public procurement process in Poland are common. U.S. and foreign firms have complained about the lack of transparency in the process and some have voiced concerns about corruption. Poland’s procurement law does not cover most purchases by state-owned enterprises, which play a significant role in the nation's economy. The domestic performance section of the state-owned enterprise law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Polish companies with foreign participation may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. Since September 1997, Poland has been an observer to the WTO Government Procurement Agreement (GPA). When Poland joins the EU, it will also have to accede to the GPA.

The Ministry of Economy has prepared amendments to the Public Procurement Act which aim to provide employment on public projects for the local unemployed.

**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. However, it still offers drawback levies on raw materials from EU and CEFTA countries that are processed and re-exported as finished products within 30 days. 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. AAM holds tenders to allocate subsidies, which vary based on market conditions and available resources. Poland exports sugar using WTO-allowed export subsidies that cover 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 limited 2001 subsidized exports to 104,400 tons (113,482 tons raw sugar equivalent) per Poland's WTO commitments. Export subsidies for Polish rapeseed were implemented for the first time in late 2000. Such subsidies were applied to an estimated 30,000 tons in 2000 and 6,000 tons in 2001. These amounts were well within Poland’s WTO export subsidy ceilings in terms of quantity and value.

AAM implemented government grain export supports in 2002 in response to surplus domestic grain supplies and high levels of government held stocks. To reduce the surplus and bolster domestic grain market prices, AAM sold approximately 245,000 tons of government wheat stocks to companies at below market prices. Such sales were conducted under the government imposed

condition that the wheat be exported anywhere but the EU.

The Polish government amended laws and regulations governing export promotion in 2000 and 2001 to both improve Poland's export performance and bring Polish regulations fully into compliance with EU regulations and practices in other OECD countries. Polish industry and exporters continually criticize the government for insufficient export promotion support. 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 against most western competitors. After the amendments to the Law on Insurance of Export Contracts in 2000, the availability of export insurance was expanded and now also covers export credits, direct investments abroad, and the cost of developing new markets. Still, the issue of easier access to credits for exporters and companies producing for export remains unresolved.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While Poland has significantly improved its legal framework for intellectual property protection over the last decade, this progress is overshadowed by insufficient enforcement and protection for proprietary test data for pharmaceutical drugs ("data exclusivity"). The 1994 U.S.-Polish Bilateral Business and Economic Treaty contains provisions for the protection of U.S. intellectual property. Poland's Copyright Law offers strong criminal and civil enforcement provisions that cover literary, musical, graphical, software, and audio-visual works, as well as industrial patterns. Amendments designed to bring the Copyright Act into full compliance with Poland's TRIPS obligations were implemented in July 2000, providing full protection of all pre-existing works and sound recordings. Amendments designed to bring the Industrial Property Law, which governs patents and trademarks, into compliance with TRIPS obligations were implemented in August 2001.

U.S. copyright industries report that Poland suffers from high rates of piracy, in large part due to weak control of its eastern border and failure to clean up or shutdown large outdoor markets. Most pirated materials available - particularly CDs, CD-ROMs and DVDs - are produced in the former Soviet Union and other Eastern European countries. With better laws in place and improved cooperation between government and industry, enforcement has improved in recent years. Nevertheless, the cumbersome judicial system and the general lack of knowledge about IPR remain impediments and undermine deterrence efforts. Criminal penalties for copyright piracy increased and procedures for prosecution were somewhat simplified when the amendments to the Copyright Law took effect. Copyright industry associations estimate the 2001 levels of piracy in Poland to be: 30 percent for sound recordings, 25 percent for motion pictures, 53 percent for business software, and 90 percent for entertainment software. Poland is currently on the Special 301 Watch List due primarily to ineffective enforcement.

Separately, pharmaceutical producers are affected by substandard data exclusivity and patent protection for their products. Until late 2001, test data submitted to the government to register a drug generally received three years of data exclusivity. However, in a number of cases, the data exclusivity period was actually shorter. In addition, in the fall of 2001 the Parliament passed a law effectively abolishing the period of data exclusivity prior to Poland's EU accession. In response to international pressure, Poland restored the three-year period of data exclusivity in January 2002, but added a condition that precludes drug firms from getting the full three years of protection. This law appears to be inconsistent with Poland's WTO TRIPS commitments and could have a negative impact on foreign research and development pharmaceutical companies operating in Poland. The U.S. Government remains engaged with the Polish government in an effort to restore the full three-year period of data exclusivity. Additionally, the government creates the potential for patent violations by registering generic or copy versions of drugs that are protected by a patent or for which a patent is pending. In late 2001, Poland agreed to introduce supplemental protection certificates (patent extensions), as required by EU law, upon joining the EU for drugs patented since January 1, 2000. Full harmonization of Polish patent legislation with EU law was completed in 2002.

## SERVICES BARRIERS

Poland has made progress in reducing barriers to services, but many remain, notably in the audiovisual and telecommunications sectors. In November 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. Subsequent legislation passed in 2000 requires broadcasters to

meet the 50 percent quota only where practicable, as specified in EU directives. Nevertheless, in response to apparent EU pressure, successive governments have tried to introduce much stricter enforcement of the European production quota. As of December 2002, a new bill introducing stricter quotas was near parliamentary approval. Liberalization of the telecommunications sector is progressing, but remains stifled by the former state monopoly, TPSA. The government began to sell stakes in TPSA in October 1998, and agreed to open domestic long-distance service to competition in 1999 and international services in 2003. Parastatal enterprise France Telecom became TPSA's largest shareholder in 2001, but the government still retains significant control. Several competitors now provide local phone service and domestic long distance service. Thus far, government regulatory agencies' efforts to curb anticompetitive behavior by TPSA, which retains a monopoly over interconnection and international long distance, have been insufficient.

## INVESTMENT BARRIERS

Lack of transparency and of clearly stated rules in government decision-making processes and instances of corruption are widely recognized as informal barriers to foreign investment. Polish law permits 100 percent foreign ownership of most corporations. Exceptions include broadcasting, where foreign ownership is limited to 33 percent (when Poland joins the EU this cap will be eliminated for EU firms and raised to 49 percent for non-EU firms), and air transport, limited to 49 percent. No foreign investment is currently allowed in gambling. The cap on foreign ownership in telecommunications was lifted on January 1, 2001. Foreign firms are free to participate in the on-going privatization program, although this process has attracted relatively few U.S. firms, in part because of transparency concerns but also because of the unreliable regulatory environment. 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.

Certain elements of the bilateral economic treaty (BET) between the United States and Poland may need to be revised in order to avoid conflicts between the obligations of the BIT and the laws and regulations with which must comply upon accession to the EU.

## ANTICOMPETITIVE PRACTICES

The Office for Competition and Consumer Protection, established in 1996, is empowered to fine state-owned and private firms that unduly prevent competition. This relatively new office has not received the political support needed to carry out its responsibilities fully. In particular, the office has faced difficulty in confronting companies, whose management is still commonly appointed on the basis of political connections. Competition law in Poland is generally governed by two pieces of legislation: the 1993 Law on Combating Unfair Competition and the 2000 Law on the Protection of Competition and Consumers.

## ELECTRONIC COMMERCE

High interconnection charges have hindered the development of electronic commerce in Poland. At the end of 2001, less than 20 percent of companies used electronic commerce. Naturally, information technology (IT) companies lead the way: around 30 percent of IT companies sell and almost 60 percent buy through the Internet. On July 27, 2001, the Polish Parliament passed the law on electronic signature, a requirement for EU membership. Sales through the Internet are unrestricted, while merchandise purchases through the Internet are subject to the customary Value Added Tax (VAT) and customs duties. The Ministry of Finance and the Customs Service are considering tax regulations for software purchased and delivered via the Internet. Poland, like many of its European neighbors, is developing ways to apply taxes and other regulatory instruments to electronic commerce that will comply with EU law. Polish VAT regulations already identify factors for determining the location of a transaction (processing site) and the taxpayer (location of parties to a transaction). Internet transactions are located where the server processes the purchase. Similar principles apply to the sale of services. An important unresolved VAT-related matter is the issue of electronic invoices that clearly state the moment when a transaction was concluded. Determining factors for taxation of income from electronic commerce include the legal status of a foreign entity and the classification of goods. Digital technology products are distinguished by their proprietary status and licensing arrangements. Polish customs regulations remain vague about the free flow of digital products and services.

### OTHER 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 underZxnded 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.