ROMANIA

TRADE SUMMARY

The U.S. trade deficit with Romania was $447 million in 2002, an increase of $301 million from $145 million in 2001. U.S. goods exports in 2002 were $248 million, down 33.7 percent from the previous year. Corresponding U.S. imports from Romania were $695 million, up 33.7 percent. Romania is currently the 85th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Romania in 2001 was $122 million, up from $103 million in 2000.

IMPORT POLICIES

Tariffs

Romania's trade policies are shaped primarily by its World Trade Organization (WTO) commitments and by its efforts to join the European Union (EU). Romania has concluded a preferential trade agreement with the EU (Europe Agreement), and free trade agreements with Central European neighbors (CEFTA) and European Free Trade Area (EFTA) countries. Romania generally maintains WTO bound rates for agricultural products (average rate of 98.6 percent) and non-agricultural products (average rate of 34.4 percent). It did, however, frequently use much lower applied rates, resulting in average applied rates of 33.9 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products.
Romania acceded to the WTO's Information Technology Agreement and eliminated tariffs on products covered by the agreement effective January 1, 2000. High Most Favored Nation (MFN) rates on distilled spirits (90 percent *ad valorem* within a modest quota and 247.5 percent outside the quota), wine (144 percent), durum wheat (242 percent), and textiles (12 percent to 32 percent) have limited access to the Romanian market for U.S. products. In 2001, Romania lifted the import surcharge it had imposed on all products in 1998.

Pursuant to its Europe Agreement, Romania is phasing out tariffs on products originating within the EU while U.S.-origin exports often face higher MFN duties. Exporters of U.S.-origin products have voiced concerns about these tariff differentials vis-à-vis EU-origin products, including distilled spirits, durum wheat, animal feed supplements, wine, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and washers and dryers for laundromats. In 2000, Romania and the EU reached agreement on further trade liberalization in agricultural products. This agreement ends EU agricultural subsidies on goods exported to Romania in return for the elimination of Romania's tariffs on most EU agricultural products. As a result, U.S. agricultural products are put at a further disadvantage compared to EU products. The United States has been consulting with Romania about the tariff differential problem and encouraging it to reduce its applied rates to the EU's Common External Tariff (CET) rates for key products and sectors.

Non-tariff barriers

In the second half of 2001, after a new stand-by agreement was concluded with the IMF, measures previously granted to small and medium-size enterprises (SMEs) that contributed to a widening 2001 trade deficit were targeted for change, however some fiscal and customs facilities remain in specific areas, such as free trade areas, industrial parks and free trade areas. Beginning in 2002, new value added tax (VAT) or customs duty holidays are stipulated in the Customs Tariff and are the same for all companies. In 2001, new rules were implemented for foreign direct investments exceeding the equivalent of $1 million. These include a customs duty holiday for imports necessary for the investment, and tax deductions of 20 percent of the total investment value. Exemptions from customs duties apply to exported goods, transiting goods, merchandise in customs warehouses (during the storage period), and goods imported and exported in the drawback system. Many exporters complain that customs valuation can be inconsistent and arbitrary.

The new VAT law, effective June 1, 2002, and the new Profit Tax Law, effective July 1, 2002, significantly change prior legislation. These laws abolished some incentives. Imports that are exempt from customs duty are no longer exempt from the 19 percent VAT, and tourism services provided to nonresidents and for construction of housing are subject to the 19 percent VAT. VAT exemption incentives previously provided for operations in Free Trade Zones are now limited to a smaller number of transactions - the most important being a VAT exemption on borrowed funds. Advantageous provisions of the VAT and profit tax laws include a 12-month postponement of VAT payment on imports for projects of SMEs, contracts in disadvantaged areas, investments with significant impact on the economy, and other production-related investments. To the benefit of U.S. trade, the laws also include an expedited VAT refund procedure for taxpayers that meet certain conditions; the elimination of hard currency cashing conditions; exemption from profit tax if operating in disadvantaged areas; and a reduced profit tax rate for Free Trade Zones and export activities.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania seeks to bring its standards in line with international and EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. For instance, Romania adopted international quality control standards such as ISO 8402, 9000-9004 and 9004-2 and incorporated them into its national standardization system.

Although the ISO standards are not compulsory by law for individual companies, buyers increasingly impose them on suppliers to ensure the quality of their products and services. Romanian Decree No. 21/1992 created an Office for Consumer Protection. This office supervises product quality compliance with compulsory standards pertaining to life, health, work security, and environmental protection.

Romania has begun to harmonize sanitary and phytosantiary measures with those of the EU. Generally, the United States welcomes harmonization with EU regulations which will create a more transparent import system that is based on science. However, adoption and implementation of EU measures will severely impact U.S. exports of poultry, beef and biotechnology products to Romania. The U.S. government has been working closely with Romanian officials to ensure U.S. products continue to have market access for these key products in the interim period leading up to EU enlargement.

GOVERNMENT PROCUREMENT

For a number of years the Government of Romania has expressed its intention to join the WTO Government Procurement Agreement (GPA), but has not yet done so. Romania already is an observer to the GPA and will have to accede to the GPA when it joins the EU.

Romania has supported discussions in Geneva on launching negotiations of an agreement on transparency in government procurement. Romania’s government procurement law covers purchases by central government bodies – Parliament, the Presidency, the government and ministries, institutions of higher learning, and the judiciary – as well as by state-owned enterprises, with the exception of the procurement of armaments or public works by the Ministry of Defense. State-owned companies with the status of commercial companies have their own internally elaborated purchasing policies based on commercial principles. Article 5 of Decree OG12/1993 establishes the two key conditions for the participation of foreign suppliers: 1) Romanian suppliers are granted similar treatment in the country of origin of the foreign supplier; and 2) a Romanian supplier is either not available or cannot fulfill the conditions of the purchase.

The Romanian government’s web-based public procurement project, operational as of March 2002, is an important step forward in improving government efficiency and curbing institutional corruption. The e-procurement system is used for basic standardized products. Romania’s tender announcements, bid processing, and offer appraisal are entirely computer-based, and the list of ongoing and closed auctions, names of adjudicators, and closing prices are all available to the public. The government asserts that the project has driven down prices and increased competition.

EXPORT SUBSIDIES

In 2001, Romania did not provide export subsidies for agricultural products. In 2002, the government budgeted a subsidy for poultry meat (chicken) exports at $203 per metric ton up to 4,000 metric tons.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Romania's criminal enforcement against copyright piracy and trademark counterfeiting (especially of U.S. distilled spirits) remains inadequate. Although Romania provides its border and other authorities sufficient legal authority, resources, and tools to combat piracy, enforcement of copyright-protected works remains marginal. This inadequate enforcement against copyright piracy caused Romania to remain on the Special 301Watch List in 2002.

The rates of copyright piracy in Romania remain high, though the authorities have made some improvements. The software piracy rate dropped from 95 percent of total sales in Romania prior to the Copyright Law coming into force in 1996, to 77 percent of total sales in the Romanian market. Currently, the estimated piracy rate of music is 55 percent and audio-visual about 50 percent. To address this problem, the government implemented a law in 2001 allowing Customs to verify the IPR legality of imports. While these legislative advances allow for greater criminal prosecution, most IPR cases do not reach trial, because many prosecutors refuse to recognize IPR crime as a social harm, a phrase often heard to explain a reluctance to take legal action. Industry groups are working to train judges and prosecutors in IPR prosecution, and have introduced the idea of specialized IPR courts or magistrates.

Similarly, Romania's failure to protect confidential test data continues to have an adverse effect on U.S. pharmaceutical producers.

SERVICES BARRIERS

In accordance with its Association Agreement with the EU, Romania was required to implement the EU broadcast directive that provides for European content quotas. However, Romania also included the "where practicable" provision of that directive, which gives the government flexibility in implementing this rule. Specifically, Law 119 of 1999, which amended the audio-visual Law 48/1992, provides: "TV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European productions, minus news and sport shows, games, advertising and teletext services." The subsequent condition is that out of the total broadcast, at least 40 percent must be Romanian made. However, making Romanian legislation compatible with EU requirements is regarded by Romanian parliamentarians as a theoretical concept rather than a rule, because Romanian stations that comply with the requirement would dramatically lose market share and revenues.

According to an August 2002 Law amending lawyers' activity in Romania, foreign lawyers not licensed in the practice of Romanian law can provide legal advice on foreign or international law only. They can provide legal advice on Romanian legislation after passing a Romanian Lawyers Union exam in Romanian legislation and the Romanian language. Foreign lawyers may work in Romania as individuals in law offices associated with Romanian firms or international law firms. However, due to the frequent legislation changes in this field, it is likely that these legal provisions will change.

As it implemented its commitments under the WTO Financial Services Agreement, Romania introduced a new law in 1998 that opened its banking sector to foreign investors. Foreign insurance companies must establish a partnership venture with a Romanian partner to enter the Romanian market. Romania has made limited commitments for cross-border provision of insurance services.

The government sold a strategic stake in the telephone company (Romtelecom) to the Hellenic Telecommunications Organization in 1998. Romtelecom's monopoly on fixed-line telecommunications services expired on January 1, 2003. Tariffs are subject to governmental supervision. Romania made commitments under the WTO Basic Telecommunications Agreement - many of which will be phased in in 2003 - and adopted the pro-competitive regulatory principles contained in the WTO Reference Paper. Romania still needs to establish a transparent, non-discriminatory licensing system as specified in the WTO Reference Paper.

INVESTMENT BARRIERS

A controversial new law on securities, Law 525/2002, requires that majority shareholders owning 90 percent of the total stock in a firm buy residual shares. This law is considered to be a compromise to provide for a modicum of minority shareholder protection. The Foreign Investors Council (FIC), representing majority investors' interests, is currently arguing that the law does not provide for methods of public offer price valuation. FIC is lobbying the Romanian government to raise the necessary minimum quota of shares held by minority shareholders to exercise the right to request a second opinion on valuation. The Shareholders Association (AAR), which represents minority shareholder interest, is opposed to this initiative and is lobbying for the implementation of the October 2002 EU Directive on mandatory closing public offer valuation.

A continued impediment to foreign investment is Romania's inconsistent legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases can require lengthy, expensive procedures, and judges' rulings face uncertain enforcement.

Romania has requested additional time to implement the WTO Agreement on Trade-Related Investment Measures (TRIMS). Developing countries were required to come into compliance with this Agreement by January 1, 2000. In regard to a single shipbuilding facility, Romania sought an extension until May 27, 2003. Romania amended the law under which such contracts were negotiated to ensure that future arrangements will not contain provisions which violate the TRIMS Agreement. Government officials stated that they do not intend to seek further extensions.

ELECTRONIC COMMERCE

The Romanian Government signed the WIPO "Internet" treaties - the Copyright Treaty and the Performance and Phonograms Treaty, and in November 2000, the Parliament ratified them. Romania has one of the highest incidences of Internet credit card fraud, which has discouraged international vendors from making payments electronically to Romania. The most common problems result from the use of stolen credit card numbers for the purchase of goods on the Internet. Romanian hackers have also hacked into U.S. companies' servers and stolen proprietary information, including customer credit card data. There have been cases in which Romanian hackers offered to sell the means by which they hacked the company's server back to the U.S. firm. In other cases, hackers threatened to release sensitive data unless a bribe was paid. To counter the millions of dollars worth of credit card fraud each year, in 2002, the Romanian government passed an e-commerce law that defines and punishes cyber crime. The law includes criminal sanctions for falsifying cyber-pay instruments, carrying out fraudulent financial transactions, accepting fraudulent financial transactions, or performing unlicensed cyber transactions.

OTHER BARRIERS

Bribery and corruption are still present in the Romanian courts, customs service, police, tax administration and economy. This is believed to have stimulated growth in the informal economy which, according to most international financial organizations, currently amounts to about half of nominal gross domestic product. Factors contributing to the growth of the informal economy are inefficient bureaucratic structures, inconsistent and changing legislation with often subjective interpretation of law, low wages of tax inspectors and other public service employees (prosecutors, judges, etc.), high taxation, and corruption in the employment and promotion systems in customs, police, and border police.

To date, the Romanian government has provided favorable conditions to state-owned and private firms that then compete against disadvantaged U.S. firms. As an example, to boost the collection of some important debts from state-owned suppliers, the Ministry of Finance negotiated rescheduling deals with state and some private domestic debtors. In certain cases, this hidden subsidy has disadvantaged U.S. competitors. While other examples of unfair competitive practice exist, small firms in particular remain hesitant to grieve such cases, due to a fear of repercussions from fiscal authorities.