BULGARIA

TRADE SUMMARY

The U.S. trade deficit with Bulgaria was $239 million in 2002, an increase of $10 million from $229 million in 2001. U.S. goods exports in 2002 were $101 million, down 6.5 percent from the previous year. Corresponding U.S. imports from Bulgaria were $340 million, up 1.0 percent. Bulgaria is currently the 107th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bulgaria in 2001 was $40 million, up from $38 million in 2000.

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. Bulgaria has signed a preferential trade agreement with the EU (European Agreement) and free trade agreements with the European Free Trade Area (EFTA) countries, and with its Central European neighbors (CEFTA), Turkey, the Former Yugoslav Republic of Macedonia, Estonia, Croatia, Israel, Lithuania and Latvia. Free trade agreements with Morocco, Moldova, Bosnia and Herzegovina, Albania and Yugoslavia are under negotiation.

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

The Government of Bulgaria has introduced into its 2003 Customs Tariff separate rates for "conventional customs duties" and "autonomous customs duties" as required by the European Agreement and the List of Obligations and Waivers to the General Agreement on Tariffs and Trade of 1994. Bulgaria's Customs Tariff has been changed in order to bring the structure of applied customs duties into compliance with the categories identified by the World Trade Organization and the EU Combined Nomenclature and Integrated Customs Tariff.

The Council of Ministers is planning to approve a Regulation, which will spell out the conditions for granting tariff suspensions (suspensive measures) and autonomous quotas. Until this regulation is adopted, the 2002 tariff mechanism will be applied in 2003 taking into account only Bulgaria's WTO obligations. The purpose of this approach is not to lower the average rates of customs tariffs prior to a new WTO round and Bulgaria's accession to the EU.

According to the 2003 Customs Tariff (MFN tariff rates): the average import tariff is 11.31 percent (up from 11.13 percent in 2002); the average level for industrial goods is 8.62 (up from 8.57 percent in 2002); the average *ad valorem* level for agricultural goods is 21.97 percent (up from 21.33 percent in 2002).

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. Industrial exports to Bulgaria have tariffs of zero to 30 percent. The applied MFN duty for pharmaceutical products is zero percent, with the exception of adhesive plasters and some gel products.

The 2003 Customs Tariff incorporates autonomous suspensive customs duties, which envisage seasonal zero duties on barley and corn, and zero duties on wheat and corn starch during the entirety of 2003. The following tariff quotas will be introduced in 2003: 3,000 tons of frozen boneless pork at customs duty of 250 euro per ton for the period of April 1 - June 30, 2003; 9,000 tons of pork fat at zero customs duty; and 2,500 tons of apple puree.

Bulgaria's trade regime for agricultural products is characterized by high MFN tariffs, particularly for red meat and poultry, and preferential agreements with the EU and CEFTA. Both aspects are barriers for U.S. exporters. *Ad valorem* duties and minimum customs charges of more than 100 percent provide importers with incentives for smuggling and fraud. Cargoes are often falsely labeled and declared, and improperly identified in an effort to avoid customs charges.

In particular, the high import tariffs favor Bulgaria's inefficient domestic chicken and pig meat industries, which are not otherwise subsidized. In addition to value added tax

(VAT), import tariffs on U.S. chicken are 68 percent -- with frozen cut parts at 74 percent -- which encourages smuggling and counterfeiting of U.S. chicken products.

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 that are used in the production of goods subsequently exported under preferential trade agreements with 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 this Europe Agreement.

In general, customs regulations and policies are 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. The Bulgarian government contracted Crown Agents Company (UK) as a consultant to help enhance enforcement of customs legislation. The Bulgarian customs service also uses minimum import prices to calculate customs duties, particularly on poultry shipments. These prices are applied arbitrarily and therefore appear to be inconsistent with Bulgaria's WTO commitments.

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). It is working to adopt 80 percent of the applicable EU standards by 2005; as of October 2002 it had adopted 5,700, or about 50 percent. Under the 1999 National Domestic Standards Act, all domestic standards are no longer mandatory. The major product safety requirements are regulated in separate ministerial ordinances in compliance with the respective EU directives.

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. However, in July 2002, a "Regulation on Requirements for Treatment and Transportation of Used Oils and Waste Petroleum Products" was adopted, which does not prohibit in particular the use of U.S.-made space heaters designed to burn used oil.

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 –- including the process by which the National Health Insurance Fund classifies drugs -- are cumbersome and not transparent. New advanced drugs, which are more effective with fewer side effects, are often arbitrarily classified with their older generic versions for pricing purposes, thereby limiting the companies' ability to recover their research and development costs.

Legislation adopted in April 2002 introduced new drug registration procedures. In compliance with paragraph 11 of the Law on Drugs and Pharmacies for Human Medicine (in particular after its last amendment, SG No. 11/ 4 April 2000) new regulations were adopted which stipulate two separate consecutive procedures. Granting a license is a precondition for entering the price registration procedure. The requirements are equally applied for local and foreign producers or traders. A Commission on Transparency on the Law on Drugs and Pharmacies for Human Medicine was established in 2001.

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. In 2000, Bulgaria applied for accession to the GPA, but it still has not submitted an offer. Bulgaria will have to join the GPA upon becoming a member of the European Union.

In June 1999, Parliament adopted a new law on procurement replacing the 1997 Law on Assignment of Government and Municipal Contracts. This legislation defines terms and conditions for public orders and aims at increased transparency and efficiency in public procurement. However, bidders still complain that tendering processes are frequently unclear and subject to irregularities, fueling speculation of corruption in government tenders. U.S. investors have also found that in general neither remaining state enterprises nor private firms are accustomed to using competitive bidding procedures to supply goods and services to these investors within Bulgaria. However, tenders organized under projects financed by international donors have tended to be open and transparent.

In April 2002, Parliament approved amendments to the 1999 Public Procurement Act, which shortened the complaints review procedure, (i.e., the complainant can now go directly to court and the judge is obliged to decide on the grounds of the complaint in one month). Bulgaria excluded mobile network operators and private radio stations from the scope of public procurement laws and regulations. There are remaining problems with the effective implementation of procedures.

According to the October 2002 EU Assessment Report on Bulgaria, amendments to the Law on Public Procurement (in effect May 2002) were a significant step forward. However, the law does not yet ensure full alignment with EU standards, and preparation of implementing legislation foreseen under the revised law is still outstanding. The amended law confirms the Public Procurement Directorate in the Council of Ministers as the institution designated to apply national procurement legislation.

It is not yet clear how equal treatment of domestic and foreign bidders will be implemented in practice, and what consequences the exemption of providers of mobile telecommunication services from the obligations of the law will bring. The review capacity of the Public Procurement Directorate remains limited. The complaint system does not function effectively, and does not provide enough protection for contractors. Audit functions still need considerable strengthening.

The parliament rejected a proposal to give a ten percent price advantage to public works project bidders who use majority Bulgarian content in the goods and services that they supplied. However, the 2002 amendments to the procurement law permit the Council of Ministers to issue decrees granting preferences for Bulgarian content (no such decrees have been issued as of October 2002). The government is planning to formulate a completely new Public Procurement Act in 2003 to establish a more effective procurement system, focusing on complaint procedures and the number of required bidders.

The Public Procurement Register has proven to be a well-used tool and has contributed to transparency. However, there is still much progress to be made in improving public knowledge of public procurement operations, and the current control system needs to be strengthened to prevent corruption in the awarding of public contracts. Many companies, especially foreign companies, have expressed complaints about the nature of public procurement transactions. The complaints review procedure is burdensome and time-consuming and should be improved.

The purchasing, pricing, and reimbursement processes for drugs under Bulgaria's national health system are not transparent. The government can use the price-approval mechanism to regulate the market for any product, and bureaucratic barriers can limit patients' access to new products. Some members of parliament have publicly advocated a policy of protectionism for Bulgarian-manufactured pharmaceuticals.

Government procurement practices in the energy sector appear to disadvantage foreign insurance companies. All Bulgarian energy entities are now insured by Energiya -- a joint venture between the state-owned National Electricity Transmission Company and Allainz Bulgaria established in 1992-1993.

EXPORT SUBSIDIES

The Ministry of Economy oversees a ten million leva (roughly five million USD) export promotion fund.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Bulgarian 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 1993 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.

On July 25, 2002, Parliament approved further amendments to the Law on Copyright and Neighboring Rights to address, among other things, new technological developments in the sphere of communications and information in digital technologies and the Internet, and to specify the rights and obligations of database producers. These database protection provisions are consistent with EU legislation, (i.e., Directive 2001/29/EC on Copyright and Related Rights in the Information Society [Copyright Directive] and Directive 96/9/EC on the Legal Protection of Databases).

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 an optical disc 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 all Watch Lists in April 1999.

The U.S. recording industry reports, however, that music piracy and copyright crime in Bulgaria's domestic market -- mainly sale of imported pirated CDs from Ukraine, Serbia, and Montenegro -- are very high and enforcement is inadequate. Recording industry associations estimate that, of all musical CDs sold in Bulgaria today, 65% (and 90% of those with international repertoire) are pirated.

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 brought down the piracy rate to approximately 78 percent of the products on the market. The Bulgarian Government has signed agreements with major software companies committing the state administration to license all company products, and it purchased software from a major U.S. company to this end in 2002.

Bulgaria is expected to pass, and put into effect in early 2003, a law introducing data exclusivity for drug manufacturers or for supplementary patent protection in line with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Bulgaria- EU Association Agreement. The current draft includes a provision to allow generic drug companies to begin testing of their version of a patented drug two years prior to the expiration of the patent.

On June 26, 2002, Parliament approved amendments to Bulgaria's 1993 Law on Patents. These amendments harmonize Bulgarian patents law with EU law in the areas of application for patents and "utility model patents" (for inventions which have a limited degree of inventiveness and a relatively short life span). Bulgaria joined the European Patent Convention on July 1, 2002, and obtained observer status in the Administrative Council of the European Patent Organization.

U.S. and European businesses complain about an inability to successfully take enforcement actions 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 judgment.

In Bulgaria, trademark and service-mark rights and rights to geographic indications arise only with registration at the Bulgarian Patent Office or an international registration mentioning

Bulgaria. Under Bulgarian law, legal entities cannot be held criminally liable. As a result, the criminal penalties for copyright infringement and willful trademark infringement are likewise limited.

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 national and 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 of expatriate personnel, but residence permits are often difficult to obtain.

New insolvency rules in Bulgaria's Commercial Code and its Law on Public Offering of Securities have greatly improved the legislative protection for minority shareholders. However, there remains the issue of adequate enforcement of the law's provisions and of adherence to good corporate governance.

The Bulgarian Telecommunications Act was passed on July 27, 1998. A bill pending before Parliament, which would repeal it, increases institutional and regulatory liberalization of the Bulgarian telecommunications sector but focuses more on institutional issues and the protection of state interests than on greater market liberalization. In particular, the bill would extend until December 2005 the Bulgarian Telecommunications Company's (BTC) control over the sole telecommunications network. The continued delay in passing the draft law is affecting the completion of the privatization of BTC. The current situation may deter new participants from competing in a rapidly expanding economic sector and increasingly complex marketplace. In addition, 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 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 the perception of corruption.

ELECTRONIC COMMERCE

In January 2001, Parliament ratified the WIPO "Internet" treaties – the Copyright Treaty and the Performance and Phonograms Treaty. The Law on the Electronic Document and Electronic Signature went into effect in November 2001. On January 31, 2002, three implementation ordinances for this law were approved, aimed at contributing to free provision of information services and promotion of electronic commerce: Ordinance on Requirements for Algorithms for Advanced Electronic Signature; Ordinance for Activity of Certification-Service-Providers, Termination Procedure, and Requirements for Provision of Certification Services; and Ordinance for the Order of Registration of Certification-Service-Providers.

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, they 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 – is a growing problem. In February 2002, the Council of Ministers detailed an Action 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 owned in whole or substantial part by foreign persons or entities, to go to arbitration outside Bulgaria. Currently, companies that are not registered in Bulgaria, but are involved in a business transaction there, can have arbitration conducted 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.