HUNGARY

TRADE SUMMARY

The United States registered a trade deficit of $2.1 billion with Hungary in 2000, an increase of $758 million from 1999. Hungary was the United States' 62nd largest export market in 2000. In 2000, U.S. exports to Hungary were $569 million, a 13.1 percent increase from 1999. U.S. imports from Hungary were $2.7 billion in 1999, an increase of $824 million (43.5 percent) from 1999.

The stock of U.S. foreign direct investment in 1999 was $1.4 billion, a 3.9 percent decrease from 1998.

IMPORT POLICIES

Tariffs

Hungary's trade policies are shaped primarily by its World Trade Organization (WTO) commitments and, increasingly, by Hungary's eventual membership in the European Union (EU). 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. As it agreed in the Uruguay Round, Hungary cut its average most-favored-nation (MFN) import duties from 13.6 percent in 1991 to 8.0 percent in 1998. The progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Hungary must eliminate import quotas on textiles, clothing, and other industrial products by 2004. The waiver of import duties on the leasing or purchase of non-EU aircraft, parts and engines by state-owned Malev Hungarian Airlines was renewed for 2001. Hungary has not yet acceded to the WTO Information Technology Agreement, but will have to do so as part of the EU accession process. In 2000, Hungary agreed to a 200 ton per year tariff rate quota for high-quality U.S. beef.

Under Hungary's Europe Agreement, tariffs on industrial products from the EU were completely phased out at the end of 2000. This preferential trade agreement also provides for reduced tariffs rates on non-industrial product imports from the EU on a selective basis. U.S. products, which are subject to Hungary's MFN rates, often encounter a significant tariff differential when competing against EU products. Various exporters of U.S. products (including automobiles, animal feed supplements, aircraft and parts, electrical generating equipment, tractors and construction equipment, small engines, chocolate and non-chocolate confections, distilled spirits, wine, commercial laundry equipment, and soda ash) have expressed significant concern over the disparity between rates imposed on EU products and MFN rates. For example, Hungary's MFN rate on automobiles is 43 percent, while EU-origin automobiles now enjoy duty-free access.

In 2000, Hungary and the EU reached agreement on further liberalization of trade in agricultural products. The so-called "zero-for-zero agreement" will end EU agricultural subsidies for goods exported to Hungary in return for the elimination of Hungary's tariffs on most EU agricultural products. Under this arrangement, each party will have greater access to each other's market for agricultural commodities. As a result, U.S. agricultural products will be put at a further disadvantage vis-a-vis EU products.

Hungary's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates. Thus, joining the EU, which will require the adoption of the EU's CXT rates, will benefit U.S. exporters of industrial products. The U.S. and Hungary are in discussions on addressing this serious tariff differential problem during the period prior to EU accession.

In October 2000, Hungary resolved a long-standing trade dispute with the U.S. over Hungary's Uruguay Round commitments. Hungary established a special 50 metric ton quota for high quality North American beef for

2000 with an increase of the quota in 2001 to 200 metric tons.

Non-Tariffs Barriers

U.S. exports (e.g., lumber and veneer products) to Hungary are hampered by the Pan-European Cumulation system, particularly the removal of the availability of customs duty drawback on products originating in the U.S. and other non-participants in the "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. In addition, under the pan-European cumulation system, content from any participant in the system can accumulate to qualify for preferential treatment under Hungary's Europe Agreement, even though other participants in the "cumulation system" are not party to this Europe Agreement.

This change concerning duty drawback has adversely affected certain U.S. industries (e.g., lumber and veneer producers). U.S. firms producing in Hungary for export using U.S. imported components (e.g. 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.

Hungary has eliminated almost all of its import license requirements. Currently, almost 96 percent (by value) of products can be imported without an import license. A license is required to import precious metals, military goods, and certain pharmaceutical products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. In 1998, the United States and other exporters of bovine semen secured modifications to restrictive practices and fees on these imports that represent an annual $1 million market.

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 multi-year 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 $10-25 million.

On February 26, 2001, the EU and Hungary signed a Protocol to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products ("PECA"). The agreement is expected to go into force in mid-2001. Under the PECA, the EU and Hungary agree to recognize the results of one another's designated conformity assessment bodies/notified bodies, thereby eliminating the need for further product testing of EU products covered by the PECA Agreement upon their importation into Hungary. It appears that among the PECA-covered products being exported to Hungary, only those which are: (i) of EU country origin, and (ii) certified by an EU notified body with the "CE" mark illustrating compliance with EU standards, will benefit from the provisions of the PECA, thereby eliminating the need for further product testing. Because of the EU origin requirement, it appears that products originating in the United States would not benefit from the PECA, even if they have been tested, certified, and bear the "CE" mark. The U.S. will monitor closely how Hungary will implement the PECA and also has begun consultations with Hungary and the EU on this issue in multilateral and bilateral settings.

In January 2001, Hungary suspended import licenses for U.S. beef, bovine genetics, and petfood products in response to the bovine spongiform encephalopathy (BSE) (or "mad cow") crisis in Europe. This action was described as a precautionary suspension while the Hungary Government consulted with the EU, and was undertaken in order to prevent problems for Hungary's exports to the EU. Hungary reopened the imports of bovine semen and non-ruminant protein petfood in February 2001. As of March 1, Hungary had not yet notified the WTO Sanitary and Phytosanitary Committee of these actions.

GOVERNMENT PROCUREMENT

Hungary is not yet 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 co-sponsored, 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 2000 was Hungarian forints (HUF) 523.6 billion ($1.86 billion), a 21 percent increase over 1999. The percentage of open tenders was up from 61.7 percent in 1999 to 76.2 percent in 2000. Half of the 3,710 tenders in 2000 were awarded to local small and medium enterprises, while only four percent went to foreign companies. Seven hundred complaints came before the Public Procurement Arbitration Court in 2000, and of these, half were rejected as unfounded. In cases where the court found for the petitioner, it either nullified the tender result or levied fines that totaled HUF 223 million ($750,000) for the year 2000.

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 it 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 has committed to establishing an electronic procurement process by 2002 that should improve transparency significantly.

EXPORT SUBSIDIES

While Hungary's agricultural export subsidies remain in excess of its original Uruguay Round commitments, the Hungarian government is gradually phasing out the excess subsidies. The Hungarian Government has pledged not to use subsidies to penetrate new export markets, in accordance with a 1997 agreement with the U.S. and other petitioning members of the WTO.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hungary's intellectual property rights (IPR) laws in many respects - with one particularly serious exception - are adequate, but prosecutorial and judicial enforcement needs to be strengthened substantially. Hungary still does not provide adequate protection for confidential test data submitted by pharmaceutical companies to obtain marketing approval. This serious deficiency appears to contravene Hungary's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Further, criminal enforcement, particularly in connection with copyright piracy, needs to be strengthened substantially. Piracy of audiovisual works and computer software has decreased, but remains at unacceptably high levels.

Patent Protection

Hungary's protection of patents needs to be improved. Hungarian patent protection was strengthened following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993. Under this agreement, Hungary agreed to grant product patents on pharmaceuticals, unlike the previous law which only granted process patent. The bilateral IPR agreement provides transitional "pipeline protection" for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary, enjoyment of patent rights regardless of whether patented products are imported or locally produced, and limitations on the use of compulsory licenses. Current Hungarian patent law does not explicitly recognize the importation of a patented product as meeting the "working the patent" requirements in the law, which could open the door for compulsory licensing of copy products when the original product is not made locally.

Persistent problems in the Hungarian judicial system continue to hinder protection of patent rights. In 1997, the Hungarian government strengthened access to injunction relief and attempted to reduce the backlog of court cases. U.S. interests have not been able to obtain injunctions prohibiting the marketing of products that the courts have deemed to be infringing. The lack of relevant technical expertise in the courts can result in patent infringement 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.

Data Exclusivity

The limited protection for confidential test data submitted to obtain marketing approval of pharmaceuticals raises serious concerns that Hungary may not be meeting its obligations under Article 39.3 of the WTO TRIPS Agreement. Currently, generic drug producers are able to use or refer to proprietary data provided by others to the Hungarian Government for marketing approval purposes, which allows the generic producers to bring their copies to the Hungarian market promptly if there is no product patent. The Hungarian Government recognizes that it will have to adopt strict confidentiality or data exclusivity rules in order to become a member of the EU. The government is considering issuing a decree in 2001 that would provide for data exclusivity starting on January 1, 2003.

Copyright Protection

Hungarian copyright laws conform in large part with international standards, but piracy is still a serious problem. Video and cable television piracy is widespread; local television and cable companies regularly transmit programs without authorization. According to U.S. industry, an estimated 40 percent of videotapes in Hungary in 2000 were pirated copies, resulting in a loss of $18 million to U.S. industry. In 1999, the estimated level of unauthorized cable programming was 45 percent and that the level of pay television signal theft was 60 percent. U.S. recording and computer industries estimated a 20 percent piracy level in records and music ($3.0 million losses), 86 percent piracy levels in entertainment software ($9.6 million in losses), and $4.0 million in losses on books and printed materials. Total losses due to piracy are estimated at $55.6 million.

Hungary's copyright laws were strengthened by the passage of the 1999 Copyright Act. This law amended the 1994 Act on Enforcement of Judicial Decisions, streamlining the procedure for the enforcement of judicial decisions in all copyright infringement cases. Also, the law included provisions against the circumvention of copyright protection measures and punishment for signal theft. Judges continue to receive training on copyright issues, and programs for judges and prosecutors on copyright and related rights have been established. 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.

Piracy of audiovisual works and transmissions has been driven underground. The 1999 Copyright Act permits compulsory licensing by cable and pay service operators of any film or program received in Hungary, so long as a fee is paid to the state copyright agency. U.S. film producers, although entitled to a share of these fees, report that they did not receive any revenues in 1999.

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.

Regarding software, U.S. industry sources estimated 50 percent of the software used in Hungary in 2000 was unlicensed, resulting in losses of $21 million. The Budapest Police's Economic Crime Unit in 2000 initiated 7,000 criminal investigations, down from over 10,000 in 1999. These investigations led to over 1,000 software copyright-related court cases. The resulting jail terms and fines have been small, however, amounting only to payment of the value of the pirated software. Employers can now exercise all economic rights with respect to software created by employees, and all economic rights concerning software will be fully transferable.

SERVICES BARRIERS

Public television in Hungary is required to fill 70 percent of its airtime with European content, of which at least 51 percent must be Hungarian, excluding advertising, news, sports, game and quiz shows. Hungarian film quotas in the 15 to 20 percent range apply to public television. While these quotas are not seen as reducing actual U.S. market share, they are more restrictive than required for EU membership. For private broadcasters, the 1995 Media Law reserves 15 percent of program time for Hungarian programs, excluding films. In selling licenses for two private national television frequencies in 1997, the National Radio and Television Board (ORTT) mandated a European content quota of 50 percent of total annual program time, excluding advertisements, news, sports, and game shows (Hungarian content quotas apply as well). U.S. feature films and television productions, however, retain a strong presence, especially in prime time. A revision to the 1995 Media Law is due to be debated in Parliament beginning in March 2001. This new law is meant to harmonize Hungary's broadcast regime with EU directives on content and quotas (over 50 percent of both public and private TV broadcasting will have to be European programming). The Hungarian Government appears to favor the inclusion of the "where practicable" language in its new Media Law, which will allow some flexibility in the implementation of EU directives such as the "TV Without Frontiers" directive.

In 1998, Hungary introduced restrictions on foreign lawyers and law firms. Hungary requires foreign lawyers to associate with local lawyers in order to practice in Hungary. This has led to the conclusion of so called "cooperative agreements" between Hungarian and U.S. firms in order 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 restricts 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. This impedes access to the Hungarian market for U.S. direct marketers.

In the telecommunications sector, Hungary committed to allow unlimited competition as part of the WTO Basic Telecommunications Services Agreement. The awarding of monopoly telephone concessions (including to U.S.-owned firms) during privatization has delayed the introduction of full competition until the end of 2001. The privatization of MATAV, the Hungarian telecommunications company, was completed in 1999. MATAV has a monopoly on domestic long distance, international fixed-line long distance, and on local service in its concession areas (about two-thirds of Hungary) until the end of 2001. The other, smaller local telephone operators have monopoly rights for local services until the end of 2002.

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 limited by law to serving no more than one-sixth of Hungary's population, which translates into about 670,000 to 700,000 households.

Government delays in approving energy price increases have repeatedly prevented U.S. and other foreign firms from realizing the 8 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 is due to be liberalized by 2002.

Local authorities also offer additional incentives in some communities and municipalities.

ANTI-COMPETITIVE PRACTICES

Privatization and the entry into the Hungarian market by multinational companies has greatly increased competition in many sectors. Some key infrastructural monopolies (broadcast transmitter Antenna Hungaria, electricity wholesaler MVM, state railways MAV, and Malev Airlines), however, remain state-owned and receive special consideration from the Hungarian government. In the telecommunications sector, the awarding of monopoly phone concessions (including to U.S.owned firms) during privatization has delayed the introduction of full competition until the end of 2002.

ELECTRONIC COMMERCE

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

Sales via the Internet are unrestricted, but subject to taxation. Internet purchases are subject to customs duties and value-added tax (VAT) if delivered from abroad or 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 buying software purchased and delivered via the Internet, however, the VAT should be paid after the purchase (on a self-assessment basis).

The Hungarian Government 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.

Due to the relatively low Internet penetration rate (less than 5 percent of households), Hungary has only recently begun to deal with electronic commerce issues. Hungary is ranked 18th in Europe for Internet usage, and its Internet subscription rates were the highest among 29 OECD countries. Low credit card acceptance and a lack of good delivery companies have contributed to slow Internet development in Hungary. Total business-to-consumer (B2C) and business-to-business (B2B) sales by means of electronic commerce doubled to over HUF 380 million ($1.3 million) in 2000, with B2B sales accounting for more than three-fifths of the total.

Another obstacle to the development of e-commerce in Hungary is the lack of e-signature legislation. The e-signature law is being debated in Parliament. The Commissioner of Telecommunications and Information Technology has indicated that Hungary intends to follow a more "market-based" approach to regulation of e-commerce, allowing for multiple, innovative approaches to e-signatures and authentication techniques. This would avoid the possibility of discrimination against foreign service providers.

The Hungarian Government has announced that by January 31, 2002, all public procurement will be conducted online.

OTHER SIGNIFICANT BARRIERS

Although the incidence of bribery does not appear to be any 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.