

ROMANIA

TRADE SUMMARY

The U.S. trade deficit with Romania was \$351 million in 2004, a decrease of \$13 million from \$363 million in 2003. U.S. goods exports in 2004 were \$502 million, up 36.8 percent from the previous year. Corresponding U.S. imports from Romania were \$852 million, up 16.7 percent. Romania is currently the 72nd largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Romania in 2003 was \$403 million, up from \$332 million in 2002.

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 a preferential trade agreement with the EU (the "Europe Agreement"), and free trade agreements with its Central European neighbors (the "CEFTA") and European Free Trade Area (EFTA) countries. Romania provides duty-free access to its market for nearly all products imported from the EU but maintains higher levels for non-EU trading partners, including the United States. The free trade arrangements with the EU and EFTA, and the CEFTA, result in customs duty differentials for many U.S. products, often of as much as 30 percent. U.S. exporters have voiced concerns about these tariff differentials, including exporters of distilled spirits, wheat, animal feed supplements, wine, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and commercial washers and dryers.

Romania has bound most of its tariff rates at the WTO for both agricultural products (average rate of 109 percent) and non-agricultural products (average rate of 34.4 percent). Lower applied rates are generally used, resulting in average applied rates of 30 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products. Romania is a party to the WTO 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 (60 percent *ad valorem*, except for bourbon whisky, taxed at 35 percent), wine (60 percent), and textiles (12 percent to 32 percent) provide limited access to the Romanian market for these U.S. products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania has begun to harmonize sanitary and phytosanitary measures with those of the EU. Adoption and implementation of EU measures will have a negative impact on U.S. exports of poultry, beef and biotechnology products to Romania. The U.S. Government has been working

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closely with Romanian officials to ensure that U.S. products continue to have market access for these key products in the interim period leading up to Romania's accession to the EU.

GOVERNMENT PROCUREMENT

Romania is an observer to the WTO Government Procurement Agreement (GPA), but will become subject to the GPA when it joins the EU. With the exception of the procurement of armaments and public works, Romania's government procurement law covers purchases by central government bodies, the parliament, the presidency, the government and ministries, institutions of higher learning, the judiciary, as well as state-owned enterprises.

State-owned companies with the status of commercial companies have their own internally developed purchasing policies based on commercial principles. Article 5 of Decree OG12/1993 establishes 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 electronic procurement system is used for basic standardized products. Romania's tender announcements, bid processing, and offer appraisals are entirely computer based, and the list of ongoing and closed auctions, names of adjudicators, and closing prices are available to the public. The government asserts that the project has reduced costs, increased competition and saved more than \$120 million since its inception.

EXPORT SUBSIDIES

In 2004, the Romanian government approved export subsidies for 8,080 HL of wine for any destination except the European Union, valued at roughly \$111,500, but this amount was not entirely disbursed.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Romania's criminal enforcement with respect to copyright piracy and trademark counterfeiting remains inadequate. Although Romania's legislation is fairly modern and comprehensive, enforcement remains quite weak. Due to inadequate enforcement against copyright piracy, Romania remained on the Special 301 Watch List in 2004. The rates of copyright piracy in Romania remain high, although the authorities have made gradual, limited improvements. Industry reports that levels of DVD piracy have risen to 80 percent, while levels of videocassette piracy are down to 20 percent and the most blatant retail piracy has been eliminated.

While legislative improvements allow for greater criminal prosecution, very few IPR cases are prosecuted and many prosecutors refuse to recognize IPR crime as a social harm. Despite a number of seizures, infringement is increasing as pirated CDs and DVDs are smuggled into

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Romania from Ukraine, China, and Moldova. Moreover, police acknowledge that sources in Romania may be building capacity to start domestic production of pirated CDs. In April 2004, as result of cooperation by the Phonogram Producer Union in Romania with its Bulgarian counterpart, Romanian and Bulgarian customs authorities seized 120,000 Bulgarian made DVDs and 52 prints that were to transit through Romania on their way to Russia. Likewise, the Romanian Organization against Copyright Theft cooperated with Romanian customs and border police in Siret to seize an additional shipment of over 100,000 videotapes from Bulgaria en route to Russia via the Ukraine.

Industry groups are working to train judges and prosecutors in IPR law, and have proposed the idea of specialized IPR courts or magistrates. The appointment of a special IPR prosecutor in 2003 by the Prosecutor General has helped efforts to combat IPR piracy. Specially appointed IPR prosecutors have been designated for all Romanian counties, and specialized judges have been designated to serve on the Bucharest Tribunal. IPR training sessions in 2004 specifically focused on training prosecutors, judges, police and border police officers, and customs officials on IPR piracy.

Another area of focus is the illegal sale of counterfeit decoder devices. The stealing of video signal is hindering cable companies' efforts to upgrade networks and keep subscription rates as low as possible. Currently, Audio-Visual Law 504 of 2002 stipulates fines for the trading of counterfeit decoders. However, the law is not enforced, threatening profits of cable companies. One video provider estimates that for each legitimate subscriber, five others are fraudulently watching transmissions through counterfeit devices.

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 a provision of the Directive which gives the government flexibility in implementing this rule. Specifically, Law 119 of 1999, which amended the Audio-Visual Law 48/1992, provides that television stations must gradually devote, as much as possible and by appropriate means, at least 51 percent of total broadcast time to European productions, minus news and sport shows, games, advertising, and teletext services. The result is that at least 40 percent of total broadcasting must be Romanian. Many Romanian Parliamentarians regard the reformation of Romanian legislation to reflect EU requirements impractical, because Romanian stations that comply with the requirement would dramatically lose market share and revenues.

As of August 2002, foreign lawyers not licensed in the practice of Romanian law can only provide legal advice on foreign or international law. They can, however, provide legal advice on Romanian legislation after passing the Romanian Lawyers Union Exam in Romanian Legislation. A law passed in May 2004 brought more flexibility for EU lawyers, enabling them to practice in Romania after a three-year probationary period as an alternative to taking the exam in Romanian legislation. Foreign lawyers may work in Romania as individuals in law offices

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associated with Romanian firms or international law firms. Due to the frequent legislative changes in this field, it is likely that these legal provisions will be modified.

Romanian law previously required that doctors and health care professionals be Romanian citizens. A law passed in June 2004 makes it possible for doctors and healthcare professionals from EU member states to practice in Romania, but maintains the restriction for non-EU citizens. This effectively hinders the provision of medical services by foreign medical professionals.

Foreign insurance companies must establish a partnership venture with a Romanian partner to enter the Romanian market. Romania has made limited GATS commitments for cross-border provision of insurance services.

During 2003, Romania phased in many of its GATS telecommunications commitments 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. Romania, however, has yet to establish a transparent licensing system as specified in the Reference Paper. The government sold a strategic stake in the telephone company Romtelecom to the Hellenic Telecommunications Organization in 1998. While Romtelecom's monopoly on fixed-line telecommunications services expired on January 1, 2003, rates remain subject to governmental supervision through the National Regulatory Authority for Communications (ANRC). Other telecommunications segments (Internet service providers, mobile telephone service providers, cable communications, etc.) have been liberalized.

INVESTMENT BARRIERS

The U.S.-Romania Bilateral Investment Treaty (BIT) provides guarantees for U.S. investors: both national and MFN treatment; the right to make financial transfers freely and without delay; international law standards for expropriation and compensation; and access to binding international arbitration. In 2003, to address several actual and potential incompatibilities between BIT obligations and EU law, the United States exchanged interpretive notes with the governments of Romania and seven other European countries expected to join the EU over the next few years. The United States and the prospective EU member states also agreed to make several narrow amendments to the texts of the relevant BITs. Both the United States and Romania have ratified the BIT amendments, but the amendments will not enter into force until Romania joins the EU.

A controversial 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 very limited minority shareholder protection.

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A continued impediment to foreign investment is Romania's inconsistent legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases often require lengthy, expensive procedures, and judges' rulings are often not enforced.

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ELECTRONIC COMMERCE

Romania has one of the highest incidences of Internet credit card fraud in Europe, 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 attacked U.S. companies' servers and stolen proprietary information. To counter the millions of dollars worth of credit card fraud each year, in 2002 the Romanian government passed an electronic 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.

Twenty two banks in Romania have acquired at least one type of authorization from the Ministry of Communications and Information Technology for 30 distance access payment instruments of various types. The Ministry issued 12-month valid licenses in order to monitor how the banks used this instrument.

OTHER BARRIERS

Though more than two-thirds of Romanian GDP is created by private entities, large state-owned enterprises and government-subsidized enterprises are major impediments to free and fair market competition in certain sectors. Preferential debt rescheduling and total or partial cancellation of debts, including taxes, by the Romanian government was continuing at least up to the government change in December 2004. In addition, allegations of non-transparent aid schemes to state companies and the firms of well-connected Romanians remain prevalent.

The most common complaints of American companies operating in Romania are the frequency with which the government changes its laws, unfair public procurement, weak enforcement of existing laws, concerns about judicial competence, lack of court impartiality, and corruption.

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