BULGARIA

TRADE SUMMARY

The United States' trade deficit with Bulgaria was $286 million in 2003, an increase of $47 million from $238 million in 2002. U.S. goods exports in 2003 were $156 million, up 54 percent from the previous year. Corresponding U.S. imports from Bulgaria were $441 million, up 30 percent. Bulgaria is currently the 102nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bulgaria in 2002 was $142 million, up from $107 million in 2001.

IMPORT POLICIES

Tariffs

Bulgaria's trade policies are shaped primarily by its World Trade Organization (WTO) membership and by its status as a candidate for EU membership. Bulgaria has 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, Israel, Lithuania and Latvia. Bulgaria has signed free trade agreements with Albania, Serbia and Montenegro, and Bosnia and Herzegovina. The free trade agreement with Albania entered into force on September 1, 2003. A free trade agreement with Moldova is under negotiation.

In 2003, the average Most Favored Nation (MFN) bound rate was 28.2 percent, with a maximum rate of 200 percent. Under the common commercial policy, upon accession Bulgaria will be required to align its tariffs with those of the EU.

For 2004, Bulgaria's average applied import tariff is 11.6 percent (up from 11.3 percent in 2003); the average level for industrial goods is 8.7 percent (up from 8.6 percent in 2003); the average *ad valorem* level for agricultural goods is 23.9 percent (up from 22.0 percent in 2003). The maximum *ad valorem* level for agricultural goods, which is applied on 0.4 percent of tariff lines, is 75 percent. Effective in 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 from the rest of the world face tariffs ranging from zero to 26.8 percent. The applied MFN duty for pharmaceutical products is zero percent, with the exception of adhesive plasters and some gel products.

Bulgaria's agricultural trade regime 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. The Bulgarian customs service also uses minimum import prices to calculate customs duties, particularly on poultry shipments. These prices are applied arbitrarily and appear inconsistent with Bulgaria's WTO commitments. Bulgaria provides the EU with preferential tariff rates and zero-for-zero for numerous agricultural products. These preferences are hurting U.S. agricultural exporters who must face higher MFN rates. In particular, the high import tariffs favor Bulgaria's inefficient domestic chicken and pig meat industries. Import tariffs on U.S. chicken are 68 percent, with frozen cut parts at 74 percent.

In 2003, the Bulgarian government introduced 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 WTO and the EU Combined Nomenclature and Integrated Customs Tariff. The Bulgarian Council of Ministers also approved a regulation to allow for the use of autonomous measures which enable the government to grant tariff suspensions to overcome temporary shortages of raw materials, intermediate products, and final products needed by domestic industry if they cannot be secured internally or from countries with which Bulgaria has free-trade agreements. Autonomous measures granting tariff suspensions are applied twice per year (January 1 and June 1) and can be introduced at the request of local persons or organizations.

Non-tariff barriers

U.S. exports to Bulgaria are hampered by the Pan-European cumulation system, and particularly by the removal of the availability of customs duty drawback on products originating in the United States. Under this recently introduced system, customs duties on U.S.-origin inputs used in the production of goods subsequently exported under preferential trade agreements between the EU, Bulgaria, and other countries, are no longer refunded. In addition, inputs from any participant in the system may be accumulated with Bulgarian inputs and the final good may qualify for preferential treatment under Bulgaria's Europe Agreement, even though other participants in the "cumulation system" are not party to the Europe Agreement.

In general, customs regulations and policies are reported to be 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.

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 was working to adopt 80 percent of the applicable EU standards by 2003; as of November 2003 it had adopted 7,500, or about 70 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.

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, thereby limiting the companies' ability to recover their research and development costs.

Legislation adopted in April 2002 introduced new drug registration procedures. New regulations stipulate two separate consecutive procedures. Obtaining a license is a prerequisite for the price registration procedure. On their face, these requirements are equally applied to local and foreign producers or traders. A Commission on Transparency on the Law on Drugs and Pharmacies for Human Medicine was established in 2001.

U.S. and other foreign pharmaceutical companies consider that Bulgarian pricing and reimbursement decisions are not based on objective and verifiable criteria. In addition, companies have expressed concerns that there are no appeal procedures for Government pricing and reimbursement decisions and no timeframes for reimbursement are provided in the Bulgarian law. Bulgaria's price approval system hampers the ability of foreign companies to compete effectively as the price regulations utilize the methodology of the lowest registered price in the member-states of the Council of Europe and do not allow companies to recover costs of importation. In addition, price regulations provide for an automatic refusal to reimburse if the government does not act on a request within 14 days.

GOVERNMENT PROCUREMENT

Bulgaria is an observer but not a signatory to the WTO Agreement on Government Procurement (GPA). In its accession to the WTO, Bulgaria committed to accede to the GPA and to submit an offer by June 1997 and complete negotiations by December 1997. But, it did not initiate the process for GPA accession until September 2000 and has not yet submitted an offer.

In June 1999, Parliament adopted a new law on procurement which sets out terms and conditions for public orders and aims to increase transparency and efficiency in public procurement. However, bidders still complain that tendering processes are frequently unclear or subject to irregularities, fueling speculation regarding corruption in government tenders. U.S. investors have also found that neither state enterprises nor private firms are accustomed to using competitive bidding. 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 plaintiff now can go directly to the court and the judge is obliged to decide the complaint in one month. The law excluded mobile network operators and private radio stations from the scope of public procurement. There are remaining problems with the effective implementation of procedures and, while the Public Procurement Register has contributed to transparency, foreign companies have complained about the nature of public procurement transactions. The complaints review procedure is burdensome and time-consuming and should be improved.

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 (50 percent), Allianz Bulgaria (25 percent) and other private shareholders (25 percent) established in 1992-1993. According to U.S. industry, procedures for awarding insurance contracts for companies within the energy sector are not transparent.

EXPORT SUBSIDIES

At the time of accession to the WTO, Bulgaria negotiated the possibility of granting export subsidies for a limited number of agricultural products. To date, Bulgaria has not granted any export subsidies.

The Ministry of Economy oversees an export promotion fund of about BGN 10 million (about $6 million) to finance the activities of the Export Insurance Agency, National Tourism Advertisement and Information Agency and Export Promotion Agency.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Bulgarian IPR legislation is fairly comprehensive, with modern patent and copyright laws and criminal penalties for copyright infringement. In 2000, amendments to the copyright law 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. Further amendments in 2002 addressed new developments in communications and information, digital technologies, and the Internet.

Responding to long-standing industry concerns, the Bulgarian government included in the drug law which took effect in January 2003 a provision to provide protection for confidential test data submitted for marketing approval by pharmaceutical products companies. The law, however, links data exclusivity to a valid patent. Bulgaria joined the European Patent Convention on July 1, 2002 and obtained observer status in the Administrative Council of the European Patent Organization.

The Bulgarian government's inability to protect trademarks is a significant barrier to investment and legitimate domestic economic development. U.S. businesses have noted significant difficulties in obtaining enforcement against trademark infringement. Even if courts understand the law and issue orders, the entities charged with enforcement often cannot be relied upon to carry out the court judgment.

In Bulgaria, trademark and service mark rights and protection for geographical indications arise only with registration at the Bulgarian Patent Office or an international registration mentioning Bulgaria; and do not arise simply with "use in commerce" of the mark or indication. Under Bulgarian law, legal entities cannot be held criminally liable. Therefore, the criminal penalties for copyright infringement and willful trademark infringement are limited.

Implementation of "special border measures" for copyright enforcement has created problems for legitimate exporters and importers and further changes are necessary to clarify the law and to better train customs officials. There is no provision for a bond from the complainant to protect the legitimate importer or exporter of goods that are stopped in transit under "special border measures."

Music piracy and copyright violations in Bulgaria's domestic market -- mainly the sale of imported pirated CDs from Ukraine, Serbia, and Montenegro -- are very high and enforcement is inadequate. Bulgaria is still widely used for transshipment of pirate CDs from Ukraine and Russia to the Balkans, Greece, and Turkey.

Optical media piracy has been increasing rapidly, and the local music business in particular is feeling the brunt of this phenomenon. The possibility that Bulgarian optical media production plants are contributing to or generating this piracy is not adequately accepted or addressed by Bulgarian authorities. In an effort to monitor the trade in optical grade polycarbonate, equipment, and stampers, the Bulgarian government introduced new tariff lines for these products in its 2004 schedule. However, the government abolished in 2002 a registration regime for optical grade polycarbonates. The Bulgarian parliament is considering a law on the production of optical disc media, but it is unclear whether the law will include key elements needed to strengthen enforcement.

Software piracy continues to be a serious problem, although an industry legalization campaign, which began in 1999, has made noticeable gains against unauthorized software. Nevertheless, the lack of prosecutions and court judgments has kept the piracy rate at an unacceptably high level. Over the last three years, out of over 122 criminal prosecutions filed, only four have reached settlement and only one has produced a court judgment.

Counterfeit spirits sales are widespread in Bulgaria and the loss of U.S. sales is caused both by differential tariffs and by trademark violations.

BULGARIA

SERVICES BARRIERS

As in other EU candidate countries, 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. This requirement, however, 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

The U.S.-Bulgaria Bilateral Investment Treaty (BIT) took effect in 1994 and provides 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, enforcement of the law's provisions is inadequate and corporate governance remains weak.

In September 2003, Parliament approved a new Telecommunications Law, which 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. The new Telecommunication Act extended until December 2005 the Bulgarian Telecommunications Company's (BTC) control over the sole telecommunications network. After a long delay, the Bulgarian government's privatization agency signed on February 20, 2004, the privatization sale of 65 percent of BTC to Viva Ventures, a wholly-owned subsidiary of U.S. company Advent. However, the delay in privatizing BTC has slowed down telecommunications market liberalization. U.S. companies continue to note problems with issues of funding, licensing, interconnectivity and leased lines, dispute resolution, rights of use, and universal service.

A June 1999 law regulating gambling imposes additional requirements on foreigners organizing games of chance. Foreigners can receive a license to establish a casino in a hotel only if they satisfy one of the following conditions: 1) purchase or construction of a hotel rated four-star or higher; or 2) investment of at least $10 million and employment of at least 500 workers in economic activities unrelated to gambling.

According to U.S. businesses, other steps needed to improve the environment for foreign investment include: improved creditor rights through improvements to bankruptcy law and 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

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 improved access to 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.

The multiplicity of Bulgarian licensing and regulatory regimes, their arbitrary interpretation and enforcement by the bureaucracy, and the incentives this creates for corruption, have long been seen as an impediment to investment, private business development, and market entry. The Restriction of Administrative Regulation and Control of Economic Activity Act adopted in 2003 is expected to considerably lighten the potential of regulatory abuse at all levels of government, and when implemented, should improve the overall business environment.