HUNGARY

TRADE SUMMARY

The United States' trade deficit with Hungary was $1.8 billion in 2003, a decrease of $184 million from $2.0 billion in 2002. U.S. goods exports in 2003 were $934 million, up 35.8 percent from the previous year. Corresponding U.S. imports from Hungary were $2.7 billion, up 2.3 percent. Hungary is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Hungary in 2002 was $2.5 billion, up from $2.0 billion in 2001.

IMPORT POLICIES

Tariffs

Hungary's trade policies are shaped primarily by its impending accession to the European Union (EU) in May 2004 and World Trade Organization (WTO) commitments. Hungary's average most-favored-nation (MFN) import duties have fallen from over 13 percent in 1991 to 7 percent in 2002. Customs duties on textile products range from 0 percent to 13 percent. Hungary will continue its preferential trade agreement with the EU until accession.

Hungary's progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Hungary has not yet acceded to the WTO Information Technology Agreement and is not a signatory to the WTO Plurilateral Agreement on Civil Aircraft, but plans to implement the tariff-cutting provisions of each upon accession to the EU.

Under its Europe Agreement, Hungary eliminated tariffs on industrial products from the EU on January 1, 2001. To address the tariff differential issue, on January 30, 2002, the United States and Hungary signed a trade package that reduced tariffs on approximately $180 million of annual U.S. exports to Hungary as of April 1, 2002. In most cases, Hungary agreed to reduce the tariff to the EU's Common External Tariff. Many U.S. products have remained subject to Hungary's MFN rates, but most rates on industrial goods will go down at the time of accession based on EU tariff rates while rates on some agricultural goods will rise.

Non-tariff Barriers

About 96 percent of imports (by value) no longer require import licenses and the number of product categories under quota constraints is decreasing yearly. For consumer goods, import licenses are required only from non-WTO countries for footwear, apparel, dry goods, and fish. As a result of the WTO Agricultural Agreement, Hungary has progressively replaced quotas on agricultural products and processed foods with tariff-rate quotas.

U.S. companies producing in Hungary, especially auto parts manufacturers, complain that Hungarian tax authorities refund the customs duties and fees paid on "imports for re-export" too slowly, tying up large sums of money.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As a result of successful U.S. government efforts, as of November 1, 2003, Hungary fully accepts and recognizes U.S.-made medical equipment and certain electrical products with a valid CE-mark without requiring additional certification. However, when Hungary joins the EU on May 1, 2004, these technical procedures will revert to strictly EU procedures. Once Hungary is an EU-member, the mutual acceptance of the Conformity Certificates issued by the Notified Bodies will apply to all industry sectors, even to those not covered by the current PECA Agreement.

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. These regulations include requirements that all bovine semen that enters Hungary be purchased through domestic animal inspection centers and submit to a 30-day in-country quarantine. According to U.S. industry estimates, potential sales without these restrictions could be worth up to $10 million.

In January 2002, Hungary introduced new "EU harmonized" certificate requirements for meat, bovine semen, and pet food, without notifying the affected foreign countries and the WTO Sanitary and Phytosanitary Committee. The United States and Hungary have not yet completed equivalency negotiations on the new requirements. As a result, unclear certification may hamper the exports of some animal products to Hungary.

In 1998, Hungary adopted legislation governing products of biotechnology in agriculture. These laws brought Hungary into harmony with EU law by imposing import restrictions that primarily affected 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. Several biotechnology crop varieties have been field tested in Hungary. In the next year the Hungarian government must make a decision to register these varieties. The market for seed imports is relatively small (estimated at $22 million in 2001), but U.S. firms in Hungary also produce seed and plant stock for other markets. U.S. industry estimates that elimination of the current restrictions on imports and field trials would lead to additional U.S. exports of $10 million to $25 million.

GOVERNMENT PROCUREMENT

Hungary is an observer but not a signatory to the WTO Agreement on Government Procurement (GPA), however it must become a Party to the GPA upon EU accession.

The total value of public procurement in the first half of 2003 was $1 billion, approximately a 20 percent decrease from the same period in 2002. Of these procurements, 72.1 percent were open tenders and the total value of open tenders was 52.2 percent, up from 40 percent in the same period in 2002. The publication of highway construction tenders in December 2003 could increase this figure further. At this point there is no data on the number of complaints filed with the Public Procurement Arbitration Court.

The 1995 Public Procurement Act and subsequent revisions (1999, 2001, 2002) regulate foreign access to government-funded construction, service, and supply contracts. Tenders must be advertised for the purchase of goods in excess of 10 million HUF ($43,000) and for the purchase of services in excess of five million HUF ($21,500). Three provisions of the current law allow preferential treatment of Hungarian companies. The first allows governmental institutions to issue tenders that explicitly exclude foreign firms, but it is rarely invoked. The second provision allows these institutions to award contracts to tenders with at least 50 percent Hungarian content even if the price is 10 percent higher than majority-foreign tenders. A third provision allows tenders to require the participation of local subcontractors or local labor. These provisions are expected to remain in place until EU accession.

Hungary is modifying its current public procurement law to fully comply with EU legislation, and to make the tendering procedure quicker and more transparent. The new law provides national treatment for companies registered in the EU. For third countries, Hungary will provide national treatment in accordance with international obligations. The law also includes a separate chapter for procurements below the EU limit, but exceeding a national limit and tasks the government to develop a system for electronic procurement. The law is scheduled to enter into force on May 1, 2004.

Some U.S. firms have expressed concern about the transparency of government tenders, and a perceived EU bias, particularly in the defense sector. In more than one instance, the government has postponed making a decision on a large or sensitive procurement without explanation, or transferred decision-making authority from the relevant ministry directly to the Prime Minister's office. Purchases related to state security, as well as purchases of gas, oil, and electricity, are subject to several exemptions from public procurement regulations. All defense-related procurement over HUF 1 billion ($4.2 million) must also be combined with an offset package of at least 100 percent of the offset basis. Thirty percent of the undertaken offset value should be investment in Hungary. These offset requirements are mandatory and inflexible and represent a significant barrier to U.S. defense exports to Hungary. The government is attempting to install more transparency into public procurement, including by requiring greater accountability and financial reporting by sub-contractors in an effort to minimize conflicts of interest.

EXPORT SUBSIDIES

In 2003, the expected value of agricultural export subsidies was about $10 million. From May 1, 2004, Hungary will use the EU's common export refund system.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With one major exception (the protection of confidential pharmaceutical test data), Hungary's intellectual property rights (IPR) laws are adequate, though insufficient resources, court delays and relatively light penalties hamper enforcement. Copyright industries report that piracy of audiovisual works and computer software remains at unacceptably high levels. The software piracy rate was 45 percent in 2002, down from 48 percent in 2001, but still high compared to a 39 percent global average.

Data Exclusivity

Certain aspects of Hungary's patent protection are inconsistent with its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) that came into force January 1, 2000. On January 1, 2003, a Hungarian Government decree on registration and marketing authorization of medicinal products took effect, but it offers retroactive protection only for test data submitted on products granted marketing authorization on or after April 12, 2001, rather than back to January 1, 2000 as required by TRIPS. In the context of the Future Medicine Law, Hungary, together with other accession countries, is fighting against the extension of the six-year data exclusivity period. The absence of any direct linkage between the Hungarian Patent Authority and the Hungarian Regulatory agency is another area of concern.

Patent Protection

Despite having strengthened its patent protection following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993, the Hungarian patent protection system needs improvement. Specifically, persistent problems in the judicial system hinder protection of patent rights. U.S. interests have tried unsuccessfully to get the judicial system to reverse the burden of proof in patent infringement cases, and to obtain injunctive relief prohibiting the marketing of products that the courts have ruled as infringing on patent rights. The lack of relevant technical expertise in the courts can result in such 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.

Hungary joined the European Patent Office (EPO) in January 2003, which allows the EU to issue patents for Hungary. In contrast to US patent regulations, in Hungary a patent can be issued to the first applicant only in the field of technical innovations.

Copyright Protection

In 2002 Hungary became a contracting party to the World Intellectual Property Organization (WIPO) Copyright, Performances, and Phonograms Treaty. Hungarian copyright laws generally conform to international standards, but weak enforcement means piracy is still widespread. Video and cable television piracy abounds; local television and cable companies regularly transmit programs without authorization. However, the estimated level of unauthorized cable programming has dropped from 60 percent to 30 percent in the last year. The estimated public performance piracy rate is 50 percent.

The 1997 Copyright Act was amended in November 2003, to ensure compliance with EU regulations and to extend copyright protection issued in Hungary to the whole territory of the EU. However, a Hungarian copyright can only become an automatic EU copyright if the same copyright is not yet registered in the EU. The 1997 Copyright Act strengthened Hungary’s copyright laws and helped to drive piracy of audiovisual works and transmissions underground. 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. 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. In 2002, the Budapest Police Economic Crime Unit closed 472 criminal investigations involving copyrights, and closed 271 in the first ten months of 2003.

SERVICES BARRIERS

Hungary does not have an Open Skies civil aviation agreement with the United States. Under the terms of the current U.S.-Hungary aviation agreement (signed in 1989), U.S. airlines wishing to operate direct flights to Hungary or make code-sharing arrangements must gain approval of Hungary’s Civil Aviation Directorate (CAD) for each route. The CAD must renew approval of the flight schedule periodically.

A new Media Act is being developed and will be presented to the Parliament in the spring of 2004. To finalize its EU accession negotiation chapter on audiovisual services, however, Hungary passed an amendment to the 1996 Media Law in July 2001. This law requires that over 50 percent of public and private TV broadcasting be of European origin and over one-third be Hungarian. The law gives broadcasters until EU accession to implement the provisions, but makes no exceptions for programming broadcast to other countries or thematic channels, and does not include the “where practicable” language of the EU’s Television without Frontiers Directive that might allow such activities.

Foreign lawyers wishing to practice in Hungary are required to work with Hungarian lawyers. This has led to the conclusion of so-called “cooperative agreements” between Hungarian and U.S. firms 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 that the government has never enacted would restrict 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. Direct marketers (Avon, Amway) are currently operating in Hungary, but under the threat that the government may enact the restrictions.

INVESTMENT BARRIERS

Hungary's early commitment to privatization of large state enterprises made it a leading recipient of foreign direct investment in Central Europe. Hungary progressively reduced state ownership in "strategic" enterprises but has sometimes retained a single golden share, which will be eliminated following EU accession. The government has started to sell some or all of its remaining stake in some key infrastructure monopolies, including in the telecommunications, energy, transportation and banking sectors. Currently, Hungary restricts ownership in varying degrees in civil aviation, defense and broadcasting. Only Hungarian citizens may own farmland; this will gradually change after EU accession.

Hungary will liberalize its natural gas sector as of January 2004 which should spur investment. Under the current system, the government controls the domestic price at artificially low levels and rarely approves exports at world market prices. Gas liberalization may help make oil exploration profitable by raising the price, but would require a more complex corporate structure from the participants. In order to improve transparency, companies will have to separate production, storage, transportation, trade, and distribution. An exploration company would thus have to create a separate company to sell its gas.

The new Natural Gas Law was approved by Parliament in the summer of 2003, and should eliminate the Hungarian Oil Company's (MOL) monopoly position by providing access to the gas pipeline network to all suppliers. Independent gas companies will also be able to freely export gas at world prices to guarantee their return on investment. Due to the lack of cross-border pipelines with export flow direction, however, swaps seem to be the only option for gas producers who trade gas in one country for that in another, but the market players are still not sure whether or not they will be able to exercise these swaps in 2004.

ELECTRONIC COMMERCE

Hungary has only recently begun to address electronic commerce issues and liberalize its market to make e-business in Hungary more attractive. A new Electronic Communications Act was passed by Parliament on November 24, 2003 replacing the Telecommunication Act of 2001. The new law, which came into effect on January 1, 2004, is structured to reduce the power of the incumbent, Matav. Interconnection fees currently stand at 224 percent of the EU average and will be reduced to the EU level by May 1, 2004. Number portability will become possible from January 1, 2004 for fixed-lines and from May 1, for mobile phone numbers. The new law encourages new market entrants by measures such as granting exemptions from paying into the Universal Service Fund for two years. Broadband investments will receive incentives and access to Hungarian and EU funds. If a broadband network development project exceeds HUF 100 million ($461,000), 50 percent of the investment value can be written off from tax payments. The new law also eased the restriction on the expansion of cable television providers making it possible to provide services on up to one-third of the country's area instead of the previous one-sixth.

All firms face structural obstacles in entering the Hungarian e-commerce market and Hungary's information technology usage and infrastructure lags significantly behind that of its European neighbors. Matáv canceled a popular flat-rate telephone charge Internet access package in spring 2002 because the package did not significantly boost usage. Telecommunications liberalization did not significantly reduce the cost of Internet access. Without a real decline in local telephone prices, Internet use (currently 22 percent) will remain below the EU average, although broadband access is a growing alternative. Personal computer penetration stands at only 22 percent. The new Telecommunications Act should significantly improve competition and prices for internet services.

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

Hungary 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 unlicenced software in Hungary.

OTHER BARRIERS

Hungary has a national health care system under which the government decrees which pharmaceutical products it will subsidize. There are concerns that the reimbursement process lacks transparency; for example, that the decision-making process is not based on adequate, objective and verifiable criteria, and that products are removed without consultation. Due to the lack of transparency, innovative compounds face difficulty entering the Hungarian drug market. As of September 2003, the Hungarian Government introduced the Global Reimbursement Volume System which sets a monthly maximum on drug subsidy payments. Companies are forced to enter volume contracts to avoid a drop in reimbursement for their products. Also, a therapeutic reference price system was implemented that does not appropriately value innovative drugs. Drug companies have raised concerns that the present preparation of the 2004 drug subsidy system is not in compliance with the EU Transparency Directive.

In a surprising move, the Hungarian government issued a decree in late December 2001 which discontinued the rights of a foreign partner who held a minority share in the management of Budapest Ferihegy airport. The government claimed the move was necessary as part of a reorganization plan for airport operations. The airport corporation, privatization agency and foreign partner have begun talks on compensation.