POLAND

TRADE SUMMARY

The United States' trade deficit with Poland was $567 million in 2003, an increase of $145 million from $422 million in 2002. U.S. goods exports in 2003 were $759 million, up 10.5 percent from the previous year. Corresponding U.S. imports from Poland were $1.3 billion, up 19.6 percent. Poland is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Poland in 2002 was $4.8 billion, up from $4.3 billion in 2001. U.S. FDI in Poland is concentrated in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

Since 1989, Poland has steadily liberalized its tariff policy in line with its WTO commitments and with a strong bias in favor of its regional free trade partners (EU, EFTA, CEFTA, Estonia, Latvia, Lithuania, Israel, Turkey, Croatia, and the Faeroe Islands). In 2003, almost three-quarters of Poland's total industrial imports arrived duty free (from Poland's free trade partners), one quarter (including all imports from the United States) was subject to most favored nation (MFN) tariffs, and about three percent were subject to preferential tariff rates under Poland's Generalized System of Preferences (GSP) for developing countries. In 2002, Poland eliminated all tariffs on industrial products from the EU. Poland and the EU liberalized trade of about 500 non-sensitive agricultural goods in 2001 (grains and meat not included) and implemented follow-up agreements thorough 2003 that included a duty free tariff-rate quota (TRQ) for EU grain and duty free access for EU wine.

When it joins the EU on May 1, 2004, Poland will become part of the EU common market, implement the EU common external tariff (CXT) toward all non-EU trading partners, and terminate its bilateral free trade agreements. In general, U.S. exports will have easier access to the Polish market after Poland's EU accession and tariffs on most U.S. exports to Poland of industrial goods will drop. However, approximately three percent of current U.S. exports to Poland, especially agricultural goods, will face higher tariffs.

Poland's pre-EU accession tariff policy has disadvantaged U.S. exporters by steadily eliminating tariffs on goods from the EU and its free trade partners while maintaining MFN tariffs that exceed CXT levels. As a result, U.S. firms have faced a competitive disadvantage selling into Poland compared with EU firms. U.S. exporters of automobiles, auto parts, small aircraft, electrical generating equipment, mining equipment, lumber and wood products, pistachios, distilled spirits, wine, sporting goods, cosmetics, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections have been particularly affected. The U.S. and Polish Governments have been engaged for some years in an effort to address this and other bilateral trade issues. In June 2001, the two sides agreed to a package of measures, including the suspension beginning in 2002 of Polish tariffs on a limited range of industrial and agricultural goods of interest to U.S. exporters, continued U.S. support for Poland's participation in the GSP program until it joins the EU, and the creation of a formal dialogue for addressing bilateral trade concerns. These measures went into effect in September 2002.

Poland applies very high duties of nearly 300 percent *ad valorem* on imported alcoholic beverages (52-105 percent ad valorem within quotas). As a result of Polish-EU pre-accession agreements, U.S. distilled spirits are at a competitive disadvantage and generally subject to an out-of-quota rate of 268 percent minimum compared to 75 percent minimum for EU product. Additionally, Poland's sugar law, effective since late August 2001, requires the use of Polish-grown agricultural resources (grain) in domestic isoglucose production.

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Non-tariff Barriers

Certain agricultural products imported under import quotas are permitted entry only by individual import permits, whereas annual import quotas for some items are split equally into three-month quota amounts. Such import permits limit amounts to various maximum levels per permit; for example, 1,500 tons for non-EU wheat (5,000 for EU wheat) and 100 tons for pork and poultry. Such requirements hamper import prospects for certain bulk products that might otherwise be shipped in larger quantities on ocean-going vessels.

In 2003, Poland experienced drought-related wheat production shortages. In response, the Polish government will likely introduce for 2004 a 600,000 metric ton duty free quota for imported grain from countries including the United States.

Poland will fully implement veterinary certificates required by the EU for all red meat and poultry products entering Poland by May 1, 2004. Given the EU's restrictive sanitary procedures, a source of longstanding trade friction between the U.S. and the EU, U.S. exports of the aforementioned goods will be effectively blocked from entering Poland once Poland implements EU veterinary certificates. U.S. exports of these goods to Poland were worth $38 million in 2002. While exports of high quality U.S. beef and poultry products will be blocked, shipments of U.S. beef tripe and transshipments of poultry will likely continue consistent with EU regulations.

Poland requires import permits and certificates of disinfection abroad for imports of used clothes. These regulations remain in force until Poland joins the EU on May 1, 2004. At that time Poland will abolish automatic registration for imports of used clothes introduced in 2003, but the disinfection requirements will become stricter. In 2003, Poland passed new EU-compatible regulations on safety and labeling of imported used clothes.

Due to heavy state involvement in financing and delivering healthcare, Poland has a highly regulated pharmaceutical market with significant barriers to market access. Research-based pharmaceutical firms cite three main impediments: 1) a discriminatory pharmaceutical policy focused on the promotion of local industry; 2) unexplained delays in the registration of innovative drugs; and 3) the government's failure since 1998 to add new, innovative medicines to the list of drugs it will reimburse.

In the run-up to EU accession, Poland has been revising its customs and trade laws to mirror EU rules. These legislative changes aimed to protect the Polish market against subsidized imports and align Polish agricultural market rules with those of the EU. The changes also introduced instruments such as automatic registration, quotas, prohibitions, export subsidies and export charges.

Poland’s regulations on safeguards and antidumping procedures were amended in 2001 and 2002 to conform to WTO standards. The amendments will speed up safeguard proceedings. Amendments also require that measures imposed cannot violate international trade agreements concluded by Poland and may only be imposed for a limited time and in the form necessary to remedy the injury done to the Polish industry. The Economy Minister’s determination cannot be appealed in the administrative courts. The Ministry expects to complete the process of notification of these amendments to the WTO in early 2004.

In 2002, Poland commenced antidumping procedures and safeguard actions against imports of: carbide from all countries; ammonium nitrate from Ukraine; synthetic rubber (SBR) from the Czech Republic, Russia and Romania; some steel products from all countries; and shoes from China. New cases were initiated in 2003 on matches from all countries and cement from Belarus while Romania was dropped from the synthetic rubber case. When it joins the EU, Poland will discontinue the abovementioned antidumping procedures and safeguard actions and implement only those imposed by the EU on goods from non-EU sources.

Finally, the classification of products, which determines the applicable custom duty and value added tax (VAT), is often done inconsistently, arbitrarily, and sometimes even retroactively.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Harmonization of standards, certification, and testing procedures with those of the EU, including greater reliance on voluntary standards, is the main objective of Polish standards policy. Under the 1997 European Conformity Assessment Agreement, Poland agreed to introduce a EU-compatible certification system; to gradually align its regulations and certification procedures with those of the EU; to eliminate mandatory certification for products free from certification requirements in the EU; and to automatically provide a Polish "B" safety certificate to EU products subject to mandatory certification.

Until May 1, 2004, products manufactured in Poland or imported into Poland for the first time that can be of potential danger or serve to protect or save health, life or environment, are subject to certification with a reserved safety mark of the Polish Research and Certification Center or with a manufacturer's declaration of compliance. A Polish "B" safety certificate has been required since 1997 for imports and domestic products and affects about 30 percent of all products marketed in Poland. Poland does not automatically accept the EU "CE" mark or international product standards. Non-acceptance of many international standards, certification, and conformity testing procedures are associated with long delays, involving expensive testing processes.

When Poland joins the EU on May 1, 2004, U.S. exporters should find it much easier to sell their goods in Poland. Poland will apply standards, testing, labeling, and certification rules compatible with those in the EU. The CE mark will be accepted automatically, and the Polish "B" safety certificates will no longer be required. Poland will implement the U.S.-EU Mutual Recognition Agreement on conformity assessment.

Poland's periodic and arbitrary application of sanitary and phytosanitary standards has, on occasion, seriously disrupted trade. The most notable discriminatory practice has been the strict enforcement of a policy of zero tolerance of certain weed seeds that are common in imported U.S. grains and oilseeds (including ambrosia or ragweed seeds), despite the fact that Poland has ragweed and does not have a meaningful eradication program in place. This policy has resulted in substantial export losses for U.S. grains, oilseeds and products. It is unlikely, however, that Poland will be able to continue this policy after it joins the EU on May 1, 2004 since such weed seeds are not on the EU quarantine list. Import permits are still required for seeds, meat, and live animals. Approval procedures for the importation of new varieties of plants and livestock genetics have also created difficulties for U.S. firms.

In February 2001, Poland banned imports of meat and bone meal (MBM) from all countries due to concerns about Bovine Spongiform Encephalopathy (BSE). Previously, Poland had imported annually around 300,000 tons of MBM worth $100 million, mainly from the EU. Poland refused to permit imports of U.S. MBM as an alternative unless U.S. MBM undergoes costly heat and pressure treatments outlined in European Commission Decision 96/449/EC. Poland also banned imports of gelatin of bovine origin from all countries in February 2001. Despite these policies, Poland had its first confirmed case of BSE in May 2002 followed by eight more through November 2003.

A new EU-compliant law on labeling of packaged goods (found in Dziennik Ustaw 193 dated November 22, 2002) went into effect January 1, 2003. This new regulation contains EU required provisions concerning product names, label content, and sizes and measurements that must be used in label descriptions.

New laws concerning products of biotechnology were adopted in mid-2001. These regulations, which fundamentally mirror those of the EU, require labeling of food products when biotechnology content exceeds one percent. Since December 2001, the government has considered amending current biotechnology law to add traceability and stricter labeling requirements pending EU legislative actions. In early 2001, a variety of biotechnology soybeans became the first biotechnology item registered for domestic use in Poland, but no biotechnology crops are commercially produced. New biotechnology product import requirements, under which each importer of biotechnology soybean meal or corn is required to apply for a Ministry of Environment approved import permit, went into effect in 2002. The Ministry of Environment approved such import permit applications upon the recommendation of a Polish government commission. The import authorization permits could be valid for up to 10 years.

Poland's Ministry of Health published new regulations concerning food additives on February 5, 2001. These regulations are more compatible with current EU regulations and less restrictive than the former Polish food additives law.

GOVERNMENT PROCUREMENT

Problems with the public procurement process in Poland are common. U.S. and other foreign firms have complained about the lack of transparency in the process and some have voiced concerns about corruption. Changes to Polish public procurement law that would make it easier for U.S. firms to compete for contracts are expected to take effect when Poland joins the EU on May 1, 2004. The changes will include abolition of preferences for domestic bidders and domestic content. Until then, Poland’s procurement law does not cover most purchases by state-owned enterprises, which play a significant role in the nation's economy. The domestic performance section of the state-owned enterprise law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Polish companies with foreign participation may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. Poland has been an observer to the WTO Government Procurement Agreement (GPA) since September 1997, but it will become subject to the GPA upon accession to the EU.

EXPORT SUBSIDIES

Upon acceding to the WTO in 1995, Poland implemented the Uruguay Round Agreement on Subsidies and Countervailing Measures and eliminated earlier practices of tax incentives for exporters. The Polish government offers drawback levies on raw materials from EU and CEFTA countries that are processed and re-exported as finished products within 30 days. Some politically powerful state-owned enterprises continue to receive direct or indirect production subsidies to lower export prices.

In 2002 and 2001, Poland amended laws and regulations governing export promotion to improve Poland’s export performance and comply with EU regulations and practices in OECD countries. Polish export promotion policy has a numerous tools and increasing resources at it disposal. Still, the lack of export credit and export promotion institutions pose a continuing weakness. The government’s export-stimulation efforts have not been very effective due to the low utilization of export support instruments by Polish enterprises and a lack of symmetry between the direct export support policy and the export development policy. Despite new measures and a sharp rise in funding, the volume of Polish exports covered by Government-backed risk insurance remains limited. Additionally, programs aimed at reviving exports to the Russian market through strengthening its insurance protection have not produced significant results. When Poland joins the EU, the competent European Union bodies will assume responsibility for direct support measures for export (financial instruments and information, promotion and training support). However, Poland will continue to be able to support exports through information, promotion and training measures that are not covered under EU law, assuming they do not violate EU rules on state aid.

The Agency for Agricultural Markets (AAM) supports the milk procurement price through intervention purchases or subsidies for storage of butter and non-fat dry milk (NFDM) plus export subsidies of NFDM. AAM holds tenders to allocate subsidies, which vary based on market conditions and available resources. Poland exports sugar using WTO-allowed export subsidies that cover one-third of exports, primarily to the former Soviet Union and the Middle East. Quotas for subsidized exports have been gradually reduced over the past several years. The government limited 2001 subsidized exports to 104,400 tons (113,482 tons raw sugar equivalent) per Poland's WTO commitments. Fees ranging from 2-16 percent on intervention prices were allocated to pay sugar export subsidies in 2003. Export subsidies for Polish rapeseed were implemented for the first time in late 2000. Such subsidies were applied to an estimated 27,000 tons in 2001 and 6,000 tons in 2002. These amounts were well within Poland’s WTO export subsidy ceilings in terms of quantity and value.

AAM implemented government grain export supports in 2002 in response to surplus domestic grain supplies and high levels of government held stocks. To reduce the surplus and bolster domestic grain market prices, AAM sold up to 600,000 tons of government wheat stocks to companies at below market prices through early 2003. Such sales were conducted under the government imposed condition that the wheat be exported anywhere but the EU.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While Poland has significantly improved its legal framework for intellectual property protection, the level of IPR protection in Poland remains unsatisfactory. The principal problems are insufficient copyright and trademark enforcement and the continuing lack of effective mechanisms to protect pharmaceutical patents and test data.

The 1994 U.S.-Polish Bilateral Business and Economic Treaty provides for the protection of U.S. intellectual property. Poland’s Copyright Law offers strong criminal and civil enforcement provisions that cover literary, musical, graphical, software, and audio-visual works, as well as industrial patterns. Amendments to bring the Copyright Act into full compliance with Poland's TRIPS obligations were implemented in July 2000, providing full protection of all pre-existing works and sound recordings. Amendments to bring the Industrial Property Law, which governs patents and trademarks, into compliance with TRIPS obligations were implemented in August 2001.

U.S. copyright industries report that Poland suffers from high rates of piracy, in large part due to weak control of its eastern border and large outdoor markets. Copyright industry associations estimate the 2002 levels of piracy in Poland to be: 43 percent for sound recordings, 30 percent for motion pictures, 54 percent for business software, and 91 percent for entertainment software. Most pirated materials available - particularly CDs, CD-ROMs and DVDs - are produced in the former Soviet Union and other Eastern European countries. With better laws in place and improved cooperation between government and industry, copyright enforcement has improved in recent years. The government’s adoption in July 2003 of an anti-piracy action plan demonstrated a positive change in approach and has led to a noticeable reduction of piracy at the Warsaw Stadium. Poland’s cumbersome judicial system and the general lack of knowledge about IPR remain impediments and undermine deterrence efforts. To address this deficiency, hundreds of Polish judges and prosecutors received IPR training in 2002-2003.

Separately, pharmaceutical producers are harmed by policies that ignore the potential for patent violations and provide a substandard period of data exclusivity (protection for test data submitted to register pharmaceuticals). Currently, Polish law provides for a three-year period of data exclusivity. Since this period begins on the date of the product’s first registration anywhere in the world, the actual period of protection is considerably less than three years. This law appears to be inconsistent with Poland's WTO TRIPS commitments and discourages foreign research and development pharmaceutical companies from investing and registering new drugs in Poland. From the day Poland joins the EU, the period of data exclusivity will be six or ten years (depending on the type of product) from the date of first registration in the EU, but may not exceed the life of the product’s patent. Additionally, the Ministry of Health takes no steps to block the registration of generic versions of drugs that are still protected by a patent or for which a patent is pending. This systematic problem has already led to unnecessary legal disputes and forced two U.S. pharmaceuticals firms to launch court cases to defend their rights. In late 2001, Poland agreed to introduce upon joining the EU supplemental protection certificates (patent extensions), for drugs patented since January 1, 2000.

SERVICES BARRIERS

Poland has made progress in reducing barriers to services, but many remain, notably in the audiovisual and telecommunications sectors. In November 1997, the government enacted a rigid 50 percent European production quota for all television broadcasters, raising concerns about certain liberalization commitments made by Poland upon joining the OECD. Subsequent legislation passed in 2000 requires broadcasters to meet the 50 percent quota only where practicable, as specified in EU directives. Nevertheless, in response to EU pressure, successive governments have tried to introduce much stricter enforcement of the European production quota.

Liberalization of the telecommunications sector is progressing in some fields such as mobile telephony, data services, and integrated corporate services, but generally remains stifled by the former state monopoly, TPSA. TPSA still controls over 90 percent of the land telephony market. The government began to sell stakes in TPSA in October 1998, and agreed to open domestic long-distance service to competition in 1999 and international services in 2003. Parastatal enterprise France Telecom became TPSA's largest shareholder in 2001, but the government still retains significant control. In the mid 1990’s, a number of competitive local exchange carriers bought licenses and started services; most have left the field because of TPSA’s resistance to providing interconnection. Several competitors remain, providing local phone service for corporations and long distance service to both corporate and consumer markets. Government regulatory agencies, however, have made only token efforts to curb anticompetitive behavior by TPSA, which retains a monopoly over interconnection and a virtual monopoly in international long distance.

INVESTMENT BARRIERS

In its 2002 “Entrepreneurship-Development-Work” program the Polish government pledged to improve business conditions. Thus far, the results have been lackluster and the business community is advocating further steps to facilitate business development. Lack of transparency and of clearly stated rules in government decision-making processes, vague tax regulations and arbitrary interpretation of tax laws, over regulation of the economy, inefficient public administration, excessive fiscal burdens, and instances of corruption are regarded by companies as informal barriers to foreign investment.

Polish law permits 100 percent foreign ownership of most corporations. Exceptions include broadcasting, where foreign ownership is limited to 33 percent (when Poland joins the EU this cap will be eliminated for EU firms and raised to 49 percent for non-EU firms), and air transport, limited to 49 percent. No foreign investment is currently allowed in gambling. The cap on foreign ownership in telecommunications was lifted on January 1, 2001. Foreign firms are free to participate in the on-going privatization program, although this process has attracted relatively few U.S. firms, in part because of transparency concerns but also because of the unreliable regulatory environment and the overall slowdown in privatization activities in recent years. As a result of OECD accession, foreigners in Poland may purchase up to 4,000 square meters of urban land or up to one hectare of agricultural land without a permit. Larger purchases, or the purchase of a controlling stake in a Polish company owning real estate, require approval from the Ministry of Interior and the consent (not always automatic) of both the Ministries of National Defense and Agriculture.

ANTICOMPETITIVE PRACTICES

The Office for Competition and Consumer Protection, established in 1996, is empowered to fine state-owned and private firms that unduly prevent competition. This young institution has not yet received the political support needed to carry out its responsibilities fully. Competition law in Poland is generally governed by two pieces of legislation: the 1993 Law on Combating Unfair Competition and the 2000 Law on the Protection of Competition and Consumers.

ELECTRONIC COMMERCE

High interconnection charges have hindered the development of electronic commerce in Poland. At the end of 2001, less than 20 percent of companies used electronic commerce. Naturally, information technology (IT) companies lead the way: around 30 percent of IT companies sell and almost 60 percent buy through the Internet. In 2001, the Polish Parliament passed a law on electronic signature, a requirement for EU membership. Sales through the Internet are unrestricted, while merchandise purchases through the Internet are subject to the customary Value Added Tax (VAT) and customs duties. The Ministry of Finance and the Customs Service are considering tax regulations for software purchased and delivered via the Internet. Poland, like many of its European neighbors, is developing ways to apply taxes and other regulatory instruments to electronic commerce that will comply with EU law. Polish VAT regulations already identify factors for determining the location of a transaction (processing site) and the taxpayer (location of parties to a transaction). Internet transactions are located where the server processes the purchase. Similar principles apply to the sale of services. An important unresolved VAT-related matter is the issue of electronic invoices that clearly state the moment when a transaction was concluded. Determining factors for taxation of income from electronic commerce include the legal status of a foreign entity and the classification of goods. Digital technology products are distinguished by their proprietary status and licensing arrangements. Polish customs regulations remain vague about the free flow of digital products and services.

Poland is bringing rules on the transfer and protection of personal data into compliance with EU requirements. Since the EU believes that U.S. law does not provide adequate protection, companies may transfer personal data to parties in the U.S. only if the EU has designated those parties as a “safe harbor,” i.e. that the party meets EU data privacy guidelines. At least one U.S. firm operating in Poland has experienced problems in transferring personal data to its U.S. parent.

OTHER BARRIERS

Poland’s business climate suffers due to weak public administration. In particular, U.S. companies often complain that the Polish government’s customs and tax services seem hostile and give inadequate guidance, apply rules inconsistently, and use legal gray areas against companies. The bonus system used by the Polish customs and tax services is said to give inspectors an incentive to bring cases built on dubious interpretations of law. Punitive fines and interest are often imposed even when there is no evidence of malfeasance and no financial loss to the state. U.S. firms frequently complain that the understaffed and underfunded court system is an ineffective tool for protecting their legal rights and business interests. Commercial court cases can continue for years without resolving the dispute or assigning penalties. This results in difficulties enforcing contracts.

Corruption, while not a new problem, became significantly more apparent in 2002 and 2003 as a spate of new scandals was uncovered. One led to the creation of Poland's first special parliamentary investigative committee. According to surveys conducted by Transparency International, the perception of corruption in Poland has been risen every year but one between 1996 and 2004.