ROMANIA

TRADE SUMMARY

The United States' trade deficit with Romania was $363 million in 2003, a decrease of $84 million from $447 million in 2002. U.S. goods exports in 2003 were $367 million, up 47.8 percent from the previous year. Corresponding U.S. imports from Romania were $730 million, up 5.1 percent. Romania is currently the 74th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Romania in 2002 was $342 million, up from $280 million in 2001.

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 (Europe Agreement), and free trade agreements with its Central European neighbors (CEFTA) and European Free Trade Area (EFTA) countries.

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 30.0 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products.

Romania acceded to the WTO's 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 (90 percent *ad valorem* within a modest quota and 247.5 percent outside the quota), wine (144 percent), and textiles (12 percent to 32 percent) provided limited access to the Romanian market for these U.S. products.

Pursuant to its Europe Agreement, Romania is phasing out tariffs on products originating within the EU, while U.S. exports often face higher MFN duties. Exporters of U.S. products have voiced concerns about these tariff differentials vis-à-vis EU products, including distilled spirits, wheat, animal feed supplements, wine, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and commercial washers and dryers. In 2000, Romania and the EU reached an agreement on further trade liberalization in agricultural products. This agreement ends EU agricultural subsidies on goods exported to Romania in return for the elimination of Romania's tariffs on most EU agricultural products. As a result, U.S. agricultural products are put at a further disadvantage compared to EU products. The United States has been consulting with Romania about the tariff differential problem and encouraging it to reduce its applied rates to the EU's Common External Tariff (CET) rates for key products and sectors.

Non-tariff barriers

In 2001, rules were implemented for foreign direct investments exceeding the equivalent of $1 million which include a customs duty holiday for imports necessary for investment, and tax deductions of 20 percent of the total investment value. Exemptions from customs duties apply to exported goods, transiting goods, merchandise in customs warehouses (during the storage period), and goods imported and exported in the drawback system.

Many exporters complain that customs valuation can be inconsistent and arbitrary. The Romanian Customs Code provides for customs suspensions, which may be granted for specified periods of time:

inward processing, outward processing, bonded warehouse; temporary admission; transformation under customs control, and customs transit. A bank collateral equal to the amount of the duty may have to be pledged. Romania has also adopted simplified procedures similar to those used within EU.

A new value added tax (VAT) law, effective June 1, 2002, and a new Profit Tax Law, effective July 1, 2002, significantly modified prior legislation and abolished some incentives. The laws also include an expedited VAT refund procedure for taxpayers that meet certain conditions as follows: the elimination of hard currency cashing conditions, exemption from profit tax if operating in disadvantaged areas, and a reduced profit tax rate for Free Trade Zones and export activities. Overall, the VAT refund is an extremely inefficient process, often taking six to eight months to receive a refund.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania seeks to bring its standards in line with international and EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. For instance, Romania adopted international quality control standards, such as ISO 8402, 9000-9004 and 9004-2, and incorporated them into its national standardization system. Increasingly, purchasers are demanding that suppliers meet ISO standards to ensure the quality of products and services.

Romania has begun to harmonize sanitary and phytosantiary measures with those of the EU. Adoption and implementation of EU measures will have a severe impact on U.S. exports of poultry, beef and biotechnology products to Romania. The U.S. government has been working closely with Romanian officials to ensure 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, and the judiciary, as well as state-owned enterprises.

State-owned companies with the status of commercial companies have their own internally elaborated 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 appraisal 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 allegedly saved $73 million.

EXPORT SUBSIDIES

In August 2003, the Romanian government approved export subsidies for 5,000 MT of poultry for any destination except European Union, valued at roughly $650,000. The government approved, but did not grant, subsidies for the export of 6,000 MT of beef.

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INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Romania's criminal enforcement with respect to copyright piracy and trademark counterfeiting remains inadequate. Although legislation is fairly modern and comprehensive, enforcement remains very weak. Due to inadequate enforcement against copyright piracy, Romania remained on the Special 301 Watch List in 2003.

The rates of copyright piracy in Romania remain high, though the authorities have made gradual, limited improvements. But 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 Romania from Ukraine, China and Moldova. Moreover, police acknowledge that sources in Romania may be building capacity to start domestic production of pirated CDs.
Recently, the Phonogram Producer Union in Romania (UPFR) won a trial court case where the defendant was sentenced to one year in prison, required to pay substantial damages, and counterfeited CDs and tapes were seized. However, the Appeals Court reversed the decision, thereby setting a bad precedent not only for UPFR and the phonogram industry in Romania (most members are Romanian music record companies), but for the entire IPR industry. 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 may help efforts to combat 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.

Romania's continued failure to protect confidential test data from unfair commercial use has a significant adverse impact on U.S. pharmaceutical producers.

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 the where practicable 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: ATV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European productions, minus news and sport shows, games, advertising and teletext services. The result is that out of the total broadcast, at least 40 percent must be Romanian. Many Romanian Parliamentarians regard reforming 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 a Romanian Lawyers Union Exam in Romanian Legislation and the Romanian Language. Foreign lawyers may work in Romania as individuals in law offices associated with Romanian firms or international law firms. However, due to the frequent legislative changes in this field, it is likely that these legal provisions will be modified.

Romanian law requires that doctors and health care professionals be Romanian 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 commitments under the WTO Basic Telecommunications Agreement 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.

The government sold a strategic stake in the telephone company (Romtelecom) to the Hellenic Telecommunications Organization in 1998. Romtelecom's monopoly on fixed-line telecommunications services expired on January 1, 2003. Rates are subject to governmental supervision. Other telecommunication segments (Internet service providers, mobile telephone service providers, cable communications, etc.) have been liberalized.

INVESTMENT BARRIERS

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.

A continued impediment to foreign investment is Romania's inconsistent legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases can require lengthy, expensive procedures, and judges' rulings face uncertain enforcement.

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 unlicenced cyber transactions.

Twenty banks in Romania have acquired at least one type of authorization from the Ministry of Communications and Information Technology for 27 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

Even though more than two-thirds of Romanian Gross Domestic Product is created by private entities, large state-owned enterprises and government-subsidized enterprises are major impediments to free and fair market competition. Preferential debt rescheduling, and total or partial cancellation of debts, including taxes by the Romanian government continues. In addition, allegations of non-transparent aid schemes to state companies and the firms of well-connected Romanians are prevalent.

The most common complaints of American companies operating in Romania are the frequency with which the government changes its laws, the instability of Romanian fiscal and tax legislation, and weak enforcement of existing laws. Concerns about judicial competence, lack of court impartiality, and corruption are also voiced by U.S. businesses. On a positive note, the Romanian government introduced a revised Fiscal Code, which took effect January 1, 2004. Unfortunately, implementing regulations will not be published before the Code goes into effect, creating near-term uncertainty about its application.

Employers and employees combined tax burden is 53.2 percent of employee wages. As a result, employers routinely understate employee salaries and compensate their work force by other means so that both avoid paying taxes. The high tax burden has also resulted in an extensive gray economy of Romanians working outside the customary employer-employee contract relationship.

Romanian tax legislation still is not OECD-consistent. Romania recently began to switch from Romanian Accounting Standards (RAS) to International Accounting Standards (IAS). The Ministry of Finance approved new accounting regulations in 2001 that aim to harmonizing RAS with both the EU’s 4th Directive and International Financial Reporting Standards (IFRS). The goal is that by fiscal year 2006, all Romanian companies except small enterprises should enforce IFRS. Beginning January 1, 2003, accounting standards harmonized with the European Directives (Order 306/2002) are also applicable to micro-enterprises and to companies that are not applying the accounting regulations harmonized with the EU’s 4th Directive and IFRS. Also, eight commercial banks in Romania have been selected to enforce IFRS beginning in 2003.