

PARAGUAY

TRADE SUMMARY

In 2000, the U.S. trade surplus with Paraguay was \$403 million, a decrease of \$64 million from the U.S. trade surplus of \$467 million in 1999. U.S. merchandise exports to Paraguay were \$444 million, a decrease of \$71 million (13.8 percent) from the level of U.S. exports to Paraguay in 1999. Paraguay was the United States' 67th largest export market in 2000. U.S. imports from Paraguay were \$41 million in 2000, a decrease of \$7 million (14.9 percent) from the level of imports in 1999. The stock of U.S. foreign direct investment (FDI) in Paraguay in 1999 was \$229 million, an increase of 12.3 percent from the level of U.S. FDI in 1998.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of MERCOSUR, Paraguay has had to increase its tariffs to comply with the MERCOSUR common external tariff (CET) of between zero and 22.5 percent. Paraguay maintains nearly 400 exceptions to the CET, allowing it to keep these tariffs at or below the CET levels. These tariffs will increase annually, reaching parity with the CET in 2006. Paraguay was also granted more than 300 exceptions to the 1997 CET increase (raising the tariff on hundreds of items from 20 to 23 percent). In December of 2000, the CET was lowered to 22.5 percent until January 2002, when it will be lowered to 20 percent.

Taxes on imports of beer and cigarettes are inconsistent with the taxes placed on the same domestic products. Presidential decrees in 1998, 1999 and 2000 created a multiplier, increasing the base value on imported beer prior to calculating excise tax. The same multiplier was not applied to domestic products. Income tax must be pre-paid on presumed profit margins of 10 percent for imported cigarettes and 30 percent for imported beer prior to removal from customs. Local manufacturers of cigarettes and beer pay income

taxes only on reported profit margins and at year-end. In some cases, this system reportedly forces importers to pay more than three times the amount of income tax owed when calculated on actual profits, and the importer is not reimbursed the tax differential when actual profits fall below the "presumed" rate.

According to Paraguayan customs data, exports of U.S. beers to Paraguay dropped by 81 percent between 1997 and 2000, a \$22 million decrease in sales. U.S. cigarette exports to Paraguay dropped by 65 percent over the same period, a \$33 million decrease in sales.

For exports to Paraguay, a Paraguayan consulate in the country from which the exports originate must certify specific documentation, such as the commercial receipt, certificate of origin, and cargo manifest. If there is no Paraguayan consulate in the country where the exports originate, the documents can be certified in the nearest country with a consulate or in the border consulate office in the country from which the exports enter Paraguay (in the case of ground or river shipments). Over the course of seven months in 2000, regulations for consular certification of export documents have been modified four times (April 28 -- decree 8489, May 12 -- decree 8686, October 31 -- decree 11011, and December 22, 2000 -- Foreign Ministry resolution 505), and there are indications that these regulations will be modified yet again early in 2001. These multiple changes make it difficult for exporters to ensure they are following the most current regulations, and could cause dispatch delays in shipments and lead to unexpected fines.

Paraguay was obligated to implement the WTO Agreement on Customs Valuation by the start of 2000. However, before it was scheduled to implement, Paraguay requested a twelve-month extension with reservations to retain minimum values for specific products (used clothing, used footwear, used vehicles). The WTO Committee on Customs Valuation granted this request, and Paraguay's new deadline to implement the Agreement and end use of minimum values was

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January 1, 2001. WTO records indicate that Paraguay has not yet notified its legislation or the Customs Valuation Checklist to the WTO Committee on Customs Valuation.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Franchisees of U.S. fast food companies complain of the onerous burden created by Agriculture Ministry Resolution 90, dated May 8, 1996. The resolution requires that Paraguayan Agriculture Ministry officials certify factories producing imported meat and cheese, generally located in neighboring countries or the United States. The cost of this certification is borne by the importer, and implementation of the resolution is reportedly inconsistent.

GOVERNMENT PROCUREMENT

U.S. companies have protested non-transparent procurement procedures, citing: (1) bid specifications that favor a preferred bidder and (2) allowance for more than one of a parent company's subsidiaries to each submit bids, while counting these bids toward the minimum qualifying bids to validate the tender process. Other complaints include the discriminatory usage of bid procedures to disqualify a non-preferred bidder, declaring the bid vacant when a non-preferred bidder makes the best bid, and permitted non-compliance with tender requirements by preferred bidders. Furthermore, improving the terms of a contract once the bid has been finalized is also permitted, allowing a preferred bidder to submit an extremely low bid to win a tender, knowing that future changes will enable it to make a profit. Paraguay is not a member of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Paraguay belongs to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). It is also a

signatory to the Paris Convention, Bern Convention, Rome Convention, the Phonograms Convention, and the WIPO Copyright, and Performances and Phonograms Treaties. On January 16, 1998, the USTR identified Paraguay as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. On February 17, 1998, the United States initiated a Section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property. This investigation was extended for an additional 3 months on August 4, 1998, in light of the complex and complicated issues involved and to provide an opportunity to continue negotiations with the Cubas Grau Administration, which took office in August 1998. The extension of the investigation moved the deadline for the U.S. Trade Representative's determination in this case to November 17, 1998.

In November 1998, the U.S. Government and the Government of Paraguay signed a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property, which in conjunction with progress made by the Cubas Grau administration in this area, allowed the United States to remove Paraguay from its Priority Foreign Country status and to terminate the Section 301 investigation. However, continued high levels of piracy and counterfeiting led the USTR to determine that certain acts, policies and practices of the Paraguayan Government were "unreasonable or discriminatory and burdens or restricts U.S. commerce." In the MOU, the Paraguayan Government committed to implement institutional reforms to strengthen intellectual property rights enforcement at its borders, and to pursue legal amendments to facilitate effective prosecution of copyright piracy. Paraguay also committed to take immediate action in known centers of piracy and counterfeiting, such as Ciudad del Este, and to coordinate the anti-piracy efforts of its customs, police, prosecutorial and tax authorities. In addition, Paraguay agreed to pursue reform of its patent law, and to ensure that its government ministries use only authorized software.

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Paraguay is currently subject to Section 306 monitoring, and Paraguayan implementation of the MOU, while uneven, includes some notable achievements. The "Special Enforcement Period" (SEP) of the MOU has been extended twice, in part to give the Gonzalez Macchi administration, which took office unexpectedly in March of 1999, an opportunity to demonstrate its resolve in fighting IPR violations. The governments of the United States and Paraguay held their last bilateral review in Miami in June 2000.

Copyrights and Trademarks

Despite several positive steps, including the seizure and destruction of two multi-million dollar high-tech, pirate CD factories in 1999, Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil.

In October 1998, a new copyright law was passed that is generally consistent with Paraguay's international obligations. Notable is the protection of software as a literary work. However, the Government of Paraguay has not provided adequate and effective enforcement of its laws to address the piracy problem, and in practical terms piracy remains rampant. An outstanding shortcoming of the law was the designation of copyright piracy as a private, rather than a public crime, thus requiring legal action by the offended party to seek redress. Law 1444, passed on June 25, 1999, made copyright violations "public actions," allowing public prosecutors to take legal action without requiring the offended party to seek redress, thus remedying the shortcoming.

Special public prosecutors, based in Asuncion, but with national jurisdiction, have been named to deal primarily, but not exclusively, with intellectual property crimes. On December 27, 2000, the first sentence was handed down on an intellectual property case under the new criminal procedural code, which provides for public trials

with oral arguments and immediate sentencing. A Paraguayan decree, dated December 31, 1998, calls for the use of only legal software in all federal agencies. On August 23, 2000, the Ministry of Industry and Commerce, the national cement company, the national petroleum distribution company and the national standards board all entered into an agreement to purchase licenses and legalize their Microsoft software. The Finance and the Justice Ministries are considering signing similar agreements.

A new trademark law was enacted in August 1998 and provides specific protection for well-known trademarks. Stronger enforcement measures and penalties for infractions are also included in the law, but enforcement remains deficient.

Patents

Paraguay does not provide adequate and effective patent protection, especially with regard to pharmaceutical and agricultural chemical products. On November 30, 2000, a new patent law entered into effect. The law provides weak patent protection, permits parallel imports, stockpiling, and gives a patent holder only 90 days to negotiate an agreement with a prospective licensee prior to issuing a compulsory license. The law does not indicate that a patent holder can satisfy the requirement to work the patent through importation of the patented item. The executive branch can issue compulsory licenses, without authorization of the patent holder, to address "public health emergencies, military or national security, and social or technological development of certain strategic sectors."

Other Intellectual Property Areas

To date, the U.S. Government has no indication that the Government of Paraguay provides TRIPS-consistent protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets and test data) TRIPS. Paraguay joined the UPOV

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Convention in 1997, but implementing regulations have not been promulgated.

SERVICES BARRIERS

Telecommunications Services

In an attempt to maintain its monopoly on long-distance phone service originating in Paraguay, ANTELCO, the state run phone company, has shut down and seized the equipment of companies alleged to have been offering call back services. Although barriers exist, the Government of Paraguay appears to be taking steps towards liberalizing the telecommunications sector. Paraguay has taken no market access and national treatment commitments on basic telecommunications in the WTO.

OTHER BARRIERS

Law 194/93 established the legal regime governing relationships between foreign companies and their Paraguayan representatives. This law requires that foreign companies prove “just cause” in a Paraguayan court to terminate, modify or fail to renew contracts with Paraguayan distributors. Severe penalties and high fines result if the court determines that the relationship was ended by the foreign company without such “just cause,” often leading to expensive out-of-court settlements. The rights under this law cannot be waived as part of contractual relationships between the parties. The constitutionality of this law is being questioned in a case currently before the Supreme Court of Paraguay. This law could potentially cost U.S. companies hundreds of millions of dollars in settlements.

Decree 11.459/95 requires importers of used clothing to obtain an import permit from the Ministry of Industry and Commerce. Importers must obtain a certification notarized in the place of origin showing that the used clothing has been sanitized. Since early 1999, the Ministry of Industry and Commerce has refused to take action

on applications to import used clothing, in effect prohibiting its importation. Decree 7084/00, promulgated on January 11, 2000, goes a step further and explicitly prohibits the importation of used clothing.