PARAGUAY

In 1998, the U.S. trade surplus with Paraguay was $752 million, a decrease of $120 million from the 1997 surplus of $872 million. U.S. merchandise exports to Paraguay were $786 million, a decrease of $127 million (13.9 percent) from 1997. Paraguay was the United States' 58th largest export market in 1998. U.S. merchandise imports from Paraguay were $33 million in 1998, a decrease of $7 million (17.7 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Paraguay was $151 million.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Cone Common Market (MERCOSUR, acronym in Spanish), Paraguay has had to increase its tariffs to comply with the MERCOSUR common external tariff (CET) of between 0 and 23 percent. Paraguay maintains almost 400 exceptions to the CET, allowing it to keep these tariffs below the CET levels. These tariffs will increase annually, reaching parity with the CET in 2006. Paraguay was also granted over 300 exceptions to the 1997 CET increase, which is scheduled to expire at the end of the year 2000.

Presidential Decree 235 of August 28, 1998, arbitrarily increases the base value upon which the excise taxes on various imported products, including beer and cigarettes, are calculated. The CIF value of these imported goods is increased by a multiplier of 50 to 30 percent prior to calculation of the excise tax, in apparent violation of the national treatment requirements of the General Agreement on Tariffs and Trade of 1994 (GATT).

Further, Decree 235 requires importers to pay taxes on “presumed profit” of 30 percent of the total value of the imported goods prior to removing imported merchandise from customs. Domestic producers of the affected products are not required to pay taxes on presumed business earnings in this fashion. In some cases, this system reportedly forces importers to pay over three times the amount of income tax owed when calculated on actual profits, and the importer is not reimbursed the tax differential when profits fall below the “presumed” 30 percent rate. The discriminatory nature of this policy is obvious.

According to Paraguayan customs data, exports of popular U.S. beers in Paraguay dropped by 64 percent between 1997 and 1998, a $13.4 million decrease in sales. U.S. cigarette exports to Paraguay dropped by 37 percent over the same period, an $18.7 million decrease in sales.

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: bid specifications that favor a preferred supplier; allowance of parent companies’ subsidiaries to each submit bids, while counting these bids toward the minimum qualifying bids to validate the tender process; discriminatory usage of bid procedures to disqualify a non-preferred supplier; and permitted non-compliance with tender requirements by preferred suppliers. Improving the terms of a contract once the bid has been finalized is also permitted, allowing a preferred supplier to submit an extremely low bid to win a tender, knowing that profits will be made based on future changes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

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 against known centers of piracy and counterfeiting, such as Cuidad 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.

Paraguay is currently subject to Section 306 monitoring, and Paraguayan implementation of the MOU has been uneven thus far. This led the U.S. Government to extend the "Special Enforcement Period" (SEP) of the MOU, scheduled to expire on March 15, 1999, by six months to September 15, 1999. The United States continues to closely monitor Paraguayan implementation of the MOU.

Copyrights and Trademarks

Despite several positive steps and major seizures conducted in coordination with the affected industries from August to November of 1998, 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 is the designation of copyright piracy as a private, rather than a public crime, thus requiring legal action by the offended party to seek redress. The U.S. Government has strongly urged Paraguay to rectify this situation by making copyright piracy subject to public prosecution. The Government of Paraguay has consulted with the U.S. Government concerning possible solutions to this problem, but no action has been taken to date.

On a positive note, special public prosecutors have been named to deal exclusively with intellectual property crimes. Nevertheless, no significant smuggler of pirated goods yet has been prosecuted and sentenced to jail, and resolution of intellectual property cases in the courts is slow and non-transparent. A Paraguayan decree, dated December 31, 1998, calls for the use of only legal software in all federal agencies.

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. The Paraguayan Congress has not taken up a bill for a comprehensive patent law. A proposed bill faces significant local opposition, particularly from the domestic pharmaceutical sector.

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) as required by TRIPs. Paraguay joined the UPOV Convention in 1997, but implementing regulations have not been promulgated.

SERVICES BARRIERS

Telecommunications Services

ANTELCO, the state run phone company, has blocked nearly all call back services to the United States, thus maintaining a monopoly on long-distance phone service originating in Paraguay.

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. Several U.S. companies have singled out this law as a cause for concern.