

PARAGUAY

TRADE SUMMARY

In 1999, the U.S. trade surplus with Paraguay was \$467 million, a decrease of \$285 million from 1998. U.S. merchandise exports to Paraguay were \$515 million, a decrease of \$271 million from 1998. Paraguay was the United States' 63rd largest export market in 1999. U.S. merchandise imports from Paraguay were \$48 million in 1999, an increase of \$15 million from 1998. The stock of U.S. foreign direct investment in 1998 was \$204 million, a 39.7 percent increase from 1997.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Cone Common Market (Mercosur), Paraguay has been required to increase its tariffs on non-Mercosur imports to comply with the group's common external tariff (CET). Paraguay maintains almost 400 exceptions to the CET and annually increases tariffs, with the objective of reaching parity with the CET in 2006. The Paraguayans were granted over 300 exceptions to the November 1997 CET increase of three percentage points, which is scheduled to expire at the end of the year 2000.

Presidential Decree 235 of August 1998, modified in 1999 by Decree 2698, arbitrarily increased the base value upon which excise taxes on beer and cigarettes are calculated. The value of these imported goods is increased by a multiplier of 20 to 30 percent prior to calculation of excise taxes, in apparent violation of the national treatment requirements of the General Agreement on Tariffs and Trade of 1994 (GATT). Domestic producers of these products are not subject to this practice.

Further, Decree 235 requires importers of these products to pay taxes on "presumed profit" (10 percent for cigarettes and 30 percent for beer) of the total value of the imported goods prior to

removing the merchandise from customs. Domestic producers of the affected products are not required to pay taxes on presumed profit in this fashion, and importers are not reimbursed the tax differential when profits fall below the "presumed" rate.

According to Paraguayan customs data, exports of popular U.S. beers to Paraguay dropped by 65 percent between 1997 and 1999, a \$18 million decrease in sales. U.S. cigarette exports to Paraguay dropped by 55 percent over the same period, a \$28 million decrease in sales.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Franchisees of U.S. fast food companies complain of the 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. Implementation of the resolution is reportedly inconsistent.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the GATT Agreement on Government Procurement. U.S. companies have protested non-transparent procurement procedures, citing: bid specifications that favor a preferred bidder and/or allowance of more than one parent company's subsidiaries to submit bids, while counting each of these offers toward the minimum qualifying participants to validate the tender process. Other complaints include: 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 permitting non-compliance with tender requirements by preferred bidders. Improving contract terms once the bid has been finalized is also permitted, allowing preferred bidders to submit unrealistically low bids to win

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a tender, while understanding that future changes will enable profits.

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 and the Phonograms Convention.

On January 16, 1998, the USTR identified Paraguay as a Priority Foreign Country (PFC) 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 three months on August 4, 1998, in light of the complex and complicated issues involved and to provide an opportunity to continue negotiations with a new presidential administration. The extension of the investigation moved the deadline for the USTR'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 in Paraguay, which in conjunction with progress made in this area, allowed the United States to remove Paraguay's PFC status and to terminate the Section 301 investigation without applying sanctions. In the MOU, the Paraguayan Government committed to implement institutional reforms to strengthen enforcement for intellectual property rights at its borders and to pursue legal amendments to facilitate effective prosecution of copyright piracy in Paraguay. The Government of 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. Further, Paraguay agreed to pursue reform of its patent law and to ensure that government bodies use only authorized software.

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 intellectual property violations.

Copyrights and Trademarks

The Government of Paraguay, in coordination with the affected industries, took several positive steps in 1999, including the seizure and destruction of two multi-million dollar, high technology pirate CD factories. Nonetheless, Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point for infringing products 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 and counterfeiting remain 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. However, 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. This action remedied the deficiency in Paraguayan law to enable the

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Government of Paraguay to take an active role in combating piracy and counterfeiting.

Additional special public prosecutors have been named to deal exclusively with intellectual property crimes in Asunción, Ciudad del Este and Encarnación. Yet, no significant smuggler of illicit goods has been prosecuted and sentenced to jail, and resolution of intellectual property cases in the courts is slow and non-transparent. On a positive note, a Paraguayan Decree of December 1998 calls for the use of only legal software in all federal government 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 Senate formed a special commission to consider draft legislation for a comprehensive patent law, but the commission has only met several times and has made little progress. 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. The Paraguayan Government is preparing to send two WIPO treaties (Copyright,

and Performances and Phonograms) to the Senate for ratification, and the U.S. Government continues to encourage it to do so shortly.

SERVICES BARRIERS

Telecommunications Services

Paraguay has not yet developed a positive climate for growth in the telecommunications sector, particularly given its lack of WTO commitments in the areas of basic or value-added services.

In an attempt to maintain its monopoly on long-distance telephone service originating in Paraguay, ANTELCO (state run telephone company), has shut down and seized the equipment of companies alleged to have been offering call back services.

OTHER BARRIERS

Law 194 of 1993 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.