

PARAGUAY

TRADE SUMMARY

In 2001, the U.S. trade surplus with Paraguay was \$364 million, a decrease of \$41 million from the U.S. trade surplus of \$405 million in 2001. U.S. goods exports to Paraguay were \$397 million, a decrease of \$49 million (11.1 percent) from the level of U.S. exports to Paraguay in 2000.

Paraguay was the United States' 71st largest export market in 2001. U.S. imports from Paraguay were \$33 million in 2001, a decrease of \$8 million (20.1 percent) from the level of imports in 2000. The stock of U.S. foreign direct investment (FDI) in Paraguay in 2000 was \$432 million, an increase of 88.7 percent from the level of U.S. FDI in 1999.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of MERCOSUR, Paraguay has had to increase its tariffs on some items to comply with the MERCOSUR common external tariff (CET) of up to 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, which increased 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 before goods can be released 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. A further drop of 27 percent in sales occurred between 2000 and 2001, according to industry representatives.

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). Multiple changes in regulations 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 and was granted a twelve-month extension with reservations to retain minimum values for specific products (used clothing, used footwear, used vehicles). WTO records indicate that Paraguay has not yet notified

PARAGUAY

its legislation or the Customs Valuation Checklist to the WTO Committee on Customs Valuation.

GOVERNMENT PROCUREMENT

In the past, 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 included 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. There were no complaints of unfair bidding procedures in 2001. Paraguay is not a member of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) 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 Geneva Phonograms Convention, and the WIPO Copyright, and Performances and Phonograms Treaties. In January 1998, the USTR identified Paraguay as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974, and in February 1998, the United States initiated a Section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property.

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 allowed the United States to remove Paraguay from its Priority Foreign Country status and to terminate the Section 301 investigation. 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.

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 to give Paraguay 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

Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil. However, positive steps have been taken, including the seizure and destruction of several multi-million dollar high-tech pirate CD factories, the seizure of millions of blank and pirated CD's, and a concerted effort in the latter

PARAGUAY

part of 2001 to conduct frequent and repeated raids in Ciudad del Este and other centers of counterfeiting.

Although a new copyright law was passed in 1998, that is generally consistent with Paraguay's international obligations, the Government of Paraguay has been slow to provide adequate and effective enforcement of its laws to address the piracy problem. However, special public prosecutors have now been named to deal exclusively with intellectual property crimes, and this step has made a difference in enforcement actions. 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. In the second half of 2001, a major U.S. software manufacturer conducted a successful campaign to entice the private sector to legalize its software.

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 weak.

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 the issuance of 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.

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

OTHER BARRIERS

Law 194/93 established the legal regime governing relationships between foreign companies and their Paraguayan representatives. Modeled after the Puerto Rico Dealer's Act, 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, thus leading to expensive out-of-court settlements. In several cases, however, the courts have upheld a rights of foreign companies to terminate representation agreements, after just cause was established, mainly lack of sales performance on the part of local representatives. The constitutionality of this law was questioned in a case before the Supreme Court of Paraguay, involving a Brazilian company and its Paraguayan representative. However, the case was finally settled without a Supreme Court ruling. This law may discourage U.S. investment through fear of potential lawsuits.

PARAGUAY

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.