

**MEMORANDUM OF UNDERSTANDING
ON INTELLECTUAL PROPERTY RIGHTS**

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

In the spirit of cooperation, consistent with international standards of intellectual property protection, and in order to strengthen the legal protection and enforcement of intellectual property rights in Paraguay, the Government of the United States of America and the Government of Paraguay

Have agreed as follows:

1. Protection and Enforcement of Intellectual Property Rights – The Government of Paraguay shall ensure that its intellectual property legal regime complies fully with its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).
2. Enforcement – The Government of Paraguay shall develop and implement effective enforcement mechanisms and practices to significantly reduce the levels of copyright piracy and trademark counterfeiting in its territory, including through the imposition of deterrent penalties.
3. Transparency and Reporting – The Government of Paraguay shall improve transparency in the administration and enforcement of intellectual property rights, including through the development of objective means of measuring progress toward improving the protection and enforcement of intellectual property rights and the development of objective criteria for carrying out and reporting enforcement-related activities.
4. Training and Technical Assistance – The Government of Paraguay and the Government of the United States of America intend to develop and implement a program of mandatory professional training for all Paraguayan officials who have a role in the development and maintenance of an effective intellectual property system, including enforcement, on mutually agreed terms, and subject to the availability of appropriated funds. Implementation of this training program may be undertaken in conjunction with, or through, international organizations and the private sector.
5. Consultation and Review – The Government of Paraguay and the Government of the United States shall consult regarding any matter related to this Memorandum of Understanding (MOU) upon the request of either Party, and, under the auspices of the U.S.-Paraguay Trade and Investment Council, shall meet to review the implementation of this MOU, preferably at six (6)

month intervals, but no fewer than three (3) times, between the date this MOU enters into force and December 31, 2005. Additional meetings to review implementation may be held upon the request of either Party.

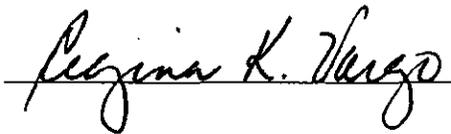
6. Obligations not Contingent – Except as otherwise provided in paragraph 4 and in paragraph 1(b)(i) of the Annex (Action Plan), implementation of the obligations in this MOU shall not be conditioned on the availability of funds, training, or technical assistance.

7. Entry into Force and Term – The Annex to this MOU is an integral part of this MOU. This MOU shall enter into force upon signature. It shall terminate on December 31, 2005, unless otherwise agreed in writing by the Parties.

Signed in Washington, D.C., this 30th day of March, 2004, in the English and Spanish languages, each text being equally authentic.

For the Government of the
United States of America:

For the Government of the
Republic of Paraguay:



Regina K. Harzo



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ANNEX

Action Plan

1. Protection and Enforcement of Intellectual Property Rights -- The Government of Paraguay shall:
 - a) improve the legal tools used by prosecutors and judges by:
 - i) issuing a publicly available and legally binding resolution ensuring that the pendency of a trademark application may not be used as a defense in civil or criminal trademark cases and to inform judges that such a defense is contrary to Paraguayan law;
 - ii) implementing regulations that ensure that goods found to be pirated or counterfeit in civil or criminal cases are destroyed, pursuant to Articles 159 and 169 of the Copyright Law and Article 86 of the Trademark Law;
 - iii) using best efforts to increase penalties available and applied against offenders convicted in criminal copyright and trademark cases, through legislative changes and any other appropriate means; and
 - iv) increasing deterrence through the imposition of mandatory minimum prison sentences (not only fines) on offenders convicted of manufacturing, importing, or distributing commercial quantities of pirated or counterfeit goods.
 - b) improve protection for pharmaceuticals and agricultural chemicals by:
 - i) undertaking best efforts to grant patents with respect to as many currently pending pharmaceutical patent applications as possible as of January 1, 2005, by hiring a minimum of two additional patent examiners who shall be dedicated solely to processing pharmaceutical patent applications, provided that the examiners receive training and technical assistance by June 30, 2004, and

provided further that, if such training and technical assistance is not provided by June 30, 2004, the Government of Paraguay and the Government of the United States shall negotiate an extension of the January 1, 2005, deadline.

ii) taking immediate steps to clarify exclusive marketing rights for pharmaceutical products by issuing a publicly available and legally binding resolution specifying that the exceptions provided in Article 94 of the Patent Law are not applicable to exclusive marketing rights;

iii) ensuring that the administrative system for granting exclusive marketing rights is immediately and effectively operational; and

iv) taking immediate steps to pass legislation protecting undisclosed test or other data from unfair commercial use for a period of ten (10) years for agricultural chemicals and five (5) years for pharmaceuticals, which periods shall not be linked in any way to any patent term.

c) improve the system for protecting trademarks and geographical indications by:

i) providing the means for any interested parties to oppose the registration of a geographical indication or to cancel any registration of a geographical indication;

ii) ensuring that the grounds for refusing protection of a geographical indication and grounds for opposing and canceling a registration of a geographical indication include that the geographical indication is likely to be confusingly similar to a trademark that is registered or that has acquired rights through use in Paraguay; and

iii) applying the principles of priority and exclusivity incorporated in the Paris Convention for the Protection of Industrial Property (1967) and the TRIPS Agreement, with respect to rights in trademarks and geographical indications.

2. Enforcement -- The Government of Paraguay shall undertake the following efforts to achieve actual, meaningful enforcement results:

a) coordinate activities among all Paraguayan government entities involved in the enforcement of intellectual property rights, including enforcement actions against intellectual property rights violations and related offences, without creating bureaucratic barriers to timely and effective action, including through full implementation of Decree No. 527, and formation of the Specialized Technical Unit established therein. The Government of Paraguay shall, in consultation with the Government of the United States of America, develop a detailed description of the activities to be performed by the Specialized Technical Unit;

- b) ensure that the Statistics Center required to be established under paragraph 3 shall, in cooperation with the Specialized Technical Unit, provide statistics and other information to prosecutors to encourage and enable them to file criminal cases *ex officio* when appropriate, without first requiring a right holder to file a complaint; in addition, the Statistics Center shall closely monitor the number and nature of cases filed by prosecutors *ex officio*, with the goal of ensuring that increasing numbers of cases are initiated over time;
- c) provide for seizure of an infringer's assets upon conviction for manufacturing, importing, or distributing commercial quantities of pirated or counterfeit goods;
- d) improve deterrence by ensuring that prison sentences (not only fines) are imposed, and not suspended, on offenders convicted of manufacturing, importing, or distributing commercial quantities of pirated or counterfeit goods; in addition, ensure that the Statistics Center will closely monitor and publish information concerning the disposition of such cases and the sentences imposed;
- e) improve border protection and enforcement by:
- i) fully implementing Decree No. 603, and forming the Register of Importers of Magnetic and Optical Media and Raw Materials for their Production established therein;
 - ii) creating the Intellectual Property Rights Unit at the Directorate General of Customs ("Customs"), which shall (1) oversee enforcement of intellectual property border control measures, including the verification that products cleared by Customs do not infringe intellectual property rights; (2) implement a system for the recordation at Customs of registered trademarks, and (3) train Customs officials on identifying and seizing infringing imports, which training shall take place no later than June 30, 2004. The Government of Paraguay shall develop a description of the activities to be performed by the Intellectual Property Rights Unit in consultation with the Government of the United States of America;
 - iii) cooperating fully with private industry on enforcement matters, including continued cooperation under the Cooperation Agreement Between the Ministry of Industry and Trade and the Paraguayan Association for Sound Recording Copyright Protection; and
 - iv) increasing the use of *ex officio* actions;
- f) focus criminal enforcement efforts to achieve meaningful and measurable results by:
- i) maintaining the six (6) existing Special Prosecutors, and training six (6) additional prosecutors in intellectual property rights enforcement; and

- ii) working with the judiciary to timely resolve existing cases and ensure that future cases are resolved expeditiously and not dismissed due to procedural delays;
 - g) improve the gathering, use, and sharing of law enforcement-related intelligence, *inter alia*, by periodically distributing to prosecutors lists of persons who have previously committed offenses against intellectual property rights, and encouraging the imposition of significant prison sentences and other significant penalties on such persons;
 - h) prepare and distribute guidelines and mandatory procedures for investigations, prosecutions, and sentencing to all investigators and prosecutors;
 - i) train and provide informational materials to judges on intellectual property laws and the importance of their enforcement generally, including (1) any amendments increasing penalties for copyright and trademark infringement; (2) the need for deterrent sentences, including prison sentences, where appropriate; and (3) the principles of Sentence No. 802 of May 28, 2003, for as long as that Sentence remains relevant;
 - j) fully implement the Software Legalization Decree and conduct an audit of public institution software to ensure full compliance with the Decree; and
 - k) educate the public, through programs in the schools and other appropriate means, about intellectual property rights and the infringement and enforcement thereof, and permit and encourage Paraguayan citizens to report, on a confidential basis, violations of intellectual property rights.
3. Transparency and Reporting -- The Government of Paraguay shall establish a Statistics Center under the Ministry of Industry and Commerce, which shall:
- a) collect information on enforcement actions promoted, initiated, or taken by the Government of Paraguay for the purpose of tracking enforcement against intellectual property infringement and determining the effectiveness of enforcement-related activities undertaken pursuant to this MOU;
 - b) generate reports for government and private sector use;
 - c) publish, in a readily accessible medium, enforcement statistics, doctrines, and rulings related to intellectual property to deter the public from committing intellectual property crimes and to keep judges, prosecutors, and the public abreast of all sentences, statistics, and actions taken by government organizations in the fight against intellectual property rights infringement; and

d) collect, at a minimum, the following information:

Border measures:

Border measures taken by Customs;

Border measures initiated by Customs at the urging of the Ministry of Industry and Commerce, without the participation of the right holder(s);

Measures taken *ex officio* by Customs following full implementation of Decree No. 603 and the training of Customs officials pursuant to paragraph 2(e)(ii) of this Annex;

Trademarks recorded at Customs following implementation of the relevant regulations;

Violations of intellectual property rights detected by Customs;

Invoiced value and actual quantity of infringing goods detected by Customs;

Identity of companies/individuals importing commercial quantities of infringing merchandise; and

Identity of freight/import companies importing infringing goods into Paraguay and their country of origin.

Criminal proceedings:

Proceedings initiated *ex officio* by prosecutors;

Complaints submitted by members of the private sector;

Judicial decisions/conclusions of cases, including sanctions imposed;

Status of goods, and materials or implements used to create infringing goods (whether and when seized or destroyed);

Identity of those convicted of infringing intellectual property rights, including a separate list of those convicted of infringing intellectual property rights more than once;

Nature of offense(s) committed; and

Updates concerning the procedural stage of each case.

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Civil proceedings with the assistance of the right holders involved:

Proceedings initiated;

Complainants and respondents;

Decisions/conclusions, including sanctions imposed;

Status and disposition of goods and materials and implements used to create infringing goods (whether and when seized or destroyed); and

Procedural stage of case.

Administrative Proceedings:

Proceedings referred by the Intellectual Property Directorate to other government entities;

Proceedings initiated by the Intellectual Property Directorate and the defendants/respondents in such proceedings; and

Decisions/conclusions, including sanctions imposed and disposition of goods.

4. Training and technical assistance - The Government of Paraguay shall:

- a) identify intellectual property administration and enforcement training needs and priorities, and additional opportunities and audiences for training; and
- b) use best efforts to engage private industry to provide technical assistance for fighting intellectual property crimes.