

ARGENTINA

TRADE SUMMARY

In 1999, the U.S. trade surplus with Argentina was \$2.3 billion, a decrease of \$1.3 billion from the 1998 surplus. U.S. exports to Argentina were \$4.9 billion during 1999, a decrease of \$947 million from the level of U.S. exports to Argentina in 1998. Despite the 1999 economic slow-down in Argentina, it was the United States' 26th largest export market that year. U.S. imports from Argentina were \$2.6 billion in 1999, up \$346 million over 1998.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1998 was \$11.5 billion, an increase of 15 percent from the level of U.S. FDI in 1997. U.S. FDI in Argentina is concentrated largely in the chemical, energy and food processing industries, as well as in the finance and telecommunications sectors.

IMPORT POLICIES

During the 1990s, the Menem Administration made significant progress in reducing tariffs and non-tariff barriers, including in the areas of investment and government procurement. Still, a number of serious barriers to trade remain. President Fernando de la Rúa, the candidate of the Alianza, was elected in October 1999 and assumed office December 10 of the same year. Most observers expect de la Rúa to pursue trade policies similar to those of the previous government.

TARIFFS AND DUTIES

Mercosur

Argentina, Brazil, Paraguay and Uruguay officially inaugurated Mercosur (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, Mercosur designated itself as a customs union by establishing a common external tariff (CET) covering 85 percent of traded goods. Mercosur is gradually phasing in coverage of the CET through 2006, when all products should be covered by the customs union. (Under the CET,

capital goods and information technology are excepted until 2001 and telecommunications equipment until 2006.) As of January 1, 1999, most trade between Brazil and Argentina enjoys duty-free status under the intra-Mercosur duty phase-out schedule. However, many sensitive sectors, such as sugar, autos and telecommunications equipment, are still assessed customs duties, falling on either Brazil's or Argentina's exception list. Chile became an Associate Member of Mercosur on October 1, 1996, and Bolivia did the same on April 1, 1997. Neither country participates in the CET, but Chile in particular began to participate more fully in Mercosur meetings over the course of 1999.

Prior to November 1997, Mercosur's CET ranged from zero to 20 percent. In November 1997, Mercosur's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase in January 1998, and it is due to expire on December 31, 2000. Argentina's average applied tariff currently is around 13.5 percent. A small number of imports are banned altogether, such as re-manufactured auto parts. Tariffs on toys were significantly increased in January 1999, particularly those originating in countries that are not members of the WTO. The U.S. Government hopes to eliminate tariff barriers on a hemispheric basis through the Free Trade Area of the Americas (FTAA) negotiations.

Argentina's export sector was negatively affected by Brazil's devaluation of the Real in early 1999, particularly since nearly a third of Argentine exports have gone to Brazil in recent years. In the wake of the devaluation, the Government of Argentina initiated a number of actions to slow or limit what it feared would be a flood of imports from Brazil, which in many cases led to a negative Brazilian reaction and/or countermeasures. As a result, tensions within Mercosur increased significantly during 1999, exacerbated by the group's lack of an internal safeguard mechanism and macroeconomic policy coordination. Mercosur's weak dispute resolution procedures and the growing tendency of individual Mercosur members to negotiate preferential trade agreements with third

ARGENTINA

countries also diluted the group's cohesion. The two governments sought to smooth over the conflicts through sectoral agreements on footwear, steel, and paper that aided somewhat in reducing friction, but restricted intra-Mercosur trade. Notably, intra-Mercosur trade fell by about a quarter in 1999.

Further, many issues remain unresolved between the giants of Mercosur, such as how to structure the Mercosur auto regime that was to have taken effect on January 1, 2000. Negotiations were ongoing as of February 2000. Further, Mercosur is slated to trade sugar duty-free between its members by January 1, 2001; these talks have not progressed. Notwithstanding, the de la Rúa Administration has stated that it will seek to strengthen and deepen the institution of Mercosur.

Pre-shipment Inspection and Paperwork Requirements

In November 1997, the Government of Argentina put in place a pre-shipment inspection (PSI) regime, covering some 1,800 goods for shipments valued at more than \$3,000. The U.S. industry's greatest complaint concerning this regime has been unwarranted delays in processing. Some companies have also complained about the cost of PSI and that customs officials disregard pre-shipment valuations. In 1998, the Argentine Government expanded the product coverage of the PSI regime by over 1,800 tariff classifications and lowered the shipment order value to \$800. Argentina created in January 1999 a procedure for import monitoring which affects roughly one-fifth of its imports, principally textiles, toys and footwear, and is similar to an import licensing regime. Further, cumbersome certificate of origin (COO) requirements, particularly in the electronics and textile sectors, have been a barrier to U.S. exports. The de la Rúa Administration reportedly is considering whether to continue the PSI program. The U.S. Government monitors PSI and customs valuation regimes carefully to detect any impediments to trade that may be inconsistent with WTO obligations.

Textiles, Apparel and Footwear

In October 1996, USTR initiated an investigation, under Section 301 of the Trade Act of 1974, into Argentina's application of specific duties on textiles, apparel and footwear; its three percent statistical tax on almost all imports; and its burdensome labeling requirements.

The United States and Argentina consulted extensively on labeling, leading to Argentina's modification of its labeling requirement. To address the remaining issues, the United States requested the establishment of a WTO dispute settlement panel in January 1997. In February 1997, the WTO dispute settlement body established a panel to examine Argentina's specific duties on textiles, apparel and footwear as well as Argentina's statistical tax on imports. Argentina subsequently informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties on non-Mercosur imports.

In November 1997, the panel found in favor of the United States, stating that under GATT Article II Argentina could not impose specific duties where it bound its tariffs exclusively in *ad valorem* terms. The panel also found that Argentina's three percent statistical tax on almost all imports violated GATT Article VIII. Argentina appealed the panel decision, but the WTO Appellate Body upheld the panel determination in March 1998. To implement the panel determination, in October 1998 Argentina capped its duties on textiles and apparel at the bound rate of 35 percent. On the statistical tax, Argentina reduced the tax to 0.5 percent in January 1998, and subsequently imposed a further cap on the tax.

Footwear Safeguard

The 1997 WTO panel did not opine on Argentina's footwear regime because Argentina had rescinded its specific duties. However, Argentina subsequently concluded that its domestic industry was being seriously injured by

ARGENTINA

imports, and it thus replaced the specific duties on footwear with nearly-identical duties imposed as a safeguard measure. In September 1997, Argentina extended the application of the safeguard duties until February 2000. In November 1998, Argentina modified the footwear safeguard to establish a stringent quantitative restriction in addition to the high safeguard duties already imposed on footwear imports (imports from Mercosur countries were excluded). Under the modified safeguard measure, footwear imports below the quota limit are subject to the original safeguard duty. Once the quota limit is filled, imports are assessed a duty rate that is double the normal safeguard duty.

Believing that the footwear safeguard raises serious questions regarding Argentina's WTO obligations, the United States raised the issue bilaterally at high levels on many occasions. Moreover, the United States reserved its right to participate in the panel established at the EU's request to examine Argentina's footwear safeguard. In addition, in March 1999 the United States requested the establishment of a panel to examine the consistency of Argentina's modified safeguard with the requirements of the Agreement on Safeguards.

The WTO panel established to review the EU's complaint determined in June 1999 that Argentina's investigation of its footwear industry did not satisfy the requirements of the Safeguards Agreement. The panel thus concluded that the investigation could not serve as a basis to impose either the original safeguard or the subsequent modification. The WTO Appellate Body affirmed that determination in December 1999. The U.S. Government is working to ensure that Argentina fully complies with this ruling.

In this effort, it is important to ensure that non-tariff measures do not become another restriction on free trade. The U.S. Government has expressed concern to Argentine authorities about licensing and labeling requirements suddenly imposed on shoe imports in August 1999. Administrative delays related to these

measures effectively blocked shoe imports from some trading partners for several months. Brazilian footwear imports, which were exempted from the Argentine safeguard measure, were particularly hard hit, and the Argentine Government began to process import licenses more expeditiously after an agreement was reached between the Brazilian and Argentine footwear sectors in November 1999. The United States will continue to monitor closely the evolution of Argentine trade measures in this sector.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products

In October 1995, Argentina placed a ban on imports of California fresh fruit due to the detection of oriental fruit flies in the state. While Argentina relaxed its ban on fruit from several California counties in 1996 and granted access in 1997 for citrus grown in these approved counties, Argentina continues to quarantine certain coastal counties no longer affected by the fly. In 1997, Argentina imposed a mandatory fumigation on all stone fruits from the approved counties due to concern over the walnut husk fly, despite the lack of credible evidence that stone fruits are a ready host for this pest. The U.S. Department of Agriculture (USDA) continues to press Argentina to completely revoke these bans and to process expeditiously the cases of other U.S. fruits currently denied access to Argentina, such as citrus from Florida and Arizona, as well as Pacific Northwest cherries.

In 1998, Argentina announced its intention to allow U.S. pork and pork products into Argentina. However, the required certification for trichinae, which is unnecessarily restrictive, effectively prevents U.S. pork from being shipped. USDA has proposed alternative language that should meet Argentina's needs, and is working with USTR to obtain a positive response. The U.S. pork industry believes that the Argentine market would be worth about \$10 million in exports.

ARGENTINA

Non-agricultural Products

IRAM, Argentina's standards institute, bases some of its voluntary standards on international standards. In addition, IRAM standards are in some cases compatible with U.S. or European standards. Argentine buyers usually accept products that meet U.S. standards as well as U.S. product certifications and laboratory testing. In early 1998, however, Argentina began mandating compliance with new safety certifications on a wide range of products. Regulations that affect U.S. exports have now been issued for low voltage electrical products (household appliances, electronics products and electrical materials), toys, energy efficiency, covers for dangerous products, gas products, construction steel, personal protective equipment and elevators. The procedures for compliance often appear inconsistent, redundant and non-transparent. Regulations that require product re-testing are particularly cumbersome and costly and are especially problematic for small and medium-sized U.S. companies. In some cases, Argentina has failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade (TBT) in its implementation of these measures. The United States has raised this issue with the Argentine Government in Geneva and bilaterally.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents

Argentina's lack of adequate and effective patent protection has been a longstanding irritant in our bilateral trade relationship. Argentina is on the Special 301 Priority Watch List. Many of the TRIPS inconsistencies in the Argentine patent law were not previously actionable in the WTO, because Argentina availed itself of the developing country transition period. However, most of Argentina's TRIPS obligations came into force on January 1, 2000. As a result, the U.S. Government is currently evaluating the manner in which we might address remaining

concerns with Argentina's intellectual property regime.

In March 1996, Executive Decree 260, which consolidated Argentine patent law, authorized the National Intellectual Property Institute (INPI) to approve pharmaceutical patents only starting in November 2000, and contained a host of problematic provisions. In December 1996, the Argentine Congress passed unsatisfactory legislation dealing with the protection of confidential test data, and the implementing regulations have yet to be finalized by the Government of Argentina. This law permits Argentine competitors to rely on data submitted by innovative companies to obtain product registration in Argentina, the United States and certain other countries. As a result of the law, in August 1998 the Government of Argentina eliminated protection that it had previously accorded data used in the registration of agrochemical products. During 1999, this backsliding was addressed by the U.S. Government through WTO dispute settlement consultations, which were announced by USTR in the context of the 1999 Special 301 Review.

In these consultations, we discussed another shortcoming in the Argentine intellectual property regime – Argentina's failure to provide effective Exclusive Marketing Rights (EMR's) for qualifying pharmaceutical products. The United States is seriously considering a WTO panel on these and other potential TRIPS violations that became actionable in January 2000.

The Menem Administration removed INPI's previous board of directors in January 1999, two months after INPI approved the first EMR granted in Argentina. A group of interim administrators was appointed immediately, and later their term was extended. During the remainder of 1999, INPI failed to act on a number of well-documented EMR applications by U.S. firms, and denied one application on seemingly unsustainable grounds. The U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over \$600 million a year.

ARGENTINA

Copyrights

Argentina's copyright laws provide generally good protection, but are under review by the Government of Argentina to ensure that these laws fully meet TRIPS requirements. Argentina adopted legislation in 1999 to ratify the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms treaty. To better protect software, the Argentine Government promulgated legislation in November 1998 establishing software piracy as a criminal offense, thus avoiding problems generated by previous court rulings. It is important that Argentina act swiftly to legalize software used by the Government.

Enforcement of copyrights on recorded music, videos, books and computer software generally remains spotty. Although Argentine Customs and other Government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. Inadequate border controls, particularly at the Paraguayan/Brazilian frontier, contribute to the regional circulation of pirated goods. The U.S. copyright industry estimates annual losses due to copyright infringement at over \$275 million.

Trademarks

U.S. companies report that the process of registering trademarks generally takes over five months. Once a trademark is registered, however, enforcement is relatively efficient and reliable.

SERVICES BARRIERS

In the 1990s, Argentina enacted liberalization in the service sector as part of its broader economic reform program, but some barriers continue to exist. For example, the Argentine Government obliges cable/pay television operators to register their programming with a government body. In addition, restrictions regarding the showing, printing and dubbing of films have burdened

U.S. exports, as has the practice of charging *ad valorem* customs duties based on the value of "authors' rights," rather than solely on the value of the physical materials being imported, as is the WTO standard. The U.S. Government is further concerned by a new bill that would create a society to collect remuneration owed to represented performers, a proposal which seems to be redundant and burdensome.

Argentina reportedly levies an excise tax on reinsurance premiums ceded abroad. The tax is defined as a percentage of the gross reinsurance premium. This results in an excise tax withheld at 3.5 percent of gross premiums.

In the WTO, Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence and to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining national treatment issue is lending limits for foreign bank branches that are based on local paid-in "capital," not parent bank capital. This effectively removes the rationale for establishing in branch form.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecommunications services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the General Agreement on Trade in Services (GATS) in July 1998. While Argentina opened long distance services to increased competition in November 1999, it will continue to limit full market access for local, domestic and international long distance, cellular and other wireless and international data services until November 2000.

INVESTMENT BARRIERS

In line with WTO rules, Argentina notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in

ARGENTINA

the automotive industry. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. Argentina and its Mercosur partners were unable to agree on a common auto regime by that date, however. Argentina and Brazil signed a 60-day interim agreement in December 1999 to allow the talks to continue. Meanwhile, Argentina submitted a request to the WTO for a lengthy, seven-year extension to its transition period. The United States is working with other WTO Members to effect a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

ELECTRONIC COMMERCE

Argentina has made a broad range of value-added and basic telecommunications GATS commitments that have helped support the development of electronic commerce. The Argentines have taken steps to lower the cost of Internet usage and have shown interest in the U.S. electronic commerce initiatives in the FTA and WTO. The United States and Argentina have signed a bilateral initiative to promote the growth of electronic commerce. Despite supporting electronic commerce, the Government of Argentina has not signed onto the WTO Information Technology Agreement (ITA). In addition, Argentina does not allow the use of electronically produced air waybills, slowing the customs processing of critical "just-in-time" shipments and interfering with Argentina's ability to conduct electronic commerce transactions.