

ARGENTINA

TRADE SUMMARY

The U.S. goods trade deficit with Argentina was \$472 million in 2005, an increase of \$115 million from \$357 million in 2004. U.S. goods exports in 2005 were \$4.1 billion, up 21 percent from the previous year. Corresponding U.S. imports from Argentina were \$4.6 billion, up 22.1 percent. Argentina is currently the 32nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Argentina were \$1.7 billion in 2004, and U.S. imports were \$754 million. Sales of services in Argentina by majority U.S.-owned affiliates were \$3.5 billion in 2003 (latest data available), while sales of services in the United States by majority Australia-owned firms were not available in 2003 (\$5 million in 2001).

The stock of U.S. foreign direct investment (FDI) in Argentina in 2004 was \$11.6 billion, up from \$10.9 billion in 2003. U.S. FDI in Argentina is concentrated largely in the manufacturing, finance, and information sectors.

IMPORT POLICY

With the collapse of the currency board system in January 2002, there was a 70 percent devaluation of the peso, a 56 percent drop in imports, and a three percent decline in exports the latter due to general uncertainty and lack of finance. Argentina's exchange rate policy is based on a managed float that targets a nominal exchange rate close to ARP 3 per U.S. dollar. However, the peso appreciated a nominal 7.5 percent between January 2003 and mid-November 2005.

Imports of used clothing are prohibited except for donations to government or religious organizations. Argentina prohibits the importation and sale of used tires, used or refurbished medical equipment, such as imaging equipment, and used auto parts. Imports of a long list of used capital goods are totally prohibited. Some used machinery imports are allowed, but only after the machinery is rebuilt. Brazil and Argentina's common automotive policy (Bilateral Auto Pact) bans the import of used self-propelled agricultural machinery.

The Government of Argentina placed substantial restrictions on natural gas exports to Chile by ministerial resolutions. Restrictions were imposed during 2004 and 2005, when rapid growth in demand outstripped the growth of supply, threatening domestic industrial production and residential use. Supply to Chile was cut completely on several occasions during 2005. Several U.S. companies were affected by these restrictions resulting in the violation of their export contracts. In May 2005, the government imposed a 20 percent export tax on gas exports.

TARIFFS

Argentina's average applied tariff rate was 13 percent in 2005, and ranges from zero to 35 percent. A statistical fee of 0.5 percent is added to most products (90 percent of all harmonized system tariff lines). The average export tax is 10.2 percent.

Exporters may claim reimbursement for some domestically paid taxes apart from VAT reimbursements. The average non-VAT reimbursement for exporters is 4.0 percent. In November 2005, the government issued rebates eliminating tax reimbursements on approximately 200 food products, as well as instituting price caps in an effort to reduce domestic prices.

Argentina is a member of MERCOSUR, a customs union comprised of Argentina, Brazil, Paraguay and Uruguay. Full common external tariff (CET) product coverage schedule for implementation in 2006 may be delayed. CETs range from zero to 20 percent *ad valorem*, with a number of country-specific exceptions. Currently Argentina maintains exceptions on 1,899 products or 7 percent of the total harmonized system.

In 2005, the government imposed new non-automatic licenses on shoes and toys (Resolutions 485/05 and 486/05) and there is an automatic license requirement for most footwear imports. In 2004, Resolution 495/04 established minimum specific import duties on footwear imports to be in force for 180 days. In 2005, however, the Ministry of the Economy extended the 180-day period to December 31, 2007. These import duties do not apply to imports from MERCOSUR countries and cannot exceed 35 percent when calculated as an equivalent *ad-valorem* tariff. Under Resolution 825/01, toys and textiles from China are taxed with high specific tariffs affecting U.S. firms established in Argentina that import from China. This resolution includes a phase-out program for all duties on these products to be equivalent to a maximum 35 percent *ad-valorem* tariff by January 2007.

CUSTOMS PROCEDURES

Argentina subscribes to the WTO Agreement on Customs Valuation. Argentina has import monitoring mechanisms, similar to an import-licensing regime, which affect roughly one-fifth of its imports. Cumbersome requirements exist for certificates of origin, particularly in the electronics and textile sectors. There is a "Canal Morado" procedure when Customs finds that the declared price of an import is lower than its reference price. The importer must provide a guarantee for the duties on the difference that Customs may end up retaining. This customs verification procedure can take a long time and results in higher financial costs for importers.

In 2005, Federal Administration for Public Revenues (AFIP) Resolution 1811/05 modified the import-export regime applied to couriers. Previously, a simplified procedure for Customs clearance that applied to international operations up to \$3,000 expedited couriers' activities. Resolution 1811/05 reduced this maximum to \$1,000, resulting in a vast number of courier operations going through normal customs clearance procedures which take three times longer than that of the simplified procedure. Additionally, couriers must declare the tax identification codes of the sender and addressee, rendering the process troublesome and costly.

FOREIGN TRADE BARRIERS

This burdensome regulation increases the cost not only for the courier, but also for users of courier services.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products: The government has banned sweetbreads (from thymus gland) since 2002, due to the perceived risk of BSE transmissibility. Additionally, the government requires all products related to beef to have a special sanitary certificate which is not required of U.S. beef under internationally recognized standards. INAL demands traceability and documents stamped/notarized by the Argentine Consulate for these products. Argentina continues to delay issuing the final authorization for imports of additional citrus fruit, pears, and cherries from the United States. Argentina prohibits the import of seed potatoes, claiming phytosanitary concerns.

Non-agricultural Products: Argentina's Standards Institute (IRAM) bases some of its voluntary standards on international standards. IRAM standards are in some cases compatible with U.S. or European standards. In general, Argentine buyers accept products that meet U.S. standards. Argentina began mandating compliance with new safety certifications on a wide range of products in early 1998, affecting U.S. exports of low voltage electrical products (household appliances, electronics products and electrical materials), toys, covers for dangerous products, gas products, construction steel, personal protective equipment, and elevators. Many businesses often find the procedures for compliance to be inconsistent, redundant, and non-transparent.

Regulations that require product testing can be cumbersome, costly and problematic for small and medium-sized U.S. companies. Argentina's certificate of origin regulations require separate certificates for each of the countries involved in manufacturing the various components of a final product. In the past, Argentina failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade (TBT) in its implementation of these measures.

Regulations require strict specifications for textile and footwear labels. Labels must have very specific characteristics and information, and importers must provide details about products and composition that result in delays.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents: Argentina's lack of adequate and effective patent protection has been a long-standing irritant in the bilateral trade relationship. Argentina is on the Special 301 Priority Watch List. The National Intellectual Property Institute (INPI) started to grant pharmaceutical patents in October 2000. INPI has been slow since that time in issuing pharmaceutical patents to products with commercial value. INPI, however, has taken a number of steps, including the implementation of fast-track procedures, to reduce Argentina's large patent application backlog. In April 2002, negotiations between the governments of the United States and Argentina clarified aspects of Argentina's intellectual property system, such as provisions related to the patentability of microorganisms and its import restriction regime. Those negotiations did not resolve the dispute concerning the lack of protection for safety and efficacy data developed by pharmaceutical companies submitted to INPI for the approval of pharmaceutical products.

Argentina amended its patent law in December 2003, as required by the May 2002 agreement between the two governments.

The intention of the amendment was to provide protections for process patents and to ensure that preliminary injunctions were available in intellectual property court proceedings, among other steps. The United States retained its right to seek resolution on the outstanding issues, including data protection, under the WTO dispute settlement mechanism.

Copyrights: Argentina's copyright laws provide generally good protection. Argentina ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in 1999, though some implementation issues remain. In November 1998, Argentina promulgated legislation establishing software piracy as a criminal offense, but the government has yet to fully comply with an agreement with the private sector to eliminate unlicensed software used in government offices.

Enforcement of copyrights on recorded music, videos, books, and computer software remains inconsistent. Argentina customs and other government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, but inadequate resources and multiple and slow court procedures have hampered the effectiveness of enforcement efforts. A court order issued in 2004 resulted in Argentine customs inspecting all shipments of blank optical disks coming into the country. The legal framework regarding Internet piracy provides few incentives to investigate and punish those who post infringing materials. On November 20, 2005, local record companies announced that they had filed 20 civil cases against “upholders”, or Internet users that share music through the net, violating intellectual property laws. Local record companies produced a report showing that more than 412 million songs are downloaded from the Internet in Argentina each year. Inadequate border controls, particularly at the Paraguayan/Brazilian border, further contribute to the regional circulation of pirated goods. The U.S. copyright industries are increasingly concerned with widespread offering of “home delivery” for pirated products. End-user piracy of business software, motion picture piracy, and book piracy remain widespread.

Trademarks: Argentina’s trademark law, Law on Trademarks and Designations (No. 23,262), was issued in 1980. Similar to other Latin American countries, Argentina has a somewhat limited view of eligible subject matter for trademarks, not accepting applications for certification marks. Argentina does, however, provide protection for sound and scent marks. U.S. companies report that the process of registering trademarks generally takes over five months. The registering procedure was improved and made quicker with Presidential Decree 1141/03.

Overall, enforcement of copyrights and trademarks remains a serious concern. Border controls and the prosecution of intellectual property violations are ineffective, civil damages are non-deterrent, and in criminal cases, the judiciary is reluctant to impose deterrent penalties, including jail time.

The United States and Argentina are closely allied in the area of agricultural biotechnology as co-complainants in challenging the EU moratorium on transgenic crops and implementation of the Cartagena Protocol of Biosafety (CPB). However, the government needs to adopt and

enforce intellectual property regimes acceptable to foreign companies, in order to attract sufficient investment in agricultural biotechnology. Argentina has been attempting to negotiate a system for royalty payments to accommodate agricultural companies where the Argentine Supreme Court previously declined to approve patent rights. These negotiations have reached an impasse, and companies could be forced to seek additional legal recourse if negotiations cannot be restarted and a reasonable solution achieved. The government opposes a grain-based collection system, as they believe it would undermine the joint WTO case against the EU. Argentine soybean exports for marketing year 2005/06 are forecast at 9.7 million metric tons. About 99 percent are biotech U.S. soybeans and large portions are produced without the necessary royalty payments.

SERVICES BARRIERS

Argentina enacted broad liberalization in the service sector as part of its economic reform program in the 1990s, but some barriers continue to exist. For example, the Argentina government obliges cable/pay television operators to register their programming with a government body. This government body imposed restrictions on the frequency of advertisements on cable-TV providers. In addition, restrictions regarding the showing, printing and dubbing of films burden U.S. exports, as does the practice of charging ad valorem customs duties based on the previously estimated value of the authors' rights, rather than solely on the value of the physical materials being imported which is the WTO standard.

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

In general, commercial presence of insurance firms is permitted under the same conditions required for local firms. Law 20091, however, establishes that the branches or agencies of foreign insurance firms will be authorized to perform insurance activities in Argentina if there is reciprocity in the respective countries' laws. There was a reform of minimum capital requirements for new insurance firms in 1998, which resulted in new firms having to fulfill higher minimum capital requirements, whereas older firms could still benefit from lower requirements. Therefore, firms that establish themselves in the Argentine market through the acquisition of another firm benefiting from lower standards will be in a better position than those firms that begin in the Argentine market as new companies and, therefore, are subject to the new standards. These measures affect both foreign and local firms. The localization of assets maintained by insurance firms is affected by regulations issued by the government entity that supervises the sector, the National Insurance Superintendency (SSN). Some 75 percent of capital and 90 percent of technical reserves are to be invested within the country. There are lists of authorized investments that become stricter in the case of firms that manage pension funds (AFJP). These lists apply to both foreign and local firms. Argentine residents cannot acquire life, medical, or patrimony insurance abroad. Foreign suppliers cannot publicize their services within Argentina. However, insurance for cargo is permitted and reinsurance engaged abroad is always permitted, for all types of insurance.

FOREIGN TRADE BARRIERS

There is also a restriction on insuring goods owned or used by the National, provincial or municipal governments, independent agencies and people or firms that were granted concessions. The insurance for such goods has to be engaged with local firms, as established by Law 12988.

INVESTMENT BARRIERS

In line with WTO rules, Argentina in 1995 notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The notified measures dealt with local content and trade balancing in the automotive industry. Proper notification allowed developing country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In November 2001, the WTO granted an extension to the TRIMS transitional period allowing Argentina and several other countries to maintain TRIMS-inconsistent measures until December 31, 2003. Article 23 of the September 2002 bilateral auto pact between Argentina and Brazil allowed Argentina to maintain minimum domestic content requirements on vehicles manufactured in Argentina until 2005. Article 13 of the agreement established trade balancing measures that expire in 2006.

The government implemented an increasing variety of capital and exchange controls throughout 2002. These measures inhibited access to foreign exchange to pay for imports, which has created difficulties for U.S. investors in Argentina, among others. As of September 2002, the government retained strict controls on the release of foreign exchange to pay for imports of 2,700 products. During 2003, most of the exchange market controls for imports were relaxed or abolished. Imports can now be paid in advance regardless of the type of good involved. Importers, however, must show that imported products entered Argentina within 360 days of payment. There are no restrictions on payments for services imports (such as freight, insurance, technical assessment, professional fees, etc.).

Hard currency export earnings, both from goods and services, must be cleared in the local foreign exchange market (with exceptions) and there are time limits to fulfill this obligation. Those limits range from approximately 130 to 350 working days for goods (depending on the goods involved) and 135 working days for services. For certain capital goods and situations where exports receive long-term financing, exporters face more liberal time limits. The foreign exchange clearance requirement does not apply to exports of certain minerals or for exports to Argentine foreign trade zones, and is limited to 30 percent of total revenues for hydrocarbons exports. Foreign currency earned through exports may be used for some foreign debt payments.

Argentina imposed a registration requirement for the inflows and outflows of capital, and a 180-day minimum investment period, beginning in June 2003. In May 2005, the government issued Presidential Decree 616/05 and extended the minimum time period to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to non-residents" and requires that all foreign debt of Argentine private sector residents, with the exception of trade finance and initial debt offerings, that bring foreign exchange into the market must include provisions that the debt need not be repaid in less than 365 days.

FOREIGN TRADE BARRIERS

Decree 616/05 imposed more restrictive controls on three classes of inbound investments: inflows of foreign funds from private sector debt, excluding foreign trade and primary stock and bond issues; inflows of non-resident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These three types of inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days. The account must be denominated in dollars and pay no interest. Violations are subject to criminal prosecution.

Under the bilateral investment treaty (BIT) between Argentina and the United States, which entered into force in 1994, each country committed to provide investors of the other country treatment equal to what it offers its own investors or investors from any other country. The BIT also includes obligations relating to compensation for expropriation, the free movement of capital and other investment-related transfers, and the right to hire senior managers of any nationality. Several U.S. investors have submitted to binding investor-state arbitration under the BIT claims that measures imposed by Argentina during the financial crisis that began in 2001 breached BIT obligations.

ELECTRONIC COMMERCE

Argentina has an advanced legal framework for Digital Signature. The Digital Signature Law 25506 was passed in 2001, followed by the Presidential Decree 2628/02, providing the implementation procedures for the use of Digital Signature in Argentina. There are, however, a few pending security and technological issues that the Application Authority needs to define to complete the regulatory regime for the full implementation of Digital Signature in Argentina. Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.

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Enforcement of copyrights on recorded music, videos, books, and computer software remains inconsistent. Argentina customs and other government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, but inadequate resources and multiple and slow court procedures have hampered the effectiveness of enforcement efforts. A court order issued in 2004 resulted in Argentine customs inspecting all shipments of blank optical disks coming into the country. The legal framework regarding Internet piracy provides few incentives to investigate and punish those who post infringing materials. On November 20, 2005, local record companies announced that they had filed 20 civil cases against “upholders”, or Internet users that share music through the net, violating intellectual property laws. Local record companies produced a report showing that more than 412 million songs are downloaded from the Internet in Argentina each year. Inadequate border controls, particularly at the Paraguayan/Brazilian border, further contribute to the regional circulation of pirated goods. The U.S. copyright industries are increasingly concerned with widespread offering of “home delivery” for pirated products. End-user piracy of business software, motion picture piracy, and book piracy remain widespread.

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Argentina imposed a registration requirement for the inflows and outflows of capital, and a 180-day minimum investment period, beginning in June 2003. In May 2005, the government issued Presidential Decree 616/05 and extended the minimum time period to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to non-residents" and requires that all foreign debt of Argentine private sector residents, with the exception of trade finance and initial debt offerings, that bring foreign exchange into the market must include provisions that the debt need not be repaid in less than 365 days.

FOREIGN TRADE BARRIERS

Decree 616/05 imposed more restrictive controls on three classes of inbound investments: inflows of foreign funds from private sector debt, excluding foreign trade and primary stock and bond issues; inflows of non-resident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These three types of inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days. The account must be denominated in dollars and pay no interest. Violations are subject to criminal prosecution.

Under the bilateral investment treaty (BIT) between Argentina and the United States, which entered into force in 1994, each country committed to provide investors of the other country treatment equal to what it offers its own investors or investors from any other country. The BIT also includes obligations relating to compensation for expropriation, the free movement of capital and other investment-related transfers, and the right to hire senior managers of any nationality. Several U.S. investors have submitted to binding investor-state arbitration under the BIT claims that measures imposed by Argentina during the financial crisis that began in 2001 breached BIT obligations.

ELECTRONIC COMMERCE

Argentina has an advanced legal framework for Digital Signature. The Digital Signature Law 25506 was passed in 2001, followed by the Presidential Decree 2628/02, providing the implementation procedures for the use of Digital Signature in Argentina. There are, however, a few pending security and technological issues that the Application Authority needs to define to complete the regulatory regime for the full implementation of Digital Signature in Argentina. Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.