

ARGENTINA

In 1996, the U.S. trade surplus with Argentina was more than \$2.2 billion, a decrease of \$193 million from the U.S. trade surplus of approximately \$2.4 billion in 1995. U.S. merchandise exports to Argentina were \$4.5 billion, an increase of \$326 million (7.8 percent) from the level of U.S. exports to Argentina in 1995. Argentina was the United States' twenty-sixth largest export market in 1996. U.S. imports from Argentina were nearly \$2.3 billion in 1996, an increase of \$518 million (29.4 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1995 was nearly \$8.0 billion, an increase of 33.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Argentina is concentrated largely in the manufacturing, wholesale, and petroleum sectors.

A U.S.-Argentine Bilateral Investment Treaty (BIT) entered into force in October 1994. Under the BIT, U.S. investors enjoy national treatment in all sectors except shipbuilding, fishing, and nuclear power generation. An amendment to the treaty removed mining, except uranium production, from the list of exceptions. The treaty provides for arbitration of disputes by the International Center for the Settlement of Investment Disputes or other mutually acceptable international bodies.

IMPORT POLICIES

Since 1989, the Menem administration has made significant progress in reducing traditional border measure barriers (such as tariffs and import licensing) and non-border measure barriers (in areas such as investment and government procurement). A number of serious barriers remain, however.

Argentina, Brazil, Paraguay, and Uruguay officially established MERCOSUR (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, MERCOSUR formed a partial customs union and a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR will gradually phase in coverage of the CET through 2006, when all products should be covered by the customs union. Chile signed a free trade agreement, effective October 1, 1996, with MERCOSUR, but will not participate in the CET. Bolivia will enter into a similar arrangement on April 1, 1997.

MERCOSUR's CET ranges from 0 to 20 percent. Capital goods and informatics are excepted until 2001, and telecommunications equipment until 2006. In 1995, Argentina raised the tariffs on these goods to help counter an expected fiscal shortfall. Argentina's current average tariff (CET plus exceptions) is around 12 percent. At the request of the United States and other World Trade Organization (WTO) members, the MERCOSUR countries agreed to the formation of a working party in the WTO to examine the consistency of MERCOSUR with the WTO rules. The United States will also continue to engage this group of countries on a bilateral basis in an effort to expand trade and investment and reduce barriers to commerce.

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In September 1995, the Government of Argentina imposed "specific duties" on textiles, apparel, and footwear. The specific duties are inconsistent with Argentina's WTO binding, which calls for ad valorem duties not to exceed 35 percent. The Government of Argentina also imposes a 3 percent "statistical tax" on these and other imports that is inconsistent with its WTO obligations. The United States has asked Argentina to eliminate these measures or otherwise bring them into conformity with the WTO. After more than a year of consultations on this issue, the U.S. Government initiated a Section 301 investigation in October 1996. Several rounds of consultations were held, but no resolution has been found. On February 25, 1997, the WTO Dispute Settlement Body established a panel to review the specific duties and "statistical tax." However, that same day, Argentina informed the WTO that it revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties, which may remain in place for 200 days. At that time, Argentina will have to determine whether it will take a longer lasting safeguard action.

Argentina no longer maintains an import licensing regime, but it does impose burdensome country of origin requirements. Import quotas exist in the auto sector, but the quotas are supposed to be eliminated by January 1, 2000, as required by the WTO. MERCOSUR members have agreed to implement a MERCOSUR automotive policy in the year 2000 to harmonize policies. The Argentine Government currently establishes annual quotas for official distributors of foreign cars and auto dealers, as well as for other firms and individuals.

In October 1995, Argentina suspended imports of fresh fruit from California in response to oriental fruit fly detections in that state. The U.S. Department of Agriculture (USDA) provided Argentina's quarantine agency data and background information on the situation, and Argentina has partially lifted the suspension. USDA continues to press Argentina to completely revoke the suspension.

In addition, certain U.S. fruits, such as Florida citrus, are currently denied access to Argentina, while others face uncertain and non-transparent phytosanitary entry requirements.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

Reform of Argentina's patent protection for pharmaceutical products has been a contentious bilateral issue over the last ten years. In March 1996, the Executive issued a decree authorizing the National Intellectual Property Institute to approve pharmaceutical patents starting in November 2000. The decree does not provide "pipeline" protection for products patented in other countries but not marketed in Argentina and contains ambiguous provisions on compulsory licenses and parallel imports. Compulsory licenses can be awarded in cases of anticompetitive practices or for failure to supply the domestic market.

The March 1996 decree provides less protection than that sought by the Menem administration to fulfill previous commitments to the United States to resolve a Section 301 investigation. U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over \$540 million a year. In December 1996, the Argentine Congress passed a data exclusivity law for firms seeking approval to market a pharmaceutical product. However, the law fails to protect adequately from unauthorized use by third

parties the data submitted to health authorities. In January 1997, during a Special 301 out-of-cycle review (OCR), the U.S. Government announced the suspension of 50 percent of Argentina's GSP benefits effective in April 1997 because of Argentina's lack of patent protection for pharmaceuticals. U.S. officials continue to urge Argentina to improve its patent and data exclusivity regimes.

Copyrights

Argentina's copyright laws and regulations have generally been adequate. Although the copyright law, dating from 1933, did not cover computer software, the government issued a decree in 1994 extending copyright protection to software. However, a local court ruled in late 1995 that the 1994 decree cannot authorize criminal sanctions for software piracy. The case has been appealed to the Supreme Court, which has not yet decided whether it will hear the case. Argentine police continue to conduct raids against software pirates, but the case has impeded the industry's anti-piracy efforts.

In 1993, the Menem administration issued a decree raising the term of protection for cinematographic works from 30 to 50 years after the death of the author to conform with the Berne Convention standard. Cable television piracy has diminished in recent years. Video piracy, however, is a severe problem, causing the home video rental market for legitimate tapes to decline significantly. In addition, according to some estimates, pirated products, virtually all of them imported, account for 30 percent of the sound recording market.

U.S. industry estimates that losses due to copyright piracy in Argentina total about \$255 million annually.

Trademarks

U.S. companies report that they continue to experience problems with enforcement of their trademarks, which is adversely affected by the inability to seek criminal prosecution, monetary damages, and criminal sanctions against counterfeiters.

SERVICES BARRIERS

Although Argentina has undertaken liberalization in the services area as part of its broader economic reform program, some barriers continue to exist. Fifty percent of the participants in the production of any broadcast advertisement must be Argentine, effectively barring use of foreign-based advertisements. In May 1996, the Argentine Government issued a regulation requiring local generation of a majority of cable channels carried by cable/pay television operators in Argentina. The regulation also obliges all operators to register their programming with a government body.

Entry into the insurance sector, previously limited, was liberalized in early 1992, allowing foreign firms established as local companies to compete on an equal footing with those owned by Argentines. However, foreign firms must have a subsidiary in Argentina to sell insurance locally. Since September 1993, foreign companies have been permitted to purchase existing life insurance licenses from Argentine companies, essentially establishing a new company with these acquired licenses. The state reinsurance firm, was abolished by a decree promulgated on January 27, 1992, and the requirement to reinsure 60 percent of each

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policy with the state eliminated retroactively to January 1, 1992. The privatization of pension funds has attracted a number of U.S. firms.

In October 1994, Law 24.377 modified the existing Argentine film law (Law 17.741). Included in the new legislation is (1) a 10 percent tax on the rental and sale of all home video products; (2) a provision calling for the obligatory exhibition and remuneration of national short subject films; and (3) a provision authorizing the Argentine Film Institute to oversee obligatory local processing, dubbing, and subtitling of foreign films. The second provision has yet to be implemented.

In the recently concluded WTO negotiations on basic telecommunications services, Argentina made commitments on most basic telecom services. It adopted the reference paper on regulatory commitments. Argentina limited market access and national treatment for cellular services to a duopoly system, and excluded market access for geostationary satellite systems. Resolutions 14/87 and 242/97, passed in January and February 1997, respectively, preclude foreign access to Argentina's satellite services market.