

# ARGENTINA

In 1997, the U.S. trade surplus with Argentina was \$3.6 billion, an increase of \$1.6 billion from the surplus in 1996. U.S. merchandise exports to Argentina were \$5.8 billion during 1997, an increase of \$1.3 billion (28.6 percent) from the level of U.S. exports to Argentina in 1996. Argentina was the United States' twenty-fourth largest export market in 1997. U.S. imports from Argentina were \$2.2 billion in 1997, a decrease of \$66 million (2.9 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1996 was \$8.1 billion, an increase of 7.5 percent from the level of U.S. FDI in 1995. U.S. FDI in Argentina is concentrated largely in the manufacturing, finance, and petroleum sectors.

## IMPORT POLICIES

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

### Tariffs and Duties

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 entered into a similar arrangement on April 1, 1997.

Prior to November 1997, MERCOSUR's CET ranged from 0 to 20 percent. Under the CET, capital goods and informatics are excepted until 2001, and telecommunications equipment until 2006. In November 1997, Mercosur's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase on January 9, 1998. The increase in the CET is effective through December 31, 1999. Argentina's current average tariff (CET plus exceptions) is around 17 percent.

Since 1993, the Government of Argentina has applied specific duties on textiles, apparel, and footwear. In September 1995, the Argentines increased these duties substantially. The duties appear to be inconsistent with Argentina's WTO bound tariff rate of 35 percent ad valorem. Since the time that the duties were promulgated, the United States has asked Argentina to eliminate them and to impose ad valorem duties consistent with Argentina's bound rate. The Argentine Government also imposed, until January 16, 1998, a three percent "statistical tax" on these and other imports, which appears to be equally problematic in light of Argentina's WTO commitments.

The U.S. Government self-initiated a Section 301 investigation regarding the duties and tax in October 1996. After extensive consultations between the United States and Argentina, in which the EU and Hungary

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participated, on February 25, 1997, the WTO Dispute Settlement Body established a panel at the request of the United States to review the specific duties and statistical tax. Just before the establishment of the panel, Argentina informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties. In September 1997, Argentina extended the application of the safeguard duties on footwear until February 2000.

In November 1997, a WTO dispute settlement panel ruled in favor of the U.S. challenge to the duties and taxes assessed by Argentina. The panel found that Argentina's specific duties on textiles and apparel are excessive and violate Article II of the GATT. The panel also ruled that Argentina's statistical tax on virtually all imports is an impermissible charge in violation of GATT Article VIII. The Argentines have appealed the panel's decision, and in January 1998 they reduced the statistical tax to .5 percent.

The panel determination did not address the specific duties on footwear, given that Argentina had recast those duties as a safeguard measure. The panel decided that it could not provide relief with respect to measures that were no longer in effect. The U.S. has undertaken consultations with Argentina on the safeguard through the WTO Safeguards Committee.

### **STANDARDS, TESTING, LABELING, AND CERTIFICATION**

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**

Argentina's lack of adequate and effective patent protection for pharmaceutical products has been a contentious bilateral issue over the last ten years. The patent regime in Argentina does not meet the standards of protection established by TRIPS, nor does it fulfill previous Argentine commitments made to the United States. However, many inconsistencies in the Argentine patent law are not immediately actionable in the WTO, because Argentina has availed itself of the developing country transition period.

In March 1996, Executive Decree 260, which consolidated previous patent laws, authorized the National Intellectual Property Institute to approve pharmaceutical patents only starting in November 2000, specifically permitted parallel imports, and contained ambiguous provisions on compulsory licenses. In December 1996, the Argentine Congress passed unsatisfactory legislation dealing with data exclusivity, and its implementing regulations are currently under consideration by the Government of Argentina. This law permits Argentine competitors to rely on data submitted for product registration in Argentina, the United States, and certain other countries.

U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over \$500 million a year. 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 May 1997 due to Argentina's lack of patent protection for pharmaceuticals. U.S. officials continue to strongly urge Argentina to improve its patent and data exclusivity regimes.

### Copyrights

Argentina's copyright laws are currently under review by the Government of Argentina. Regarding software, the Argentine Government issued a decree in 1994 explicitly extending copyright protection to software and providing criminal sanctions for infringement. However, a local court ruled in late 1995 that the 1994 decree cannot authorize criminal sanctions for software piracy. The Argentine Supreme Court upheld the lower court ruling in December 1997. The Argentine Chamber of Deputies approved a bill making software piracy a crime in November 1997, but the Senate has not yet voted on the measure.

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 still a severe problem, causing the home video rental market for legitimate tapes to decline significantly. Losses to the U.S. motion picture industry due to audiovisual piracy in Argentina during 1997 are estimated at \$30 million. In addition, piracy of products in the sound recording market, virtually all of them imported, has reportedly been on the rise.

The lack of control of the borders, particularly with Paraguay, contributes to the circulation of pirated goods. U.S. industry estimates that losses due to 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,

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essentially establishing a new company with these acquired licenses. The Government of Argentina has announced its intent to liberalize the insurance market further in 1998. The privatization of pension funds and workers compensation insurance 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.

In the recently concluded WTO negotiations on basic telecommunications services, Argentina made commitments on most basic telecom services. It also adopted the reference paper on regulatory commitments. However, Argentina is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The deadline for submission of acceptance has been extended to July 31, 1998. In addition, Argentina has limited market access and national treatment for cellular services to a duopoly system.

### **INVESTMENT BARRIERS**

Argentina has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the

WTO. Argentina therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMS to ensure that WTO members meet these obligations.