

# ARGENTINA

In 1998, the U.S. trade surplus with Argentina was \$3.6 billion, an increase of \$38 million from the 1997 surplus. U.S. merchandise exports to Argentina were \$5.9 billion during 1998, an increase of \$77 million from the level of U.S. exports to Argentina in 1997. Argentina was the United States' 23rd largest export market in 1998. U.S. imports from Argentina were \$2.3 billion in 1998, up only slightly from 1997.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1997 was \$9.8 billion, an increase of 23 percent from the level of U.S. FDI in 1996. 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 tariffs and nontariff barriers, including in the areas of investment and government procurement. Still, a number of serious barriers to trade remain.

### **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 will gradually phase in coverage of the CET through 2006, when all products should be covered by the customs union. As of January 1, 1999, virtually all 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 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.

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 in January 1998, effective through December 31, 1999. Argentina's average tariff currently is around 13.5 percent. Some imports are banned altogether, such as re-manufactured auto parts. Tariffs were significantly increased in January 1999 on toys, 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) negotiation.

Argentina has been negatively affected by recent economic turmoil in Brazil and the devaluation of the Real, particularly in the Argentine export sector. Approximately 31% of Argentina's exports go to Brazil. In early 1999, the Governments of Brazil and Argentina initiated discussions to find the best method for confronting

## Argentina

the economic situation. The U.S. Government will take steps to help ensure that MERCOSUR countries do not turn their backs on trade liberalization in response to current difficulties.

### 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. 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. In addition, Argentina created in January 1999 a procedure for import monitoring which will affect roughly one-fifth of its imports, principally textiles, toys and footwear, by requiring that an "information form" be filed prior to entry of the imports. This system appears to be similar to an import licensing regime. The U.S. Government is monitoring this system carefully to detect any impediment to trade.

### Textiles, Apparel and Footwear

On October 4, 1996, USTR self-initiated an investigation under section 301 of the Trade Act of 1974 into Argentina's application of specific duties on textiles, apparel and footwear; three percent statistical tax on almost all imports; and burdensome labeling requirements.

The United States and Argentina consulted extensively in this matter, leading to Argentina's modification of its labeling requirement. To address the remaining issues, we requested the establishment of a WTO dispute settlement panel in January 1997. After this request was delayed by Argentina as allowed under WTO procedures, in February 1997 the WTO Dispute Settlement Body established a panel, at which time 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 the panel found in favor of the United States, stating that, per 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 violates GATT Article VIII. Argentina appealed the panel decision, but the WTO Appellate Body upheld the panel determination in March 1998. Regarding implementation of 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 .5 percent in January 1998 and will cap this statistical tax at appropriate levels beginning on May 30, 1999, per an Argentine Government decree published on February 25, 1999.

The panel had not opined on footwear, stating that it was unable to afford relief on measures no longer in effect. Believing that Argentina's application of the footwear safeguard raised serious questions regarding the WTO obligations of Argentina, the United States has raised the safeguard bilaterally at high levels on many occasions and has asserted third party rights in the EC panel on this matter. In November 1998, the Argentine Government modified the safeguard through Resolution 1506. The resolution establishes a quantitative restriction in addition to the already-high safeguard duty, while imposing a TRQ of 3.9 million pairs on imports of footwear falling under the original safeguard measure (all imports not originating in MERCOSUR). This quota amount represents less than 50% of annual footwear imports from non-Mercosur countries over the last

## **Argentina**

3 years. Non-Mercosur footwear imports below the quota limit are subject to the original safeguard duty according to their HTS classification. Once the quota limit is filled for each HTS number, imports above the limit are assessed a duty rate that is double the current safeguard duty. In addition, the Resolution postpones any liberalization of the original safeguard duty until November 30, 1999, delaying two tariff reductions that were scheduled for December 1998 and August 1999. A scheduled May 1998 liberalization had already been delayed in April 1998. As regards liberalization of the quota, on December 1, 1999 the quota will be marginally liberalized by a 10% increase.

In the December 1998 Third Party Submission of the United States in the EC's WTO panel on the original footwear safeguard (final report due in May 1999), we expressed our view that the modification of the safeguard appears to be in violation of article 7.4 of the Safeguard Agreement. The modification of the safeguard raises even greater concerns, specifically in light of the requirements of Article 7.4 of the WTO Agreement on Safeguards. We are currently considering our policy options in this case, including the pursuit of litigation at the WTO. In March 1999, the U.S. Government requested WTO consultations with Argentina on this matter.

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

In October 1995, Argentina placed a ban on the imports of California fresh fruits due to the detections of oriental fruit fly in the state. The U.S. Department of Agriculture (USDA) has provided Argentina's quarantine agency data and technical information on the situation. Argentina removed its ban on fruit from several California counties in 1996, and granted access in 1997 for citrus grown in these approved counties in 1997; however, Argentina continues to quarantine certain coastal counties. In 1997, Argentina imposed a mandatory fumigation on all stonefruits from the approved counties due to concern over the walnut husk fly, which is not present in Argentina. However, there is no credible evidence that stonefruits are a ready host for this pest. USDA continues to press Argentina to completely revoke these bans.

In addition, certain U.S. fruits, such as citrus from Florida, are currently denied access to Argentina. Florida exports of citrus to Argentina are currently banned due to phytosanitary concerns regarding the Mediterranean fruit fly and citrus canker. The United States has been actively engaged with Argentina to resolve this issue, and we have been hopeful that the recent site visits and technical information provided by USDA to Argentine officials would allay Argentine pest concerns related to Florida citrus so that exports could commence. The U.S. citrus industry estimates its annual losses at \$35 million due to Argentine restrictions.

In 1998, Argentina announced its intent 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. The U.S. Department of Agriculture has proposed alternative language that should meet the needs of the Argentines, and is working with USTR to obtain a positive response. The U.S. pork industry believes that Argentine market is expected to be about \$10 million.

## Argentina

### LACK OF INTELLECTUAL PROPERTY PROTECTION

#### Patents

Argentina's lack of adequate and effective patent protection, particularly for pharmaceutical products, has been a long-standing irritant in the bilateral trade relationship. Many of the TRIPS-inconsistencies in the Argentine patent law are not immediately actionable in the WTO, because Argentina has availed itself of the developing country transition period. Most of Argentina's TRIPS obligations come into force on January 1, 2000. However, Argentina's failure to comply fully with its current TRIPS obligation regarding Exclusive Marketing Rights for qualifying pharmaceutical products is cause for serious concern. The U.S. Government is considering appropriate policy responses to this apparent violation of WTO obligations.

In March 1996, Executive Decree 260, which consolidated previous patent laws, authorized the National Intellectual Property Institute (INPI) to approve pharmaceutical patents 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 the implementing regulations are still 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. 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.

The U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over \$600 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. In the 1998 Special 301 review, Argentina remained on the Priority Watch List (PWL) due primarily to the patent issue. U.S. officials continue to press Argentina to improve its patent and data exclusivity regimes.

#### Copyrights

Argentina's copyright laws are currently under review by the Government of Argentina, which has indicated its intention to ensure that its copyright regime meets TRIPS standards by January 1, 2000. Also, Argentina has made progress toward adopting legislation to ratify the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Regarding software, the Argentine Government promulgated legislation in November 1998 specifically criminalizing acts of software piracy, eliminating problems generated by previous Argentine court rulings.

Enforcement of copyrights generally remains an issue, and the U.S. copyright industry estimates annual losses due to copyright infringement at well over \$250 million. The lack of border controls, particularly at the Paraguayan border, contributes to the regional circulation of pirated goods.

## Argentina

### Trademarks

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

### SERVICES BARRIERS

In the 1990's, Argentina has undertaken services liberalization as part of its broader economic reform program, but some barriers continue to exist. 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. In addition, high taxation and restrictions regarding the showing, printing and dubbing of films have burdened U.S. exports.

Entry into the insurance sector was liberalized in early 1992, allowing foreign firms established as local companies to compete fairly with Argentine insurers. However, foreign firms must have a subsidiary in Argentina to sell insurance locally. Since 1993, foreign companies were allowed to purchase existing insurance licenses from Argentine companies and to establish new companies with these acquired licenses. On October 1, 1998, however, the Government of Argentina eliminated this requirement, thereby allowing foreign companies to set up new companies without first acquiring an existing firm. Argentina reportedly levies an excise tax on reinsurance premiums ceded abroad. The tax is defined as a percentage of the gross reinsurance premium and is equal to the Argentine corporate tax rate multiplied by what Argentine law deems to be profit on reinsurance business, equal to 10 percent of gross premiums. This results in an excise tax withheld at 3.5 percent of gross premiums. Profit margins for insurance companies in Argentina appear to be well below 10 percent of gross premiums, according to U.S. companies.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecom services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the General Agreement on Trade in Services on July 27, 1998. While Argentina will open basic telecom services to limited competition in November 1999, it will continue to limit full market access for local, domestic and international long distance, cellular and other wireless services until November 2000.

### 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. Argentina therefore must eliminate these measures before January 1, 2000, and Argentina is currently engaged in negotiations with its MERCOSUR partners to develop a common MERCOSUR auto regime by that date. The United States is working in the WTO Committee on TRIMs to ensure that all WTO members meet these obligations.

## **Argentina**

### **ELECTRONIC COMMERCE**

While Argentina has made no specific GATS commitments that would cover Internet access, the Government of Argentina generally supports the promotion 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 FTAA and at the WTO. Despite its support for electronic commerce, however, the Government of Argentina has not participated in either of the Information Technology Agreements. 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 e-commerce transactions.

A December 1998 modification to the Argentine customs code, categorizing services and intellectual property as “goods” for customs purposes, raised U.S. concerns in this area. However, high-level Argentine officials have assured the U.S. Government of their “firm decision” not to use the customs code reform to establish duties on the importation of services, intellectual property or electronic commerce transmissions.