

# ARGENTINA

## TRADE SUMMARY

The U.S. goods trade balance with Argentina went from a trade deficit of \$426 million in 2005 to a trade surplus of \$801 million in 2006. U.S. goods exports in 2006 were \$4.8 billion, up 15.8 percent from the previous year. Corresponding U.S. imports from Argentina were \$4.0 billion, down 13.3 percent. Argentina is currently the 32<sup>nd</sup> largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Argentina were \$1.8 billion in 2005, and U.S. imports were \$792 million. Sales of services in Argentina by majority U.S.-owned affiliates were \$2.8 billion in 2004 (latest data available), while sales of services in the United States by majority Argentine-owned firms were \$29 million.

The stock of U.S. foreign direct investment (FDI) in Argentina in 2005 was \$13.2 billion, up from \$11.5 billion in 2004. U.S. FDI in Argentina is concentrated largely in the non-bank holding companies, manufacturing and information sectors.

## IMPORT POLICIES

Worldwide, Argentina prohibits the import of many used capital goods. Used capital goods exempt from this prohibition (based on several conditions allowed by Resolution 511 in 2000) are subject to a 6 percent import tariff, as established by Resolution 78/2006 in February 2006. Some used machinery imports are allowed, but only if repaired or rebuilt. Imports of used clothing are prohibited through June 2010, except in donations to government or religious organizations, as established by Resolution 637 (2005). Argentina prohibits the importation and sale of used or re-treaded tires by law 25626; law 24051 precludes the importation of used or refurbished medical equipment, including imaging equipment and used automotive parts. In addition to limiting automobile and automotive parts trade, Brazil and Argentina's common automotive policy (Bilateral Auto Pact), which was renegotiated in 2004 with new aspects entering into force in 2006, bans the worldwide import of used self-propelled agricultural machinery. In 2006, Argentina initiated a safeguard investigation on imports of recordable compact discs. Argentina also currently imposes anti-dumping duties on imports of U.S. polyvinyl chloride.

### Tariffs

Argentina's import tariffs range from zero percent to 35 percent, with an average applied tariff rate of 13 percent in 2006. A fee of 0.5 percent to fund the government of Argentina's compilation of trade data is assessed on most imports (90 percent of all harmonized system tariff lines). As noted above, Argentina also taxes some of its largest exports, at differing (sometimes indexed) rates. Total export tax revenue in 2005 was equal to 10.5 percent of the value of all Argentine exports, including goods not subject to export taxes.

The government of Argentina has solicited sector-specific voluntary price caps aimed at reducing price increases on key components of the consumer price index (CPI). Exporters may claim reimbursement for some domestically paid taxes, including value-added-tax (VAT) reimbursements. The average non-VAT export reimbursement rate is 4.1 percent of export value. In November 2005, the government eliminated such non-VAT reimbursements for approximately 200 food products, including milk and dairy products. Non-VAT reimbursements for these products were reinstated in 2006, after producers committed not to

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increase their prices. In July 2006, some types of vegetable oils were excluded from tax reimbursement by Resolution 530/2006.

MERCOSUR's common external tariff (CET) averages 13.6 percent and ranges from zero percent to 20 percent *ad valorem*. Full CET product coverage was scheduled for implementation in 2006, but has been delayed. Individual MERCOSUR member country exceptions to the CET are now permitted until the end of 2008. Currently Argentina has exceptions to the CET on capital goods (for which the CET is 14 percent but for which Argentina allows duty-free entry), computing and telecommunications goods and an additional diversified group of 100 products. Duty-free movement within the bloc, also originally scheduled for 2006, has been deferred indefinitely. Multiple tariffs may therefore be imposed on products imported from outside the bloc. Argentina and Brazil have adopted a Competitive Adaptation Clause, which permits countries to impose safeguards with defined phase-out periods and linked programs to improve sector competitiveness.

In 2005, the government imposed new non-automatic licenses on toys (Resolution 485/2005), requiring importers to obtain a certificate reviewed by three different offices in the Secretariat of Industry. The process takes 120 days, partly due to a backlog. Once issued, the certificates are valid for 60 days. Under Resolution 825/2001, toys and textiles imported from China are subject to substantial specific tariffs which affect U.S. firms operating in Argentina that import from China. Under a program included in the Resolution, these specific duties were reduced to a maximum 35 percent *ad valorem* equivalent tariff in January 2007.

Resolution 486/2005 established non-automatic licenses on shoes in 2005, requiring certificates that are valid for only 120 days and whose issuance involves procedures that, according to the private sector, are burdensome. There is an automatic license requirement for most footwear imports; the government of Argentina says this requirement is needed for informational purposes, but the private sector claims it is an obstacle to trade. In July 2004, Resolution 495/2004 established minimum specific import duties on footwear for 180 days, which were later extended to December 31, 2007. These import duties do not apply to goods from MERCOSUR countries and cannot exceed the value of an equivalent 35 percent *ad valorem* tariff.

### **Customs Procedures**

Argentina subscribes to the WTO Agreement on Customs Valuation. There are certificate of origin requirements for a long list of products with non-preferential origin treatment, as established by the Federal Administration for Public Revenue's (AFIP's) External Note 8 of 2006, including textiles, capital goods, steel products and household appliances. This Note established a procedure ("Canal Rojo Valor") such that, 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 and taxes on the difference. This customs verification procedure can take a long time and result in higher financial costs for importers.

In 2005, AFIP Resolution 1811/2005 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 1811/2005 reduced this maximum to \$1,000. Additionally, couriers are considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more troublesome and costly. These burdensome regulations increase the cost not only for the courier, but also for users of courier services.

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## **EXPORT POLICIES**

Following the 2002 currency devaluation, the government of Argentina imposed tariffs on all but a few exports, including significant tariffs on key hydrocarbon and agricultural commodity exports, in order to generate revenue and increase domestic supplies of these commodities to constrain domestic price increases. These export tariffs continue to be actively managed by the government of Argentina.

The government of Argentina suspended beef exports for 180 days beginning in March 2006, excepting only beef exports to the European Union under the Hilton quota program, and beef exports guaranteed under bilateral agreements. Export taxes originally imposed in 2002 on boned cuts and heat-processed beef were increased from 5 percent to 15 percent. Both the ban and the higher export taxes were aimed at increasing local supply and avoiding further increases in domestic beef prices. Starting in June 2006, the government eased the ban, allowing maximum exports by volume of 40 percent (applied to each tariff line) of the 242,000 ton total exported between June and November of 2005. In September 2006, the government of Argentina further loosened the beef export ban, allowing exports to rise from 40 percent to 50 percent of the June to November 2005 total export volume, while extending the export caps until November 30, 2006.

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

**Agricultural Products:** The government has banned thymus gland sweetbreads since 2002 based on Resolution 117/2002, which sets criteria to assess the risk of bovine spongiform encephalitis (BSE) transmissibility. Import permits for salivary gland sweetbreads, which according to Resolution 117/2002 should be allowed, have been denied by SENASA, the government phyto-sanitary agency. In August 2006, Argentina issued Resolution 315/2006 that aligns Argentina's import requirements for BSE to those of the Organization for Animal Health. This is a significant development toward a more open market for beef and other bovine products. However, the Argentine National Food Institute continues to demand traceability and documents stamped/notarized by the Argentine Consulate for all bovine-derived imports. Even though there is no technical/sanitary restriction, Argentina continues to delay issuance of health certificates that would allow the resumption of exports of poultry meat and products from the United States.

**Non-agricultural Products:** Argentina's Standards Institute (IRAM) aligns the bulk of Argentine standards with U.S. or European norms. Argentina began mandating compliance with new national safety certifications on a wide range of products in early 1998, affecting U.S. exports of low-voltage electrical products (household appliances, electronics and electrical materials), toys, covers for dangerous products, gas products, construction steel, personal protective equipment, bicycles and elevators. Many businesses often find the procedures for compliance to be inconsistent, redundant and non-transparent. Enforcement by Customs of a regulation mandating the use of a national standard with respect to plugs for low-voltage equipment, as established by IRAM rules 2073/2063, and Customs homologation required by the Secretariat of Communications to ensure that telecommunication and radio equipment meet regulatory requirements, can result in long delays and do not apply to domestic producers.

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 in its implementation of these measures.

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Resolution 287/2000 established strict labeling requirements for footwear and textiles, which have specific characteristics in terms of print size, attachment to the garment, information contained, country of origin, importer and others. Importers complain that such requirements significantly delay import processing.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Argentina's lack of adequate and effective intellectual property protection has caused some friction in the bilateral trade relationship. Argentina has been on the Special 301 Priority Watch List since 1996.

**Patents:** The National Intellectual Property Institute (INPI) started to grant pharmaceutical patents in October 2000 after a nearly five-year moratorium. Issuance of pharmaceutical patents has been slow since that time. INPI, however, has taken a number of steps to reduce Argentina's large patent application backlog. In the past year, Argentina made significant progress in reducing its patent backlog. Steps include the implementation of fast-track procedures and a one-time opportunity in 2005 for companies to prioritize their patent applications before INPI. 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 ANMAT (the Argentine equivalent of the U.S. Food and Drug Administration) 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. However, the injunctive relief process has proven slow enough to not be an effective deterrent to patent infringers in some cases. The United States retained its right to seek resolution under the WTO dispute settlement mechanism on the outstanding issue of data protection.

**Copyrights:** Argentina's copyright laws generally provide 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. 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. Argentine customs and other government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, but inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. The legal framework regarding Internet piracy provides few incentives to investigate and punish those who post infringing materials. Inadequate border controls, particularly at the border near Paraguay and Brazil, further contribute to the regional circulation of pirated goods. The U.S. copyright industries are increasingly concerned with the widespread offering of "home delivery" for pirated products. End-user piracy of business software, motion picture piracy and book piracy remains widespread. Law 25986 of January 2005 prohibits the import or export of merchandise which violates intellectual property rights. However, Argentine Customs authorities were unable to detain merchandise based on the presumption of a violation until regulations to implement this law were issued on October 12, 2006. The International Intellectual Property Alliance estimates that music piracy grew 5 percent in 2005 compared to 2004, representing a 60 percent piracy rate and \$69.5 million in losses for 2005. The Argentine Chamber of Phonogram and Videogram Producers estimate that DVD movie piracy represents 52 percent of the market, or ARP 300 million per year. The Business Software

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Alliance estimates a 77 percent piracy rate of business software, resulting in a \$109 million loss to the business software industry. Business software piracy grew 2 percent in 2005 over 2004.

Trademarks and Geographical Indications: Argentina's trademark law, the Law on Trademarks and Designations (No. 22362), was issued in 1980. Laws 25380 and 25966 protect names of origin and geographical indications. Similar to other Latin American countries, Argentina has a somewhat limited view of eligible subject matter for trademarks, and does not accept applications for certification marks. Argentina does, however, provide protection for sound and scent trade marks. U.S. companies report that the process of registering trademarks generally takes over five months. The registration procedure was improved and made quicker with Presidential Decree 1141/2003.

Overall, enforcement of copyrights and trademarks remain 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, such as prison sentences.

The United States and Argentina have been closely allied in the area of agricultural biotechnology, including as co-complainants in a WTO dispute challenging the EU moratorium on transgenic crops and the EU's implementation of the Cartagena Protocol of Biosafety. However, the Argentine government should adopt and enforce an intellectual property regime 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 may choose to seek additional legal recourse if negotiations cannot be restarted and a reasonable solution achieved. The government opposes a grain-based collection system, as it believes this would undermine the joint WTO case against the EU, but this case was resolved in favor of the United States and Argentina. Argentine soybean exports for marketing year 2006/07 are forecast at 7.1 million metric tons. About 99 percent are biotechnology 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 still exist. For example, the Argentine government obliges cable/pay television operators to register their programming with a government body. This government body imposed restrictions on cable-TV providers about the frequency of advertisements. 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 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

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could still benefit from lower requirements. Therefore, firms that establish themselves in the Argentine market through the acquisition of another firm benefiting from the lower standards is in a better position than 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. 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 (Administradoras de Fondos de Jubilaciones y Pensiones or AFJP). These lists apply to both foreign and local firms. Argentine residents cannot acquire life, medical or patrimony insurance abroad and 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. 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.

## **GOVERNMENT PROCUREMENT**

Argentina is an observer to the WTO Plurilateral Agreement on Government Procurement. Law 25551 of 2001 establishes a national preference for local industry for most government purchases if the domestic supplier bid is no more than 5 percent to 7 percent (the latter figure for small or medium-sized businesses) higher than the foreign bid, and applies to tender offers by all government agencies, public utilities and concessionaires. There is similar legislation at the provincial level, resulting in entry barriers for foreign firms.

Inland water shipping is reserved for Argentine flag carriers. Any foreign firm entering the market will have to nationalize vessels, paying high import duties and follow strict local union regulations on nationality of the crew.

## **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 balancing trade flows in the automotive industry. Proper notification allows developing country WTO Members to maintain such measures for a five-year transitional period, which ended January 1, 2000, for Argentina. 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 same agreement established trade balancing measures which were to expire in 2006. However, in mid-2006 the agreement, including the local content and trade balancing clauses, was extended through December 2008.

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 and professional fees).

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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 180 to 480 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 not exceeding six years, exporters face more liberal time limits. The foreign exchange clearance requirement is limited to 30 percent of total revenues for hydrocarbons exports, and does not apply to exports of certain minerals, exports that were subject to temporary admission if they were not transformed, and to exports to Argentine foreign trade zones. Foreign currency earned through exports may be used for some foreign debt payments.

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact of large short-term capital flows on the nominal exchange rate. In June 2003, Argentina imposed a registration requirement for inflows and outflows of capital, and a 180-day minimum investment period. In May 2005, the government issued Presidential Decree 616/2005 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 private Argentine residents, with the exception of trade finance and initial public debt offerings that bring foreign exchange into the market, must include provisions that the debt need not be repaid in less than 365 days.

Decree 616/2005 (as implemented by Ministry of Economy resolutions issued during 2005 and 2006) also imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial stock and bond issues); inflows for initial public offerings of Central Bank debt instruments; inflows for most fiduciary funds; 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 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 in an account that must be denominated in dollars and pay no interest. Violations are subject to criminal prosecution. As of September 2006, a deposit is not required for capital inflows aimed to finance energy infrastructure works.

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. Thirteen U.S. investors have submitted to binding investor-state arbitration under BIT claims against the government of Argentina that measures imposed by Argentina during the financial crisis that began in 2001 breached BIT obligations.

## **ELECTRONIC COMMERCE**

Argentina has a legal framework for digital signatures. The Digital Signature Law 25506 of 2001 was implemented by Presidential Decrees 2628 of 2002 and 724 of June 2006. Argentine law has accepted digital signatures since early 2004, under the requirement that they are verified by a certified licensor. Decree 724/2006 allowed government of Argentina agencies to act as license certifiers and to issue certificates for government officials or private individuals, establishing conditions for use of digital

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signatures between public organizations and the community. The decree also eliminates the requirement that each entity with the authority to certify digital signatures be backed by liability insurance. 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.

Electronic invoicing became effective in Argentina as of January 16, 2006, through AFIP Resolution 1956/2005. This new procedure allows replacement of the traditional paper invoice with an electronic one, which can be sent via the Internet. The new resolution establishes eligibility requirements for companies to obtain authorization to use e-invoicing, such as having appropriate IT systems and infrastructure to send and store originals, duplicates and receipts and to keep digital records/registry of all documentation sent and received.