

# ARGENTINA

## TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$5.4 billion in 2011, an increase of \$1.8 billion from 2010. U.S. goods exports in 2011 were \$9.9 billion, up 33.7 percent from the previous year. Corresponding U.S. imports from Argentina were \$5.0 billion, up 18.3 percent. Argentina is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were \$4.6 billion in 2010 (latest data available), and U.S. imports were \$1.5 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$6.3 billion in 2009 (latest data available), while sales of services in the United States by majority Argentina-owned firms were \$85 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$12.1 billion in 2010 (latest data available), down from \$14.3 billion in 2009. U.S. FDI in Argentina is mostly in mining and manufacturing sectors.

## IMPORT POLICIES

### Tariffs

Argentina is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from zero percent to 35 percent *ad valorem*. A number of country-specific exceptions and tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit through at least one or more MERCOSUR members before reaching their final destination.

In December 2011, the MERCOSUR members agreed to increase import duty rates temporarily to a maximum rate of 35 percent on 100 tariff items per member country. The increased duties went into effect in January 2012 and will remain in effect through the end of 2012, with the possibility of extension through the end of 2015. MERCOSUR member countries are also currently allowed to set import tariffs independently for computer and telecommunications equipment, sugar, and some capital goods. Argentina also has bilateral arrangements with Brazil and Uruguay on automobiles and automotive parts.

Several U.S. industries have raised concerns about prohibitively high tariffs and other taxes in Argentina on certain products, including apples, distilled spirits, restaurant equipment, and motorcycles. In early 2012, the Argentine government announced a tax increase on "high-end" imported cars and motorcycles with the stated purpose of protecting the domestic industry. Argentine consumers are now required to pay an additional 10 percent tax on such vehicles imported from outside MERCOSUR.

While the majority of tariffs are levied on an *ad valorem* basis, Argentina also charges compound rates consisting of *ad valorem* duties plus specific levies known as "minimum specific import duties" (DIEMs) on products in several sectors including textiles and apparel, footwear, and toys. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent. Although the DIEMs expired on December 31, 2010, and the government of Argentina has not formally extended them, they are still being charged.

## FOREIGN TRADE BARRIERS

During its 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and a decision to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. That deadline was not met, however, and the CCC still must be ratified by MERCOSUR's member countries.

### **Nontariff Barriers**

Argentina has imposed a growing number of customs and licensing procedures and requirements that makes importing U.S. products more difficult. The measures include additional inspections, port-of-entry restrictions, expanded use of reference prices, automatic and non-automatic license requirements, and requirements that importers have invoices notarized by the nearest Argentine diplomatic mission when imported goods are below reference prices. A number of U.S. companies with operations in Argentina have expressed concerns that the measures have delayed exports of U.S. goods to Argentina and, in some cases, stopped exports of certain U.S. goods to Argentina altogether. In response to U.S. Government inquiries, Argentine government officials have asserted that all of these measures are nondiscriminatory and WTO-consistent.

During 2011, the government of Argentina increased its reliance on a growth strategy that is based heavily on import substitution. To carry out this strategy, Argentina increased its use of non-automatic import licenses (see more detailed discussion below) and imposed other nontariff barriers. U.S. firms have reported long delays in obtaining import licenses, including delays that exceed the 60 day period contemplated by the WTO Agreement on Import Licensing Procedures. U.S. firms have also reported that applications for import licenses are often not approved unless they are accompanied by a plan to export from Argentina goods of equivalent value to those that are being imported or a plan to invest in local production facilities. These requirements are not codified in law or regulation. Rather, they are communicated to companies informally by the Argentine government, for example, via telephone calls.

In early January 2012, Argentina announced a new measure requiring companies to file online affidavits (known as the Advanced Sworn Statement on Imports) and wait for government review and approval before they can import. The measure became effective on February 1, 2012. U.S. companies are concerned that this requirement will create additional delays and will be used to restrict imports.

Since April 2010, importers have reported delays in the approval of certificates of free sale for imported food products by the *Instituto Nacional de Alimentos*, a division of Argentina's equivalent of the U.S. Food and Drug Administration. The certificate is necessary to import food products into Argentina. While there is no formal regulation restricting these imports, approval of the certificate is reportedly conditioned on the absence of a domestic substitute for the product.

Argentina prohibits the import of many used capital goods. Local legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, which are also subject to import taxes up to 28 percent and a 0.5 percent statistical tax. Argentina has carved out exceptions for some industries (*e.g.*, graphics, printing, machine tools, textiles, and mining), enabling importation of used capital goods at a zero percent import tax. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self-propelled agricultural machinery unless it is rebuilt. Argentina prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and used automotive parts. Argentina generally restricts or prohibits the importation of any remanufactured good, such as remanufactured

automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. On December 31, 2010, Argentina reintroduced an import prohibition on used clothing, which is due to expire in 2015.

*Import Licensing:*

The government of Argentina has significantly expanded the list of products subject to both automatic and non-automatic import licensing requirements since 2008.

Argentina imposes automatic import licensing requirements on 2,100 tariff lines, mainly involving consumer products. Examples of products affected include food and drink, pet food, computer and audio equipment, cars, bicycles, cameras, mattresses, telephones, toys, and watches. Companies have reported not being granted import licenses unless they commit to export from, or invest in, Argentina.

In 2011, Argentina continued and expanded the use of non-automatic licenses to protect sectors that the Argentine government deems sensitive. U.S. industry representatives complain that the wait time for the issuance of non-automatic licenses often extends beyond 60 days to 100 days or more, partly due to a backlog of license applications. Obtaining a license is reportedly burdensome and requires multiple duplicative reviews by several different government offices. Once issued, the certificates are generally valid for 60 days.

According to the most recently available official information, approximately 600 tariff lines are currently subject to non-automatic licenses, which include approximately 200 tariff lines that were added in 2011 to the list of products requiring non-automatic import licenses. The Minister of Industry stated in a February 2011 press release that this increase was designed to help domestic manufacturers and boost local production.

Of the products subject to the non-automatic license requirements, nearly half are textile products, yarn, and fabrics. However, a broad range of other sectors has been targeted, including metallurgical products, automotive parts, chemical products, general and special purpose machinery, and consumer goods.

Since 2005, the government of Argentina has also required non-automatic import licenses for toys and shoes. Shoe import licenses are valid for only 120 days and, according to exporters, obtaining them involves especially burdensome procedures. The government of Argentina says the licensing requirement is needed for informational purposes. Some U.S. companies, however, claim it is designed to delay footwear imports.

*Customs Valuation:*

Argentina currently applies reference values to several thousand products. In 2011, goods covered by approximately 50 tariff lines were added to that list of products. The stated purpose of reference pricing is to prevent under-invoicing, and authorities establish benchmark unit prices for customs valuation purposes for certain goods that originate in, or are imported from, specified countries. These benchmarks establish a minimum price for market entry and dutiable value. Importers of affected goods must pay duties calculated on the reference value, unless they can prove that the transaction was conducted at arm's length.

Argentina requires importers of any goods from designated countries that are invoiced below the reference prices to have the invoice validated by both the exporting country's customs agency and the appropriate Argentine Embassy or Consulate in that country. Argentina has stated that the rule is designed to

discourage under-invoicing and fraudulent under-payment of customs duties. The government of Argentina publishes an updated list of reference prices and applicable countries which is available at: <http://www.afip.gov.ar/aduana/valoracion/valores.criterios.pdf>.

Customs External Notes 87/2008 of October 2008 and 15/2009 of February 2009 establish administrative mechanisms that restrict the entry of products deemed sensitive, such as textiles, apparel, footwear, toys, electronic products, and leather goods. While restrictions are not country-specific, they are to be applied more stringently to goods from countries considered “high risk” for under-invoicing, and to products considered at risk for under-invoicing as well as trademark fraud. The full text of Note 87/2008 can be found at: <http://www.infoleg.gov.ar/infolegInternet/anexos/145000-149999/145766/norma.htm>.

The tax collection agency (AFIP) charges import duties based on pre-established reference prices on these several thousand products. If an importer disagrees with the reference prices established by AFIP or wants to establish its own reference prices, it must submit large volumes of documentation to AFIP in support of its reference prices. On October 14, 2011, AFIP issued Note 15/2011, which permits large importers to establish in-house customs services that are pre-approved by the Argentine government in order to establish their own reference prices.

#### *Ports of Entry:*

Argentina restricts entry points for several classes of goods, including sensitive goods classified in 20 Harmonized Tariff Schedule chapters (*e.g.*, textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches) through specialized customs procedures for these goods. A list of products affected and the ports of entry applicable to those products is available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131847/norma.htm>. Depending on their country of origin, many of these products are also subject to selective, rigorous “red channel” inspection procedures, and importers are required to provide guarantees for the difference in duties and taxes if the declared price of an import is lower than its reference price.

Since the first measure regarding the limitation of ports of entry was formally announced in 2005, several provincial and national legislative authorities have requested the elimination or modification of the specialized customs scheme. Through several new resolutions issued by the Customs Authority in 2007, 2008, 2010, and 2011, the government of Argentina has increased the number of authorized ports of entry for certain products.

#### **Customs Procedures**

Certificates of origin have become a key element in Argentine import procedures because of antidumping measures, criterion values, and certain geographical restrictions. In August 2009, AFIP revised certificate of origin requirements for a list of products with non-preferential origin treatment through External Note 4. These additions referred primarily to certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (*e.g.*, wool, cotton, other vegetable), carpets, most textiles (*e.g.*, knitted, crocheted), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the most favored nation tariff rate, the certificate of origin must be certified by an Argentine consulate. The certificate is valid for 180 days, which has proven problematic for some companies that import goods subject to non-automatic licenses, and companies report that the major delays in obtaining an import license often put them beyond the 180 day validity period for the certificate of origin.

Simplified customs clearance procedures on express delivery shipments are only available for shipments valued at \$1000 or less. Couriers also are now 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 time-consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services. The U.S. Government has raised these policies with the Ministry of Federal Planning, Public Investment and Services, the Directorate of Customs, and the National Administration of Civil Aviation.

## **EXPORT POLICIES**

The Argentine government imposes export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities. In many cases, the export tax for raw materials is set higher than the sale price of the processed product to encourage development of domestic value-added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks. Total export tax revenue in 2011 was equal to 15.6 percent of the value of all Argentine exports (down from 17 percent in 2010), including goods not subject to export taxes.

Despite proposals within and without the Argentine Congress to reduce or eliminate export taxes, the taxes continue to be actively supported and managed by the government of Argentina as they are a major source of fiscal revenue. The following major agricultural commodities are currently subject to export taxes: soybeans at 35 percent; soybean oil and soybean meal at 32 percent; sunflower meal and sunflower oil at 30 percent; wheat at 23 percent; and corn at 20 percent. The export tax on pure biodiesel was 20 percent in 2011, with a 2.5 percent rebate. The difference in tax rates between raw and processed products appears to create large incentives to process those commodities locally, particularly for soybeans, which are turned into oil and in turn provide the feedstock for Argentina's rapidly growing biodiesel industry.

The Common Customs Code (CCC), approved during the 39th MERCOSUR CMC meeting in August 2010, restricts future taxes and anticipates a transition to a common export tax policy. The CCC still must be ratified by MERCOSUR's member countries.

### **Export Registrations**

In addition to levying high export taxes, the government of Argentina requires major commodities to be registered for export before they can be shipped out of the country. Until 2011, the National Organization of Control of Agricultural Commercialization (ONCCA) administered the Registry of Export Operations for meat, grain (including vegetable oils), and dairy products under the provisions of Resolution 3433/2008. After ONCCA was dismantled in early 2011, administration of the Registry of Export Operations was transferred to the Ministry of Agriculture, but reportedly there have been no major changes to procedures for registering exports. All exports must still be registered, and the government retains the authority to reject or delay exports depending on domestic price and supply conditions. One of the goals of the export registration process has been to control the quantity of goods exported, and thereby guarantee domestic supply. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions due to shortfalls in domestic supplies.

Argentina continues to impose time restrictions on grain and oilseed exports depending on when the export tax is paid. Under applicable regulations, export permits are valid for 45 days after registration is approved, if the export tax is paid at the time of export. Export permits may be valid for up to 365 days for corn and wheat and 180 days for soybean and sunflower products if the exporter pays 90 percent of the export tax at the time the export license is approved.

## **GOVERNMENT PROCUREMENT**

Law 25551 of 2011 establishes a national preference for local industry for most government procurement where the domestic supplier's tender, depending on the size of the company, is no more than five percent to seven percent higher than the foreign tender. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

In March 2011, the Argentine Senate approved an amendment to Law 25551 extending the entities subject to the "Buy Argentine" regime to include: (a) offices within the Argentine public sector (centralized and decentralized public administration); (b) social security institutions; (c) state-owned companies; (d) private legal entities engaged in public works and licensees and concessionaires of public utilities and other services (fixed and mobile communications, freight transportation, mining, oil and gas, etc.); (e) provincial public entities; and (f) private entities with tax benefits. As of December 2011, the Draft Law was still pending in the Argentine Lower House.

Argentina is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Argentina continued to be listed on the Priority Watch List in the 2011 Special 301 report. Recently, the Argentina has taken a number of positive and encouraging steps on intellectual property rights (IPR) protection. Argentina intensified its enforcement efforts beginning in 2010, and industry continues to report encouraging cooperation with police officers regarding raids. However, key concerns remain regarding the need to strengthen IPR legal enforcement to combat the widespread availability of pirated and counterfeit products. Problems persist in the civil and criminal enforcement areas. Delays in the adjudication of criminal IPR infringement cases are common, and there is a reluctance to impose strong penalties, such as incarceration, for repeated and/or serious violations. Argentina has taken steps to address its patent backlog, but it still does not provide adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In addition, Argentina lacks an effective system to address patent issues expeditiously in connection with applications to market patented pharmaceutical products.

## **SERVICES BARRIERS**

### **Audiovisual Services**

U.S. industry remains concerned with the added costs associated with exporting movies to Argentina due to measures governing the showing, printing, and dubbing of films. Industry also has concerns regarding the practice of charging *ad valorem* customs duties on U.S. exports based on the estimated value of the potential royalty generated from the film in Argentina rather than on the value of the physical materials being imported.

Beginning on August 30, 2011, under Resolution 2114/2011, the National Institute of Cinema and Audiovisual Arts is authorized to tax foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and

geographical locations of theaters at which films will be screened within Argentina. Films that are screened in 15 or fewer movie theaters are exempted.

In October 2009, the Argentine Congress passed Law 26.522 regulating audiovisual communication services. Although the government of Argentina has promulgated implementing regulations, some provisions of the law have been suspended pending judicial review. If implemented, several aspects of the law appear problematic. Law 26.522 would limit foreign ownership of media outlets to 30 percent, require minimum national content of 60 percent to 70 percent, require that all signals owned wholly or partially by the national government be included, set a minimum screen quota for Argentine movies, and require a fee on foreign programmers in the amount of 0.5 percent of annual revenue for acquiring Argentine films. The law provides for different tax treatment for foreign media operations compared to local companies and imposes a limit on the number of broadcasting licenses (based on geography and market segment) in the hands of a single licensee.

### **Financial Services**

Argentina limits lending by foreign bank branches based on local paid-in capital, as opposed to the parent bank's capital.

### **Insurance Services**

The Argentine insurance regulator (SSN) issued an order (Resolution 36.615/2011) in February 2011 prohibiting cross-border reinsurance. Beginning on September 1, 2011, local insurers may only contract reinsurance from locally based reinsurers. Foreign companies without local operations are not allowed to enter into reinsurance contracts except when the SSN determines there is no local reinsurance capacity.

On October 27, 2011, the Argentine insurance regulator issued Resolution 36.162 requiring that "all investments and cash equivalents held by locally registered insurance companies be located in Argentina." These regulations do not formally require the exchange of dollars into pesos; companies can convert their holdings to dollar-denominated assets based in Argentina and still be in compliance. Nevertheless, foreign insurance firms have reported pressure by the Argentine government to sell their dollars for pesos. Many of these companies have liabilities denominated in dollars, making this foreign exchange requirement difficult to meet. Insurance firms also have said that complying with the Argentine government's requirements would force them to take losses due to what they believe is an official exchange rate that over-values the peso.

## **INVESTMENT BARRIERS**

### **Pension System**

The Argentine parliament approved a bill to nationalize Argentina's private pension system and transfer pensioner assets to the government social security agency in November 2008. Compensation to investors in the privatized pension system, including to U.S. investors, is still pending and under negotiation.

### **Foreign Exchange and Capital Controls**

Hard currency earnings on exports, both from goods and services, must be converted to pesos in the local foreign exchange market. In November 2011, Argentina eliminated the exceptions previously granted to hydrocarbon and mining exporters. These firms must now exchange their revenues to pesos on the local

foreign exchange market. Revenues from exporting to Argentine foreign trade zones and from re-exporting some temporary imports are still exempted from this requirement. To the extent that these foreign exchange restrictions negatively affect U.S. investors in Argentina, those investors may be able to invoke the United States-Argentina Bilateral Investment Treaty (BIT), which contains obligations regarding the free transfer of capital.

Time limits on fulfilling the obligation to convert to pesos range from approximately 60 days to 360 days for goods (depending on the goods involved) and 15 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters receive more generous time limits. A portion of foreign currency earned through exports may be used for foreign transactions.

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact on the nominal exchange rate from large short-term capital flows. In May 2005, the government issued Presidential Decree 616 revising registration requirements for inflows and outflows of capital and extending the minimum investment time period from 180 days 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 nonresidents” 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 fewer than 365 days.

Since 2004, both foreign and domestic institutional investors have been restricted to total currency transactions of \$2 million per month, although transactions by institutions acting as intermediaries for others do not count against this limit. In June 2010, the Argentine Central Bank introduced a regulation that permitted Argentine residents to conduct more than \$2 million per month in foreign exchange transactions for specific enumerated purposes (*e.g.*, to purchase bonds issued by the federal government, to deposit in the local banking system, and to finance investment projects). The Central Bank also requires Argentine residents who purchase more than \$250,000 within a year to show that the purchase is compatible with personal income tax filings.

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 that imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident 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: (1) they may not be transferred out of the country for 365 days after their entry; (2) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (3) a 30 percent unremunerated reserve requirement must be met, meaning that 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.

As of September 2006, a deposit is not required for capital inflows intended to finance energy infrastructure works. Furthermore, as of January 2008, a deposit is not required for inflows for the purchase of real estate property by foreigners as long as the foreign exchange liquidation occurs on the day of settlement (and transfer of the title). As of February 2009, a deposit is not required for inflows to be used for tax payments and social security contributions within the 10 days following settlement of the foreign currency exchange. Violations are subject to criminal prosecution. In October 2007, the Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank



initial public offerings. However, foreign firms may still trade Central Bank debt instruments on the secondary market. In November 2011, insurance firms converting non-Argentine assets to Argentine assets were also exempted from this requirement.

Argentina increased controls on retail foreign exchange in October 2008. Buyers are required to be approved by AFIP, which evaluates each request based on the individual's or company's revenue stream. Local business representatives have reported receiving amounts much lower than they requested. This has hampered the ability of Argentine importers to buy U.S. exports.

### **Non-Payment of Investment Treaty Awards**

Nine U.S. firms have pending cases against the government of Argentina in investor-state arbitration under the United States-Argentina BIT, although there are reports that two of those claims have now been settled. Some of these claims allege that measures imposed by Argentina during the financial crisis that began in 2001 breached certain BIT obligations. Investor-state arbitral tribunals have ruled against Argentina in a number of these cases, awarding hundreds of millions of dollars to U.S. investors.

To date, Argentina has resisted paying any awards made to U.S. investors. Argentina has argued that, under the International Center for Settlement of Investment Disputes (ICSID) Convention, it is not required to pay damages until a prevailing claimant has completed the potentially lengthy additional process of taking all necessary steps to enforce a final ICSID award through the Argentine courts. In 2008, the U.S. Government filed a submission in an arbitration rebutting Argentina's argument and reaffirming its view that Argentina is obligated to pay final ICSID awards immediately. Arbitral tribunals have consistently rejected Argentina's argument.

As a result of Argentina's failure to pay two final ICSID awards, the two U.S. companies to which these awards are owed have filed petitions with the Office of the United States Trade Representative seeking the suspension of all benefits to Argentina under the Generalized System of Preferences (GSP). These petitions have been accepted for review and included in the U.S. Government's annual GSP review. Decisions on both petitions are pending.

### **ELECTRONIC COMMERCE**

Argentina does not allow the use of electronically produced air waybills that would accelerate customs processing and the growth of electronic commerce transactions.