

# ARGENTINA

## TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$3.6 billion in 2010, an increase of \$1.9 billion from 2009. U.S. goods exports in 2010 were \$7.4 billion, up 33.1 percent from the previous year. Corresponding U.S. imports from Argentina were \$3.8 billion, down 2.2 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 \$3.7 billion in 2009 (latest data available), and U.S. imports were \$1.4 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$6.3 billion in 2008 (latest data available), while sales of services in the United States by majority Argentina-owned firms were \$150 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$14.1 billion in 2009 (latest data available), up from \$12.5 billion in 2008. U.S. FDI in Argentina is mostly in mining, the nonbank holding companies, 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 11.6 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. A number of country-specific exceptions and tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit at least one or more MERCOSUR members before reaching their final destination.

Argentina is permitted by MERCOSUR to maintain 100 exceptions to the CET on goods until December 31, 2011, setting tariffs (at Argentina's discretion) either above or below CET. 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.) As of November 2010, Argentina's average applied import tariff rate was 11.6 percent.

During its 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with the much-anticipated approval of a Common Customs Code and the implementation of a plan to eliminate double application of the CET within MERCOSUR. The plan takes effect in three installments with the first phase due to be implemented no later than January 1, 2012 in all member countries. The CMC also took steps to adopt a harmonized guide for Customs Value Control of imports no later than August 1, 2011. While the majority of tariffs are levied on an *ad valorem* basis, Argentina charges compound rates consisting of *ad valorem* duties plus specific levies known as "minimum specific import duties" (DIEM) on products in several sectors, including textiles and apparel, footwear, and toys. Although these DIEMs expired on December 31, 2010, there are concerns that the Argentine government is considering an extension. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent.

## FOREIGN TRADE BARRIERS

## **Nontariff Barriers**

Argentina has imposed a growing number of customs and licensing procedures and requirements since October 2008 that, combined with a series of measures implemented in mid-2007, can make importing U.S. products and products from third-country affiliates of U.S. companies more difficult. The measures include additional inspections, port-of-entry restrictions, expanded use of reference prices, automatic and non-automatic licenses, and requirements for importers to 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 implemented in October 2008 and subsequently have delayed imports and made imports of intermediate and final goods from U.S. companies and their third-country affiliates more costly and, in some cases, nearly impossible. In response to U.S. Government inquiries, Argentine government officials have asserted that all of these measures are nondiscriminatory and WTO-consistent.

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 are allowed, 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 0 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.

Starting in April 2010, importers have reported delays in the approval of certificates of free sale for imported food products by the Instituto Nacional de Alimentos (INAL) – a division in 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 imports, approval of the certificate is reportedly conditioned on an absence of a domestic substitute of the product. Additionally, in 2010, Argentine policymakers reportedly began requiring companies to invest domestically or commit to export an equal amount in order to import.

### *Antidumping*

According to World Trade Organization (WTO) figures, Argentina has initiated over 30 antidumping investigations since October 2008. Provisional duties have been applied in several cases. Affected goods include textiles, clothing (including footwear), and metal products, mostly from major trading partners Brazil and China. According to the WTO, only one other country initiated more antidumping investigations between January and April 2010 than Argentina.

Argentina initiated an antidumping investigation on coated paper and paperboard from the United States on December 15, 2010.

### *Import Licensing*

Since October 2008, the government of Argentina has significantly expanded the list of products subject to both automatic and non-automatic import licensing. In 2009 and 2010, Argentina continued and expanded the use of non-automatic licenses to protect what Argentina characterizes as “sensitive sectors with policy

instruments approved by the WTO.” U.S industry representatives have complained that the time for ruling on 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 burdensome and requires multiple duplicative reviews by several different government offices. Once issued, the certificates are valid for 60 days.

According to the most recently available official information, over 600 tariff lines are currently subject to non-automatic licenses. Of the products subject to the non-automatic licenses, almost 50 percent are textile products, yarn, and fabrics. However, a broad range of other sectors has been targeted, including metallurgical products, 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 burdensome procedures. The government of Argentina says this requirement is needed for informational purposes. Some U.S. companies, however, claim it is designed to delay footwear imports.

Another measure, Disposition 16/2008 of November 2008, imposed automatic license requirements on 1,200 different types of consumer goods, which collectively represented approximately seven percent of total imports in 2007. Products affected include food and drink, pet food, computer and audio equipment, cars, bicycles, cameras, mattresses, telephones, toys, and watches. The licenses are issued 48 to 72 hours after application and are described as statistical requirements. Companies have reported not being granted import licenses unless they commit to export from or invest in Argentina. They also claim that they are prevented access to parts of the Argentine market.

In February 2010, Argentina and Brazil agreed to study non-automatic licenses currently in force in both countries and to find ways to make the licensing regimes less burdensome. No further announcements have followed, and in August 2010 the Argentine press reported delays in the approval of non-automatic licenses for agricultural machinery, which mostly affects exports from Brazil. Brazil accounts for 50 to 60 percent of total Argentine imports of agricultural machinery (\$620 million in 2010, according to private estimates), while the United States accounts for 17.3 percent.

Due to a surge in demand between March and June 2010, driven by strong economic growth, the government of Argentina agreed with local industry representatives from the automotive and agriculture machinery industries to suspend non-automatic licenses on truck tires and agricultural machinery.

In February 2011, Argentina expanded the list of products requiring non-automatic licenses to include approximately 200 more products. The Minister of Industry stated in a press release that this increase is designed to help domestic manufacturers and boost local production.

#### *Customs Valuation*

Argentina currently applies reference values to over 24,000 imported 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 and/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. Private estimates indicate that approximately 24,000 products are currently subjected to reference prices for Argentine customs purposes.

Customs External Note 57 of 2007, which the government of Argentina indicated was designed to discourage under-invoicing and fraudulent under-payment of customs duties, requires importers of any

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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. The government of Argentina has made the list of reference prices and applicable countries (the Annex to Customs External Note 58) available at:

<http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131630/notaext58-2007-sup.doc>.

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. The stated purpose of the measures is to prevent under-invoicing. 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>.

Resolution 2783/2010 of February 2010 set reference values for the import of some tariff lines of glassware for table/kitchen from several countries, including the United States. The full text of Resolution 2783/2010 can be found at:

<http://www.infoleg.gov.ar/infolegInternet/anexos/160000-164999/164881/norma.htm>. In 2009, U.S. imports into Argentina falling under the affected tariff lines totaled \$260,000.

#### *Ports of Entry*

Argentina restricts entry points for several classes of goods. Customs Resolution 52 of 2007 and subsequent resolutions restrict the ports of entry for numerous items, including sensitive goods classified in 20 Harmonized Tariff Schedule (HTS) chapters (*e.g.*, textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches), via specialized customs procedures for these goods. Resolution 52 was itself a modification of the 2005 General Resolution 1924, which implemented specialized customs treatment for textiles, footwear, and toys.

With Resolution 52, partial limitations on ports of entry were also applied to plastic household goods, leather cases and apparel, porcelain and ceramic tableware and ornaments, household glass goods, imitation jewelry, household appliances, pots and pans, computers, car parts, motorcycles and parts, bicycles and parts, lamps, and toys. The government of Argentina has listed products limited to certain ports of entry and the ports of entry applicable to those products 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 Customs External Note 58 of 2007, which revised some reference prices and set new ones on over 7,000 tariff lines. This Note expanded selective, rigorous "red channel" inspection procedures (via Resolution 1907 of 2005 and amplified by Customs External Note 55 in 2007) to a broader range of goods and requires importers to provide guarantees for the difference of 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, several provincial and national legislative authorities have requested the elimination or modification of the specialized customs scheme. Through Resolutions 3/2010 and 37/2010 of February and June 2010, respectively, the government of Argentina increased the number of authorized ports of entry for certain products.

Since 2005, the government of Argentina has requested private sector companies to negotiate and abide by sector-specific voluntary price caps aimed at limiting price increases, especially on Argentina's basic consumption basket components. Sectors in which voluntary price accords have been negotiated include a variety of foodstuffs, personal hygiene and cleaning products, and pharmaceuticals. The government, which had largely frozen public utility electricity and natural gas rates since 2002, has recently allowed selective increases targeting industrial and other large users, and is starting to allow increases for consumers.

### *Customs Procedures*

Certificates of origin have become a key element in Argentine import procedures because of antidumping measures, criterion values, and other restrictions with a geographic consideration. In August 2009, Argentina's Federal Administration for Public Revenue (AFIP) revised certificate of origin requirements for a long list of products with non-preferential origin treatment through External Note 4. These additions referred mainly to certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (wool, cotton, other vegetable, etc.), carpets, most textiles (knitted, crocheted, etc.), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the MFN 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 over the 180-day validity period for the certificate of origin.

The import-export regulations applied to couriers were most recently modified in 2005 via AFIP Resolution 1811, which reduced the maximum value of express delivery service shipments for which simplified customs clearance procedures are applied from \$3,000 to \$1,000. Additionally, couriers 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**

Following the 2002 currency devaluation, the government of Argentina imposed export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities, to generate revenue, increase domestic supplies, and constrain domestic price increases. 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 2009 was equal to 15.7 percent of the value of all Argentine exports (down from 16.3 percent in 2008), including goods not subject to export taxes. In 2009, when a severe drought affected agricultural production, export taxes predominantly came from oil and energy exports, accounting for 12 percent of total tax collection.

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, and remain 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 seeds 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 2010, 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

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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 Common Market Council (CMC) meeting in August 2010, which still needs to be ratified and enacted by member states, also restricts new export taxes. Although the CCC does not overturn existing export tax policies (Decision 27/2010, Article 157, Item b.4), it restricts future taxes and anticipates a transition to a common export tax policy.

### **Export Registrations**

In addition to applying high export taxes, the government of Argentina requires export registration for major commodities before an export sale can be shipped. The National Organization of Control of Agricultural Commercialization (ONCCA) administers the Registry of Export Operations for meat, grain (including vegetable oils), and dairy products under the provisions of Resolution 3433/2008 of August 27, 2008. All exports must be registered and the government has the authority to reject or delay exports depending on domestic price and supply conditions. This process has been used to control the quantity of goods exported, thereby guaranteeing domestic supply. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions to guarantee domestic supplies. As of November 2010, registrations were open for all major commodities. Resolution 7552/2009 of October 2009 establishes mandatory domestic supply levels for corn and wheat (8 million tons and 6.5 million tons, respectively), which must be maintained in the domestic market in order for export registrations to be granted for those commodities. Resolution 7552/2009 eliminated restrictions for wheat and corn exports, principally for exporters and producers participating in an agreement to precondition exports on satisfaction of domestic market needs.

Argentina imposes 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 time of export. Up to 365 days for corn and wheat, and 180 days for soybean and sunflowers products, are allowed if the exporter pays 90 percent of the export tax at the time the export license is approved.

### **GOVERNMENT PROCUREMENT**

Law 25551 of 2001 establishes a national preference for local industry for most government purchases where the domestic supplier bid, depending on the size of the company, is no more than five percent to seven percent higher than the foreign bid. The preference applies to tender offers 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.

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 (IPR) PROTECTION**

Argentina was listed on the Priority Watch List in the 2010 Special 301 report. Key concerns cited in the report relate to the need to strengthen IPR enforcement to combat the widespread availability of pirated and counterfeit products. Although cooperation continues between Argentina’s enforcement authorities and U.S. industry, stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products are needed. Problems persist in the civil and criminal enforcement areas, including

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civil damages that have not proven to be a deterrent to piracy and counterfeiting. In criminal cases, delays in the adjudication of IPR infringement cases are common, and there is a reluctance to impose stronger penalties, such as incarceration, for repeated and/or serious violations. Argentina also continues to face a backlog of patent applications and does not provide adequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In addition, Argentina lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

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### **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, and 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.

On October 10, 2009, the Argentine Congress passed a law for regulation of audiovisual communication services, Law 26.522. Although the government of Argentina has already promulgated regulations to implement Law 26.522, some provisions are suspended pending judicial decisions. Some U.S. companies have raised concerns regarding several aspects of the law, which could potentially discriminate between national and foreign investors. Law 26.522 establishes, non-retroactively, a cap of 30 percent foreign capital ownership in media outlets, a minimum national content of 60 percent to 70 percent, an obligation to include all signals owned totally or partially by the national government, a minimum screen quota for Argentine movies, and a fee on foreign programmers in the amount of 0.5 percent of annual revenue for acquiring Argentine films. Foreign media operations are given different tax treatment from local companies and the law also 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.

## **INVESTMENT BARRIERS**

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.

### **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, with some exceptions. There are limits set on the total amount of export income that may remain in foreign currency. For example, the maximum foreign exchange clearance allowed for hydrocarbon exports is 30 percent of total revenues. There is no maximum for exports of certain minerals, re-exports of some temporary imports, and exports to Argentine foreign trade zones.

Time limits to fulfill 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

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where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters receive more liberal 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 are 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: (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) 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.

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

Fifteen U.S. investors have submitted claims to investor-state arbitration under the United States-Argentina bilateral investment treaty (BIT). 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 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “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 ongoing 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 for 2010. 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.