

# ARGENTINA

## TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$1.7 billion in 2009, a decrease of \$44 million from 2008. U.S. goods exports in 2009 were \$5.6 billion, down 26.2 percent from the previous year. Corresponding U.S. imports from Argentina were \$3.9 billion, down 33.2 percent. Argentina is currently the 31st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were \$3.6 billion in 2008 (latest data available), and U.S. imports were \$1.6 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$4.8 billion in 2007 (latest data available), while sales of services in the United States by majority Argentine-owned firms were \$131 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$15.2 billion in 2008 (latest data available), up from \$14.1 billion in 2007. U.S. FDI in Argentina is mostly in the nonbank holding companies, manufacturing, and mining sectors.

## IMPORT POLICIES

### Tariffs

Argentina's import tariffs range from zero percent to 35 percent, with an average applied tariff rate of 16 percent as of late 2009.

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*, with a limited number of country-specific exceptions. 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 until December 31, 2011, over 800 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, chemicals, sugar, and an additional diversified group of 100 products. On November 18, 2009, Argentine President Cristina Kirchner and Brazilian President Luiz Inácio Lula da Silva agreed to work on the reduction of exceptions for Argentina.

In December 2009, Argentina – along with the other MERCOSUR members – also approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the bound levels, *i.e.*, the level that generally under WTO rules cannot be exceeded. In October 2008, Argentina adopted a decision (issued by MERCOSUR in September 2007), to increase the CET on several hundred tariff lines of textiles, footwear, and automobiles and automotive parts from a prior ceiling of 20 percent to either 26 percent (for textiles) or 35 percent (for apparel and footwear). Automobiles and automotive parts are subject to tariffs of 26 percent or 35 percent depending on the model, part, and/or origin.

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. These DIEMs are

scheduled to expire on December 31, 2010. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent.

Since late 2008, the government of Argentina has initiated numerous antidumping investigations and imposed antidumping duties in a wide range of sectors. The antidumping investigations primarily involve products imported from major trading partners Brazil and China. While none of the new investigations involve direct exports from the United States, there are several U.S.-owned companies exporting from China to Argentina that have complained of lost market share and unprofitable margins on products due to antidumping duties, either imposed or threatened.

Since 2007, Argentina has imposed a specific safeguard duty on imports of recordable compact discs. The safeguard is scheduled to be phased out by May 2010.

### **Nontariff Barriers**

Argentina has imposed new 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. The U.S. Government continues to monitor the situation.

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>.

Another measure, Disposition 16/2008 of November 2008, imposed new “automatic” license requirements on 1,200 different types of consumer goods, which collectively represented approximately 7 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 hours to 72 hours after application and are explained as statistical requirements.

Customs Resolution 52 of 2007 and subsequent resolutions restrict the ports-of-entry for numerous goods, 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). Partial limitations on ports-of-entry are 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.

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 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>.

Since 2005, the government of Argentina has required non-automatic licenses on shoes, requiring certificates that are valid for only 120 days and whose issuance involves procedures that, according to the private sector, are burdensome. 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.

Since October 2008, the government of Argentina has significantly expanded the list of products subject to both automatic and non-automatic import licensing. From January to April 2009, it submitted seven new notifications to the WTO Committee on Import Licensing Procedures. In total, Argentina has issued regulations enforcing automatic as well as non-automatic licensing on nearly 40 tariff lines affecting three dozen trading partners. A broad range of sectors have been targeted, including textiles, metallurgical products, chemical products, general and special purpose machinery, consumer goods, and several additional sectors. Since 2005, the government has also required non-automatic import licenses for toys. Obtaining a license is burdensome and requires multiple duplicative reviews by several different government offices. The process generally takes 100 days or more, partly due to a backlog of license applications. Once issued, the certificates are valid for 60 days. In 2008 and 2009, some toy importers reported difficulty in bringing products into Argentina.

Argentina also may be using its import license system as a trade balancing measure and companies have reported concerns that the system lacks transparency, appears arbitrary, and is preventing access to the Argentine market. Companies also have reported not being granted import licenses unless they commit to export from or invest in Argentina.

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 large users and is starting to allow increases for consumers.

Argentina prohibits the import of many used capital goods. Used capital goods that can be imported are subject to a 6 percent import tariff. Some used machinery imports are allowed, but only if repaired or rebuilt. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self-propelled agricultural machinery, unless it is rebuilt. Imports of used clothing are prohibited through June 2010, except when donated to government or religious organizations, as established by Resolution 367 in 2005. Argentina prohibits the importation and sale of used or re-treaded tires, used or refurbished medical equipment, including imaging equipment, and used automotive parts.

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 HTS lines).

### **Customs Procedures**

In August 2009, Argentina's Federal Administration for Public Revenue revised certificate of origin requirements for a long list of products with non-preferential origin treatment through External Note 4 (which replaced External Note 2 from 2008). This regulation refers generally to certain organic chemicals, tires, parts of bicycles, 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. 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.

In 2005, AFIP Resolution 1811 amended the import-export regime applied to couriers. This amendment 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 2008 was equal to 16.3 percent of the value of all Argentine exports (up from 11.8 percent in 2007), including goods not subject to export taxes. In 2008, export taxes, which predominantly come from agricultural exports, accounted for nearly 13 percent of total tax collection and for virtually the whole of the Argentine government fiscal surplus (3.1 percent of GDP).

Export taxes continue to be actively managed by the government of Argentina. As of November 2009, the following major agricultural commodities were 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 effective export tax on biodiesel was 16.6 percent in 2009, with a 2.5 percent rebate. The differential taxes between raw and processed products 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.

### **Export Registrations**

Along with 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 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 2009, 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 these regulations, exporters must export the product within 45 days of registration, 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 the export tax at the time of requesting the export license.

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

Argentina was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the report relate to strengthening IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Although cooperation has improved between Argentina's enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products is needed. Civil damages have not proven to be a deterrent to piracy and counterfeiting, and in criminal cases the judiciary is reluctant to impose strong penalties, such as prison sentences. In addition, Argentina does not provide adequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products and lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of 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, 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.

### **Financial Services**

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

## **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 5 percent to 7

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.

## **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 negotiation.

## **Exchange and Capital Controls**

Hard currency earnings on exports, from both 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 135 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters face more liberal time limits. As a general matter, local companies may not use foreign currency to pay for offshore transactions. However, 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 of large short-term capital flows on the nominal exchange rate. 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 less 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.

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 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 cases claim 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 the damages that it owes to U.S. investors under these awards. 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 affirming its view that Argentina is obligated to pay final ICSID awards immediately. Arbitral tribunals have rejected Argentina's argument.

At present, U.S. investors continue to seek Argentina's payment of outstanding arbitral awards.

### **ELECTRONIC COMMERCE**

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.