

Business

Law

International

Vol 13 No 2 pp 119–240 ISSN 1467 632X

May 2012

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Published by the Legal Practice Division of the International Bar Association

Business Law International

Business Law International is a journal of the International Bar Association Legal Practice Division.
It is published three times a year.

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Free to members of the Legal Practice Division.
Annual subscription for non-members, including index: 2011 prices:
£215 (\$344) full year; £80 (\$130) single issue.
Please order from the International Bar Association at subscriptions@int-bar.org.

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www.ibanet.org

Postal Information

Periodicals postage paid at Rahway NJ.
This journal is published three times a year.
Postmaster: send corrections to:
Business Law International
c/o Mercury Airfreight International Ltd Inc
365 Blair Road, Avenel, NJ, 07001, USA
© IBA Legal Practice Division 2012

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Articles appearing in this journal are indexed in:

- Cabell's Directory of Publishing
- H W Wilson's Index to Legal Periodicals
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- International Bibliography of the Social Sciences (IBSS)
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Business Law International

Vol 13 No 2 pp 119–240 May 2012 ISSN 1467 632X

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Business Law International

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Business Law International, published by the Legal Practice Division of the IBA, is the leading law journal devoted to issues of relevance to the international commercial, legal and academic community.

Business Law International welcomes submissions from potential contributors. Articles should deal with commercial law topics that have a multijurisdictional or cross-border flavour. Submissions should be 3,000–10,000 words long, although submissions may be considered if they are below or above this word length. Full guidelines for contributors can be found on the inside back cover of this journal. All articles are peer-reviewed.

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BLI Speedread

A brief overview of the articles in the May 2012 issue of
Business Law International

2012 London Olympics: Dispute Resolution in a Commercial Context

Richard McLaren (pp 123–142)

The world eagerly awaits the commencement of the 2012 Summer Olympic and Paralympic Games in London, United Kingdom. This article describes the multiplicity of contracts and legislation that interlace the structure and fabric of the London Olympics. In describing the types and scope of contracts and legislation used, it discusses the applicable law and dispute resolution mechanisms used in a host of commercial contracts for the London Olympics.

FATCA and Funds – Where Are We Now?

Jennifer Wheeler (pp 143–162)

This article examines the current position in relation to FATCA as it affects the investment fund industry. The article analyses the key concepts that will be applicable to funds and that the global fund industry will need to understand and address going forward. It also reviews the areas of FATCA that remain unclear in ways that could have an impact on the funds market and considers potential solutions to these issues. Finally, the article gives a list of the key dates that relate to the implementation of FATCA and thus advises investment funds of a timeline for their own actions.

WTO Rules and Argentina's Import Controls

Gustavo L Morales Oliver (pp 163–194)

During the last decade Argentina has developed a broad import control system, adopting multiple measures that have stacked up on top of each other. As a result, Argentina has become one of the most protectionist countries in the world according to Global Trade Alert.

- Is there a pattern in the evolution of these measures?
- Were all of them WTO compliant?
- What is the purpose of this import control system?
- Why is it that no WTO consultations or disputes were initiated in connection with this matter?
- Is it possible to do business in Argentina in this context?

This article aims at introducing this case to scholars and practitioners in the international community by describing the evolution of Argentina's current import control system – including the reactions of importers and other nations – providing preliminary answers to the questions raised above, and providing a forecast of Argentina's international trade policy for the near future.

Social Media Usage in the Workplace Around the World – Developing Law and Practices

Daniel Ornstein (pp 195–208)

There is an ongoing and rapid proliferation of social media use in the workplace. As a result, businesses need to be attuned to ensuring social media is used responsibly. This article addresses social media use at work through an analysis of: employment-law issues raised by increasing social media usage in the workplace and the developing legal frameworks for addressing them around the world; ways in which employment case law related to social media is developing illustrated through decisions from England, France and the United States on the rights of employers to sanction employees for derogatory comments made via social media; and steps businesses are taking to deal with social media use at work, based on a survey recently carried out by the author's firm of over 120 businesses.

CASE NOTE**Trade War in the Skies**

Ines Litzenberger (pp 209–222)

Since 1 January 2012, all aircraft arriving or departing from an airport in the European Union have had to participate in the European Union Emissions Trading System (ETS). This has caused considerable uproar throughout the world. Preceding recent discussions was the European Court of Justice's judgment concerning the ETS, which held that the system is compatible with the Chicago Convention, the Kyoto Protocol, the US–EU Open Skies Agreement, as well as customary international law. Since then, opposing states have tightened their economic threats against the EU to pressure it into abolishing the system.

CASE NOTE**Vodafone International Holdings BV (Vodafone NL)**

G Mahadevan (pp 223–234)

In Vodafone International Holdings BV, the Supreme Court of India held that the transfer of shares in an offshore entity between two non-resident persons/entities cannot be taxed in India only on the plea that the underlying assets determining the value of the shares was in India.

WTO Rules and Argentina's Import Controls

Gustavo L Morales Oliver*

The WTO, as the evolution of GATT 1947, seeks to promote international trade free of non-tariff restrictions, except for those allowed under WTO agreements.

Currently, more than 150 countries are members of the WTO and Argentina is one of them.¹ Therefore, Argentina must abide by WTO rules, which, to a large extent, relate to import and export restrictions.

During the last decade, Argentina has developed an import control system,² which has seen significant enhancements since 2008. The Argentine authorities have regularly adopted new import control rules, which have piled up on top of each other. Why is this? Is there a pattern in the evolution of these measures? Were all these measures WTO compliant? What has been the purpose of this import control system? Is it possible to do business in Argentina in this context?

As a result of this policy, Argentina has become one of the most protectionist countries in the world according to Global Trade Alert (GTA),

* Gustavo Morales Oliver is a senior associate at Marval O'Farrell & Mairal in Argentina, where he advises local and foreign clients on corporate and international trade matters. He earned a law degree at Torcuato Di Tella University, a specialist degree in finance at the University of San Andrés and an LLM at the University of Illinois College of Law. This article is intended to provide readers with basic information and it does not purport to be comprehensive or to render legal advice. The final version of this article was edited by the author on 30 April 2012.

1 Argentina joined the GATT in 1967. In 1994, Argentina amended its constitution, implementing a new hierarchy of laws placing international treaties and the constitution at a higher level than domestic laws, decrees and other regulations. In 1995, Argentina passed Law 24425 approving the GATT Uruguay Round Agreements.

2 Some export restrictions have also been imposed (see *The Economist*, 'Protectionism in Argentina – Keep out', 24 September 2011, available at www.economist.com/node/21530136). However, they are beyond the scope of this article.

an independent network of 750 researchers from several universities.³ However, no WTO consultations or disputes have been initiated in connection with Argentina's import control system. Why is this? Is it possible to implement substantial import control measures during almost a decade while also complying with WTO rules? Do WTO rules give room for such a tight import control system?

Argentina will most probably become a case study for anyone interested in cross-border trade controls, free international trade and WTO rules. This article aims to introduce this case to scholars and practitioners in the international community. It describes the evolution of Argentina's current import control system – including the reaction of importers and nations – and provides preliminary answers to the questions raised above. Additionally, it provides a forecast of Argentina's international trade policy in the near future.⁴

Evolution of import control measures in Argentina during the last decade

Background: Argentina's economy during the 1980s, 1990s and 2000s

Argentina's economy has acted like a roller coaster during recent decades, moving from outstanding growth to severe crisis, almost in spasms.⁵ During that time, the foreign exchange rate for the Argentine peso versus the US dollar⁶ and the inflation rate have been significant factors in Argentina's economic plans. However, in the last decade a third element has gained strong relevance: import controls.⁷

3 See Global Trade Alert 10th Report, November 2011: 'Since protectionist acts can affect different numbers of products, sectors, and trading partners, there is no single metric to identify the worst-offending nations. The GTA reports four indicators of harm... On three of the four metrics, Argentina, Germany, India, Indonesia, and the Russian Federation are in the top ten worst-offending nations. See Table 5 [titled] Which countries have inflicted the most harm?' available at www.globaltradealert.org/sites/default/files/GTA10_0.pdf. See also www.lanacion.com.ar/1377353-la-argentina-lidera-el-ranking-de-paises-mas-proteccionistas. See also www.lanacion.com.ar/1457522-la-argentina-con-record-de-medidas-proteccionistas-en-el-mundo.

4 Other than a legal analysis of Argentina's import control system and WTO rules, this article is not aimed at producing an economic analysis, a comparative analysis or a political analysis of Argentina's case.

5 See www.lanacion.com.ar/m2/1455453-se-ignora-la-macro-pero-se-la-extrana.

6 Argentine citizens have learned that devaluation is a widely used tool in domestic economic policy. Therefore, over time they have lost confidence in their own currency and gained an appreciation for the US dollar as a more stable one.

7 In previous decades (eg the 1980s) import restrictions were also in place (see www.lanacion.com.ar/1459296-vuelven-las-recetas-del-pasado-la-sintonia-fina-se-inspira-en-viejos-gobiernos). However, their impact was somehow different since Mercosur and the WTO were not in place at the time. Additionally, hyperinflation and other economic circumstances gained more attention at that time.

In the mid-1980s, hyperinflation was devastating the nation. In the 1990s a solution was found: 'importing' US inflation rates by means of the 'dollarisation' of Argentina's economy. This meant that a fixed exchange rate between the Argentine peso and the US dollar was established by law. No import controls or foreign exchange controls existed at that time. This open economy sometimes made it easier to import goods than to produce them locally. This plan was effective for a decade but in the early 2000s, Argentina was trapped in a cycle of continuously borrowing funds from the international capital markets and multilateral financial entities (eg the International Monetary Fund) to finance large and growing budget deficits.⁸ By December 2001, borrowed funds were not enough to overcome increasing unemployment and a run on the banking system. Consequently, a major crisis took place including massive riots, President de la Rúa's resignation on 22 December, Argentina's default on its sovereign debt and a strong devaluation of Argentina's currency.⁹

In 2003, Néstor Kirchner took office as President, laying emphasis on national production as a means to reach low unemployment rates and surplus in the balance of payments. The latter was closely related to keeping the foreign exchange rate of the Argentine peso versus the US dollar under control. Néstor was succeeded by Cristina Kirchner, who took office as President in December 2007. Under Cristina Kirchner's presidency, imports were put under close surveillance as a supplementary measure to achieve the goals described above. This strategy became the main driver of Argentina's economic plan and is still in place. Kirchner was re-elected in late 2011 for a second four-year period in office.¹⁰ When initiating her second term in office, Kirchner said in Congress that her second four-year term would entail a fine tuning of Argentina's current economic model.¹¹

8 See http://home.uchicago.edu/gbecker/Businessweek/BW/2002/02_11_2002.pdf. See also www.guardian.co.uk/world/2001/dec/20/argentina1 and www.globaleconomicgovernance.org/wp-content/uploads/setser-and-gelpern-pathways_argentina.pdf. Argentina obtained additional funds through the privatisation of public services companies (eg YPF, Telecom, Telefonica).

9 See www.guardian.co.uk/world/2001/dec/20/argentina1. See Decree 214/2002: by means of devaluation, the fixed exchange rate between the US dollar and the Argentine peso was terminated; devaluation was asymmetric (ie debts in US dollars were transformed into debts in Argentine pesos at a rate of 1 to 1, while credits in US dollars were transformed into credits in Argentina pesos at a rate of 1 to 1.40).

10 Kirchner obtained more than 50 per cent of the votes, which is among the highest figures ever achieved by a candidate running for President in Argentina.

11 See <http://comex.iprofesional.com/notas/131869-Cristina-defendi-el-cerrojo-a-las-importaciones-a-pesar-de-los-reclamos-del-Mercosur>. See also www.redaccionpopular.com/articulo/kristina-fernandez-discurso-de-asuncion-segundo-periodo.

According to official figures, Argentina has achieved interesting growth rates since 2003 (eg eight per cent and nine per cent annual GDP growth several times¹²), while keeping inflation rates under control, although the government's statistics have been seriously challenged.¹³ Some say that this growth is a consequence of the economic plan. Others allege that it is mainly a side effect of the high international price of commodities exported by Argentina (eg soya beans¹⁴).

The main import control measures established by Argentina during recent years are described in Figure 1 in chronological order.

Figure 1: Evolution of import controls in Argentina



12 See www.indexmundi.com/g/g.aspx?c=ar&v=66. See also www.indexmundi.com/argentina/gdp_real_growth_rate.html and www.tradingeconomics.com/argentina/gdp-growth-annual.

13 See www.economist.com/node/21548242.

14 See <http://comex.iprofesional.com/notas/132647-Volvi-la-super-soja-en-Chicago-qued-a-pasitos-de-los-us500-la-tonelada->. See www.iprofesional.com/notas/132916-Los-planetas-se-alinean-y-el-mundo-vuelve-a-jugar-a-favor-de-Argentina-Anticipo-de-que-la-fiesta-contina.

First stage of import measures (1999–2007): reference values and automatic import licensing

Automatic import licences

The automatic import licensing system was established in Argentina in 1999. The list of products falling under this system was often increased by the authorities. Currently, more than 2,100 tariff lines require automatic import licences.

According to WTO rules: 'import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.'¹⁵ Automatic import licensing is defined as import licensing where approval of the application is granted in all cases.¹⁶

Reference values, as with all other trade remedies permitted under WTO rules, must not be administered in such a manner as to have a restrictive effect on imports.¹⁷

As described in the regulation, automatic import licences are in force in Argentina to provide the government with statistical information about imports in advance to the historical records that are created once an import is made. This information is to be used for analysing the potential need for implementing trade remedies without any delays that may harm local production.¹⁸

This system is the least harmful of those described in this article since it only allows the government to collect data and run statistics.

Automatic import licences have caused no relevant complaints by importers in Argentina.

Reference values

In 2001, reference values were imposed to avoid under-invoicing in imports.¹⁹ The list of products to which reference values are applied by the Argentine customs authorities was regularly increased by the authorities. Currently, reference values apply to more than 9,000 tariff lines.

¹⁵ See www.wto.org/english/docs_e/legal_e/23-lic_e.htm#top.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Resolution 17/1999 of the Ministry of Economy.

¹⁹ General Resolution 1004/2001 of the Federal Revenue Agency (AFIP).

This measure allows the government to control the price at which an import is considered for the purposes of import duties. If the price declared by the importer is below the reference value, the importer may pay customs duties calculated on the basis of the reference value or challenge the reference value with the authorities so long as a bond is provided to secure the difference in customs duties. Additionally, the Red Channel would apply to those goods in order to clear customs. Thus, both a review of the documents and a physical inspection of the goods take place.

Reference values are established by the analysis division of the Argentina Customs Valuation Bureau, based on information derived from the values declared by other importers for identical or similar goods; public or private databases; or specialised companies.²⁰ Following a WTO Panel decision, *Colombia – Indicative Prices and Restrictions on Ports of Entry – DS366*, it has been argued that Argentina's reference value system is not WTO compliant as it follows none of the valuation methods set out in the Valuation Agreement of the GATT.²¹ Nonetheless, no major complaints have been noted in connection to reference values in Argentina.

Second stage of import measures (2008–2011): anti-dumping and non-automatic import licensing

Anti-dumping

In 2008, the government amended existing anti-dumping regulation to speed up investigations by reducing the time frame for several steps in the procedure.²²

An anti-dumping investigation may not take more than ten months. However, this period may be extended up to 18 months in light of the

20 General Resolution 1907/2005 of the AFIP.

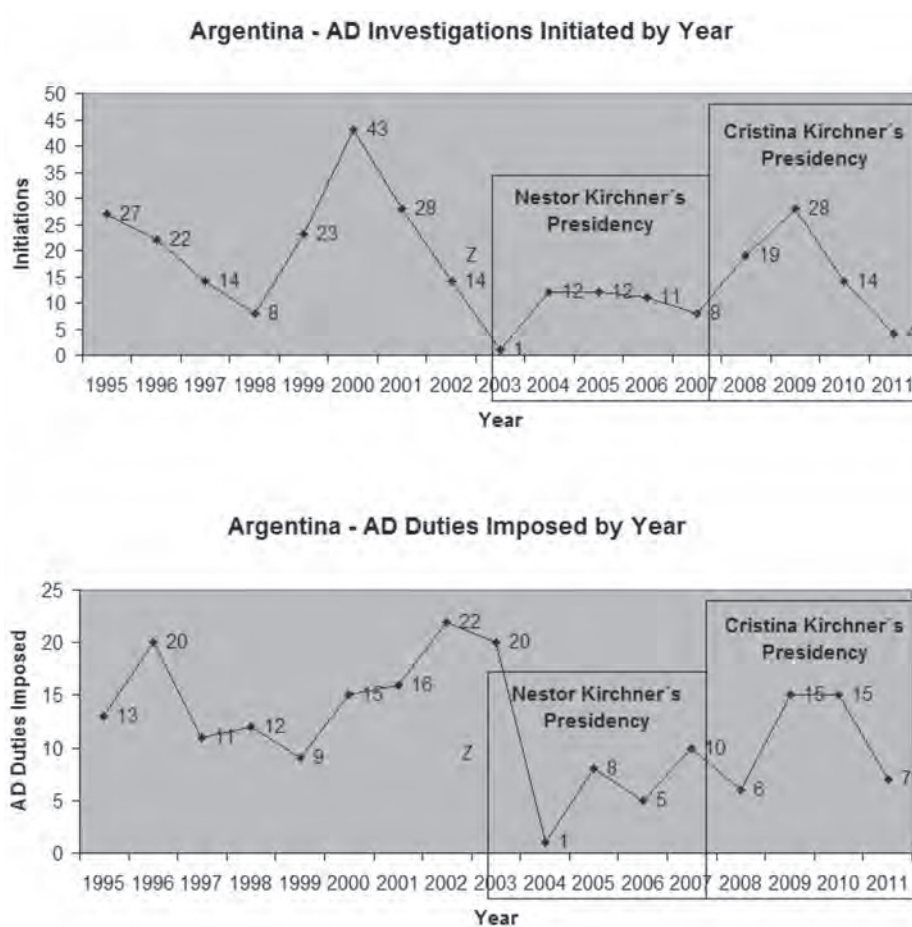
21 See www.internationallawoffice.com/newsletters/detail.aspx?g=fe3848be-b80f-42eb-91a3-112784581c21 (International Law Office – Trade & Customs – Argentina, 11 November 2011, 'Authority tightens controls on import values').

22 Argentina joined the GATT in 1967, thus adhering to GATT's anti-dumping regulation. In 1992, Argentina's local anti-dumping provisions, included in the Customs Code, were replaced by Law 24176, which adopted the Tokyo Round Anti-Dumping Code. In 1994, Argentina enacted Decree 2121/94, establishing detailed rules for anti-dumping and subsidies proceedings. In 1995, Argentina passed Law 24425 approving the GATT Uruguay Round Agreements, including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 – the 'AD Agreement'. In 2001, Argentina enacted Decree 1088/01, amending the rules in order to speed up anti-dumping investigations. In 2006, Argentina enacted Decree 1219/06, setting out the rules for anti-dumping investigations dealing with products whose origin are non-market-economy countries. In 2008, Argentina enacted Decree 1393/08 to further amend procedural rules, again to speed up anti-dumping investigations.

complexity of the relevant investigation.²³ Actually, most anti-dumping investigations in Argentina take approximately 18 months.

After increasing 350 per cent during the interval 2007–2009, initiations of anti-dumping investigations in Argentina have fallen sharply. While 28 anti-dumping investigations were initiated in 2009, 14 were initiated in 2010 and only four in 2011.²⁴

Figure 2:



²³ See Decree 1393/2008.

²⁴ As at 30 April 2012, only one anti-dumping investigation has been initiated by Argentina in 2012.

Between 2003 and 2011, Argentina initiated 109 anti-dumping investigations and imposed anti-dumping duties in 87 of them. This shows a trend of anti-dumping duties imposed in approximately 80 per cent of Argentina's anti-dumping investigations.

Asian products were a regular target between 2007 and 2010. Most of the time, when Chinese products were investigated, Brazil was chosen as the surrogate country whose market economy was to be considered for the purposes of calculating the normal value.²⁵

Anti-dumping investigations are usually initiated because of a formal petition from a significant portion of the local industry of the product to be investigated. The government is allowed to initiate anti-dumping investigations *ex officio*²⁶ but it has rarely done so.

Anti-dumping investigations involve all importers and exporters of the product under investigation who decide to participate in the proceedings, which are conducted by two separate government agencies. The final decision is made by the Minister of Economy of Argentina and it may be grounded both on legal and international trade policy reasons.

Products falling under anti-dumping investigations require certificates of origin in order to be imported into the country, irrespective of their origin. This requirement adds cost and time to these imports.

Anti-dumping allows the government to influence the price of the imports of the products under investigation. However, a long and complex investigation is required to achieve that goal and the group of affected goods is usually small.

Although specific issues may be raised with regard to Argentina's implementation of anti-dumping regulation (ie the permanent suitability of Brazil as an appropriate surrogate country for non-market economies almost all the time), this regulation complies in general with the requirements of WTO rules.

No relevant complaints have been raised with regard to Argentina's anti-dumping regulation.

Non-automatic import licensing (and the initial version of a trade balancing requirement?)

Non-automatic import licensing is allowed under both WTO rules and sections 632 and 609 of the Argentine Customs Code, provided that specific conditions are met.

²⁵ See www.wto.org/english/tratop_e/adp_e/adp_info_e.htm. See also Decree 1219/2006.

²⁶ See Decree 1393/2008.

Under WTO rules, non-automatic import licences may or may not be granted by the authorities.²⁷ Non-automatic import licensing must not have trade restrictive or distortive effects on imports additional to those caused by the imposition of the restriction.²⁸ Non-automatic licensing procedures are required to correspond in scope and duration to the measure they are used to implement and must be no more administratively burdensome than is absolutely necessary to administer this measure.²⁹ Agencies handling non-automatic licences should not take more than 30 days to deal with an application or 60 days when all applications are considered at the same time.³⁰ Further, non-automatic licences must be equally administered.

Non-automatic import licences were imposed in Argentina around the mid-2000s. The number of products falling under this requirement has been regularly increased by the authorities. Currently, imports of goods such as home appliances, shoes, tyres, toys, textiles, motorcycles, metallic products and automobiles require companies to obtain non-automatic import licences in advance (also known as import certificates) in order for the products to be imported into Argentina. More than 1,000 tariff lines currently fall under the non-automatic import licence system.

According to the press, no specific pattern exists on how import licences are granted. It seems that certain products are granted import licences faster than others, depending on the needs of both the local industry and the local economy. It has been reported in the press that higher scrutiny applies to imports of products that are produced and that can be produced in Argentina (eg BlackBerry phones, books).

Obtaining these licences has proved more difficult for importers since 2008. In some cases, importers who depended on a regular inflow of products from abroad (eg large retailers) filed complaints with the courts alleging that the government was in breach of WTO rules, for instance, when granting import licences within time frames of 90, 180 days and more.³¹ The courts repeatedly decided in favour of the importers and ordered that the government should immediately grant the import licences involved in each lawsuit. These judicial decisions were based³² mainly on the following grounds:

27 See www.wto.org/english/docs_e/legal_e/23-lic_e.htm#top.

28 *Ibid.*

29 *Ibid.* See Art 3.2 of the Agreement on Import Licensing Procedures.

30 See note 27 above.

31 See <http://comex.iprofesional.com/notas/133318-En-Brasil-denuncian-que-hay-licencias-pendientes-desde-hace-ms-de-500-das>.

32 Both administrative claims and court actions (ie summary actions – ‘*Acción de amparo*’ – declarative actions and injunctions) may be filed against formal import restrictions. Court actions appear to be more effective since administrative claims would not suspend the application of the relevant import controls.

- proceedings to obtain non-automatic import licences were arbitrarily delayed by the government;³³
- non-automatic import licences are aimed only at assessing the international commercial flow of goods;³⁴ and
- non-automatic import licences apply to industrial supplies and, therefore, interfere with local production.³⁵

However, after some time, even the most active plaintiffs realised that they could not sustain their businesses on the basis of continuous requests to the courts. Therefore, they settled to accept – rather than continue fighting – the government’s implementation of non-automatic licensing. To that end, importers decided to be flexible and adjust their operations to make them fit with the reality of Argentina’s position, for instance, by starting import procedures earlier.

In May 2010, Argentina was questioned at the WTO Committee on Import Licensing.³⁶ Canada, China, the European Union, Japan, Mexico, Peru and the United States asked the following: ‘Some companies report that they have been told that their import licence application will not be approved unless the company agrees to trade balancing requirements established by the Secretary of Domestic Trade. ... Could Argentina please provide an explanation for these measures, along with copies for the Committee of the laws and regulations that authorize and implement these requirements?’

Trade balancing means that the importer is allowed to import goods provided that he exports goods³⁷ for the same value as those imported. This measure compensates outflows of funds caused by payment of imports with inflows of funds caused by collection of exports. Therefore, it has a direct impact on the balance of payments of both the country and the companies.

Argentina’s reply was short and concise: ‘Argentina is unable to provide an explanation for such measures since they do not exist and there are consequently no laws or regulations in this respect.’ This answer was correct and remains correct since no formal measure (ie regulation published in the official gazette) sets out a trade balancing requirement in Argentina.

33 Federal Administrative Court of Appeal, Chamber II, *In re ‘Multiscope SA’* (8 April 2008); Federal Administrative First Instance Court No 8, *In re ‘SHK SA’* (March 2011) and *In re ‘Litchytex SA’* (February 2011). See www.lanacion.com.ar/1392391-aumenta-la-cantidad-de-productos-importados-varados-en-la-aduana.

34 Federal Administrative Court of Appeal, Chamber V, *In re ‘Yamana’* (8 May 2008).

35 Federal Administrative Court of Appeal, Chamber III, *In re ‘Textil Rio Grande’* (12 May 2009).

36 G/LIC/Q/ARG/11.

37 Exports of services may also be considered for the purposes of trade balancing requirements.

Therefore, if proven to exist, the trade balancing requirement could be construed as a *de facto* (ie informal) measure.³⁸

By the time of the above-mentioned questioning at the WTO, the press was suggesting that some kind of trade balancing requests were being made by the authorities to high-profile companies in private meetings.³⁹

During the first semester of 2011, public announcements were made that several companies had committed to export goods in order to reduce the imbalance between their imports and exports as a means of securing their flow of imports.⁴⁰ Porsche committed to export wine and olive products.⁴¹ Volkswagen committed to reduce its imbalance between imports and exports by 70 per cent.⁴² Peugeot committed to balance imports and exports by increasing its exports⁴³ while Alfa Romeo committed to reach the same goal by exporting biofuels.⁴⁴ Goodyear committed to substituting imported supplies with local ones.⁴⁵ Ford committed to increasing exports in order to balance its imports and exports.⁴⁶ Hyundai Argentina became involved in exporting soya products, biodiesel, wine and peanuts.⁴⁷ According to the press, negotiations to obtain these commitments were hard and diplomats were involved in

38 See www.lanacion.com.ar/1332530-buscan-reducir-la-importacion-de-autos. See also www.lanacion.com.ar/1366977-laboratorios-en-la-mira-de-moreno, www.lanacion.com.ar/1342179-moreno-vuelve-a-frenar-el-ingreso-de-bienes-importados and www.lanacion.com.ar/1356488-ponen-mas-trabas-para-importar-autos.

39 See www.lanacion.com.ar/1332530-buscan-reducir-la-importacion-de-autos. See also www.lanacion.com.ar/1366977-laboratorios-en-la-mira-de-moreno, www.lanacion.com.ar/1342179-moreno-vuelve-a-frenar-el-ingreso-de-bienes-importados, www.lanacion.com.ar/1356488-ponen-mas-trabas-para-importar-autos, www.lanacion.com.ar/m2/1449674-moreno-exigio-a-las-empresas-que-compensen-importaciones, www.globaltradealert.org/measure/argentina-announces-import-export-balance-policy-automotive-industry, www.globaltradealert.org/measure/argentina-extends-its-import-export-balance-policy-pharmaceutical-industry, www.globaltradealert.org/measure/argentina-import-export-%E2%80%9C1%E2%80%9D-policy-extended-refrigerators-washing-machines-cookers-and-toy. See also G/C/W/667.

40 See www.lanacion.com.ar/1354715-guino-a-las-automotrices-no-tendran-trabas-para-importar.

41 See www.lanacion.com.ar/1360352-vinos-por-autos-para-equilibrar-la-balanza.

42 *Ibid.*

43 See Resolution 116/2011 of the Secretary of Industry and Commerce, approving an investment plan proposed by Peugeot within the framework of Decree 774/05 (Regime of Incentives to Competitiveness in the Automobile Industry). See also Resolution 248/2011.

44 See www.lanacion.com.ar/1367219-peugeot-y-alfa-romeo-con-luz-verde-para-importar.

45 See www.lanacion.com.ar/1375043-hay-que-adaptarse-son-las-reglas-del-partido.

46 See www.lanacion.com.ar/1375792-prometio-ford-revertir-su-deficit-comercial. See also Resolution 248/2011 of the Secretary of Industry and Commerce, which grants Ford the benefits of the Regime for Import of Goods for Large Investment Projects set out by Resolution 256/2000 of the Ministry of Economy. The author had no access to the text of Ford's commitment but Resolution 248/2011 may in part be related to it.

47 See www.lanacion.com.ar/1381343-hyundai-exportara-mani-vino-y-soja.

some cases.⁴⁸ These commitments were not public documents so it was not possible to know their exact content other than by press reports. They are deemed to be unilateral commitments by the companies.

In most of these cases, the exports were exports previously made by other companies. Therefore, no exports were added to the total exports of Argentina – only the exporter's name changed – and the net effect with regard to the balance of payments was zero. However, this initial approach to trade balancing allowed the government to introduce the idea to the local market.

No specific information is available on how effective these commitments were in order both to reduce the imbalance between the exports and imports of each company and secure the possibility of importing goods, but the automobile companies continue doing business regularly in Argentina.⁴⁹

GATT Article X requires members to publish promptly laws, regulations, judicial decisions and administrative rulings of general application, including those pertaining to requirements on imports or exports and to administer them in a uniform, impartial and reasonable manner.⁵⁰

Uncertainty on regulations applicable to imports may enhance the authorities' power to reject import petitions on their own discretion, facilitating implementation of trade restrictive measures. Additionally, lack of formal published rules makes any challenge with the courts substantially more difficult – although not impossible – since the plaintiff would be required to provide evidence that a requirement is made by the authorities although it has not been formally enacted by them. Additionally, the authorities may deny the existence of such a requirement.

No relevant court claims have been initiated with regard to this first version of the non-written trade balancing requirement, which was only applied to a small group of big companies, most of them from the automotive industry.

A similar balancing requirement was analysed in 2001 by a WTO Panel on Dispute DS146 (India – Measures Affecting the Automotive Sector). The Panel concluded that:⁵¹

48 See www.lanacion.com.ar/1349063-presion-por-los-autos-importados (eg German diplomats assisted in the negotiations of the German automobile brands).

49 See www.lanacion.com.ar/1354715-guino-a-las-automotrices-no-tendran-trabas-para-importar.

50 See www.wto.org/english/tratop_e/implic_e/implic_info_e.htm. De facto import controls may be construed as violating the principle of legality established by Art 19 of the Argentine Constitution: 'No inhabitant will be obligated to do what is not mandatory by law nor prevented from what the law does not prohibit.'

51 See www.wto.org/english/tratop_e/dispu_e/cases_e/ds146_e.htm.

- India had acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing on automotive manufacturers an obligation to use a certain proportion of local parts and components in the manufacture of cars and automotive vehicles ('indigenisation' condition).
- India had acted inconsistently with its obligations under Article XI of the GATT 1994 by imposing on automotive manufacturers an obligation to balance any importation of certain kits and components with exports of equivalent value ('trade balancing' condition).
- India had acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing, in the context of the trade balancing condition, an obligation to offset the amount of any purchases of previously imported restricted kits and components on the Indian market, by exports of equivalent value.

India appealed this Panel Report but later withdrew its appeal as a result of the introduction of its new auto policy. The Dispute Settlement Body (DSB) proceeded with the adoption in full of the Appellate Body and Panel Reports. On 6 November 2002, India informed the DSB that it had complied fully with the recommendations of the DSB in this dispute by issuing Public Notice No 31 on 19 August 2002 terminating the trade balancing requirement. India also stated that it had earlier removed the indigenisation requirement by Public Notice No 30 on 4 September 2001.

The WTO Panel on Dispute DS175 (India – Measures Affecting Trade and Investment in the Motor Vehicle Sector) was required to analyse the same legal issues described above for DS146 and the result was identical.

By 2010, the initiation of anti-dumping investigations in Argentina was dramatically decreasing while non-automatic import licences combined with an alleged trade balancing requirement were becoming the primary focus of Argentina's import control programme.⁵²

Third stage (2012): the catch-all system

In December 2011, Cristina Kirchner took office for a second term as President of Argentina and reaffirmed the government's international trade policy.⁵³ A few days later, by means of a presidential decree, she established that the government agencies for both local and international trade matters should be under the Ministry of Economy and Finance. Those areas were previously shared between the Ministry of Economy and the Ministry of Foreign Affairs. The stated purpose for this measure was to achieve faster implementation of

⁵² Later in this article the author provides a thesis on why this change took place.

⁵³ See <http://ar.noticias.yahoo.com/cristina-dixit-puntos-clave-discurso-presidenta-191400072.html>.

the government's trade policy measures.⁵⁴ In fact, this amendment meant a concentration of power in the hands of the Secretariat of Interior Commerce, which is part of the Ministry of Economy and makes all decisions regarding both Argentina's domestic commerce and international trade activity.⁵⁵

Prior sworn import statement (and the advanced version of a trade balancing requirement?)

On 1 February 2012, a new requirement applicable to almost all imports in Argentina became effective:⁵⁶ the Prior Sworn Import Statement (*'Declaración Jurada Anticipada de Importación'* or 'DJA').⁵⁷

The DJAI must be filed in advance to issuing a purchase order and must describe the typical elements of an import transaction (eg FOB price, quantity). This filing is made through the website of the Federal Revenue Agency ('AFIP'), who gives notice to other government agencies that participate in this system.⁵⁸ These agencies may raise objections to the relevant import if they see fit.

It is not clear on what grounds these agencies may object. However, the regulation establishes that these agencies are allowed to participate in the DJAI system on the basis of their jurisdiction and, therefore, it seems reasonable to assume that any objections should be limited to the scope of the relevant agency's field.

If objections are raised, the import procedure will not continue until the importer provides all explanations and documents required directly to the agency raising the objection. Importers must solve the objections by dealing directly with the agency raising them. No time frame is established by the

54 See www.marval.com.ar/Publicacionen-US/MarvalNews/ArticuloMN/tabid/96/language/en/Default.aspx?ItemID=2165&nl=112.

55 See www.marval.com.ar/Publicaciones/MarvalNews/ArticuloMN/tabid/96/ItemID/2164/language/en-US/Default.aspx. See www.lanacion.com.ar/1448034-todo-el-poder-en-manos-de-un-solo-hombre. See also www.lanacion.com.ar/m2/1453483-nunc-tan-concentrados-en-complacer-a-una-sola-persona.

56 The Prior Sworn Import Statement applies to almost all imports for consumption in Argentina except for those falling under the following import regimes, among others: imports for replacing defective goods, reimported goods, imports for donations, imports for samples, diplomatic imports, courier imports, postal service imports and imports related to production plant constructions under specific circumstances.

57 General Resolution 3252/2012 by the AFIP.

58 General Resolution 3252/2012 by the AFIP does not specify whether '*entities*' refers to public, private (eg associations of local producers), or both kinds of entities. The original word in Spanish is '*organismos*', which could be translated into English as *entities*, *organisations* or *agencies*, depending on the context. As at April 2012, only public agencies participate in the DJAI system.

regulation for the authorities to decide the importer's petition for dismissal of the objection.

Only if the objections are solved or if no objections are raised may the proposed import transaction proceed.

So far, the main agencies that have signed up for the DJAI system are the National Administration for Food, Drugs and Medical Technology (ANMAT), the National Agency for Health and Quality in Food and Agriculture (SENASA), the National Institute for the Wine Industry⁵⁹ and the Secretariat of Interior Commerce.⁶⁰ The latter is the leading government agency in terms of international trade in Argentina and has a 15-day period to raise objections once a DJAI is filed.⁶¹

In late April 2012, a strike by port employees took place alleging that import-related work had seriously decreased in the light of the recently imposed DJAI system. The Secretary of Domestic Commerce was able to solve this strike personally.⁶²

The DJAI easily resembles a non-automatic import licence applicable to almost all imports of goods since it constitutes a mandatory filing, which allows the authorities to object to the proposed import transaction. As mentioned in 'Automatic import licences' above, Article 1 of the WTO Agreement on Import Licensing Procedures defines import licensing 'as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member'. Further, Article 2.1 provides that 'Automatic import licensing is defined as import licensing where approval of the application is granted in all cases...' and Article 3.1 establishes that 'Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2'.

59 See www.infobae.com/notas/634182-La-Sedronar-y-los-vitivincolas-adhieren-a-la-consulta-de-importaciones.html.

60 Resolution 1/2012 by the Secretariat of Interior Commerce.

61 *Ibid.*

62 See www.lanacion.com.ar/m2/1467156-moreno-logro-levantar-el-bloqueo-en-los-puertos. See also www.lanacion.com.ar/m2/1467017-levantaron-el-paro-portuario-tras-48-horas-de-bloqueo-a-las-terminales, <http://comex.iprofesional.com/notas/135100-Continua-el-paro-que-mantiene-bloqueadas-las-terminales-portuarias>, www.mercado.com.ar/nota.php?id=372087 and www.lanacion.com.ar/m2/1462116-las-trabas-afectaron-la-recaudacion.

If the DJAI is deemed to be a non-automatic import licence, the following aspects of the WTO Agreement on Import Licensing Procedures may raise concerns:⁶³

- According to Article 1.6, 'Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies'. The DJAI system establishes that the filing is to be made with one agency (AFIP) but if any objections are raised by other agencies taking part in the DJAI system, the importer must directly approach each one of them in order to solve those objections. If more than two agencies raise objections, the three administrative bodies threshold would be breached. This situation may also conflict with the 'single window' mechanism proposed by the World Customs Organization through the SAFE Framework of Standards, which is mentioned as a goal for the DJAI system according to AFIP's General Resolution 3255. Further, the fact that the DJAI may be objected could be deemed incompatible with SAFE since SAFE promotes anticipated information but it does not relate to the possibility of objecting to an import.
- A non-automatic licensing requirement is WTO incompatible unless it is necessary to implement measures that are imposed in conformity with the relevant WTO rules and does not have trade-restrictive or trade-distortive effects on imports beyond those caused by the underlying restriction.⁶⁴ As disclosed in the regulation, the purpose of the DJAI system is to provide the government with anticipated information about future imports. No specific underlying measure seems to be applied through the DJAIs but agencies involved in the system may prevent specific imports from being made. This may be construed as incompatible with the Agreement on Import Licensing Procedures and GATT Article XI.
- Requiring duplicate filings for an import may be construed as opposite to the 'single window' goal and as more burdensome than is necessary under WTO rules. For instance, an import may require filing a DJAI, the *Nota de Pedido* form (see 'Form to be filed with the Secretariat of Interior Commerce' below) and an automatic or non-automatic import licence. This may be deemed incompatible with SAFE and WTO rules.

There are no official statistics with regard to objections raised by the agencies to the DJAIs. However, by March 2012, the local Chamber of Importers

63 Under local regulation, it may be arguable that it is not the AFIP but the Executive Branch that is entitled to enact import control measures.

64 See WT/DS90/R – 6 April 1999. See also BISD 35S/116 – 4 May 1988, BISD 30S/129 – 12 July 1983, BISD 25S/68 – 18 October 1978 and WT/DS27/AB/R – 1997.

(CIRA)⁶⁵ stated that approximately 50 per cent of the DJAIs were objected to.⁶⁶ As reported by the media and by the Association of Customs Brokers,⁶⁷ importers whose DJAIs are objected are required to submit the following information to the Secretariat of Interior Commerce,⁶⁸ by means of a sworn statement executed by the importer's legal representative:

1. details of the price of their products in the local market in 2010, 2011 and 2012, indicating inter-annual price increases;⁶⁹
2. estimated imports and exports for 2012 in US\$ values; and
3. a unilateral commitment to balance imports and exports in 2012.

There is no formal rule requiring companies to file this information and, specifically, requiring this advanced version of the trade balancing requirement applicable to all importers facing objections to their DJAIs. Therefore, if proven to exist, this filing and the updated trade balancing requirement⁷⁰ could be construed as a *de facto* (also known as an informal) measure.

When dealing with informal requirements, companies must be especially careful with regard to internal company rules and compliance policies. Further, they must consider that no formal guarantees exist that compliance will provide the desired effects.

In order to achieve a balance between imports and exports, the following alternatives may be considered in export commitments:

- **Increasing exports.** Some importers may increase their exports by adjusting internal operations but other importers may need to engage in business with third parties (ie current or prospective exporters). These engagements may involve joint ventures or simply having importers acquiring the merchandise from exporters in order to export it themselves later. The case of joint ventures or other kinds of business associations should be carefully analysed since contingencies may arise (ie joint liability) under tax law, corporate law, labour law and others. In order to export, a company must be registered as exporter with customs and must have exporting activities

65 See <http://comex.iprofesional.com/notas/131166-Estiman-que-el-80-de-las-declaraciones-juradas-que-se-presentaron-recibieron-luz-verde>.

66 See <http://comex.iprofesional.com/notas/133035-Los-empresarios-ya-tienen-su-ventanilla-nica-el-problema-es-que-cada-da-se-cierra-ms>.

67 See *Centro de Despachantes de Aduanas*, Bulletin BID No 9866 – Buenos Aires, 5 March 2012. See also G/C/W/667.

68 See www.lanacion.com.ar/1449021-las-exigencias-de-moreno-para-liberar-importaciones-frenadas.

69 See www.lanacion.com.ar/m2/1455809-moreno-autoriza-una-ola-de-aumentos-en-consumo-masivo.

70 See www.ambito.com/diario/noticia.asp?id=630256. See also <http://comex.iprofesional.com/notas/134548-El-Gobierno-le-exigi-a-Volkswagen-que-sustituya-con-produccion-nacional-autopartes-de-Brasil>.

within the corporate purpose in its by-laws. Adding exporting activities to the company's business in its by-laws may not be easy if the company is incorporated with the Public Registry of Commerce of Buenos Aires since this Registry generally objects to companies having business purposes that involve several unrelated activities (ie importing cars and exporting furniture). In those cases, it may be necessary to set up a separate company to run the export business. Lately, the government has stated that in order for the exports of a company to count towards its imports under the trade balancing requirement, they must be new exports (ie exports that were not previously in the hands of other local exporters). This criteria has not been strictly implemented yet since expecting all importers to develop enough new export businesses in the short term seems to be asking too much of their ability as business people and of Argentina's economy. However, it is expected that the government will increasingly use this criteria in the approval or rejection of export commitments by importers. In most cases, companies claim that developing export businesses may take months or years depending on the targeted value in US\$.

- ***Substituting imports for local products.***⁷¹ Local products may be produced directly by the importer or by a third party operating in the local market. In many cases, companies maintain that developing local production of the goods that they import may take several months, depending on how large and sophisticated the local production should be. They also allege that in some cases the local market is not equipped with the kind of technology required for producing some goods.
- ***Capital increase.*** In some cases, capital increases for the value of the imbalance between imports and exports may be an alternative. This option may be especially useful for companies having dividends yet unpaid to their shareholders located abroad and facing trouble transferring those funds abroad because of local foreign exchange restrictions. However, this alternative does not seem to be a long-term solution.

Given the government interest in keeping unemployment rates low, direct or indirect creation of jobs would be a great advantage to any export commitment. Some companies have attempted to use Mercosur's system for the payment of exports/imports in local currency (ie in Argentine pesos

71 See <http://comex.iprofesional.com/notas/134610-Cristina-lo-hizo-los-chocolates-Milka-vern-made-in-Argentina>.

or in Brazilian real, but not in US\$).⁷² However, the government has not accepted this tool as a way to sidestep import controls yet.

Some of the recent export commitments announced in the press involve Pirelli exporting honey⁷³ and Newsan exporting fish.⁷⁴ Also according to the press, mining companies may be the next in big hit export commitments.⁷⁵

It is unclear what will happen in 2013 to those importers who committed to make exports for a specific amount in 2012 and did not comply. In principle, it may be difficult to enforce unilateral commitments in court since no bargained for exchange exists. However, these commitments have somehow been relayed to government, which may construe them as a promise to the nation and then those importers could be charged with breaching said promise. In any case, although no formal sanction exists, it is expected that in 2013 the government will audit compliance with export commitments.

Form to be filed with the Secretariat of Interior Commerce

In January 2012, the Argentine Chamber of Importers (CIRA) and the Argentine Chamber of Commerce (CAC), following specific instructions by the Secretariat of Interior Commerce, informed their members that a form named '*nota de pedido*' should be filed in advance to all imports by e-mail at notadepedido@mecon.gob.ar.⁷⁶ This form includes a description of the main aspects of the transaction (eg price, products, quantity). No written rule was published by the government establishing this requirement. Therefore, this could be construed as a de facto (also known as an informal) measure.

The information required by the form '*nota de pedido*' is similar to that required by the DJAI. However, the DJAI is to be filed with the Federal

72 Decree 1003/2008. See also <http://economia.iprofesional.com/notas/132431-Uruguay-preocupado-por-el-cerrojo-pedira-a-la-Argentina-comerciar-con-monedas-locales>. See also <http://comex.iprofesional.com/notas/131073-Lo-que-viene-ante-la-falta-de-divisas-Moreno-presionara-a-empresas-para-puentear-al-dolar-a-la-hora-de-importar>.

73 See www.infobae.com/notas/636275-Pirelli-gestionara-la-exportacion-de-miel-argentina-por-110-millones-de-dolares.html.

74 See <http://negocios.iprofesional.com/notas/132177-Newsan-exportar-calamar-merluza-y-langostino-para-compensar-importaciones>.

75 See <http://comex.iprofesional.com/notas/134217-El-Gobierno-mete-presin-para-sustituir-importaciones-por-us200-millones>. See also <http://negocios.iprofesional.com/notas/134239-Convocan-a-las-mineras-con-operaciones-en-el-pas-para-sustituir-importaciones>.

76 See www.diariobae.com/diario/2012/01/25/7286-los-importadores-tambien-deberan-tramitar-una-autorizacion-paralela-de-moreno.html. See Tarifar newsletter dated 26 January 2012. See <http://comex.iprofesional.com/notas/129693-Confirmado-si-usted-quiere-traer-productos-de-afuera-sirvase-completar-el-siguiente-formulario-y-enviarselo-por-e-mail-a-Moreno>.

Revenue Agency while the form is to be filed with the Secretariat of Interior Commerce.

The idea of requiring duplicate filings with similar information goes against the purpose stated by the government for the DJAI system: implementing the 'single window' mechanism recommended by the World Customs Organization and against WTO rules for adding unnecessary administrative requirements to imports.

Prior Sworn Services Statement

In April 2012, some imports of services (ie services rendered by non-residents to residents⁷⁷) became subject to a Prior Sworn Services Statement⁷⁸ ('DJAS'). The DJAS procedure is similar to that of the DJAIs and is also grounded on the World Customs Organization idea of a 'single window'.⁷⁹

According to Article 1 of AFIP's General Resolution 3276, the DJAS system is applicable both to imports and exports of services. However, Annex A to that Resolution describes the data to be required at the time of implementing the DJAS and it only refers to imports of services. Therefore, exports of services seem to be currently outside the scope of the DJAS.

The DJAS must be filed through the AFIP's website describing all information related to the services that will be rendered (eg date of the contract, price, term). As explained in the following sub-section, the DJAS is directly related to foreign exchange regulation. Consequently, not filing the DJAS will render an obstacle for transferring funds abroad as payment for the relevant import of services.

For the DJAS requirement to apply:

1. the services must be rendered by a non-resident to a resident;
2. the services must be rendered after 1 April 2012;
3. the price to be paid for those services must be unspecified, equal to or above US\$100,000, or the instalments equal to or above US\$10,000; and
4. the services must fall under specific categories such as information and computing services, trademark and patents, royalties, copyright, guarantees for exports of goods and services, professional services, technology transfers.⁸⁰

⁷⁷ For purposes of this regulation, the concept of 'resident' is the one established under the Argentine Income Tax Law.

⁷⁸ General Resolution 3276 by the AFIP.

⁷⁹ See <http://comex.iprofesional.com/notas/132545-Ya-arrancaron-los-controles-a-la-importacin-y-exportacin-de-servicios-y-suma-un-nuevo-miedo-a-los-empresarios>.

⁸⁰ These classifications are established by foreign exchange regulation enacted by the Central Bank of Argentina.

Foreign exchange controls

Foreign exchange regulation was imposed in Argentina after the 2001 crisis. Specific rules apply depending on the kind of transaction (eg payment of imports, repatriation of funds collected abroad for payments of exports, capital contributions, financings, derivatives and others).

The most recent update to the foreign exchange regulation applicable to payments of imports took place in early 2012, on the DJAI and the DJAS systems entering in force. By means of Communications A 5274 and 5295,⁸¹ the Central Bank of Argentina established that the DJAI and the DJAS are a requisite for certain payments of imports of goods and services respectively.⁸²

Previously, in October 2011, the AFIP established a new system under which all individuals or companies willing to purchase foreign currency in Argentina are subject to a prior control by said agency.⁸³ This control involves an analysis by the AFIP of the petitioner's income and expenses as reported by means of tax returns and other sources of information in order to verify if the petitioner has enough economic capacity to make the desired purchase of foreign currency. Whenever the purchase of foreign currency is related to an import of goods or services to which the DJAI or the DJAS respectively applies, the ID number for the relevant DJAI or DJAS must be submitted together with the petitioner's information (eg name, tax ID number) for the purposes of running the above-mentioned analysis of economic capacity.

Preliminary analysis of Argentina's import control policies

As mentioned before, this article describes the evolution of Argentina's current import control system and provides preliminary answers to the questions raised in the introduction. This section looks into each of those questions and provides some additional analysis.

In less than ten years, Argentina developed a broad import control system and climbed to the top of the rankings of protectionist countries. However, no WTO consultations or disputes were initiated in this regard. Why?

81 See www.marval.com.ar/Publicaciones/MarvalNews/ArticuloMN/tabid/96/language/en-US/Default.aspx?ItemID=2217.

82 Describing Argentina's foreign exchange regulation is beyond the scope of this article.

83 General Resolution 3210/2011 by the AFIP.

Uruguay,⁸⁴ the United States,⁸⁵ the European Union, Italy,⁸⁶ Colombia,⁸⁷ Mexico,⁸⁸ Chile⁸⁹ and the UK⁹⁰ have often complained in the media about Argentina's import control regime.⁹¹

Brazil has also complained. However, Brazil has always had a close trade relationship with Argentina and negotiations are held on a regular basis with regard to both countries' import controls (eg restrictions on their respective automotive industries).⁹²

84 See <http://comex.iprofesional.com/notas/131871-Por-trabas-a-importaciones-Uruguay-comenz-a-cancelar-contratos-con-la-Argentina>. See also <http://comex.iprofesional.com/notas/131790-Mujica-Las-trabas-comerciales-de-la-Argentina-mortifican-bastante>, <http://comex.iprofesional.com/notas/132105-Uruguay-subsidiar-a-industriales-por-las-trabas-argentinas-al-comercio-exterior>, <http://comex.iprofesional.com/notas/132707-Por-trabas-argentinas-Uruguay-lanza-paquete-de-medidas-en-apoyo-al-sector-industrial>, <http://comex.iprofesional.com/notas/132289-Uruguay-aplica-ley-del-Talin-e-impide-ingreso-de-autos-argentinos>, <http://economia.iprofesional.com/notas/130658-Desde-Uruguay-advierten-que-las-trabas-a-las-importaciones-violan-el-acuerdo-del-Mercosur>, www.lanacion.com.ar/m2/1447606-mujica-buscara-acuerdos-con-paises-por-fuera-del-mercosur and www.lanacion.com.ar/m2/1453060-uruguay-se-resigna-a-buscar-otros-mercados.

85 See www.lanacion.com.ar/m2/1459916-eeuu-acuso-a-la-argentina-de-no-actuar-de-buena-fe. See also www.lanacion.com.ar/m2/1461819-nueva-queja-de-eeuu-por-las-trabas, www.lanacion.com.ar/m2/1460607-eeuu-volvio-a-defender-la-sancion-comercial-a-la-argentina, www.lanacion.com.ar/m2/1458924-eeuu-les-retira-beneficios-a-exportaciones-argentinas and www.lanacion.com.ar/1461819-nueva-queja-de-eeuu-por-las-trabas.

86 See www.lanacion.com.ar/m2/1466223-quejas-de-italia-por-las-trabas-a-la-importacion.

87 See <http://comex.iprofesional.com/notas/134994-Colombia-present-una-protesta-ante-la-OMC-en-contra-del-proteccionismo-argentino>.

88 See www.lanacion.com.ar/m2/1462504-mexico-podria-demandar-al-pais.

89 See <http://comex.iprofesional.com/notas/133085-Per-Chile-Colombia-y-Mxico-demandaran-a-la-Argentina-por-las-trabas-a-las-importaciones>.

90 See <http://comex.iprofesional.com/notas/132740-Disparen-contra-Argentina-gobiernos-se-preparan-para-dar-batalla-comercial-por-bloqueo-K-a-importaciones>.

91 See www.lanacion.com.ar/1281053-crece-la-disputa-con-la-ue-por-las-trabas-a-las-importaciones. See also www.ambito.com/diario/noticia.asp?id=447948, <http://comex.iprofesional.com/notas/131871-Por-trabas-a-importaciones-Uruguay-comenz-a-cancelar-contratos-con-la-Argentina>, www.ieco.clarin.com/economia/Brasil-analiza-aplicar-represalias-importaciones_0_631137113.html, www.ieco.clarin.com/economia/UE-denunciar-Argentina-OMC-importaciones_0_251375023.html, www.lanacion.com.ar/m2/1459916-eeuu-acuso-a-la-argentina-de-no-actuar-de-buena-fe, www.lanacion.com.ar/m2/1464529-pese-al-malestar-eeuu-dice-que-quiere-exportar-mas-al-pais, www.lanacion.com.ar/1454836-europa-pide-a-la-argentina-que-respete-las-normas-de-comercio-internacional and <http://comex.iprofesional.com/notas/132740-Disparen-contra-Argentina-gobiernos-se-preparan-para-dar-batalla-comercial-ante-el-bloqueo-K-a-productos-importados>.

92 See www.lanacion.com.ar/1100632-la-argentina-y-brasil-sin-acuerdo-por-las-trabas-a-las-importaciones. See also www.lanacion.com.ar/m2/1465886-las-trabas-al-comercio-ya-afectan-a-la-industria, www.lanacion.com.ar/m2/1466363-brasil-amenaza-con-represalias-por-las-trabas-a-las-importaciones, <http://comex.iprofesional.com/notas/132910-Habr-cupos-para-el-ingreso-de-derivados-de-porcinos-desde-Brasil>, www.lanacion.com.ar/m2/1459057-brasil-busca-volver-a-discutir-las-trabas-al-comercio, <http://economia.estadao.com.br/noticias/economia,brasil-e-argentina-discutem-importacao-de-carne-na-sexta-feira,107487,0.htm>, www.lanacion.com.ar/m2/1458581-dura-critica-de-lorenzino-a-industriales-de-brasil and www.lanacion.com.ar/1105187-brasil-amenaza-con-demandar-al-pais.

India openly announced that it would decrease its purchases of Argentine products as a protest against Argentina's import controls.⁹³ China slowed down its purchases of Argentina soya beans when Chinese products became a regular target in Argentina's anti-dumping investigations.

At meetings of the WTO Committee on Import Licensing,⁹⁴ countries such as Mexico, Japan, Switzerland, the United States, Korea, Peru, Canada and others have raised their concerns about Argentina's import control measures (see 2.2.3 above). At those meetings, Argentina provided, among others, the following remarks:

- 'The implementation of automatic import licensing... was the result of changes in international trade flows in recent years.'
- 'Resolution 45/2011 which. ... was notified by Argentina on 21 March 2011, extended the coverage of products subject to licensing to 581; however, tariff lines subject to non-automatic licensing only represented seven per cent of the total number of tariff lines in Argentina's Schedule of Concessions.'
- 'The application of non-automatic licensing did not, in any way, lead to incompatibility with Argentina's commitments in the G-20 and in the WTO since this was a valid trade policy measure as provided for in Article 3.3 of the Agreement.'
- 'Importation of products subject to NAL indicated that the system was not ultimately intended to protect national domestic industry by controlling imports'; 'if the imports trends of products subject to NAL were compared to those which are not subject to such licences the following conclusions could be drawn: (i) in 2009, as a result of the international economic crisis, there was a decrease in imports both in terms of total numbers and for those subject to NAL; (ii) in 2010, the total increase in imports also saw an increase in the number of imports subject to NAL as a result of the recovery of the world economic activity and; (iii) imports subject to NAL increased by 110 per cent in 2010 in comparison with 2006, whilst there was a 65 per cent increase of total imports over the same period. Therefore, NALs did not operate as a protective trade measure to favour domestic industry.'
- 'The predictability and transparency of the NAL system had enabled normal trading flows to continue.'

93 See www.lanacion.com.ar/1461557-la-india-reduce-sus-compras-en-el-pais-en-protesta-por-las-trabas.

94 G/LIC/M/33 and G/LIC/M/34. G/LIC/M/30 to 34 and G/LIC/Q/ARG/10 and 11, available at www.wto.org/english/tratop_e/implic_e/implic_e.htm.

- ‘All imports subject to NAL, regardless of their origin, received the same treatment when applying the measures; the same requirements and processing time were also applied for requests and renewals thereof.’
- ‘Processing of applications did not exceed 60 days according to the period set for in Article 3.5(g) and (h) of the Agreement.’
- No trade balancing requirement is imposed by law in Argentina.

On 30 March 2012, the most relevant international complaint against Argentina’s import control system took place. At a meeting of the WTO Council for Trade in Goods,⁹⁵ a joint statement was made by Australia, the European Union, Israel, Japan, Korea, Mexico, New Zealand, Norway, Panama, Switzerland, Chinese Taipei, Thailand and the United States. It is interesting to see that no Mercosur members – especially Brazil – signed this public statement.

The statement briefly describes allegations relating to Argentina’s import control system and requests that Argentina:

1. terminates all import-restrictive measures and practices, or
2. provides a detailed written explanation of why in its view these measures and practices are consistent with WTO rules.

The main parts of this joint statement are as follows:

- ‘Trade-restrictive measures taken by Argentina,... are adversely affecting imports into Argentina from a growing number of WTO Members.’
- ‘These measures include the overly broad use of non-automatic import licensing trade balancing requirements, and pre-registration and pre-approval of all imports into Argentina.’
- ‘Companies... report that Argentina’s non-automatic import licensing scheme has a trade-restrictive effect on imports and that there are long delays in the issuance of import licenses.... In some instances, companies are denied import licenses altogether, without justification or explanation.’
- ‘The lack of transparency in Argentina’s implementation and administration of its import licensing regime creates profound uncertainty both for exporters and potential exporters to Argentina, as well as for investors in Argentina.’
- ‘In January 2012, Argentina announced regulations that went into effect on 1 February, requiring pre-registration, review and approval of each and every import transaction... creating long delays and resulting in huge costs... It appears that this new system is operating as a de facto import restricting scheme, on *all products*.’
- ‘Argentina has made clear through public government statements that it has also adopted an informal “trade balancing” policy, whereby

95 G/C/W/667.

companies seeking to import products must agree to export, dollar for dollar, goods of an equal or greater value or establish production facilities in Argentina. Many companies have reported receiving telephone calls from Argentine government officials in which they are informed that they must agree to undertake such trade balancing commitments prior to receiving authorization to import goods. The Ministry of Industry's website is replete with press releases announcing these trade balancing and domestic production arrangements. These arrangements include well known automakers agreeing to export products such as wine, olive oil, and soy meal, and requiring companies across a number of sectors to undertake production in Argentina without reference to the economics of doing so. Argentina may claim that companies enter into these arrangements voluntarily, but many of the Members supporting this statement share concerns that it may be operating otherwise. We are not aware of any official directive or resolution setting out these trade balancing or investment requirements. However, high level Argentine government officials have been quoted in the Argentine press as saying quite clearly that the purpose of these requirements is to improve its trade balance by restricting imports and promoting exports.'

- 'Many of the Members that support this joint statement today have previously raised concerns about Argentina's increasingly protectionist measures both bilaterally and multilaterally beginning in 2008 when Argentina began progressively expanding the number of products subject to its non-automatic import licensing requirements. Concerns have been raised and questions have been directed to Argentina in the Committee on Import Licensing, the Committee on Agriculture, and in this Council. However, Argentina has failed to adequately address these concerns or respond to Members' questions. Indeed, rather than eliminating these import-restrictive measures and practices, Argentina has introduced new measures, and the existing measures have become increasingly problematic for our exporters.'
- 'The import-restrictive measures and practices that Argentina has put in place are unbecoming any WTO Member, particularly a member of the G-20 who has committed to refrain from raising new barriers to trade and investment. In light of the shared goal of making every effort to sustain global economic growth, Argentina's measures, which clearly limit the growth-enhancing prospects for trade, are particularly troubling.'

Argentina replied to the joint statement by means of a press release, which included the following arguments:⁹⁶

- Major trade partners of Argentina, including Mercosur members, China, Russia and India, did not sign the joint statement.
- The nations signing the joint statement have increased their exports into Argentina by 25 per cent.
- This year, Argentina was the G-20 member with the highest increase in imports.
- No specific cases in which Argentina was in breach of WTO rules were presented.
- Only 'vague' allegations by the local press are the grounds for the joint statement.
- Argentina will continue to promote trade policies that provide outstanding economic growth while also complying with WTO rules.

Many theories may arise about why no WTO consultations or disputes have yet been initiated with regard to Argentina's import control system.⁹⁷

While the European Union and United States are focused on dealing with hard economic situations since the 2008 global financial crises, Brazil and some Asian nations are focused on maintaining outstanding growth rates. However, it seems difficult to conclude that WTO members have no time or resources to initiate a WTO complaint against Argentina if they see fit.

Argentina is not among the largest economies in the world. However, countries having economies smaller than Argentina's have been subject to WTO disputes.

WTO dispute settlement proceedings take time. Nonetheless, they are regularly used by nations to solve trade disputes.

The European Union may be interested in not harming the negotiations for a free trade agreement with Mercosur, which have been developed in recent years.⁹⁸

Following Argentina's Government official statements in the press, it may be the case that many of the complaining nations have surplus in their

96 See www.lanacion.com.ar/1461045-cancilleria-rechazo-la-queja-de-estados-unidos-y-la-union-europea-ante-la-omc-por-las-trabas-de-moreno. See also www.cancilleria.gov.ar/prensa.html and <http://economia.iprofesional.com/notas/133943-Timerman-aseguro-que-la-denuncia-contra-la-Argentina-por-parte-de-40-paises-en-la-OMC-es-un-invento>.

97 This is the situation up to 30 April 2012 and the author mainly refers to non-automatic import licences, de facto measures, the DJAI and the DJAS systems. Mercosur regulation is not within the scope of this article. However, Mercosur rules are similar to those of the WTO and they seek to avoid trade restrictive measures. No Mercosur disputes have been initiated with regard to Argentina's current import control system.

98 See www.iprofesional.com/notas/135617-Crece-la-presin-de-40-paises-sobre-la-Argentina-por-las-trabas-comerciales.

balance of payments with Argentina and they do not want a WTO dispute to threaten that situation.

In several recent opportunities Argentina has not complied with international rules and rulings, including the following:⁹⁹ Argentina's sovereign debt commitments (ie 2001 default); rulings in New York jurisdiction related to Argentina's 2001 default; ICSID rulings¹⁰⁰ and UNCITRAL rulings.¹⁰¹ Based on these facts, it may be the case that a feeling exists in the international community that Argentina may not comply with a potentially adverse decision by a WTO Panel in connection with its import control regime.

In the end, each nation takes the course of action most suitable to its needs: complaints, negotiations or trade pressure. It remains to be seen if WTO dispute proceedings take place in the future.

Argentine authorities regularly adopted new import control rules that piled up on top of each other during the last decade. Why? Is there a pattern in the evolution of those measures?

The Argentine authorities regularly adopted new measures that were more convenient than the previous ones to implement their policy. Each new tool had a broader scope than the previous one.¹⁰² Since the new measures did not replace the pre-existing ones, they all work together now as a comprehensive system.

Initially, automatic import licences provided the government with advanced information about the inflow of imports. Later, reference values

99 The policy reasons and convenience behind Argentina's behaviour in these matters are beyond the scope of this article.

100 CMS, Azurix, Aguas del Aconquija, Continental Casualty. See www.economist.com/node/21547836 and www.lanacion.com.ar/m2/1458924-eeuu-les-retira-beneficios-a-exportaciones-argentinas.

101 National Grid.

102 Argentina is in the process of expropriating the local oil and gas company, YPF, from the hands of the Spanish company Repsol. Spain and the European Union have threatened to retaliate through trade measures. If those measures take place, any analysis of Argentina's import controls should distinguish the effects in trade caused by the import controls and those caused by the YPF case. See www.lanacion.com.ar/m2/1467364-espana-insta-a-que-otros-paises-castiguen-a-argentina-por-ypf?utm_source=n_tip_notal&utm_medium=titularP&utm_campaign=. See also www.lanacion.com.ar/m2/1466836-la-comunidad-empresarial-europea-dura-con-la-argentina, www.lanacion.com.ar/1466836-la-comunidad-empresarial-europea-dura-con-la-argentina, <http://comex.iprofesional.com/notas/135158-Timerman-neg-que-Argentina-est-aislada-por-YPF-El-establishment-est-molesto-pero-los-pueblos-apoyan>, <http://comex.iprofesional.com/notas/135094-Da-D-pases-de-Europa-dictan-sentencia-contra-Argentina-y-analistas-dicen-cmo-afectar-a-empresas-locales>, www.iprofesional.com/notas/135143-Espaa-oficializa-la-medida-para-frenar-las-compras-de-biodiesel-a-la-Argentina and www.lanacion.com.ar/m2/1464645-el-canciller-espanol-convoca-de-urgencia-al-embajador-argentino-por-el-caso-ypf.

and anti-dumping duties allowed the authorities to discuss the price of specific imports (although in the case of anti-dumping, long and complex investigations are required). Subsequently, non-automatic import licences affected the inflow of goods, for example when licences were not granted or when proceedings were delayed. Finally, the DJAI system extended the effects of non-automatic import licensing to almost all imports. In addition, foreign exchange regulation is in place.

There are elements to consider in relation to Argentina's move in recent years towards a system that allows control over both the price and flow of imports, where it is necessary to obtain permission (or to obtain 'absence of objections') in advance for an import to be made.

Is it possible to run a strong full scope import control system under WTO rules? Were all of Argentina's measures WTO compliant?

Running a comprehensive analysis of the several tools used in Argentina's import control system would require a much longer than this one, involving both deep theoretical analysis and large statistical data to verify the actual impact of Argentina's import controls on its international trade flows. Notwithstanding that, several issues were raised in the previous sections to analyse whether or not some of Argentina's import controls comply with specific WTO rules.

In essence, the two main issues to be discussed in order to decide whether Argentina's import control system is WTO compliant or not are the following:

- the requirement that the implementation of trade measures should not have trade-restricting effects; and
- the requirement that all import control measures should be published promptly in such a manner as to enable governments and traders to become acquainted with them (Article X.1 of GATT 1947).

On one hand, Argentina claims that none of these principles has been breached by its import control system. On the other hand, several other nations have repeatedly alleged that Argentina is in breach of these two main aspects of WTO rules, among others.

What has been the purpose of Argentina's import control measures?

According to formal regulations, Argentina's import control measures are aimed at implementing a WTO-compliant import licensing system, implementing the 'single window' mechanism proposed by the World Customs Organization¹⁰³ and obtaining statistical information in order to better plan Argentina's trade policies.

103 See section 1.3.8 of SAFE, available at www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/SAFE%20Framework_EN_2007_for_publication.pdf.

If the informal (de facto) measures are deemed real,¹⁰⁴ the trade balancing requirement – which is allegedly measured in terms of value (ie money) and not in terms of products – may be evidence that further purposes are behind Argentina's measures, such as control over inflows and outflows of funds due to international trade (ie the balance of payments). To that end it is relevant to consider that a capital increase using dividends that were supposed to be paid to shareholders abroad means that those funds will remain in the country, substituting imports by local products means that a lower amount of funds will be transferred abroad to pay for imports, and increasing exports means that a higher amount of funds will be brought into the country.

If Argentina's foreign exchange regulation is added to the formula, especially considering its link with the DJAI and the DJAS systems, it seems that reaching a surplus in the balance of payments may be the main goal for Argentina.

According to the press, the government's goal is to obtain a surplus of US\$10,000 million per year in its balance of payments.¹⁰⁵ Decreasing unemployment rates, fostering local production¹⁰⁶ and keeping the foreign exchange rate of the Argentine peso and the US dollar under control would be a consequence of that policy.¹⁰⁷

Understanding the goals behind Argentina's import control system should allow a better understanding of the decisions adopted by its government both at the macro and micro level.

From an economic perspective, several questions may arise. How will Argentina battle against inflation? What if a decrease in imports of supplies affects the local industry?¹⁰⁸ What if, in the mid- and long term those nations that complain about Argentina by means of press releases decide

104 The Argentine Government has denied this.

105 See <http://comex.iprofesional.com/notas/135287-El-cerrojo-de-Guillermo-Moreno-no-afloja-y-vuelve-a-provocar-una-cada-de-las-importaciones>. See also www.lavoz.com.ar/noticias/politica/guillermo-moreno-llama-defender-trabajo-argentino, <http://comex.iprofesional.com/notas/132545-Ya-arrancaron-los-controles-a-la-importacin-y-exportacin-de-servicios-y-suma-un-nuevo-miedo-a-los-empresarios> and www.lanacion.com.ar/1451689-subordinados-a-las-divisas.

106 See www.cronista.com/economiapolitica/Boudou-la-sustitucion-de-importaciones-apunta-a-la-defensa-de-la-produccion-20120330-0135.html.

107 Other than import controls, no major plans have been developed by Argentina to foster its local industry (eg tax benefits plans, financings). Other countries such as Brazil show additional measures. See www.ambito.com/noticia.asp?id=628844, www.telam.com.ar/nota/18987 and www.clarin.com/mundo/Brasil-programa-reactivacion-fuerte-impuestos_0_675532603.html.

108 See www.lanacion.com.ar/1466830-tierra-del-fuego-sufre-las-trabas-de-moreno. See also <http://comex.iprofesional.com/notas/132315-Por-falta-de-insumos-importados-Fiat-suspension-personal-y-paraliza-dos-dias-planta-de-Cordoba>.

to retaliate?¹⁰⁹ Is this a sustainable long-term policy for Argentina?¹¹⁰ Will this policy cause a decrease in imports?¹¹¹ The answers are uncertain and should be addressed by economists and politicians. However, it seems that achieving a surplus in the balance of payments is at the core of Argentina's economic policy and this policy is not expected to change for as long as the current government officials remain in office.

The balance of payments was and always will be a significant issue in international trade policy. The best evidence of its relevance is that Article XII of GATT 1947 specifically establishes that 'in order to safeguard its external financial position and its balance of payments, [Argentina] may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article'. Trade restrictions imposed under Article XII should be exceptional, temporary and removed as soon as the situation is solved.

Is it possible to do business in Argentina in this context?

Doing business in Argentina has never been – and may never be – easy. As mentioned above in the introduction, Argentina's economy is always challenging and changing.

According to the press, only a few high-class clothing brands have decided to leave the country because of the imports control system.¹¹² However, the press has also stated that many companies are struggling to secure their flow of imports,¹¹³ especially those in the electronics business (eg Mac, Sony¹¹⁴),

109 Argentina's Government is targeting Angola as a new economic partner (see www.lanacion.com.ar/1454294-durante-el-viaje-a-angola-moreno-arengo-a-los-empresarios-en-el-avion-y-les-regalo-globos). See also <http://comex.iprofesional.com/notas/132728-El-mercado-africano-sigue-despertando-interes-tras-la-misin-a-Angola-ahora-miran-a-Nigeria>.

110 See www.lanacion.com.ar/m2/1445874-la-argentina-va-en-contra-de-la-logica-de-steve-jobs.

111 See *supra* lxxxv.

112 See <http://fortunaweb.com.ar/2011-09-27-65411-ysl-se-del-pais-entra-cerruti-1881>. See also www.lanacion.com.ar/1459632-otra-marca-de-ropa-se-va-de-la-argentina.

113 See <http://comex.iprofesional.com/notas/133149-En-el-pas-en-guerra-con-lo-importado-esta-es-la-odisea-que-atravesan-los-empresarios-para-traer-productos-de-afuera>. See also www.lanacion.com.ar/1457074-por-las-trabas-de-moreno-crece-la-falta-de-productos-importados.

114 See <http://negocios.iprofesional.com/notas/132625-Lenta-agona-de-Apple-y-Sony-por-trabas-a-la-importacin-casi-no-tienen-productos-y-comenz-el-cierre-de-locales>. See also <http://negocios.iprofesional.com/notas/130164-Aqu-estn-estas-son-las-marcas-argentinas-que-reemplazaron-en-las-gndolas-a-los-gigantes-de-la-tecnologa-mundial> and <http://negocios.iprofesional.com/notas/130164-Aqu-estn-estas-son-las-marcas-argentinas-que-reemplazaron-en-las-gndolas-a-los-gigantes-de-la-tecnologa-mundial>.

and that some companies reported improvements under Argentina's current trade policy.¹¹⁵

Several layers of import controls are now in force in Argentina. The main ones are described above but there are other measures in place that are not detailed in this article (eg new customs proceedings to run a more strict verification of imported goods when arriving at ports¹¹⁶).

Although importers know that they may have grounds to challenge import controls with the courts, they tend to see judicial actions as a last resort. Companies do not like running a business on the basis of legal actions. Additionally, they do not like entering into a conflict with the government on a topic that is at the top of the government's agenda (ie trade policy). Therefore, they choose to be flexible and adapt their operations – as much as possible – to the import control system in force. Scania,¹¹⁷ Phillips¹¹⁸ and Syngenta¹¹⁹ are examples of this.

In the end, companies tend to run a return/risk analysis. Since Argentina's recent growth rates have provided strong consumption, most companies have achieved rates of return that justify dealing with the many import control measures in place. It would be interesting to see what companies would do if Argentina's economy were to slow down and rates of return were to fall.¹²⁰ Obviously, the investment horizon¹²¹ of a company is a key additional element in this analysis. Many companies have operated in Argentina for decades and they know that in Argentina policies tend to change from time to time.¹²²

115 See <http://negocios.iprofesional.com/notas/134252-McGregor-sortea-las-trabas-a-la-importacin-y-busca-ampliar-sus-franquicias>. See also <http://comex.iprofesional.com/notas/134313-Fiat-invertir-430-millones-para-volver-a-fabricar-maquinarias-agrcolas-en-Argentina> and <http://comex.iprofesional.com/notas/134306-Por-las-trabas-a-la-importacin-la-balanza-comercial-del-calzado-mejor-en-el-primer-bimestre>.

116 General Resolution 3304 by the AFIP. See also www.lanacion.com.ar/m2/1460646-la-afip-crea-nuevos-equipos-de-control-en-la-aduana <http://www.lanacion.com.ar/m2/1460567-multiplica-la-afip-los-trabajos-de-fiscalizacion-en-los-puertos> and www.lanacion.com.ar/m2/1460217-intensifica-la-afip-el-control-a-la-importacion-de-mercaderias.

117 See www.lanacion.com.ar/m2/1453392-marcelo-mannucci-no-estamos-de-acuerdo-en-todo-con-el-gobierno-pero-nos-amoldamos.

118 See www.lanacion.com.ar/m2/1462701-las-reglas-tienen-que-ser-las-mismas-para-todos.

119 See www.lanacion.com.ar/m2/1459190-prefiero-un-pais-sin-inflacion-porque-es-un-pais-mas-justo.

120 See www.lanacion.com.ar/m2/1456167-la-argentina-ante-el-fantasma-de-la-recesion.

121 The total length of time an investor expects to hold an investment. The investment horizon is used to determine the investor's income needs and desired risk exposure.

122 Under Argentina's National Constitution, two consecutive periods as President are the maximum allowed. Since Cristina Kirchner was re-elected as President in 2011, she may not be able to run for President again in 2015.

Final remarks

The financial and economic crisis initiated in 2008 after the falling of Lehman Brothers raised concerns in the international community about a possible ‘return to nationalism’¹²³ in many nations and regions. Some nations such as Brazil and Argentina have been charged with running protectionist policies in recent years.¹²⁴ Indeed, Argentina is at the top of Global Trade Alert’s ranking of protectionist nations¹²⁵ and it is reasonable to expect that its current policies will continue, at least until the end of Cristina Kirchner’s second term in office as President, in December 2015.

A final decision on whether Argentina is in breach of WTO rules would require extensive analysis focused on the actual implementation of Argentina’s measures.

Argentina is an active WTO member, which construes all its import controls as WTO compliant.

In any case, it is clear that Argentina’s international trade policy has evolved towards a scheme based on broad ex ante import controls applicable to almost all imports.

This story is around ten years old but it is still too early to make a final judgment. Close follow-up by stakeholders (eg practitioners, scholars, government officials and traders) will certainly enrich the analysis and lead to conclusions that may be of use for other nations in the future.

Argentina will most probably become a case study for anyone interested in cross-border trade controls, free international trade and WTO rules. This article is an introduction to and a preliminary analysis of this case study.

123 See www.economist.com/node/13061443. See also www.time.com/time/business/article/0,8599,1872565,00.html. See also www.globaltradealert.org/gta-analysis/did-wto-restrain-protectionism-during-recent-systemic-crisis.

124 See www.economist.com/node/21530144. See also www.sourcingbrazil.com/greater-brazil-plan-a-few-details-emerge-and-further-questions, <http://comex.iprofesional.com/notas/132701-Brasil-es-uno-de-los-pases-ms-cerrados-segn-la-Cmara-de-Comercio-Internacional>, www.globaltradealert.org/sites/default/files/GTA10_exec_summary.pdf, <http://veja.abril.com.br/noticia/economia/brasil-esta-entre-os-10-paises-mais-protecionistas-do-mundo>, www.lanacion.com.ar/m2/1465547-el-proteccionismo-verdadero-problema and <http://america.infobae.com/notas/46554-El-Banco-Mundial-alerto-que-el-proteccionismo-afecta-a-America>.

125 See *supra* i.

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