

II. TRADE AND INVESTMENT REGIME: FRAMEWORK AND OBJECTIVES

(1) INTRODUCTION

1. Since the previous Trade Policy Review of Argentina, important changes have been introduced in the legal framework for trade and investment policies, consolidating and advancing the reform programme. New multilateral and sub-regional commitments have been made and the main agency for trade policy formulation and implementation has been reorganized. Argentina's involvement in multilateral trade disputes as a complainant, plaintiff or third party has increased.

(2) GENERAL FRAMEWORK

2. The new Constitution of August 1994 brought about significant changes in trade-related matters. A new Chapter, entitled New Rights and Guarantees, contains provisions on political, civil, legislative, environmental, consumer protection and competition matters, which, together with other changes, should improve the stability of business conditions.

3. Executive power is in the hands of the President, who is elected by universal adult suffrage for a four-year term. The possibility of a single re-election of the President and two-round elections was introduced in 1994.¹ The President appoints his eight-member Cabinet, a Secretary-General of the Presidency and a Head of Cabinet, a post introduced under the new Constitution to moderate presidential powers. Ministers need not be members of the legislature nor of the President's political party. The next presidential elections are due in 1999.

4. Legislative power is vested in a bi-cameral Congress, which, since 1995, has been composed of a 72-member Senate and a 257-member Chamber of Deputies.² Deputies are elected by universal suffrage for a four-year term; half of the Chamber is renewed on a draw basis at mid-term elections. The last national elections for the entire Chamber of Deputies took place in May 1995 and the next are due in 1999, together with the presidential elections; the last mid-term elections for deputies were held in October 1997. Senators are nominated by the provincial assemblies (three per province as from 1995) for a six-year term, with one-third of the Senate being renewed every two years. From 2001, senators are to be directly elected by popular vote.

5. In response to the urgent need for an effective and independent judiciary, the 1994 Constitution established the Office of the Attorney-General as an independent entity, and introduced the appointment of judges by a Council of Magistrates and the removal of judges (other than those of the Supreme Court) by a judges' jury. The law establishing the Council of Magistrates, submitted to Congress in 1995, was passed in December 1997; however, the Council had not yet been established in May 1998.³ The acceleration of reforms and independence of the judicial branch, including the establishment of the Council of Magistrates, formed part of the discussions held with the IMF for the granting of Extended Credit Facilities to Argentina. Among the reforms is the establishment of new courts of first instance to deal exclusively with financial and fiscal cases initiated by the newly-created Federal Administration of Public Revenue (AFIP), section 3(i) of this Chapter). A large part

¹ In the past, no re-election was possible; the re-election amendment under the 1994 Constitution allowed President Menem to stand for a second term in 1995 (EIU, 1996a, p. 7; and EIU, 1997b, p. 6). In early 1997 a draft bill aiming to amend constitutional provisions so as to allow re-election for a third consecutive term was submitted to the Congress (Latin American Weekly Report, 18 February 1997, 25 November 1997, and 13 January 1998).

² Europa Publications Limited (1995); EIU (1996a), p. 7; and EIU (1996b), p. 4.

³ Latin American Weekly Report, 16 December 1997, Law 24937, 10 December 1997; and Decree 1469/97, 30 December 1997.

of their work seems likely to involve cases of tax evasion, which is estimated to run at US\$24 billion a year.⁴

6. At present, the judicial branch is divided into the nine-member Supreme Court of Justice, federal courts of appeal (including civil, commercial, criminal, peace, labour, penal-economic) and province courts.⁵ Judges of the Supreme Court are appointed by the President, with the approval of at least two thirds of the Senate, for an indefinite period; under the new Constitution, the nomination of other federal judges, currently appointed by the President with the Senate's approval, will be based on a binding recommendation of the Council of Magistrates, which will select candidates through public competition.⁶

7. Argentina's provinces each have their own Constitution, a directly-elected (four-year term) legislature (composed of Senate and Chamber of Deputies), a Governor and municipal officials, as well as a separate judiciary.⁷ The national Constitution authorizes the provinces to promote industry, railway and waterway construction, migration, land colonization and capital inflows independent of federal policy, and, under this provision, certain provinces maintain investment incentives (Chapters III and IV). Inter-provincial disputes are resolved by the Supreme Court.

8. Provincial and municipal authorities are empowered to levy social security, property, automobile and consumption taxes; rates and methods of assessment vary. Except for the exclusive right of the Federal Government to impose customs duties on imports and exports, the Constitution is not explicit as to the rights of the Federal Government to impose nationwide taxes and it does not limit the variety or nature of taxes that the federal and the various provincial governments may impose.⁸ To clarify this situation, the provincial governments have ceded their rights to impose certain taxes to the Federal Government in consideration for their receiving an agreed share of the relevant proceeds (co-participation/revenue-sharing of taxes). Since 1992 two fiscal pacts, agreed in 1992 and 1993, have governed public finances including transfers of federal revenues in order to promote fiscal adjustment and other reforms at the provincial level (e.g. in health and education, social security systems, public administration resources and bank privatization).⁹ In 1996 a new regionalization scheme was launched to eliminate overlaps between federal and provincial public sector agencies; it started with the transfer of branches of State-owned banks (*Banco de la Nación, Banco Hipotecario Nacional*) to publicly-owned provincial banks.¹⁰

(3) STRUCTURE OF TRADE POLICY FORMULATION

(i) Legislative and executive branches of government

9. The Congress has authority, *inter alia*, to legislate on foreign trade (including import and export duties), taxation, national loan, debt, budget and currency issues; it must also approve decrees

⁴ *Clarín digital*, 16 July 1997; *Ámbito Financiero*, 22 July 1997; *La Nación Line*, 16 and 22 July 1997; *Latin American Weekly Report*, 18 November and 9 December 1997; and *Latin America Economy & Business*, December 1997.

⁵ Provincial courts have their own Supreme Court and a system of subsidiary courts; they deal with cases within and confined to the provinces (Europa Publications Limited, 1995).

⁶ Paragraph 4 of Article 99 of the Constitution; EIU (1996a), pp. 7 and 8; EIU (1996b), p. 4; EIU (1997b), p. 4; and Europa Publications Limited (1995).

⁷ EIU (1996b), p. 4. Argentina consists of 23 provinces, one autonomous federal district (the Federal Capital of Buenos Aires), and the Islands of the South Atlantic.

⁸ Price Waterhouse (1995).

⁹ World Bank (1996b), p. 7; and World Bank (1996c).

¹⁰ *Latin American Weekly Report*, 3 October 1996.

(including the Executive's "emergency and necessity" decrees¹¹ as well as treaties.¹² Bills may be introduced in both chambers of the Congress by individual members or the Executive, as well as by popular initiative; however, bills related to constitutional reforms, international treaties, taxation, budget and penal issues cannot be introduced by popular initiative (Constitution Article 39). After being debated and approved by both chambers, they are passed to the Executive for approval within ten days, and promulgation. The Executive may return bills passed by Congress to be revised; after being amended and re-approved by a two-thirds majority in both chambers, the law must be enacted by the Executive.

10. The Executive concludes and signs international treaties, but it may not introduce implementing legislation without prior authorization by the Congress except in emergency, necessity or exceptional circumstances; thus, in principle, the Executive only issues implementing regulations.¹³ However, in recent years recourse to "decrees of necessity and emergency" seems to have been a regular practice in order to overcome blockages in the Congress; between 1989 and 1994, more than 300 such decrees (mainly related to state reforms) were issued. By defining a specific framework for such action, the 1994 constitutional reform seems to have curbed the President's powers to rule in this area; nevertheless, certain recent reforms (e.g. the privatization of the post company (Encotesa) and of airports, the de-regulation of the health care system, labour reforms, and the increase in telephone charges) have been introduced in this way. This has led to a series of court challenges, including to the Supreme Court of Justice, but so far only one decree (relating to taxes on videotapes) has been found unconstitutional.¹⁴

11. Since the previous Trade Policy Review, Argentina has continued with its practice of having relatively few Ministerial positions, but under these Ministries there are a number of distinct secretariats and Under-secretariats as well as other agencies. These are the Ministries of: the Economy, Works and Public Services; External Relations, International Trade and Worship; Defence; Education and Culture; Public Health and Social Action; Labour and Social Security; Interior; and Justice. On the basis of the constitutional reform, in 1996 four secretariats (culture; social development; sports and tourism, and, natural resources and the environment) were given independent ministerial status.¹⁵

12. The Ministry of Economy, Works and Public Services (MEOSP) has vast powers due to the wide range of economic issues administered by its secretariats. MEOSP's secretariats are responsible for designing, conducting and implementing virtually all trade and trade-related policies, although responsibility for trade negotiation and representation activities at multilateral and regional level is shared and coordinated with the Ministry of External Relations, International Trade and Worship.¹⁶ The latter Ministry is responsible, *inter alia*, for Argentina's trade negotiations, regional integration and export promotion; its Secretariat of International Economic Relations is responsible for relations with the WTO.

13. Since 1992 the organizational structure of MEOSP secretariats has been revised on several occasions to reflect, *inter alia*, policy priorities arising from reforms (e.g. privatization, public sector

¹¹ Such decrees must be sanctioned by the Permanent Bicameral Commission of the Congress (Article 100 of the Constitution).

¹² GATT (1992); and Europa Publications Limited (1995).

¹³ Articles 76 and 99 of the Constitution.

¹⁴ Latin American Regional Reports-Southern Cone, 4 March and 15 April 1997; Latin American Economy & Business, issues of April and August 1997; Latin American Weekly Report, issues of 1 January, 7 January, 14 January, 21 January and 9 December 1997; Uruguayan newspaper El País, 18 December 1997.

¹⁵ EIU (1996a), p. 7.

¹⁶ Law 22250, 12 March 1992; Decree 660/96 published on 28 June 1996.

and restructuring.¹⁷ Changes within MEOSP include: the creation in May 1994 of a National Commission on Foreign Trade to analyse, investigate and rule on injury to domestic production in the context of safeguards, anti-dumping and countervailing actions (Chapter III); the establishment in 1997 of the Federal Administration of Public Revenue (AFIP) comprising the Customs (ANA) which was merged with the Directorate General of Taxation (DGI) in October 1996.¹⁸

14. The Central Bank of Argentina (BCRA) formulates and implements monetary and financial sector policy. Since 1992, the Bank has been independent from the Executive. The scope for monetary policy actions is severely limited under the quasi-currency board arrangement (Chapter I).

(ii) Advisory bodies

15. At present, there is no formal governmental advisory body; cooperation with the private sector is principally maintained through informal consultations. In the past, the private sector contributed to the formulation and evaluation of trade policy through the Advisory Council on Foreign Trade (CACE), formed in 1985.

(4) TRADE POLICY OBJECTIVES

(i) General trade policy objectives

16. Since 1991, Argentina's main trade policy objective has been to raise the competitiveness of the economy. The principal means has been to reduce the anti-export bias resulting from earlier policies by tariff reductions and the elimination of non-tariff measures on trade in goods. Deregulation and the opening of the economy has similarly helped the competitiveness of the services sector and fostered foreign investment. Argentina has also sought to improve access to foreign markets in the context of multilateral and regional negotiations. Although there has been no major policy reversal, the pursuit of these objectives has been influenced by fiscal constraints, which have led to frequent tax and trade policy changes, particularly between 1993 and 1995 (Chapters I, III and IV).¹⁹

17. Regional agreements, particularly membership of MERCOSUR, are a priority element in foreign and trade policy. These are seen as means to diversify export markets as well as to strengthen economic cooperation and complementarity. However, other objectives are the consolidation and strengthening of the multilateral trading system (see below), as well as the growth of trade and bilateral relations with other countries, including in Asia.

(ii) Sectoral trade policy objectives

18. Sectoral trade policy is intended to be neutral and raise efficiency through the implementation of a horizontal approach, and, in general, there has been no reversal toward import substitution or "picking winners".²⁰ Nevertheless, in addition to MERCOSUR-based tariff escalation, sector-specific

¹⁷ In 1998, MEOSP comprised the following secretariats: Economic Planning; Coordination; Finance; Industry, Trade and Mining; Public Works and Services; and Agriculture, Livestock, Fisheries and Food, (Decree 660/96, published on 28 June 1996).

¹⁸ *Le Monde*, 11 October 1996; *La Nación Line*, 15 July 1997; Decree 1156, 14 October 1996; Decree 1589, 19 December 1996; Decree 618/97, 10 July 1997.

¹⁹ It is claimed that such frequent changes have had a negative impact on exports and investment potential, as uncertainty has affected their profitability and assigned higher value to rent-seeking activities (World Bank (1996b), p. 43).

²⁰ Chapter IV and UN/ECLAC (1997), p. 35.

trade-related measures have maintained border protection and encouraged domestic supplies for certain domestic industries, and encouraged investment, production, modernization or environmental protection (including natural resource conservation). Tobacco, sugar, forestry, fisheries, motor vehicles, pharmaceuticals, paper, textiles and clothing, and the footwear industries are among the sectors benefiting to varying extents from such measures, while unprocessed oilseeds, raw hides and skins are subject to export taxes (Chapter IV). In services, promotional measures apply to the film and advertising industries as well as construction; a few special conditions affect certain activities in insurance, telecommunications and transport services (Chapter IV).

(iii) The Uruguay Round and the WTO agenda

19. Argentina, a GATT contracting party since 1967, was an active participant in the Uruguay Round; it ratified the Marrakesh Agreement on 15 December 1994 and became a founding member of the World Trade Organization (WTO) on 1 January 1995 (see also section (6)).²¹

20. In the Uruguay Round most tariffs were bound at ceiling levels substantially higher than applied rates (Chapter III). The range of WTO obligations constitutes a challenge for Argentina's economy and for policy-making at the federal and provincial levels: the WTO has already required a number of legal and regulatory changes in order to meet commitments, and this process will continue through the implementation period. Similarly, full implementation of the provisions on TRIPS and TRIMS will require important industrial adaptation to new regimes in the pharmaceuticals and automobile industries. Overall, the resulting changes in the trade regime are expected to benefit investment, technological innovation and productivity. In the Uruguay Round, Argentina also obtained improved market access conditions for a large number of its agricultural exports to major world markets such as the EU and the United States (Chapters III and IV); nevertheless, the authorities consider that remaining non-tariff barriers in foreign markets, very high "tariffication" levels, and subsidized exports continue to affect the expansion and competitiveness of Argentine agricultural exports.²²

21. At the first Ministerial Meeting of the WTO in Singapore in December 1996, Argentina stressed the need to reinforce WTO commitments to help counter pressures for unilateral and discriminatory restrictive action. Argentina believed that these could be further strengthened by accelerating ongoing accession negotiations. The authorities considered that modest progress had been made in the implementation of market access and export subsidization commitments in agriculture, a vital sector of the economy. Argentina's objective was the full integration of this sector under the rules of the multilateral trading system. Argentina also took the view that WTO-consistent regional integration initiatives contributed to trade liberalization and were a positive response to new economic challenges; and considered it essential to study the links between trade and environment, investment, technology, competition policies and government procurement as well as to debate labour standards.²³

22. At the second WTO Ministerial Conference in Geneva in May 1998, Argentina expressed faith that at the next Conference a broad and comprehensive negotiating process would be initiated on the basis of consensus and a balance of interests over the entire range of negotiating issues.²⁴ In Argentina's view the amendment of existing provisions should be considered only within the

²¹ Law 24425, 7 December 1994; and WTO document WT/L/113/Rev.6, 5 December 1996.

²² Ministry of External Relations, International Trade and Worship; Presentation to the authorities of the province of Córdoba by Mr. Nestor Stancanelli on the Results of the Uruguay Round (*Los Resultados de la Ronda Uruguay del GATT*) in May 1994.

²³ WTO document WT/MIN(96)/ST/4, 9 December 1996.

²⁴ WTO documents WT/MIN(98)/ST/21, 18 May 1998, and WT/MIN(98)/ST/97, 20 May 1998.

framework of the new negotiations. Negotiations in agriculture should encompass a roll-back of export subsidies, as well as finding ways to eliminate domestic price support, rationalizing "green box" subsidies, striking a balance between agricultural and industrial tariffs, eliminating the dual exemptions presupposed by the special safeguards and simplifying the pattern of tariff quotas established in the Uruguay Round. Argentina, along with other members of the International Textiles and Clothing Bureau (ITCB), also expressed concern that, although a few quantitative restrictions had been eliminated, new barriers (e.g. repeated anti-dumping actions, customs and administrative formalities) had increased developed countries' import restrictions in this sector, and, as a result, the improved market access possibilities for small suppliers and least-developed countries (provided for in the Agreement on Textiles and Clothing, ATC) had not materialized. Further extensive and in-depth work on the complementarity and consistency between regional and multilateral measures was seen as an essential step towards ensuring the functioning of the WTO. Argentina was also concerned about the consistency of WTO commitments with macroeconomic provisions undertaken in the context of the International Monetary Fund and the World Bank; it emphasized that such disciplines should be mutually supportive. Argentina also felt that the WTO Dispute Settlement mechanism, which was broadly satisfactory, required some fine-tuning.

23. Since the early 1990s, Argentina has participated in GATT and WTO work on trade and environment.²⁵ It has expressed its concern on the absence of multilateral provisions on this matter, underlined the importance of the WTO's role in avoiding the use of environmental measures for protectionist purposes, emphasized the links between further agricultural trade liberalization and the environment, and highlighted several problems relating to packaging rules. Argentina also participated actively in the negotiations in financial, maritime transport and basic telecommunication services (Chapter IV). However, it expressed no interest in participating in the Information Technology Agreement (ITA); on the contrary, under MERCOSUR's tariff protection pattern, import duties on several items covered under this Agreement were increased ahead of schedule in 1995 (section (6)(ii)(b) of this Chapter, and Chapter III).

24. Concerning electronic commerce, in April 1998 Argentina indicated that proposals in this area (e.g. for creating a tariff-free zone for electronic commerce or concluding a duty-free pact) were covered neither by GATS Article V nor by Article XXIV of GATT 1994; as such commerce (defined as neither a good nor a service) was not part of WTO Agreements, there was no obvious legal basis for a decision and dispute settlement in this area.²⁶ Although supporting fast Internet growth, Argentina needed time to study the impact of electronic commerce on trade flows and how WTO disciplines could be adjusted while retaining stability and confidence in the system.

25. Since July 1997, Argentina has participated in the work of the Working Groups on the Interaction between Trade and Competition Policy and on the relationship between Trade and Investment and Transparency in Government Procurement (Chapter III).

26. At the June 1997 Cairns Group Ministerial Meeting in Rio de Janeiro, the Argentine authorities presented a study on the trade policies of WTO-acceding or aspirant countries; they also expressed concern over what they saw as the inadequate trade concessions offered by such countries (mainly China and the Russian Federation). At the WTO Singapore Ministerial meeting, the Group emphasized the need to monitor the implementation of the Uruguay Round commitments and agreed to the preparation of an agenda for the next round of multilateral trade negotiations. At the 18th Cairns Group Ministerial Meeting (Sydney, 1-3 April 1998), specific objectives in the key areas of export

²⁵ GATT documents TRE/5, 4 June 1992, TRE/7, 30 October 1992, and TRE/10, 6 April 1993; WTO document WT/CTE/W/24, 20 March 1996.

²⁶ WTO document WT/GC/M/28, 8 May 1998.

subsidies, market access and domestic support for agriculture, were agreed ("Vision Statement"); action in various fora was to be pursued for, *inter alia*, promoting such objectives, as well as the implementation of existing commitments in the area of agriculture.²⁷ The Group's next meeting will be held at Mar del Plata (Argentina) in 1999.

(5) TRADE LAWS AND REGULATIONS

27. The provisions of international agreements that are ratified and published in the Official Bulletin are implemented directly, unless their implementation requires the adoption of national regulations. They supersede existing domestic legislation and cannot be affected by subsequent domestic laws. MERCOSUR decisions, directives and resolutions have similar status but, under certain circumstances, do not require legislative approval; these legal texts, are published in the Official Bulletin of MERCOSUR. Some of these MERCOSUR regulations are adopted by law, decree or resolution and implemented after publication in the national Official Bulletin.²⁸

28. The provisions of the WTO Agreements, now incorporated into national legislation, are constitutionally superior to those of domestic legislation and MERCOSUR rules affecting trade with third countries.²⁹ The WTO Agreements can, therefore, be directly invoked before the courts, including the Supreme Court; such a case, for safeguard measures against footwear imports, was proceeding at the time of preparation of this report.

29. Since the previous Trade Policy Review, the issue of a single foreign trade law (Draft Law 23101) has been pending. Some of the draft law's mechanisms have begun to be put in place, but details were not available at the time of completion of this report.³⁰

30. Trade policy guidelines are increasingly based on multilateral or MERCOSUR provisions (Chapter III), which are themselves in a process of evolution. In this context, several laws on trade matters have been promulgated since 1992, for example, on preshipment inspection (1997), patents (1995/1996), data exclusivity, industrial design and utility models protection (1996). At the time of completion of this report, legislation was being prepared at the national or MERCOSUR level in areas such as customs clearance, standards, government procurement, anti-dumping, subsidies and countervailing measures, patents and copyrights, and competition policy.

31. The Constitution guarantees environmental protection and prohibits the entry of dangerous wastes or radioactive material; it mandates consumer protection and undistorted competition (Chapter III).

32. While Argentina has met most of the regular WTO notification requirements, transparency would be improved at the international level through prompt communication to the WTO of the introduction or modification of trade measures (Tables AII.1 and AII.2 and Chapter III).³¹ Areas where there have been delays in or a lack of notifications include the introduction of specific duties on

²⁷ Details on these matters may be found in WTO document WT/L/263, 21 April 1998.

²⁸ National Standards, must also be published in the official bulletins of the provinces.

²⁹ Commenting on the status of the Marrakesh Agreement in the Argentine legal system, the authorities confirmed to the WTO the guarantees on the primacy of international treaties and law over domestic legislation (except for the Constitution) (WTO document G/SG/W/139, 19 March 1996). Paragraph 22 of Article 75 of the Constitution stipulates that treaties are superior to domestic laws and case law (1992).

³⁰ GATT (1992).

³¹ This type of obligation, originally adopted in November 1979 and reiterated in Part I of the WTO Ministerial Decision on Notification Procedures (on 15 December 1993), covers the adoption of any trade measure.

textiles, clothing and footwear (section 7(i)(a) of this Chapter), variable import levies on sugar (since 1992), quotas on paper products (in force during 1993 and 1994), "mirror" export subsidy scheme (1992-93), changes in the statistical tax rate and legislation on free-trade zones and special customs areas (since 1994, Chapter III).

(6) TRADE AGREEMENTS AND ARRANGEMENTS

(i) Multilateral agreements

33. Under the Agreement Establishing the WTO, Argentina assumed, as part of the Single Undertaking, all commitments under the Multilateral Trade Agreements. It also signed the plurilateral International Bovine Meat and the International Dairy Agreements, which were discontinued at the end of 1997. It has maintained observer status in the plurilateral Committees on Government Procurement, since February 1997, and on Trade in Civil Aircraft, since November 1996.³² Observer status in the Committee on Government Procurement is intended to help Argentina become acquainted with its rules and activities, as well as to appraise the possibility for accession; the lack of direct commercial interest explains non-adherence to the Agreement on Trade in Civil Aircraft.

34. Since 1971, Argentina has been a beneficiary under various GSP (Generalized System of Preferences) schemes, which in 1997 covered more than 28% of total exports to donor markets, with the EU and the United States being the most important destinations in value.³³ In 1997, Argentina's degree of utilization of such benefits (defined as share of covered exports to total exports to the market) ranged from about 10% (Japan) to about 78% (average level for central and eastern European markets). Despite subsequent changes to the 1995 graduation-related amendments to the EU scheme (when Argentina lost GSP status for 50% of export items including raw hides and skins, leather, aluminium wire, dyes, chemicals, and lead pellets) the degree of utilization for this market increased by more than one third to about 33%.³⁴ Despite the reduction of Argentine benefits from the U.S. GSP scheme, by the application of the "competitive needs limit" and punitive action affecting more than 50% of Argentine exports (agricultural, chemical, pharmaceutical material and other manufactured items) because of allegedly poor efforts to strengthen protection of intellectual property rights for pharmaceuticals (Box III.1), the degree of utilization of the scheme was not affected in 1997, remaining at about 15%.

35. Argentina is involved in the second round of negotiations under the Agreement establishing the Global System of Trade Preferences (GSTP), where MERCOSUR countries negotiate as a single trading entity.

(ii) Regional agreements

(a) LAIA

36. Argentina is a member of the Latin American Integration Association (LAIA).³⁵ The long-term objective of the Montevideo Treaty, which provides the legal and institutional basis for the conclusion of economic and trade agreements among signatories, is the gradual and progressive

³² WTO documents TCA/W/1, 4 November 1996 and WT/L/247, 26 November 1997.

³³ MEOSP (Secretariat of Industry, Trade and Mining) estimates based on applications for the issue of certificates of origin.

³⁴ *Comisión Nacional de Comercio Exterior* (1996), p. 107; and WTO (1995).

³⁵ LAIA membership does not cover all Latin American countries; LAIA countries (i.e. Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela) are also WTO Members and, except for Ecuador, have each been subject to at least one Trade Policy Review.

establishment of a Latin American Common Market. The instruments used to attain LAIA objectives comprise two main categories of agreements: regional-scope agreements, where all member countries participate according to their level of development, and partial-scope agreements that bind only their signatories.³⁶

37. The establishment, operation and expansion of the LAIA-derived MERCOSUR has necessitated the adjustment of past LAIA trade agreements and has affected the significance of its institutional setting; the LAIA General Secretariat seems now to have treaty depositary and administration and advisory functions, as well as the responsibility for maintaining a database for trade negotiation purposes. In accordance with the Sao Paulo Guidelines, all trade preferences contained in existing bilateral LAIA agreements involving MERCOSUR and other LAIA members have to be renegotiated on the basis of the MERCOSUR Common External Tariff (section (b) below and Chapters III and IV) and deposited with LAIA as Partial-Scope Agreements. Since 1995, an ad hoc MERCOSUR-LAIA group has pursued such negotiations; while those with Chile and Bolivia were concluded (section (b) below), negotiations with other Andean Community countries and Mexico continued in 1998.³⁷

38. At present Argentina is a signatory to various partial-scope agreements, including³⁸:

- Bilateral economic complementarity agreements with non-MERCOSUR members (Colombia, Ecuador, Peru and Venezuela; in force until 30 September 1998, and Mexico until 30 June 1998, and covering tariff preferences and/or other economic issues (e.g. physical integration, establishment of mixed enterprises).
- Bilateral economic complementarity agreements with Brazil and Uruguay covering products where duties on intra-MERCOSUR trade have not yet been reduced to zero.
- Bilateral hydrocarbons trade agreements with Bolivia, Chile and Uruguay.
- Other agreements involving several LAIA members such as the River Transport Agreement for the Paraguay-Paraná Waterway, the Agreement on Unified Basic Regulations Governing Road Traffic; the Agreement on Cooperation and Trade in Goods Used for Environmental Conservation and Protection; the Agreement for the liberalization and expansion of intra-regional trade in seeds (comprising non-LAIA members too).

Sectoral trade agreements with several other LAIA members expired at the end of September 1997.

³⁶ ALADI/AR.PAR/4 of 1 August 1990, Regional Scope Agreement No. 4 and Amending Protocol of 12 March 1987. Countries are classified in three categories: most-developed; those at an intermediate stage of development; and least-developed. Argentina is a most-developed LAIA country. Countries higher in the classification are expected to grant more benefits than those standing lower and make an effort to grant deeper preferences to least-developed countries as well as on products of special export interest to them in the context of the Regional Tariff Preferences Agreement (PAR). In addition to the PAR, Regional Market-Opening Agreements in favour of least-developed LAIA countries based on non-reciprocity and cooperation, provide for the immediate elimination of all tariff and non-tariff restrictions on imports of certain items (specified in each agreement between the donor and the beneficiary) into other LAIA markets. Argentina is a signatory to Regional Market-Opening Agreements Nos. 1, 2 and 3 in favour of Bolivia, Ecuador and Paraguay, respectively.

³⁷ WTO document WT/COMTD/1/Add.4/Rev.1, 11 April 1997, p. 21.

³⁸ For a list of sectors, see WTO document WT/COMTD/7, 30 September 1996; and LAIA document ALADI/SEC//di 971, 14 July 1997.

39. Two reports to the WTO on LAIA activities were submitted in 1996 and 1997 and cover developments until 1996; similar reports had been presented to the GATT.³⁹

(b) MERCOSUR

40. Argentina is a member of the MERCOSUR, established in March 1991 under the Treaty of Asunción; its objective is, *inter alia*, the creation of a common market and the free circulation of goods, services, capital and labour among member countries as from 1 January 1995. MERCOSUR, initially only an agreement within the LAIA framework, now has an independent institutional status, which, *inter alia*, enables the group as such to undertake international commitments, and membership is now open to other LAIA countries.⁴⁰

41. MERCOSUR's institutional structure, established under the 1994 Protocol of Ouro Preto (in force since December 1995), comprises, in hierarchical order: the Council of the Common Market, which meets at least every six months; the Common Market Group, an executive body; the MERCOSUR Trade Commission, which monitors the application of the common trade policy instruments, reviews issues relating to common trade policies, intra-MERCOSUR trade and trade with third countries, and meets at least once a month; the Joint Parliamentary Commission, an advisory body; the Economic-Social Consultative Forum, an advisory body; and the MERCOSUR Administrative Secretariat. At the Fortaleza meeting of the Common Market Council in December 1996, plans to set up a MERCOSUR development bank to finance infrastructure projects in the sub-region were announced.

Intra-zone trade liberalization

42. Under the Trade Liberalization Programme, between June 1991 and 31 December 1994 barriers to trade among MERCOSUR partners covering close to 95% of intra-regional trade were eliminated. A regime of adjustment, agreed in August 1994, is to lead to a progressive phase-out of remaining tariffs on intra-regional trade. Sensitive items, which are contained in individual exception/adjustment lists, are being phased in between 1 January 1995 and 31 December 1998 for Argentina and Brazil, and between 1 January 1996 and 31 December 1999 for Paraguay and Uruguay. Argentina's exception/adjustment list contains 209 eight-digit HS items for which duty-free treatment is to apply as of 1 January 1999 (Chapters III and IV). Paraguay and Uruguay benefit from preferential rules of origin within MERCOSUR (Chapter III).

43. The adjustment regime was extended by waiver to permit longer progressive adjustment periods for the sugar and automotive sectors to MERCOSUR rules. At the time of completion of this report in June 1998, negotiations for the establishment of a common automotive regime in the year 2000 were at an advanced stage. The issue of a sugar regime was still under examination (Chapter IV).

44. A framework agreement for freeing trade in services within MERCOSUR over a ten-year period was signed in December 1997 (Chapter IV).

³⁹ LAIA reports to the GATT and WTO are found in GATT documents L/6946, 20 December 1991, L/6985, 5 March 1992, and L/6985/Add.1, 9 April 1992; and WTO documents WT/COMTD/7, 30 September 1996, and WT/COMTD/11, 8 October 1997.

⁴⁰ Economic Complementarity Agreement No. 18.

Common External Tariff

45. The Common External Tariff (CET) of MERCOSUR has been in force since January 1995, covering 85% of goods traded within the group; the CET affected 65% of Argentina's imports from outside the region or 70% of the tariff lines (Table III.1). As discussed in Chapter III, full implementation of the CET (all members, all items) is to take place by 2006; in principle, Argentina is to apply the CET fully (including sugar and automotive items) by the year 2001, except for certain informatics and telecommunications products for which the CET is to enter in force in 2006 (Table III.1). The phase-in of the CET consists of a gradual convergence (increase or reduction) in rates, depending on: the country; the items contained in the common list, namely capital goods, informatics, telecommunications items; and the national exception lists. Tariff reductions for products contained in national exception lists may only be accelerated, not delayed. MERCOSUR CET rates may only be modified with the consent of all MERCOSUR partners.

46. A temporary increase of the CET by three percentage points on most tariff items, with the precise product coverage varying across MERCOSUR members, was agreed in December 1997 to accommodate Brazil's external imbalance and allow Argentina to reduce the level of its statistical tax (section 7(i)(a) of this Chapter and Chapter III). While this change had not been notified to the WTO by June 1998, the authorities indicated to the Secretariat that the notification was being coordinated with other MERCOSUR partners.⁴¹ In the context of the Committee on Regional Trade Agreements, certain WTO members have requested more detailed information on the increase.⁴² Uruguay and Paraguay are to exempt certain sectors (e.g. capital and telecommunications goods, and inputs) from the increase.⁴³

Sectoral policies

47. Negotiations are under way for the harmonization of remaining restrictions on internal trade in agricultural products; in March 1998, the scope of work was expanded to include the coordination of national positions in international fora and the analysis and discussion of individual agricultural and agro-industrial policies with a view to ensuring the rational development of regional output and an increase in productivity. Production-sharing arrangements, which, *inter alia*, are aimed at fostering the rationalization of investments and raising the competitiveness of companies, may be negotiated by the private sector; the approval of MERCOSUR's Common Market Group is required. Bilateral arrangements between Brazil/Argentina, Argentina/Uruguay and Brazil/Uruguay govern trade in the automotive sector⁴⁴ (Chapters III and IV), while a steel production-sharing arrangement was applied between Argentina and Brazil for the period 1992-94. Discussion was recently initiated on ways to foster sub-regional trade in leather and footwear (Chapter IV).

Macroeconomic and other policies

48. MERCOSUR ministers meet periodically to coordinate their position on areas such as foreign investment and trade, and the adoption of common positions in international fora. Coordination is also being strengthened in other areas, as MERCOSUR encompasses a diversified agenda including environment, justice, education and labour issues. In the context of long-term major macroeconomic

⁴¹ Reuters, 14 December 1997; and *Latin American Weekly Report*, 18 November 1997.

⁴² WTO document WT/REG/M/15, 13 January 1998.

⁴³ More information may be found in the forthcoming Trade Policy Review of Uruguay.

⁴⁴ Having notified to the WTO their trade and investment measures for the automotive sector prior to the implementation of the WTO Agreements, Argentina and Uruguay benefit from the transition period provided under the Agreement on TRIMS; thus, their existing regimes may remain in force until 31 December 1999 (WTO document G/L/68, 6 March 1996).

decisions within the group, the adoption of a common currency for MERCOSUR was raised in an informal manner.⁴⁵ Several analysts consider that structural reforms and completion of the customs union must precede any move towards a single currency. Moreover, efforts are being made for the harmonization of the financial (convergence of individual regulatory frameworks to Basle recommendations), investment (section (8) of this Chapter) and fiscal (forthcoming negotiations) regimes, which constitute other major obstacles to such move.

Regional expansion process

49. MERCOSUR members have renegotiated existing preferential agreements within the LAIA framework with a view to establishing free-trade areas within the same framework. The process of extending sub-regional agreements is considered as part of the "building block" approach for the establishment of a South American Free-Trade Area. In most of the negotiations with individual countries and sub-regional trading blocs, MERCOSUR's main concern has been the opening of markets. The so-called "four plus one" method (MERCOSUR members negotiating as a group with individual countries) has been used and, in this context, individual free-trade area (FTA) agreements were concluded with Chile and Bolivia (formally LAIA partial scope agreements), but negotiations with the Andean community (without Bolivia) are being conducted as group-to-group negotiations.

50. Under the free-trade agreement with Chile, which entered in force on 1 October 1996, duty-free treatment applies between Chile and MERCOSUR and is expected to cover about 90% of traded goods within eight years; for the remaining 10% of items (sensitive and very sensitive items) the tariff elimination period is set at 10, 15 and 16 years, except for wheat, which will require 18 years. The reduction of Chilean import duties ahead of schedule on more than 165 MERCOSUR export items was being negotiated in May 1998; these talks, which were initiated in early 1997, are aimed at offsetting the potential impact of preferences under the 1996 Chile/Canada free-trade agreement on MERCOSUR exports.⁴⁶ The LAIA Regional Tariff Preference Agreement (PAR) applied between Argentina, Brazil and Chile was set at 30%, except for a few items where it is maintained at 12%; Chile grants tariff cuts of 50% and 40% to Paraguay and Uruguay. Areas such as rules of origin, intellectual property, transportation, communications, services, investment and dispute settlement are also covered by this agreement (Chapter III). Argentina sees in this agreement an opportunity for increasing and diversifying progressively its exports, mainly of cereals, oilseeds, beef, dairy and vegetable oils, to Chile.⁴⁷

51. The agreement with Bolivia was concluded in December 1996 and came into force on 2 March 1997. It is to lead to a free-trade area within a period of ten years. Argentina's interest in this agreement has been the lowering of Bolivian duties on imports of wheat, flour, canned peaches, cheese, chocolate, biscuits, plastic goods and steel; however, these are exempt from tariff cuts until 2005.⁴⁸

52. Since 1996 trade negotiations have also been initiated with Mexico (currently suspended) and the Andean Community (excepting Bolivia). A Framework of Understanding with the Andean Community signed on 16 April 1998, is to lead to the conclusion of an agreement for the extension ("multilateralization") of existing preferences to signatories, possibly also extending coverage to new items by October 1998, and a second agreement for the establishment of an FTA from

⁴⁵ Statements made by the Argentine President Menem and the Brazilian Finance Minister (Pedro Malan) and discussions at an inter-ministerial meeting in Brazil in early 1997 (*Latin American Weekly Report*, 10 June 1997; *Wall Street Journal*, 21 July 1997; and *Reuters*, 15 December 1997).

⁴⁶ Dow Jones Newswires, 20 February 1998.

⁴⁷ MEOSP/Secretaría de Agricultura, Pesca y Alimentación (1996), p. 11.

⁴⁸ *Latin American Regional Reports- Southern Cone*, 27 December 1996.

1 January 2000. A framework agreement to work towards free trade and cooperation was also signed with the Central American Common Market (CACM) in April 1998. Preparatory discussions are being held with the EU for the launching of negotiations for an association agreement. Reportedly, talks on future negotiations may be initiated with other countries and regional groups including Canada, the Caribbean Common Market (CARICOM) and Panama.⁴⁹

53. MERCOSUR members have developed a common position on the action programme and the negotiation process for a Free Trade Area of the Americas (FTAA). According to the Plan of Action agreed at the Second Summit of the Americas in Santiago de Chile in April 1998, negotiations launched in 1998 are to be appraised by the year 2000 and concluded by 2005. Nine negotiating Groups are to deal with issues such as market access, anti-dumping, subsidies and countervailing measures, government procurement, intellectual property rights, competition policy, agriculture, services, investment and dispute settlement. The negotiations are to lead to a comprehensive single undertaking, which is to be WTO-consistent and co-exist with bilateral and sub-regional agreements already in force. Furthermore, at the Second Summit of the Americas, a series of proposals were made, aimed at deepening the process of economic integration and creating opportunities for the full participation of all countries, to advance the modernization of financial markets, programmes of science and technology, energy cooperation, and hemispheric infrastructure (i.e. transportation and telecommunications). At the fourth FTAA Trade Ministers' Meeting, held in March 1998 in Costa Rica, an Administrative Secretariat for the FTAA negotiations was established to provide technical support.

54. MERCOSUR countries maintain an agreement with the United States for the promotion of trade and investment (Agreement relating to a Council on Trade and Investment, established in June 1991). A Framework Agreement on Inter-regional Cooperation with the European Union in December has been in force since 1995; this agreement is intended to pave the way for negotiations for an association agreement, as mentioned earlier, as well as to extend existing economic and trade cooperation to other fields, such as science and technology, environmental protection, communication, investment promotion, and the fight against illegal drugs trade. Discussions aimed at strengthening economic relations with India, Japan, the Russian Federation and the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) have also been launched since 1996.⁵⁰

Appraisal and challenges

55. Some concerns have been expressed about the possible trade diverting effects of the MERCOSUR integration scheme, in particular the boosting of intra-regional trade in inefficient sectors.⁵¹ However, while intra-MERCOSUR trade expanded faster than trade with third countries or other regions, trade with third countries also grew strongly between 1990 and 1996.⁵² Changes in the trade pattern for certain product categories (e.g. those relating to agriculture and agro-industry) toward MERCOSUR countries may also reflect shifting comparative advantage and increased competition within the region, but tariff escalation and a higher than average incidence of non-tariff barriers on inputs from the rest of the world may also be a contributing factor. As discussed elsewhere in this report, Argentina's export dependence on MERCOSUR markets (mainly Brazil) has increased for virtually all products, and for certain sectors MERCOSUR has become the main destination; while

⁴⁹ *Journal of Commerce*, 13 September 1997; *La Nación Line*, 13 September 1997.

⁵⁰ WTO document WT/COMTD/1/Add.4/Rev.1, 11 April 1997.

⁵¹ Yeats (1997).

⁵² In this period, MERCOSUR imports from other MERCOSUR countries grew at an annual average rate of 26% in U.S. dollars, while imports from other countries grew at 18%; EU trade with MERCOSUR valued in ECU has stagnated, while growing in U.S. dollar terms (WTO, 1997).

the impact on imports was not as pronounced as for exports, the share of MERCOSUR-origin imports for certain items that benefit from increased border protection against MFN sources has increased markedly (e.g. footwear and office machines).⁵³

56. The deepened links with MERCOSUR make Argentina sensitive to policy developments and economic conditions in Brazil.⁵⁴ Sensitive issues have included the sugar trade, access delays for exports of pharmaceuticals, state and federal investment incentives in the automotive sector (expected to be eliminated by the end of 1998)⁵⁵, constraints on banking operations, restrictions on short-term import finance, as well as plans for the introduction of new prior import authorization requirements. In this context, the need for improved coordination of macroeconomic policies and harmonization of regulatory environments within MERCOSUR is apparent.

WTO examination

57. Since February 1996, MERCOSUR has been examined in the light of the relevant provisions of GATT 1994, including Article XXIV (on customs unions and free-trade areas), by the new WTO Committee on Regional Trade Agreements. Until then, the GATT Working Party on MERCOSUR, set up in May 1993, had been examining the operation of the Treaty of Asunción, which was first notified under the Enabling Clause in July 1992. MERCOSUR countries have supplied to the GATT and the WTO detailed information on: the elimination of tariff and non-tariff restrictions; the establishment of the CET and the adoption of a common trade policy in relation to third States or groups of States; the coordination of macroeconomic policies; rules of origin; measures affecting imports from third countries; the application of national treatment; issues relating to commitments under LAIA; accession; dispute settlement; services; trade data and studies on trade creation/diversion; and the institutional structure. The MERCOSUR agreements with Chile and Bolivia were communicated to the WTO in April 1997 and discussed at the May 1997 meeting of the Committee.

(iii) Bilateral and other arrangements

58. Since 1982 Argentina has maintained bilateral agreements with the following non-LAIA countries from the region: Costa Rica, Cuba (extended until 31 December 1998) and El Salvador; any concessions under these agreements will be extended to the relatively less-developed LAIA members, as required by the Montevideo Treaty.⁵⁶ More recently, bilateral trade and cooperation agreements have been signed (with Armenia, the Russian Federation, and Saudi Arabia) or are in the process of negotiation (Croatia). Argentina has also subscribed to a fisheries agreement with the EU (Chapter IV) and signed meat export agreements with several countries.

⁵³ Growth of more than 70% was recorded in the share of MERCOSUR-origin imports of product categories such as animal and vegetable fats, coal, gas, medical products, leather items, office machines and data processing equipment, metal working machinery, and footwear (UNSD, Comtrade database).

⁵⁴ Chapters III and IV of this report; World Bank (1996b), pp. 21 and 42; Latin American Regional Reports-Brazil, 11 March 1997; El País, 23 February 1998.

⁵⁵ La Nación Line, 28 and 30 March 1998.

⁵⁶ Annex 12 of WTO document WT/COMTD/7, 30 September 1996.

(7) TRADE DISPUTES AND CONSULTATIONS**(i) Dispute settlement under the GATT/WTO****(a) Complaints against Argentina***Argentina - certain measures affecting imports of footwear, textiles, apparel and other items*

59. Following unsuccessful consultations initiated in October 1994, a panel was established in February 1997 upon request of the United States to examine certain measures maintained by Argentina affecting imports of textiles, apparel and other items.⁵⁷ These measures comprised: minimum specific duties on various footwear, textiles and apparel in excess of the bound rate of 35% *ad valorem*; a statistical tax of 3% *ad valorem* on imports from all sources other than MERCOSUR countries; and measures imposing, *inter alia*, labelling requirements related to affidavits of product components. The EU, Hungary and India reserved their rights to participate in the proceedings as third parties, and all presented arguments to the Panel.

60. The Panel concluded that:

- the minimum specific duties imposed by Argentina on textiles and apparel were inconsistent with the requirements of Article II of GATT; and
- the statistical tax of 3% *ad valorem* imposed by Argentina on imports was inconsistent with the requirements of Article VIII of GATT.

61. On 21 January 1998, Argentina notified its intention to appeal certain issues of law and legal interpretations developed by the Panel.⁵⁸

62. In January 1998, Argentina reduced the statistical tax rate to 0.5% *ad valorem* and raised by 3 percentage points the tariff rate affecting imports subject to the tax (Chapter III); it also appealed certain issues of law covered and legal interpretations developed in the Panel Report. In March 1998 the Appellate Body virtually confirmed the findings of the Panel, and, more specifically, its report, adopted on 22 April 1998⁵⁹:

- concluded that the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with Article II:1(b), first sentence, of the GATT 1994 to the extent that it results in ordinary customs duties being levied in excess of those provided for in that Member's Schedule. In this case, Argentina had acted inconsistently with its obligations under Article II:1(b), first sentence, of the GATT 1994, because the minimum specific duties regime, by its structure and design, resulted, with respect to a certain range of import prices in any relevant tariff category to which it applies, in the levying of customs duties in excess of the bound rate of 35% *ad valorem* in Argentina's Schedule;

⁵⁷ WT/DS56/R, 25 November 1997. The Panel decided not to review the consistency with the WTO Agreement of the minimum specific duties with respect of footwear; these were revoked on 14 February 1997 (WT/DS56/AB/R, 27 March 1998, and Chapter III of this report).

⁵⁸ When a Panel Report is appealed to the Appellate Body, it is not considered for adoption by the Dispute Settlement Body until completion of the appeal.

⁵⁹ WT/DS56/AB/R, 27 March 1998; and WT/DS56/11, 23 April 1998.

- concluded that the Panel did not err in finding that Argentina had acted inconsistently with its obligations under Article II of the GATT 1994 "in all cases" in which Argentina applied the minimum specific duties;
- upheld the findings of the Panel concerning the inconsistency of the statistical tax (paragraphs 6.79 and 6.80 of the Panel Report); and
- concluded that the Panel did not violate Article 11 of the DSU in: (i) admitting certain evidence submitted by the United States two days prior to the second substantive meeting of the Panel with the parties, and granting Argentina two weeks to respond; and (ii) not seeking information from, and consulting with, the IMF so as to obtain its opinion on specific aspects of the matter concerning the statistical tax imposed by Argentina.

63. In July 1998, the authorities made a proposal to implement the Appellate Body's conclusions: customs procedures were to be introduced to ensure that the *ad valorem* equivalent of minimum specific duties would not exceed the bound rate of 35%, and ceilings by range of import value were to be set from January 1999 to ensure that the statistical tax would not exceed US\$500 per shipment.⁶⁰

Argentina - measures affecting textiles and clothing

64. In October 1997 a panel was established to examine a complaint by the EU concerning the application and non-notification of specific duties on imports of textiles and clothing in excess of bound tariff levels.⁶¹ The United States reserved its third party rights.

Argentina – safeguard measures in imports of footwear

65. Following unsuccessful consultations with the EU, Indonesia, and the United States, in July 1998 a panel was established to examine safeguard measures on imports of footwear in force since February 1997 (Chapters III and IV).⁶²

Other

66. In November 1992, the EU requested Argentina to enter into GATT Article XXIII consultations regarding the application of countervailing duties on imports of certain dairy products.⁶³ In December 1992, under the same procedures the EU requested consultations on countervailing duties on imports of canned peaches in syrup originating in Greece.⁶⁴ In April 1994, the Czech Republic requested Argentina to hold consultations (Article XXII:1) regarding the imposition of provisional anti-dumping duties on imports of three-phase electric motors originating in the former.⁶⁵ All complaints referred to lack of substantive evidence on the fact that the imports of the products in question had caused or threatened to cause material injury to the domestic industry, as required by GATT Article VI of the General Agreement; as a result, investigations were initiated in Argentina and/or measures were adopted (Chapter III).

⁶⁰ WTO document WT/DS56/14, 7 July 1998.

⁶¹ WTO documents WT/DS77/4, 7 January 1998, and WT/DS77/4/Corr.1, 20 January 1998.

⁶² WTO documents WT/DS121/1, 8 April 1998, WT/DS121/2, 8 April 1998, WT/DS123/1, 27 April 1998, and WT/DS123/2, 13 May 1998.

⁶³ GATT document DS35/1, 7 December 1992.

⁶⁴ GATT document DS36/1, 6 January 1993.

⁶⁵ GATT document DS50/1, 11 April 1994.

(b) Complaints by Argentina

EU - oilseeds concessions

67. In September 1992, Argentina requested the urgent establishment of a panel under Article XXIII:2 to examine its principal supplier rights to the EU market with respect to soy beans and soy cake. At the Council meeting of November 1992 the EU recognized the rights of Argentina as a principal supplier in the light of paragraph 4 of the 1980 Procedures for Negotiations under Article XXVIII.⁶⁶

Norway - subsidy in connection with a tender submitted for a hydro-electric project in Costa Rica

68. In September 1992 Argentina informed the GATT Council of its intention to request Article XXII:1 consultations with Norway in connection with a hydro-electric project in Costa Rica that involved work in energy materials as well as the supply of related equipment.⁶⁷ The offer had included a donation (mixed-credit financing), which implied an implicit subsidy, considered by Argentina inconsistent with Article XVI. Although consultations with Norway were being held, Argentina reserved its right to resort to Article XXIII:2 if that should prove necessary.

EU - restrictions on imports of lemons

69. In July 1993, Argentina complained, in the GATT Council, against the system of reference prices and countervailing charges applied by the EU under its Common Market Organization for fruit and vegetables; these measures, which were viewed by Argentina as inconsistent with GATT Articles XI, XIII and X, affected Argentine lemon exports.⁶⁸ Following a series of consultations (Article XXIII:1), initiated in June 1994 under paragraph 4 of the April 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures, this case was resolved in 1996, in the context of GATT 1994 Article XXIV:6 negotiations on the accession of Austria, Finland and Sweden to the EU; Argentina was, *inter alia*, offered more flexible import price conditions for lemons, apples and pears.⁶⁹

Hungary - export subsidies in respect of agricultural products

70. In March 1996, Argentina and other WTO Members, complained that Hungary had not observed its commitments under Article 3.3 and Part V of the Agreement on Agriculture, by providing export subsidies in respect of agricultural products not specified in Section II of Part IV of its Schedule, as well as subsidies in excess of the budgetary outlay and quantity commitment levels specified in the same Schedule. In February 1997, following unsuccessful consultations, a panel was established on the request of Argentina, Australia, New Zealand and the United States. By July 1997, the parties to the dispute had reached a mutually agreed solution, which required Hungary to request a

⁶⁶ GATT documents DS 34/1, 18 September 1992 and C/M/260, 26 November 1992; and GATT (1992). Argentina's claims were based on the monitoring of EU compliance with panel recommendations, which in 1990 urged it to redress the nullification and impairment of benefits accruing from tariff bindings; this situation had been created by the introduction of a regime of payments and subsidies to processors and producers of oilseeds and related animal-feed proteins. Argentina had participated as a complainant in this panel (GATT document C/M/256, 29 May 1992).

⁶⁷ GATT documents C/M/259, 22 October 1992 and C/M/260, 26 November 1992.

⁶⁸ GATT documents C/M/265, 16 August 1993, DS 45/2, 28 June 1994, C/M/273, 12 July 1994, and C/M/275, 24 October 1994.

⁶⁹ WTO document G/L/65/Rev.1/Add.2, 21 October 1997.

waiver of certain WTO obligations; pending adoption of the waiver the complaint was not withdrawn.

Other

71. In December 1997, Argentina (Canada and Japan joined in January 1998) requested the United States to enter into consultations with respect to the administration of its tariff-rate quota for imports of groundnuts.⁷⁰

(c) Third party interests

United States - measures affecting the importation, internal sale and use of tobacco

72. In January 1994, following unsuccessful consultations, a panel was established in accordance with paragraph F(a) of the April 1989 Decision concerning Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61) pursuant to the complaints of Brazil, Canada, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe, to examine measures maintained on the importation, internal sale and use of tobacco in the United States; Argentina, the EU and New Zealand joined later as interested third parties.⁷¹ Argentina claimed that the measures would seriously affect its tobacco exports to the United States, a market which in the previous two years had accounted for almost 40% of its total tobacco exports. Argentina's sales to the United States represented 17,820 tonnes (or US\$45.8 million) and 15,568 tonnes (or US\$41.4 million) in 1992 and 1993, respectively; such levels represented a significant increase compared to past performance.⁷²

73. The Panel concluded that:

- the Domestic Marketing Assessment (Section 1106(a) of the 1993 Budget Act) was an internal quantitative regulation inconsistent with Article III:5;
- the Budget Deficit Assessment (Section 1106(b)(1) of the 1993 Budget Act) was an internal tax or charge inconsistent with Article III:2;
- the No Net Cost Assessment (Section 1106(2)(b) of the 1993 Budget Act) was not inconsistent with Article III:2; and
- the evidence did not demonstrate that Section 1106(c) of the 1993 Budget Act, Fees for Inspecting Imported Tobacco, mandated action inconsistent with Article VIII:1(a).

74. The Panel recommended that the inconsistent measures should be brought into conformity with the United States' obligations under the General Agreement.

75. The Panel Report was presented to and adopted by the GATT Council in October 1994.

⁷⁰ WTO documents WT/DS111/1, 8 January 1998, WT/DS111/2, 22 January 1998, and WT/DS/111/3, 22 January 1998.

⁷¹ GATT document DS/44R, 12 August 1994; and GATT (1996), p. 44.

⁷² GATT document DS 44/8, 11 February 1994.

Turkey - action on imports of textiles and clothing

76. In February 1996, Argentina stated at the Dispute Settlement Body that it shared the views of other complainants and was to reserve its rights with respect to consultations regarding the conformity of the unilateral measures on imports of textiles and clothing adopted in the context of the implementation of the customs union agreement between Turkey and the EU; such measures were said to affect imports from Argentina.⁷³ By January 1998 such consultations were still pending.

(ii) Disputes outside WTO

77. The Committee of Representatives of the LAIA provides a framework for trade consultation mechanisms. This body makes proposals for the resolution of differences between members when norms or principles of the Montevideo Treaty are not observed. Bilateral commissions deal with problems, mostly in the area of non-tariff measures, arising from the implementation of bilateral LAIA agreements.

78. MERCOSUR's dispute settlement procedures, initially established under the Brasilia Protocol for the Settlement of Disputes of 1991 (in force as from April 1993), were amended and expanded by the 1994 Ouro Preto Protocol. The mechanism provides for three successive stages for resolving disputes: (i) direct negotiation, (ii) intermediation by the MERCOSUR Trade Commission and, in the absence of consensus, recourse to the Common Market Group, and (iii) recourse to an arbitration tribunal (panel of experts), whose decisions cannot be appealed. In 1994 it was decided to establish MERCOSUR's Arbitration Tribunal in Asunción (Paraguay), but up to mid-1996, all cases had been resolved with direct negotiation (the first stage); furthermore, in 1997 there was discussion (at the *Comisión Parlamentaria Conjunta del MERCOSUR*) on the setting up a Tribunal of Justice to settle trade disputes.⁷⁴ The first formal dispute settlement case, involving a complaint by a Uruguayan paper firm on the application of import duties by Argentina, was resolved between the parties in April 1997.

79. The MERCOSUR agreements with Chile and Bolivia provide for a dispute settlement mechanism based on a panel of experts.

(8) INVESTMENT POLICY FRAMEWORK

80. According to the OECD, Argentina's overall policy framework has been a critical factor in maximizing the gains from foreign direct investment (FDI) and trade policy was of particular relevance. Trade liberalization had a positive effect on the volume of FDI inflows, because it made the domestic market more dynamic, allowed enterprises to import better or lower cost inputs (which made export-oriented production viable) and regional or multilateral agreements implied that these exports would face fewer barriers abroad.⁷⁵

81. Changes in Argentina's foreign investment regime have been a key element in opening the economy and in the successful deregulation, privatization and modernization of the large sectors traditionally controlled by the State. Argentina has made significant efforts to liberalize, strengthen and expand its investment framework, and has worked for similar improvements at the sub-regional and multilateral levels.

⁷³ WTO document WT/DSB/M/11, 16 March 1996.

⁷⁴ Mexico & NAFTA Report, 8 July 1997.

⁷⁵ OECD submission and intervention at the March 1998 meeting of the WTO Working Group on the Relationship between Trade and Investment (WTO documents WT/WGTI/W/26, 23 March 1998, and WT/WGTI/M/4, 5 June 1998).

82. Argentina's provisions governing foreign investment encompass, in a single text, the liberalization measures under the 1989 Economic Emergency and State Reform Acts as well as the prior Foreign Investment Law (Law 21382, as amended in 1980, 1989 and 1993); separate legislation, designed specifically to attract foreign investment, governs the mining sector and similar provisions are under preparation for the hydrocarbons sector (Chapter IV).⁷⁶

83. Foreign firms may invest in Argentina without prior government approval (including for full foreign ownership of a domestic company) on an equal footing with domestic firms in virtually all activities. No restrictions apply on the access of foreign investors to sources of local financing, including publicly financed research or subsidized research, full eligibility for economic development incentive programmes, or to the foreign exchange market; investment in government securities and in local quoted companies; capital repatriation and transfer of realized earnings⁷⁷; and the use of unrepatriated funds. No law or regulation forces foreign investors to associate with local partners. There are no discriminatory withholding taxes on income and no taxes affect the remission of profits and dividends emanating from foreign capital. No performance requirements are aimed specifically at foreign investors.

84. Under the 1993 legislation, mining investment, including in nuclear minerals such as uranium and thorium, has guaranteed stability as regards tax treatment for a 30-year period⁷⁸; stable exchange and customs treatment; exemption from taxation on assets and for profits stemming from capital contributions involving mines and mining rights; deductions for prospecting and exploration expenses and environmental conservation expenses; accelerated depreciation for income tax purposes for investments made in infrastructure and equipment for new mining projects or extending the productive capacity of existing operations; and exemptions from import duties (as well as the statistical tax that applied until early 1998) on equipment and parts (Chapter III).⁷⁹ To be eligible for this treatment, individuals and corporations must be domiciled in Argentina and register with the National Mining Department. A schedule of tasks and surveys to be conducted must be submitted to this Department, which verifies compliance (either directly or indirectly) on an annual basis. In addition, a sworn declaration on the environmental impact of the firm's activities has to be submitted annually.

85. Fiscal incentives consisting of tax payment deferral are in force in agriculture, while trade-related investment measures are in force for the automotive sector (Chapters III and IV).

86. Investment disputes can be adjudicated through local courts or administrative procedures, as well as through international arbitration. Under the Constitution, expropriation is only possible in case of public necessity and provided that appropriate compensation is paid in accordance with the

⁷⁶ Decree-Law 1853, 8 September 1993; U.S. Department of Commerce (1996) United States Department of Commerce/National Trade Data Bank and Economic Bulletin Board, Country Diversification and Defense Market Assessment Guides Country Profile: Argentina, IMF (1996); Price Waterhouse (1995).

⁷⁷ The right to repatriate profits and invested capital may be suspended by the Government in the event of serious balance-of-payments problems; in this case, the authorities may issue external public debt instruments, denominated in foreign currencies, to cover the amounts that registered foreign investors wish to repatriate as profits (European Commission, 1997).

⁷⁸ Provinces that adhere to this statutory regime and receive royalties or decide to receive royalties, cannot charge an amount exceeding 3% over the "minehead value" of the extracted mineral.

⁷⁹ Law 24196/93, Law 24296, 7 December 1993, and Decree 2686, 28 December 1993. Activities relating to liquid gas and hydrocarbons, the industrial process of cement manufacturing from calcination or similar processes, the industrial process for the manufacturing of ceramics, and sand, pebbles and gravel assigned to the construction industry are excluded.

provisions of the law. Since the implementation of the 1989 economic reform programme began, there has been no expropriation. Confiscation of property is not allowed.⁸⁰

87. Argentina is a party to the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA). MIGA guarantees have recently covered construction, manufacturing and energy projects.⁸¹ In 1995 MIGA guaranteed currency transfer and expropriation risks for: a toll road project involving an equity investment by Italy's largest construction company in Argentina's *Autopistas del Sol SA* (risk valued at US\$5 million); and a joint venture expansion of an Argentine cotton textile facility by means of an equity investment by a U.S. firm (risk valued at US\$16.2 million). In 1996 currency and war risks (valued at US\$2.2) were covered for investment aimed at developing a small-scale hydro-electric power plant.

88. In April 1997 Argentina underscored its commitment favouring foreign direct investment and demonstrated its ability to meet OECD standards in this field by becoming the first non-OECD Latin American country to adhere to several OECD investment instruments with the same rights and obligations as OECD member countries.⁸² In anticipation of its adherence, it acquired observer status in the OECD Committee on International Investment and Multinational Enterprises (CIME), which is responsible for monitoring implementation of the instruments, and, as a result, its investment policies are to be periodically examined by the CIME; it has also participated as an observer in the negotiations for the preparation of the Multilateral Agreement on Investment (MAI). Argentina has also agreed to take measures against the bribery of foreign public officials in connection with international business transactions and to endeavour not to allow the deductibility of bribes to foreign public officials; in this context, it has become a participant in the OECD Working Group on Bribery in International Business Transactions.

89. In 1994 and 1995, Argentina signed the MERCOSUR Intra-zone and Extra-zone Protocols for the Promotion and Protection of Investment.⁸³ While both protocols are aimed at creating favourable investment conditions in MERCOSUR countries, the extra-zone protocol is intended to avoid conflicting investment regulations among individual MERCOSUR members with respect to foreign direct investment; its provisions will not cover the automotive sector until 2000. These protocols guarantee fair, equitable and national treatment to foreign investors. Under the intra-zone protocol (affecting MERCOSUR-origin investment), temporary exceptions to national treatment are allowed for certain activities, and Argentina has reserved its rights on this matter. The intra-zone protocol also explicitly prohibits the use of local-content and export-performance requirements; as stated above, the automotive sector is not subject to such conditions.

90. Since the previous Trade Policy Review, Argentina has increased considerably its bilateral investment promotion and protection treaties; 37 treaties are currently in force, mainly with

⁸⁰ Europa Publications Limited (1995); U.S. Department of Commerce (1996).

⁸¹ MIGA News, issues of Spring and Summer 1995, and Spring and Fall 1996.

⁸² WTO document WT/WGTI/W/4, 7 August 1997. The instruments include: the OECD Declaration and the related OECD instruments on International Investment and Multinational Enterprises; the 1994 Recommendations on Bribery in International Business Transactions; and the 1996 OECD Recommendation on Tax Deductibility of Bribes to Foreign Public Officials. The OECD Declaration on International Investment and Multinational Enterprises requires signatories to provide national treatment; good behaviour guidelines for multinational enterprises; transparency, consultations and review procedures on investment incentives and disincentives; and the use of its cooperative approach for avoiding or minimizing the imposition of conflicting requirements on multinational enterprises.

⁸³ OECD (1997); MERCOSUR Decisions 11/93 and 11/94; and WTO document WT/W/GTI/W/22, 26 January 1998.

European, American and some Asian countries, and another ten are subject to ratification. In addition, an inter-institutional agreement with Chinese Taipei was signed and applied in 1993. Furthermore, 33 bilateral agreements against double taxation (19 of which deal with transport-related taxation) and/or tax evasion are in force. Argentina also maintains a comprehensive insurance-type agreement with the United States Overseas Private Investment Corporation (OPIC) which covers U.S. investors against political risks such as exchange controls, war and riots, as well as other risks, provided that the investment project has the approval of the authorities; it also allows for international arbitration of investment disputes.

91. There are no controls on the movement of capital into or out of Argentina.

92. The Secretariat of Industry, Trade and Mining of MEOSP is the regulatory and enforcement authority for foreign investment legislation. In August 1993, *Fundación Invert-Ar Argentina*, a private sector institution, was co-founded by the public and the private sectors to promote investment in Argentina. It provides advice to domestic and foreign investors, disseminates information on investment opportunities and organizes campaigns, seminars and conferences on this matter.

93. Since October 1997, in the context of the Working Group on the Relationship between Trade and Investment, Argentina has identified certain problems arising from the lack of coherence and limited scope of the investment-related provisions in WTO Agreements; its success in and reasons for attracting FDI in recent years are discussed in background papers prepared by the WTO Secretariat for use in the Working Group.⁸⁴

⁸⁴ WTO documents WT/WGTI/M/2, 10 November 1997, and WT/WGTI/W/26, 23 March 1998.