II. TRADE AND INVESTMENT REGIME

(1) OVERVIEW

1. There have been no changes to the Constitution or the basic legal system since Argentina's last Trade Policy Review in 1999, although reforms relating to the judiciary and various other matters were introduced under the Emergency Law. This Law, which came into force in 2002, temporarily grants the Executive extraordinary powers to set prices and intervene in the economy. During the review period, the President also made frequent use of his powers to issue, in exceptional circumstances and with the intervention of ministers, on grounds of necessity or urgency, decrees which have the same standing as laws adopted by the Legislature.

2. Argentina regards regional and multilateral negotiations as a means of promoting the well-being and fairness of society as a whole. It is an original Member of the WTO and participates actively in the multilateral trading system. Argentina is also an active participant in the Doha Development Round negotiations and has made several proposals, individually or jointly with other countries. Argentina is mainly interested in agriculture, although the negotiations on services, market access for non-agricultural products, special and differential treatment for developing countries, and the reduction of barriers to trade in environmental goods and services are also regarded as areas of special interest.

3. Argentina has made several notifications to WTO Members, although, as at October 2006, some notifications were overdue. Argentina has made active use of the WTO dispute settlement mechanism, in nine cases as the complainant, in 16 cases as the respondent and in 15 cases as a third party (of these 40 cases, five were initiated in 1996-1997). Out of the 16 cases in which Argentina participated as the respondent, nine related to trade remedies.

4. Argentina pursues an autonomous foreign trade policy which, however, must always be consistent with its Southern Common Market (MERCOSUR) obligations. As part of MERCOSUR, Argentina has concluded preferential trade agreements with Bolivia, Chile and Peru, which are associate members of MERCOSUR, and with the members of the Andean Community (Colombia, Ecuador and Venezuela). Argentina has also concluded several individual agreements with other LAIA members. The main agreements, in terms of product coverage, are those with the Andean Community and with Mexico.

5. With a few exceptions, Argentina's foreign investment regime is an open one. Foreign participation is restricted only in relation to fishing, domestic transport, the purchase of real estate in security (border) zones, and arms and ammunition; in 2003, restrictions were also imposed on certain communications media. Foreign investment is not subject to any prior authorization requirement and benefits from national treatment. In principle, foreign investors may repatriate their investments and profits and, like other investors, are eligible for the various tax incentives offered at federal and provincial level (see Chapters III and IV).

6. Argentina has signed and is applying bilateral investment treaties with 50 other countries, the aim being to promote and provide reciprocal protection for investments. During the review period, Argentina has had to respond to numerous complaints before international arbitration tribunals, several relating to emergency measures adopted in the context of the economic crisis. In January 2006, there were 43 cases before the International Centre for Settlement of Investment Disputes (ICSID). During the economic crisis, Argentina temporarily imposed exchange restrictions on the repatriation of capital and profits. Although investment flows have recovered since the crisis, it will be necessary to restore investor confidence in order to attract the investment needed to sustain economic growth.

(2) FRAMEWORK FOR TRADE POLICY AND INVESTMENT

(i) General institutional and legal framework

7. Since the last constitutional reform in 1994, there have been no changes in the Argentine Constitution. Argentina is a federative republic consisting of 23 provinces and one autonomous federal district (the Autonomous City of Buenos Aires). Under the Constitution, executive power is vested in the President, who is elected by universal adult suffrage for a term of four years, with the possibility of re-election for one more term. The last presidential elections were held in April 2003. The President appoints the Chief of the Cabinet of Ministers and the Ministers themselves, together with the Secretary-General of the President's Office. The President also concludes and signs treaties and other international agreements.[1]

8. The President issues the directives and regulations necessary to implement the country's laws, participates in their formulation and promulgates them. In exceptional circumstances, the President may, in agreement with his ministers, issue decrees on the grounds of necessity or urgency.[2] During the review period, the Executive issued many such decrees relating, for example, to the economy, health, works, public services and transport, social development, employment and social security, and administrative organization, some of them to amend existing laws. The authorities have pointed out that these decrees were adopted during the state of emergency to speed up the legislative process and were subject to a specific control mechanism since they could not be issued without the intervention of the Legislature. If there is no explicit pronouncement by the Legislature, after being issued the decrees in question remain in force for the duration of the procedure for which the Constitution provides.

9. Legislative power is vested in a Congress composed of two houses: the Chamber of Deputies and the Senate.[3] Deputies are elected by universal suffrage for a four-year term and may be re-elected. Senators are elected on a provincial basis by direct vote for a six-year term and may be indefinitely re-elected.[4] The Congress is empowered, among other things, to legislate on customs matters; establish import and export duties together with their tax base; impose indirect taxes (concurrently with the provinces); impose direct taxes for a specified term; establish the annual general budget; regulate trade with foreign nations; approve or reject treaties concluded with other nations and international organizations (but not amend their contents), and approve integration treaties which delegate powers and jurisdiction to supranational organizations.[5]

10. Legal instruments are arranged in the following hierarchical order: the Constitution and international human rights treaties that satisfy certain conditions; other international treaties; the laws passed by Congress, decrees issued on grounds of necessity or urgency, and delegated decrees issued under Article 76 of the Constitution; decrees; administrative decisions of the Chief of the Cabinet of Ministers; resolutions (issued by the Chief of Cabinet internally within his jurisdiction, and by Ministers, Secretaries and Under-Secretaries, as well as by the heads of regulatory entities); and, lastly, the orders issued by Directors.

11. Laws may originate in either the Chamber of Deputies or the Senate through draft laws introduced by their members, by the Executive or by citizens; however, draft laws relating to constitutional reforms, international treaties, taxation, budget and penal matters cannot be introduced

[1] Article 99 of the Constitution.
[2] Article 99 of the Constitution.
[3] Article 44 of the Constitution.
[4] Articles 54 and 56 of the Constitution.
[5] Article 75 of the Constitution.

by popular initiative. Laws become mandatory only after publication and on the date specified therein; if no date is specified, they become mandatory eight days after their official publication.[6]

12. Judicial power is exercised by the Supreme Court of Justice and the lower courts as constituted by Congress. The provinces and the Autonomous City of Buenos Aires have their own judicial organizations. In all cases, the organization is hierarchical or pyramidal and characterized by the existence of a Supreme Court or High Court, bench courts of second instance, and sole-judge courts. The Supreme Court of Justice consists of nine members, appointed by the President, with the approval of the Senate, for an indefinite period. The judges of the lower courts of the judicial system are also appointed by the President, with the approval of the Senate, for an indefinite period, following a selection process conducted by the *Consejo de la Magistratura* (Judicial Commission), at the conclusion of which it proposes a binding short-list of candidates to the Executive.

13. In 1997 a task force was set up to identify the main problems of the judicial system, and in 1998 a National Plan for Judicial Reform was drawn up.[7] In 2000, Resolution No. 177/00 of 24 July 2000 on the System of Justice and Legislative Matters established a Comprehensive Programme of Judicial Reform intended to develop and implement modernization projects and provide support for programmes for the reform of Argentina's entire judicial system. The authorities have pointed out that the reform was driven by long-standing problems, including slowness in processing cases, severe congestion in the courts and the lack of public access to justice. The main achievements of the Programme include the Electronic Communications Agreement[8]; the Agreement on an Information System for the Argentine Courts[9]; the creation of a Federal Training Network for the Argentine Judicial System[10]; the bilingual publication *Argentina – The Judicial System*[11]; the publication of Manuals on Aid for the Victims of Crime[12]; technical assistance for the Judicial Reform Programmes being implemented by the Supreme Courts and High Courts of Argentina's provinces; and the coordinated organization of continuing training activities.

14. Law No. 26.080, adopted in 2006[13], modified the composition and functioning of the *Consejo de la Magistratura* and of the *Jurado de Enjuiciamiento de Magistrados*, the body competent to conduct proceedings for the dismissal of judges. The Law reduced the number of members of the *Consejo* from 19 to 13 and changed its composition, increasing the proportion of representatives of the Legislature and Executive.

15. The General Auditing Office of the Nation, a congressional technical advisory body, is responsible for overseeing the legal aspects, management and auditing of all the activities of centralized and decentralized government departments and participates in the procedure for approving or rejecting the accounts relating to revenue collection and the investment of public funds.[14]

16. The Constitution recognizes the autonomy of each province in, *inter alia*, the political, administrative, institutional, and financial spheres. Provincial authorities have the right to levy indirect taxes concurrently with the Congress, although in practice tax administration has been mainly

[6] Article 2 of the Civil Code.
[7] Available at: http://www.reformajudicial.jus.gov.ar/materiales/plannac.htm.
[8] Consulted at: http://www.justiciaargentina.gov.ar.
[9] Consulted at: http://www.justiciaargentina.gov.ar.
[10] Consulted at: http://www.reformajudicial.jus.gov.ar.
[11] Available at: http://www.reformajudicial.jus.gov.ar.
[12] Available at: http://www.reformajudicial.jus.gov.ar and http://www.cpacf.org.ar.
[13] Law No. 26.080 of 22 February 2006, amending Law No. 24.937 of 10 December 1997, and Decree No. 207/2006 of 24 February 2006.
[14] Article 85 of the Constitution.

a Federal Government responsibility. This situation has led to successive revenue-sharing pacts, under which most of the revenue is collected by the Federal Government but later shared with the provinces.[15] During the period since Argentina's last Review, revenue-sharing pacts were concluded in 1999, 2000 and 2002. Revenue from taxes which may only be levied by the Federal Government (such as business taxes) is not subject to revenue-sharing.

17. The provinces reserve to themselves all the powers not delegated to the Federal Government under the Constitution, as well as those powers expressly reserved for them by special pacts at the time of their incorporation.[16] The Constitution authorizes the provinces to conclude international agreements, insofar as they are not incompatible with the country's foreign policy and do not affect the powers delegated to the Federal Government or the national reputation, with the knowledge of Congress. They are also authorized to enter into partial treaties with each other for the purposes of the administration of justice, economic interests or works of mutual benefit. They may also, among other things, promote the introduction and establishment of new industries or the importation of foreign capital.

(ii) Trade policy objectives, formulation and implementation

18. Argentina has reiterated its commitment to an open economy, taking the view that regional and multilateral liberalization will foster social well-being.[17] However, Argentina also considers that trade liberalization cannot be detached from the need of governments to retain sufficient room to conduct active policies in pursuit of their economic and social objectives.[18] Its strategic trade objectives include better economic integration through trade negotiations and cooperation with the private sector. In addition, Argentina is seeking to promote high-value added exports; further diversify its export markets; design support policies to help small- and medium-sized enterprises break into international markets; improve the commercial information available to enterprises; promote tourism and foreign direct investment; and pursue the coordination of foreign trade policy measures between the Ministries of the Economy and Production, External Relations, International Trade and Worship (MRECIC) and other institutions.[19]

19. According to the authorities, the multilateral trading system and the WTO are at the forefront of Argentina's trade policy, followed by MERCOSUR and then the preferential agreements. Regional agreements are likewise a priority concern of Argentina's foreign and trade policy. In particular, Argentina is giving priority to MERCOSUR as an integration project that goes beyond economic and trade considerations and represents a joint endeavour to achieve an open-door regionalism fully consistent with the multilateral system.[20] Argentina's major trade objectives at MERCOSUR level have been the revival of MERCOSUR following the regional crises, the consolidation of the free trade area (FTA) and the further development of the customs union, together with the granting of MERCOSUR associate status to other countries of the region.[21]

[15] The revenues of the shared pool are divided up as follows: 57.36 per cent goes to the provinces, 1.4 per cent to the City of Buenos Aires, 1 per cent to the *Fondo de Aportes del Tesoro Nacional* – ATN (National Treasury Contributions Fund), and the remainder to the Federal Government.

[16] Article 121 of the Constitution.

[17] WTO document WT/MIN(01)/ST/16 of 10 November 2001.

[18] WTO document WT/MIN(05)/ST/10 of 14 December 2005.

[19] Ministry of External Relations, International Trade and Worship, *Comercio internacional*. Consulted at: http://www.mrecic.gov.ar/.

[20] WTO document WT/MIN(01)/ST/16 of 10 November 2001.

[21] Ministry of External Relations, International Trade and Worship, *Comercio internacional.* Consulted at: http://www.mrecic.gov.ar/.

20. The authorities have pointed out that the general objectives of long-term trade policy are the well-being of the population, economic growth and full employment. Trade policy is formulated and implemented against the background of Argentina's traditionally small number of ministries within which the various secretariats and under-secretariats have responsibilities akin to those of ministries in other countries. Thus, the Ministry of the Economy and Production (MEP), which replaced the Ministry of the Economy, Works and Public Services, is in charge of formulating objectives and policies relating to economic issues, public finances, industry, agriculture, livestock, fisheries, and trade. Its functions include designing, implementing and auditing the tax and customs regime, defining foreign trade policy, and elaborating and implementing the foreign investment regime. The MEP is responsible for international negotiations on monetary and fiscal issues, as well as for relations with the international monetary and financial institutions.

21. The Federal Revenue Administration (AFIP), a self-governing entity of the MEP, is responsible for implementing tax and customs policy.[22] The AFIP includes the Directorate-General of Customs (DGA) and the Directorate-General of Taxation (DGI).

22. The MRECIC handles economic and trade negotiations as part of the implementation of Argentina's foreign trade policy, defined in coordination with the MEP.[23] The MRECIC is also responsible for regional integration and export promotion. The MRECIC's Secretariat of Trade and International Economic Relations is in charge of relations with international economic and trade organizations, including the WTO.

23. The Ministry of Federal Planning, Public Investment and Services was established in 2003[24] and given the task of determining objectives and policies in the areas of transport, communications, mining, energy, sanitation and public works. It also plays a part in the development of tariff structures.

24. The private sector participates in trade policy formulation through the *Consejo Consultivo de la Sociedad Civil* – CCSC (Consultative Council for Civil Society, whose aim is to promote the exchange of information between public authorities and civil society. The CCSC is composed of government representatives (15 per cent) and representatives of the private sector (22 per cent), non-governmental organizations (49 per cent) and academic institutions (14 per cent).[25] Its activities are coordinated with the Special Representative Body for Integration and Social Participation (REIPS) created in November 2003 under the Sub-Secretariat for American Economic Integration and MERCOSUR (SUBIE) of the MRECIC. At regional level, the REIPS represents Argentina in the MERCOSUR Economic and Social Consultative Forum, the civil society forum for the various member countries.

(3) FOREIGN INVESTMENT REGIME

25. There have not been any major changes to the legal framework governing foreign investment *per se*, established by the Foreign Investment Law (Law No. 21.382) and its Regulatory Decree No. 1853/93.[26] There are restrictions on foreign participation in the fisheries (see Chapter IV, Section (2)(iii)), communications media (including radio broadcasting and Internet access, see below), and arms and ammunition sectors.

[22] Decree No. 618/97 of 10 July 1997.
[23] Decree No. 355/2002 of 21 February 2002.
[24] Decree No. 1283/2003 of 24 May 2003.
[25] Ministry of External Relations, International Trade and Worship (MRECIC), *Consejo Consultivo de la Sociedad Civil*. Consulted at: http://www.mrecic.gov.ar/ccsc/.
[26] Law No. 21.382 approved by Regulatory Decree No. 1853/93 of 2 September 1993.

26. The Constitution (Article 20) grants foreigners, among other things, the right to exercise "their industry, trade or profession", and the right to own, buy and sell real estate. Law No. 21.382 confers on foreign investors the same rights and obligations as the laws and Constitution confer on national investors, subject to the provisions of any special or promotional regimes. According to the authorities, none of the special or promotional regimes treats enterprises differently according to whether their capital is domestic or foreign. A "foreign investor" is any natural or legal person domiciled outside the national territory who is the holder of a foreign capital investment, and local foreign-capital enterprises if they are investors in other local enterprises.

27. For national security reasons certain restrictions are imposed on investment in security (border) zones. To purchase real estate in these zones it is first necessary to apply to the National Security Zones Commission, which comes under the Internal Security Secretariat of the Ministry of the Interior, for approval to transfer property and/or exploit permits and concessions.

28. In 2003, a new law on the preservation of cultural property and assets was adopted.[27] This imposed a 30 per cent cap on the participation of foreign enterprises in the ownership of communications media[28] and limited their voting rights to 30 per cent.

29. Under Decree No. 1853, foreign companies can invest without prior approval, on the same conditions as investors domiciled in Argentina, and have the right to repatriate their investments and transfer their profits abroad at any time. However, in late 2001 an exchange control regime was re-established[29], including measures such as prior authorization requirements for external transactions involving interest and dividend payments, the repayment of principal and profit remittances.

30. According to the authorities, as of June 2006 there were no longer any restrictions on interest payments or on payments relating to the servicing of external debt capital or to the distribution of profits and dividends, provided that they correspond to closed and audited balance sheets. However, the repatriation of direct investments as a result of the sale or definitive disposal of the investment is subject to the prior approval of the Central Bank of the Argentine Republic (BCRA) insofar as it exceeds US$2 million per month. Under certain conditions, direct investments are subject to the 30 per cent deposit introduced by Decree No. 616/05.[30]

31. Local foreign-capital enterprises can access local credit on the same conditions as local domestic-capital enterprises.[31] Foreign investors may adopt any of the corporate structures allowed by national legislation.[32]

32. Incentives have been designed to attract investment to certain targeted activities (see Chapter IV). To reduce the initial cost of the investment, or of modernizing or expanding operations, incentives are also granted under certain specific tax regimes, including tariff concessions; some tax incentives are also granted under promotional schemes sponsored by provincial governments (Chapter III).

[27] Law No. 25.750 of 18 June 2003.

[28] The following are deemed to be communications media: newspapers, periodicals and publishing houses in general; radio broadcasting services and supplementary radio broadcasting services covered by Law No. 22.285; producers of audiovisual and digital content; Internet service providers; and public broadcasting companies.

[29] Presidential Decrees No. 1570/2001 of 1 December 2001, No. 1606/2001 of 5 December 2001, No. 1638/200 of 11 December 2001, and Law No. 25.561 of 6 January 2002.

[30] Decree No. 616/2005 of 9 June 2005, and BCRA Communications A 4554/2006 and A 4554/2006 of 4 August 2006.

[31] Law No. 21.382, approved by Regulatory Decree No. 1853/93 of 2 September 1993.

[32] Law No. 21.382, approved by Regulatory Decree No. 1853/93 of 2 September 1993.

33. The only case of expropriation envisaged in the Constitution is expropriation for reasons of public interest; this must be authorized by law and the owner must first be compensated. The confiscation of property is prohibited.[33] The authorities state that, nationally, there has been no legislation providing for expropriation. Locally, however, some provinces have adopted provincial expropriation legislation in connection with enterprises that have gone bankrupt, for the purpose of preserving the source of employment. In all these cases the expropriating province granted the owners of the business compensation equal to the value of the assets expropriated.

34. In order to promote and reciprocally protect investment, Argentina has signed and is implementing bilateral investment treaties with 50 countries[34], as well as double taxation agreements with 15 countries.[35]

35. Faced with the numerous complaints brought before arbitration tribunals by foreign investors, Argentina adopted a series of measures designed to deal with these claims. In 2003 it established, *inter alia*, the Public Utility Contracts Renegotiation and Analysis Unit (UNIREN) and the Arbitration Defence Aid Unit (UNADAR) to take charge of the amicable negotiations on foreign investment disputes under bilateral investment treaties.

36. Investment disputes can be adjudicated through administrative procedures and local courts or through international arbitration. Argentina is a member of the Multilateral Investment Guarantee Agency (MIGA), the Overseas Private Investment Committee (OPIC), and the International Centre for Settlement of Investment Disputes (ICSID).[36]

37. In May 2005, an arbitration tribunal constituted under ICSID rules awarded damages amounting to US$133 million in favour of a shareholder in an Argentine privatized gas transport company. According to the findings of the tribunal, through the pesoization and freezing of gas tariffs, Argentina had violated the protection accorded under the Argentina-United States bilateral investment treaty.

38. A total of 48 claims against Argentina were brought before international institutions between 1999 and October 2006; as of January 2006 there were 43 cases before ICSID. In 2005 and 2006, four claims were withdrawn and nine were suspended. One case was withdrawn because Argentina's Supreme Court ruled in favour of the investor. The authorities have indicated that the other withdrawals were due to settlements having been reached. The nine suspensions reflected the progress made in the renegotiations between the Government and the investors or the companies in which they had invested. In 2005, there were around 30 pending claims brought against Argentina by

[33] Article 17 of the Constitution.

[34] These countries are (year of signature): Austria (1994), Armenia (1994), Australia (1992), Bolivia (1995), Bulgaria (1994), Canada (1992), Costa Rica (1999), Croatia (1995), Cuba (1997), China (1994), Czech Republic (1998), Denmark (1994), Ecuador (1995), Egypt (1993), El Salvador (1998), Finland (1995), France (1992), Germany (1992), Guatemala (2000), Hungary (1994), Indonesia (1997), Israel (1997), Italy (1992), Jamaica (1995), Lithuania (1998), Luxembourg (1992), Malaysia (1995), Mexico (1998), Morocco (1997), Netherlands (1994), Nicaragua (2000), Panama (1998), Peru (1996), Poland (1992), Portugal (1995), Romania (1995), Russia (2000), South Korea (1996), Senegal (1994), South Africa (2000), Spain (1992), Sweden (1992), Switzerland (1992), Tunisia (1994), Turkey (1994), Ukraine (1996), United Kingdom (1992), United States (1992), Viet Nam (1997), and Venezuela (1995).

[35] These countries are (year of signature): Austria (1983), Belgium (1999), Bolivia (1979), Brazil (1982), Canada (1994), Chile (1985), Denmark (1997), Finland (1996), France (1981), Germany (1979), Italy (1983), Netherlands (1998), Spain (1994), Sweden (1997), and United Kingdom (1997).

[36] Investment Promotion Agency (ADI), *Legal Framework: How to Invest in Argentina*. Consulted at: http://www.inversiones.gov.ar/documentos/marco_juridico_argentina.pdf.

foreign investors under the ICSID arbitration rules, mainly in the utilities sector (see also Chapter IV, Section (6)).[37]

39. The MEP's Secretariat of Industry, Trade and Small and Medium-Sized Enterprises is the authority responsible for implementing the foreign investment regime. During most of the period under review, the Investment Promotion Agency (ADI), operating under the MEP was in charge of identifying business opportunities in various sectors and in the different regions of the country and of circulating the information, as well as serving as a reference centre.[38] In September, however, the National Investment Promotion Agency was established pursuant to Decree No. 1225/2006, replacing the ADI. This new agency is a decentralized body with wider scope for action than the previous one.

(4) INTERNATIONAL RELATIONS

(i) World Trade Organization

40. Argentina is an original member of the WTO and grants at least MFN treatment to all its trading partners. It is not a signatory to the WTO Plurilateral Agreements but is an observer to the Committee on Trade in Civil Aircraft and the Committee on Government Procurement. Argentina made specific commitments in the WTO negotiations on telecommunications and has ratified the Fourth Protocol (see Chapter IV, Section (6)). It also participated in the financial services negotiations but neither made any offers nor undertook new commitments, and therefore does not figure among the signatories to the Fifth Protocol. The MRECIC is responsible for Argentina's permanent mission in Geneva.

41. Argentina has made a large number of notifications to the WTO, but as of October 2006 certain notifications were still pending, such as those concerning agricultural export subsidies (for 2004 and 2005) and domestic support (for 2002, 2003, 2004 and 2005), export prohibitions and restrictions, and customs valuation (see Table AII.1).

42. Argentina has made active use of the WTO dispute settlement mechanism during the period under review. It has appeared as a complainant in nine cases (in three of which panels were established), as respondent in 16 cases (in seven of which panels were established) and as a third party in 15 cases; five cases out of the 40 were initiated before 1998. Out of the 16 cases involving Argentina as respondent five dealt with anti-dumping and countervailing duties and four with safeguards. The cases involving Argentina as respondent, and in which a panel report had been adopted as of June 2006, are as follows (complainant country in brackets): poultry (Brazil), preserved peaches (Chile), ceramic tiles (European Union), hides and leather (European Union), footwear (European Union), and textiles and apparel (United States). In each of these six cases a panel report was adopted.

43. At the WTO, in the context of the Doha Round Argentina has made a number of contributions and proposals, either alone or together with other MERCOSUR partners or other WTO Members.

[37] See http://www.imf.org/external/pubs/ft/scr/2005/cr05236.pdf.

[38] Investment Promotion Agency (ADI), *Quienes somos.* Consulted at: http://www.inversiones.gov.ar/quienes_somos.htm.

Argentina belongs to various negotiating groups, such as the G-20[39] and the Cairns Group (for agriculture) and the NAMA-11 Group[40] (for non-agricultural products).

44. Argentina remains convinced that the objective of Doha Round is development, and that the results should contribute to substantial poverty reduction.[41] Agricultural negotiations are one of Argentina's main interests in the WTO. Argentina has stated that "there could be no progress in NAMA and services if the developed countries failed to take seriously the commitment to an effective contribution in agriculture".[42] It has expressed its commitment to achieving substantial and progressive reductions in support and protection in the agricultural sector.[43] As a member of the G-20, Argentina has proposed that tariffs be divided into four bands, with higher tariffs subject to greater reductions[44]; concerning domestic support, the Group aims at real cuts based on support actually provided[45], while on export subsidies, it is in favour of the elimination of all forms of export subsidies.[46] Argentina is a supporter of non-trade concerns; the main non-trade concerns for Argentina are rural poverty, unemployment and environmental protection.[47]

45. Regarding market access for non-agricultural products, Argentina, together with Brazil and India (ABI proposal), has proposed a Swiss-type formula for tariff reduction.[48] Argentina has submitted a proposal that contains trade facilitation elements and stresses the importance of special and differential treatment.[49] Argentina has also made submissions concerning subsidies in the

[39] The G-20 is composed of Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzanía, Thailand, Uruguay, Venezuela, and Zimbabwe.

[40] The group consists of Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia, and Venezuela.

[41] WTO document TN/C/M/16 of 21 April 2005.

[42] WTO document TN/C/M/19 of 15 September 2005.

[43] WTO document G/AG/NG/W/88 of 30 November 2000 (Legitimate Non-Trade Concerns, Technical Submission by Argentina).

[44] G-20 Proposal on Market Access. Consulted at: http://www.g-20.mre.gov.br/conteudo/proposals_marketaccess.pdf.

[45] G-20 Proposal on Domestic Support. Consulted at: http://www.g-20.mre.gov.br/conteudo/proposals_domesticsupport.pdf.

[46] WTO document WT/MIN(03)/W/6 of 4 September 2003.

[47] WTO document G/AG/NG/W/88 of 30 November 2000 (Legitimate Non-Trade Concerns, Technical Submission by Argentina).

[48] WTO document TN/MA/W/54 of 15 April 2005 (Communication to the Negotiating Group on Non-Agricultural Market Access from Argentina, Brazil and India).

[49] WTO documents TN/TF/W/40 of 2 June 2005 (Communication from Argentina) and TN/TF/W/41 of 2 June 2005 (Communication from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru and Uruguay).

fisheries sector[50]; contingency measures[51]; geographical indications[52]; and environmental goods/services.[53]

46. In April 2003, Argentina circulated its offer on services in the context of the Doha Development Agenda negotiations. Together with some other Members, Argentina tabled a proposal concerning Mode 4 (presence of natural persons) under the GATS negotiations.[54] With respect to dispute settlement, Argentina, together with some other countries, has presented a non-paper that focuses on systemic issues.[55]

(ii) Preferential trade agreements

(a) Southern Common Market (MERCOSUR)

47. Together with Brazil, Paraguay and Uruguay, Argentina is a founding member of MERCOSUR, which was established in 1991 under the Treaty of Asunción with the objective of creating a common market and ensuring the free circulation of goods, services, capital and labour among member countries.[56] Initially only an agreement within the Latin American Integration Association (LAIA) framework, MERCOSUR acquired an independent legal personality under international law by virtue of the Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR (Protocol of Ouro Preto), signed in 1994. The Bolivarian Republic of Venezuela signed its Protocol of Accession with the other four MERCOSUR countries in July 2006; in October 2006 the Protocol was still in process of being ratified.

48. MERCOSUR was initially notified to the GATT in 1992 under the Enabling Clause.[57] The Agreement on MERCOSUR has been examined in the WTO Committee on Regional Trade Agreements under the provisions of both the GATT 1994 and the Enabling Clause. As of April 2006, the Working Party on MERCOSUR had reviewed the operation of the Treaty of Asunción in four meetings, the latest of which took place in March 2006.[58] The MERCOSUR countries have provided

[50] WTO Document TN/RL/W/166 of 2 November 2004.

[51] WTO document TN/RL/W/81 of 23 April 2003 (Communication from Argentina).

[52] WTO documents TN/IP/W/5 of 23 October 2002 (Communication from Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, Philippines, Chinese Taipei, and the United States); TN/IP/W/6 of 29 October 2002 (Communication from Argentina, Australia, Canada, Chile, New Zealand, and the United States); TN/IP/W/9 of 13 April 2004 (Communication from Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand, and the United States); TN/IP/W/10 of 1 April 2005 (Submission by Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Chinese Taipei, and the United States); and TN/C/M/11 of 2 February 2004.

[53] WTO document TN/TE/W/62 of 14 October 2005 (Integrated Proposal on Environmental Goods for Development).

[54] WTO documents TN/S/W/14 of 3 July 2003 (Communication from Argentina, Bolivia, Chile, People's Republic of China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Pakistan, Peru, Philippines, and Thailand) and TN/S/W/31 of 18 February 2005 (Communication from Argentina, Bolivia, Brazil, Chile, Colombia, India, Mexico, Pakistan, Peru, Philippines, Thailand, and Uruguay).

[55] WTO document JOB(04)/52 of 19 May 2004 (non-paper submitted by Argentina, Brazil, Canada, India, Norway, and New Zealand).

[56] The provisions of the Treaty of Asunción were incorporated in the LAIA legal framework through Economic Complementarity Agreement No. 18.

[57] WTO document WT/L/127 of 7 February 1996.

[58] GATT documents L/7044 of 9 July 1992, L/7370 of 18 January 1994, and L/7370/Add.1 of 18 January 1994. WTO document WT/COMTD/5/Rev.1 of 25 October 1995, and WT/COMTD/1 document series.

the WTO with information on numerous aspects of its institutional and legal framework.[59] In 2005, the WTO Secretariat prepared a document on the weighted average tariff rates and customs duties collected by MERCOSUR member countries (see also Chapter III(2)(iv)).[60]

49. The institutional structure of MERCOSUR, established under the Protocol of Ouro Preto, signed on 17 December 1994 and in force since 15 December 1995, comprises six organs, out of which three are intergovernmental with decision-making powers: the Council of the Common Market (CCM); the Common Market Group (CMG), and the MERCOSUR Trade Commission (MTC). The CCM is responsible for matters relating to the consolidation of regional integration and fulfilment of the goals set forth in the Treaty of Asunción and adopts Decisions. The CMG is the executive body responsible for supervising the implementation of the Treaty of Asunción, and issues Resolutions. The function of the MTC is to implement common trade policy instruments and handle matters relating to common trade policies, intra-MERCOSUR trade, and trade with third countries; it also issues Directives. The rulings of these bodies are binding on all member countries. The organs with no decision-making powers are: the Joint Parliamentary Commission, the Economic and Social Advisory Forum, and the MERCOSUR Administrative Secretariat. None of the MERCOSUR organs is supranational; they are all intergovernmental.

50. There have been some institutional changes since 1999, including the transformation of the MERCOSUR Administrative Secretariat into a technical secretariat with broader functions.[61] Moreover, in October 2003, the MERCOSUR Commission of Permanent Representatives (CRPM) was established as a subsidiary body of the CCM.[62] Its mandate is to assist the CCM and the Pro-Tempore Chairperson; make proposals regarding the common market, regional integration, and external negotiations; and strengthen economic, social and parliamentary relations within MERCOSUR.

51. With regard to the dispute settlement system, the Brasilia Protocol has been replaced by the Protocol of Olivos, signed in 2002 and in effect since January 2004. The new system incorporates a stage for reviewing the arbitral awards made by MERCOSUR's ad hoc arbitral tribunals, restricted to points of law and legal interpretations. It also includes a clause offering a choice of competent forum (MERCOSUR, WTO, or other preferential schemes). During the period under review, Argentina has participated in nine MERCOSUR disputes, in four as complainant and in five as respondent.[63]

[59] Most of the information is contained in WTO document WT/COMTD/1 of 2 May 1995, and the addenda and revisions thereto dated after 1995.

[60] WTO document WT/COMTD/1/Add.15 of 24 May 2005.

[61] MERCOSUR Decision No. 30/02 (Transformation of the MERCOSUR Administrative Secretariat into a Technical Secretariat) of 6 December 2002. Consulted at: http://www.sice.oas.org/trade/mrcsrs/decisions/dec3002s.asp.

[62] MERCOSUR Decision No. 11/03 of 6 October 2003.

[63] The disputes are as follows (complainant/respondent): Argentina/Brazil, "Application of Restrictive Measures to Reciprocal Trade"; Argentina/Brazil "Complaint concerning Subsidies on the Production and Exportation of Pork"; Brazil/Argentina, "Application of Safeguard Measures concerning Textile Products, Resolution No. 861/99 of the Ministry of the Economy, Works and Public Services"; Brazil/Argentina "Application of Anti-Dumping Measures against the Exportation of Whole Poultry from Brazil, Resolution No. 574/2000 of the Ministry of the Economy of the Argentine Republic"; Uruguay/Argentina, "Restrictions on Access to the Argentine Market for Bicycles of Uruguayan Origin"; Argentina/Brazil, "Barriers Preventing Argentine Phytosanitary Products from Entering the Brazilian Market. Non-Incorporation of Resolutions GMC Nos. 48/96, 87/96, 149/96, 156/96 and 71/98, which is preventing their entry into force in MERCOSUR"; Argentina/Uruguay, "Incompatibility of the Wool Processing Incentives Regime Granted by Uruguay and Established by Law No. 13.695/68 and Decrees Additional to the MERCOSUR Legislation Regulating the Application and Use of Incentives in Intra-zone Trade"; Uruguay/Argentina, "Ban on the Import of Retreaded

52. The Treaty of Asunción envisages the free movement of goods between the members of MERCOSUR. Since January 2000, all products, with the exception of those of the automotive and sugar sectors, have been subject to zero tariffs in intra-MERCOSUR trade (see also Chapter III(2)(iv)). As of April 2006, the automotive sector was governed by bilateral agreements (Argentina has agreements with Brazil and Uruguay); in the case of the sugar sector, MFN tariffs, with a 20 per cent preference, apply to intra-zone trade.

53. The Common External Tariff (CET) has applied (with some exceptions) to trade with non-MERCOSUR countries since January 1995 (see Chapter III(2)(iv)). The CET rates can only be modified with the consent of all members. According to data provided by the authorities, approximately 78.7 per cent (excluding information technology and telecommunications goods and capital goods) or 85.2 per cent (including information technology and telecommunications goods and capital goods) of Argentina's total imports are subject to the CET.

54. In December 2004, with a view to achieving the free movement of goods and eliminating the double charging of CET duties, the MERCOSUR members concluded an agreement[64] granting MERCOSUR origin status (see also Chapter III(2)(iii)) to products imported from outside MERCOSUR that comply with the common tariff policy. The first stage in this process, which began in January 2006, concerns goods with a zero per cent rating in all the member countries or with a tariff preference of 100 per cent within the framework of the agreements concluded by MERCOSUR with third parties. The second stage, which will cover all the goods subject to the CET, must be implemented by 2008 at the latest, with the entry into force of a MERCOSUR Customs Code, a mechanism for the distribution of customs revenue and the interconnection of the computerized customs management systems of the various member States.

55. The Protocol of Montevideo, signed by the MERCOSUR members in 1997, aims at liberalizing trade in services over a 10-year period. The Protocol has been ratified by Argentina, Brazil and Uruguay and entered into force on 7 December 2005.

56. The Macroeconomic Assessment Group, comprising the Ministers of Finance and the Presidents of the Central Banks, was established in 2000 for the purpose of coordinating macroeconomic policies.[65] To remedy the problem of differences in levels of development within MERCOSUR, the MERCOSUR Structural Convergence Fund was established, integrated and regulated by MERCOSUR Decisions No. 45/04 of 16 December 2004, No. 18/05 of 19 June 2005, and No. 24/05 of 8 December 2005, respectively. It is the first MERCOSUR mechanism to permit a net transfer of resources between MERCOSUR countries.

(b) Agreements concluded within the framework of the Latin American Integration Association (LAIA)

57. Argentina is a member of the Latin American Integration Association (LAIA), established in 1980 by the Treaty of Montevideo. The Treaty aims at the gradual establishment of a Latin American common market. Two types of LAIA agreements grant tariff reductions: Regional Agreements (AR) and Partial Scope Economic Complementarity Agreements (ECA).

Tyres"; and Uruguay/Argentina, "Omission of the Argentine State to Adopt Appropriate Measures for Preventing and/or Eliminating Obstacles to Free Movement due to the Cutting in Argentine Territory of Access Roads to the General San Martín and General Artigas International Bridges linking the Argentine Republic with the Eastern Republic of Uruguay".

[64] MERCOSUR Decision No. 54/04 of 16 December 2004.

[65] MERCOSUR Decision No. 30/00 of 29 June 2000.

58. The first type includes Regional Tariff Preference Agreement No. 4, which has been signed by all LAIA members. Under this agreement, LAIA countries are classified in three categories, namely: relatively less developed countries, countries at an intermediate level of development; and other countries. Argentina belongs in the latter category and accordingly grants preferences of 48 per cent to imports from land-locked relatively less developed countries, 40 per cent to imports from other relatively less developed countries, 28 per cent to imports from countries at an intermediate level of development, and 20 per cent to imports from countries at the same stage of development as itself (see also Chapter III(2)(iv)(d)).

59. Among the ECA agreements, the most important is ECA No. 18 which created MERCOSUR (see Section (4)(ii)(a) above). Other significant agreements (in terms of product coverage) are the agreements between MERCOSUR and Chile, MERCOSUR and Bolivia, Argentina and Colombia, Ecuador and Venezuela, Argentina and Mexico, and MERCOSUR and Peru (Table II.1).

Table II.1
Framework and free trade agreements concluded by MERCOSUR, April 2006

Agreement	Date of signature/ entry into force	Remarks
Free trade agreements		
MERCOSUR-Chile (ECA No. 35)	25 June 1996/ 1 October 1996	Elimination of duties on at least three quarters of tariff lines before January 2004 and for all tariff lines before 2014
MERCOSUR-Bolivia (ECA No. 36)	17 December 1996/ 2 March 1997	Establishment of a free-trade area for 1 January 2006
MERCOSUR-Mexico (ECA No. 54)	5 July 2002/ 5 January 2006	Gradual establishment of a free-trade area
MERCOSUR-Mexico (ECA No. 55)	5 July 2002/ 1 January 2003	Establishment of free trade in the automotive sector in July 2011
MERCOSUR-Andean Community (ECA No. 59)	ECA No. 59: 16 December 2003/ March 2005	Gradual establishment of a free-trade area over a maximum transition period of 15 years
MERCOSUR-Peru (ECA No. 58)	25 August 2003/ November 2005	Establishment of a free-trade area over a maximum transition period of 15 years
MERCOSUR-Cuba	21 July 2006/ not in force	Limited coverage (2,700 tariff headings). Establishment of a free-trade area over a maximum period of 5 years for a limited product universe
Extra-regional agreements		
MERCOSUR-India Preferential Trade Agreement	25 January 2004/not in force as it still requires parliamentary approval	Limited coverage (some 900 tariff headings); concessions still to be finalized with preference margins of 10 or 20 per cent, rising to 100 per cent for a limited group of products
Framework agreements		
MERCOSUR-South Africa; MERCOSUR and Lesotho, Namibia, Swaziland and Botswana (2003)	15 December 2000/n.a.	It is intended to establish a fixed preference agreement as a first stage, with a view to creating the conditions for the signature of a free-trade agreement at a later stage; negotiations in progress
MERCOSUR-Egypt	7 July 2004/n.a.	It is intended to establish a fixed preference agreement in a first stage, as a preliminary to a free-trade agreement
MERCOSUR-Morocco	26 November 2004/n.a.	It is intended to establish a fixed preference agreement in a first stage, as a preliminary to a free-trade agreement
MERCOSUR-Israel	8 December 2005/n.a.	Establishment of a free-trade area; negotiations in progress
MERCOSUR-Pakistan	21 July 2006/n.a.	It is intended to establish a fixed preference agreement in a first stage, as a preliminary to a free-trade agreement

n.a. Not applicable.

Source: Regional Trade Policy Directorate of the MEP.

60. Apart from the Agreement establishing MERCOSUR, no other MERCOSUR agreement has been formally notified to the WTO.[66] Nevertheless, WTO Members were informed about the conclusion of the Agreements with Chile and Bolivia in a communication presented by the LAIA Secretariat to the WTO Committee on Trade and Development.[67]

(c) Other preferential arrangements

61. Argentina is taking part in the Free Trade Area of the Americas (FTAA) negotiations, launched in December 1994 with a view to progressively removing barriers to trade in goods and services among 34 countries of the Western Hemisphere. The negotiating process was due to be completed in January 2005, but the Argentine authorities have indicated that in October 2006 the negotiations had reached an impasse, without time limits or dates for the resumption of the meetings of the Trade Negotiations Committee.

62. MERCOSUR has also begun negotiating free-trade agreements with countries that do not belong to the region and has signed a trade agreement with India and framework agreements with the members of the Southern African Customs Union (South Africa, Lesotho, Namibia, Swaziland and Botswana), with Egypt and with Morocco (Table II.1).

63. Moreover, MERCOSUR and the European Union are negotiating an interregional association agreement for the establishment of a political and economic association, based on the EU-MERCOSUR Interregional Framework Cooperation Agreement signed in December 1995. In May 2006, on the occasion of the Fourth Summit between the European Union, Latin America and the Caribbean, representatives of the two regions reaffirmed the need to conclude a balanced and comprehensive interregional association agreement.

64. Argentina benefits from the generalized system of preferences of the following countries: Australia, Belarus, Bulgaria, Canada, European Union, Japan, Liechtenstein, New Zealand, Russia, Switzerland and the United States.[68] In 2005, the percentage of Argentina's exports to the United States that actually used the system was 13.3 per cent of total Argentine exports to the United States, the main products exported in 2005 being hides and skins, methyl alcohol, motor vehicle parts and accessories, sugar confectionery, bovine meat preparations, cheese, aluminium wire and leather garments. In 2004 (the latest year available), the percentage of total Argentine exports to the European Union that actually used the system was 28.8 per cent.

65. Argentina participates in the Global System of Trade Preferences among Developing Countries (GSTP)[69], having granted, in the first round of negotiations, tariff concessions on a number of products, both agricultural and industrial. In June 2004, the third round of negotiations was launched in Brazil. In 2006, the Argentine Congress approved the Protocol for the Accession of MERCOSUR to the GSTP[70], under which the preferences granted by the members of the group are also conferred by Argentina, thereby turning MERCOSUR into a participant in the GSTP.

[66] WTO document WT/COMTD/1 of 2 May 1995.
[67] WTO document WT/COMTD/11 of 8 October 1997.
[68] Fundación Export.Ar: *Principales Acuerdos Preferenciales que benefician a las exportaciones argentinas.* Consulted at: www.exportar.org.ar/descargas/negocios.php?id= IE12estrategia.pdf.
[69] Argentina incorporated the GSTP Agreement in its legislation through Law No. 23.743 of 28 September 1989.
[70] Law No. 26.083 of 14 March 2006.