IV. TRADE POLICIES BY SECTOR

(1) OVERVIEW

1. Argentina enjoys a major comparative advantage in agriculture, especially in cereal production and livestock products. In 2005, exports of agricultural and livestock products (WTO definition) made up almost one-half of Argentina's exports of goods. Generally speaking, agriculture has received little assistance in comparison with other sectors producing goods and virtually all the aid notified has been within the Green Box. Minimum producer prices are set only for tobacco.

2. The manufacturing sector's share of GDP increased considerably during the period under review, largely as a reflection of its increased competitiveness following the 2002 devaluation of the peso, and of the growth of the domestic market. Special support schemes apply to the automotive industry, including an incentives scheme introduced in 2005 for the production of autoparts, whereby refunds are granted if local components are used. Argentina has concluded preferential agreements in the automotive industry providing, *inter alia*, for import quotas and measures to ensure a trade balance.

3. Argentina is the fourth largest producer of crude oil in Latin America and has the third largest reserves of natural gas. Exports of hydrocarbons are subject to a surcharge (in addition to the 25 per cent export duty), which can be as much as 20 per cent depending on the international price of oil. The rates that may be charged by natural gas distributors were frozen in 2002; artificially low prices and growing demand have caused problems that prompted the Government to take a number of steps, including export restrictions. Moreover, in order to guarantee the supply of liquid hydrocarbons, since 2006 the Government has determined the amounts that refining companies, wholesalers and retailers of gas oil must supply to the local market.

4. There were sweeping reforms in the electricity sector in the 1990s, leading to increased investment and helping to keep rates low. In the context of the economic crisis, electricity rates were frozen and contracts were declared open for renegotiation. As a consequence, operators incurred losses and investment in the sector dwindled. The subsequent economic recovery has caused supply to lag behind growing demand.

5. Argentina accepted commitments in six of the 12 sectors specified in the GATS. It submitted an initial offer in April 2003 in the framework of the Doha Round negotiations on services. Argentina participated in the Extended Negotiations on Telecommunications and has ratified the Fourth Protocol; it also participated in the Extended Negotiations on Financial Services but made no new offer partly because, except for insurance, it had already made extensive commitments in financial services.

6. As a result of its ratification of the Fourth Protocol, Argentina extended its commitments in telecommunications and consolidated its reform process. Since November 2000, all telecommunications services have been provided on a competitive basis. Yet fixed telephony continues to be dominated by the two "traditional operators", whose rates were frozen and whose contracts were declared open for renegotiation in 2002. Some rate adjustments were permitted in mid-2006, but the ratification of new contracts was still pending.

7. The financial sector was hard hit by the 2001-2002 crisis, which prompted the authorities to take a series of steps including more flexible regulatory principles, restrictions on the withdrawal of bank deposits, the conversion of deposits and banking assets into pesos at asymmetric exchange rates. The insurance sector showed negative profitability between 1995 and 2004. In practice, there are no restrictions on the entry of financial entities into the market and the principle of national treatment

applies to foreign capital. Foreign insurance companies receive national treatment in accordance with the principle of reciprocity, however. Prior permission must be obtained in order to operate on the insurance market and depends on opportunity and desirability criteria. Insurance covering risks on Argentine territory may be contracted only through companies established in Argentina. Insurance premiums are subject to a tax and a higher rate applies to companies established abroad. Current account transactions, as well as all movements of funds within financial entities, are subject to the Tax on Current Account Debit and Credit.

8. In the transportation sector, domestic air transport services (cabotage) are reserved for national companies, though exceptions may be allowed. Similar restrictions apply to maritime transport. Airports are State-owned but the management of the major airports has been contracted out to private enterprises or consortia. Most ports are under private management, but six of them, including the Buenos Aires port, are still State-run. The rates collected by State-run ports differ for internal transportation and international trade, being lower for the former.

9. To practise a profession in Argentina, foreign professional qualifications must be revalidated at a national university. Most professions are self-regulating, though some are Government-regulated, generally those with health or security implications such as medicine or engineering. Argentina has made specific commitments regarding a number of professional services under the GATS, including legal, accounting, engineering and architectural services.

(2) AGRICULTURE, FORESTRY, FISHERIES AND RELATED PROCESSING ACTIVITIES

(i) Agriculture and food processing

(a) Main features and objectives

10. Argentina has traditionally enjoyed a solid comparative advantage in agriculture, especially cereal and livestock production, and this has been amplified in recent years by firm international prices. Agriculture's share of GDP (including livestock and forestry but not food processing) was 9.2 per cent in 2005, compared with 5.5 per cent in 1998. At the beginning of 2006, agriculture, livestock, hunting and forestry provided 5.2 per cent of total employment, with food processing, beverages and tobacco accounting for a further 5.1 per cent.[1] The main agricultural products are (in decreasing order of volume produced): soyabeans, maize (corn), wheat, sunflowers, sorghum, grapes, lemons, apples, rice, and livestock (mainly cattle).[2] Argentina is one of the world's top five producers of sunflower oil, soyabeans and soyabean oil, honey, lemons and beef.[3] The leading agricultural exports are oilseed products, livestock products, and cereals (see also Chapter I(3)).

11. The Ministry of the Economy and Production (MEP) is responsible for policy formulation in the sector; its Secretariat of Agriculture, Livestock, Fisheries and Food (SAGPyA) formulates and implements policy.

12. At the international level, Argentina is striving for greater liberalization of trade in agricultural and livestock products, and agricultural negotiations are one of its main interests in the WTO (see Chapter II(4)(i)). It also attaches importance to non-trade concerns, in particular the

[1] MEP (2006b).
[2] *Ibid.*
[3] ADI, *Agribusiness*, consulted at: http://www.inversiones.gov.ar/sectors_invest.htm.

alleviation of rural poverty and unemployment, as well as environmental protection, even though it does not believe that non-trade concerns should be resolved at the expense of other trading partners.[4]

(b) Policy instruments

Measures at the border

13. Tariff protection for agricultural and livestock products is some 7.1 per cent (group 111, ISIC, Rev.2), compared to 10.7 per cent for the manufacturing sector (major division 3, ISIC) (see also Chapter III(2)(iv)). Additional import duties are applied to sugar imports of any origin, which may increase or decrease the *ad valorem* duty applied. The sugar trade within MERCOSUR is not duty-free and is thus one of the two exceptions (along with the automotive industry) to free trade within MERCOSUR.

14. Argentina does not maintain any multilateral tariff quotas, although there are preferential tariff quotas for some agricultural products. Under Economic Complementarity Agreement (ECA) No. 6, Argentina gives Mexico a reciprocal quota of 10,000 tonnes of canned peaches in syrup or packed in water containing added sugar or sweetening matter or syrup. Under ECA No. 59, Argentina grants quotas of 132 tonnes to Ecuador (increasing by 3 per cent annually) for chewing gum and 232 tonnes (increasing by 3 per cent annually) for cocoa powder.

15. At the time of the previous review, only bovine-derived raw materials and unprocessed oilseeds were subject to export taxes. Export taxes were, however, re-introduced in 2002 for all consumer goods, including a range of agricultural products (see Chapter III(3)(ii)). Furthermore, in November 2005, the refund rate for internal taxes was set at zero per cent for exports of several commodities spanning various product groups, thereby increasing the tax burden on exports.[5]

16. After unsuccessful negotiations between producers and the authorities on an agreement to stabilize beef prices, the authorities imposed a ban of 180 days on exports of bovine meat in March 2006.[6] In May 2006, the export ban was lifted and replaced by an export quota for the period 1 October to 30 November 2006 equivalent to 40 per cent of exports over a reference period (1 June to 30 November 2005).[7] Exports under the Hilton meat quota and bilateral agreements were in general excluded from both the ban and the quota restriction. In October 2006, Argentina had still not notified its export restrictions to the WTO.

17. Since January 2006, all bovine meat export transactions[8] have had to be registered with the Export Transactions Register – ROE *(Registro de Operaciones de Exportación)*.[9] According to the authorities, the Register serves only to upgrade the information available.

[4] WTO document G/AG/NG/W/88 of 30 November 2000.

[5] The products affected included meat and meat preparations, fish, dairy products, fruit and vegetables, coffee and tea, cereals and cereal-based preparations, milling products, and oils and fats.

[6] Resolutions Nos. 114/2006 of 8 March 2006 and 210/2006 of 30 March 2006. The tariff items affected were 0102.90.90, 0201.10.00, 0201.20.10, 0201.20.20, 0201.20.90, 0201.30.00, 0202.10.00, 0202.20.10, 0202.20.20, 0202.20.90, 0202.30.00, 1602.50.00, 1602.90.00 (bovine meat), and 1603.00.00 (bovine meat).

[7] Resolution No. 397/2006 of 26 May 2006. The quota concerns the following tariff items: 0102.90.90, 0201.10.00, 0201.20.10, 0201.20.20, 0201.20.90, 0201.30.00, 0202.10.00, 0202.20.10, 0202.20.20, 0202.20.90 and 0202.30.00.

[8] Tariff items 0102.10.10, 0102.10.90, 0102.90.11, 0102.90.19, 0102.90.90, 0201.10.00, 0201.20.10, 0201.20.20, 0201.20.90, 0201.30.00, 0202.10.00, 0202.20.10, 0202.20.20, 0202.20.90, 0202.30.00, 0206.10.00,

18. In 1999, the European Union requested the establishment of a panel, alleging that Argentina maintained a "de facto" export ban on raw and semi-tanned bovine hides. The Panel report concluded that the measures were inconsistent with Argentina's obligations to apply the rules and regulations in a reasonable manner (see also Chapter III(3)(iii)). In 2002, a new decree (Decree No. 1399/02) was adopted regarding the participation of private entities in the inspection of hides meant for export, repealing Resolution No. 2235/96.

19. Argentina did not reserve the right to grant export subsidies for agricultural products. In its latest notification to the WTO, Argentina indicated that it did not grant any export subsidies during the period 1998-2003.[10]

20. Several agricultural products enjoy preferential access to the markets of Argentina's main trading partners through quotas (Table AIV.1).

Internal measures

21. During the period under review, Members of the Committee on Agriculture questioned Argentina's intention to rectify its commitments regarding the Aggregate Measurement of Support (AMS) in its original Schedule notified to the WTO in 1997.[11] Following consultations, Argentina submitted an official request to rectify its Schedule in 1998[12]; the new Schedule was certified in 1999.[13] As a result, the total AMS and the product-specific global measurement of support for the only product in the Schedule (tobacco) were gradually reduced to Arg$75 million in 2004/2005.

22. According to Argentina's latest notification to the WTO, which covers the period up to 2002, domestic support was granted for research, pest and disease control, information services, extension and advisory services, inspection services, and infrastructure services.[14] Decoupled income support was granted to smallholders (*minifundistas*) and tobacco-growing families. Financial support has been granted in emergencies and as structural adjustment assistance. All these Green Box measures amounted to Arg$73.5 million (1992 pesos). The total AMS (granted for tobacco only) was Arg$47.7 million (1992 pesos).

23. The full price of beef cuts is set out in Resolution No. 1/2006.[15] Article 4 of that Resolution states that "the full price of beef cuts intended for the domestic market shall be the prices listed in Annex IIc", and in the event of non-compliance the rules set out in the Law on Supply shall apply (see Chapter III(4)(ii)). The same Resolution also sets the benchmark prices for various categories of live animals and for bovine meat. According to the authorities, all of the prices established for meat are only benchmark prices, and are the result of the agreement concluded with the private sector to make transactions more transparent, improve marketing efficiency and reduce consumer prices. The authorities have stressed that public policy on bovine meat is anti-inflationary and that meat policy is considered a social policy.

0206.21.00, 0206.22.00, 0206.29.10, 0206.29.90, 0210.20.00, 0504.00.11, 0504.00.90 (bovine meat), 1602.50.00, 1602.90.00 (bovine meat), 1603.00.00 (bovine meat), 2104.10.11 (bovine meat), 2104.10.19 (bovine meat), 2104.10.21 (bovine meat), 2104.10.29 (bovine meat), 3503.00.11, and 3503.00.12.

[9] Resolutions Nos. 31/2006 of 27 January 2006 and 209/2006 of 30 March 2006.

[10] WTO documents from the G/AG/N/ARG series (the latest being that of 23 March 2004).

[11] WTO document G/AG/N/ARG/4 of 7 November 1997.

[12] WTO document G/MA/TAR/RS/52 of 14 August 1998.

[13] WTO document WT/Let/292 of 12 March 1999.

[14] WTO document G/AG/N/ARG/24 of 25 April 2006.

[15] Resolution No. 1/2006 of 20 April 2006.

24. Tobacco producers benefit from a system of minimum prices financed by the Special Tobacco Fund – FET (*Fondo Especial del Tabaco*). The SAGPyA sets the FET price (which includes the surcharge and an additional emergency tax for some regions) for different varieties of tobacco, and transfers the funds to the provinces (in proportion to the gross value of each province's output).[16] The provinces pay the "FET price" to producers through the Local Executive Unit. The remaining 20 per cent of the Fund's receipts are used to finance specific projects aimed at the restructuring, diversification and modernization of tobacco production.[17]

25. The Argentine National Bank – BNA *(Banco de la Nación Argentina)* has special credit lines for the agricultural and livestock sector. Financing at a lower rate of interest is provided for various purposes including sowing, for working capital and investment, the discounting of credit invoices, mortgage-secured current account overdrafts, the purchase of used agricultural machinery, participation in trade fairs and import financing.[18]

(ii) Forestry

26. The share of forestry and logging in the agricultural GDP was 1.7 per cent in 2005. In that year, forestry employed some 15,000 people in the primary or plantation sector and other forestry work, and 33,978 people in the industrial sector.[19] Exports of forestry products are not voluminous (0.07 per cent of Argentina's goods exports in 2004). Paper and paperboard exports made up 36 per cent of total forestry exports, followed by wood and articles of wood (32 per cent), and wood pulp and other fibres (12 per cent).

27. Several bodies are in charge of the forestry sector: the Forestation Directorate of the SAGPyA is responsible for cultivated forests, the Woodlands Directorate of the Office of the Chef de Cabinet of the Executive is responsible for native forests, and the National Agricultural Technology Institute for applied research and extension services. At the provincial level, there are bodies responsible for the forestry sector in each province. The authorities have stated that, in October 2006, they were in the process of finalizing a National Forestry Programme in cooperation with the FAO.

28. The legal framework governing the forestry sector encompasses the Law on Promotion of Forestry Activity (Law No. 13.273, approved by Decree No. 710/95 of 13 November 1995); Decree No. 711/95 concerning the promotion of afforestation; the Fiscal Stability Law (Law No 24.857 of 6 August 1997, as amended), and the Law on Promotion of Investment for Cultivated Forests (Law No. 25.080 of 16 December 1998), and its regulatory Decree No. 133/99 and Resolutions Nos. 610/99, 152/00 and 22/01.[20]

[16] Argentine Association of Regional Consortia for Agricultural Experimentation – AACREA (2006).

[17] ADI, *Incentivos a la Inversión en Argentina,* consulted at: http://www.inversiones.gov.ar/documentos/incentivos_inversion%20.pdf.

[18] BNA (2006).

[19] The industrial sector comprises the primary and secondary processing industries, those making panels, pulp and paper, sawmills, impregnation, slicing, and laminated wood industries, as well as extractive industries such as the rosin and turpentine industries.

[20] WTO documents G/SCM/N/48/ARG/Suppl.1-G/SCM/N/60/ARG-G/SCM/N/71/ARG-G/SCM/N/95/ARG of 7 October 2004 and G/SCM/N/123/ARG of 25 September 2006.

29. Argentina notified the WTO that its forestry legislation allows for the payment of subsidies.[21] The total non-reimbursable amounts disbursed as economic support were notified for the period 2001-2005. For 2005, the figure was Arg$27.3 million (roughly US$9.4 million).

30. Under the Law on Promotion of Forestry Activity (Law No. 13.273), the subsidies are granted in the form of customs exemptions. Decree No. 711/95 provides for the payment of a set amount per hectare to the owners of cultivated forests. The Fiscal Stability Law (Law No 24.857 of 6 August 1997, as amended) provides fiscal stability for all forestry activities and any exploitation of forests covered by Law No. 13.273. The Law on Promotion of Investment for Cultivated Forests (Law No. 25.080 of 16 December 1998), and its regulations[22] provide for the refund of the VAT on certain goods and services intended for investment in forestry. Non-reimbursable economic support is provided for planted forests of no less than 500 hectares, based on a scale set out in Law No. 25.080.

(iii) Fisheries

31. The fishing sector is relatively small. It accounted for 0.3 per cent of the GDP[23] in 2005 (the extractive subsector only) and generated 20,000 jobs (fisheries and related activities). There is world demand for such Argentine fishery products as hake, squid and prawns. Eighty per cent of fisheries production (in volume terms) is exported.[24] Fisheries exports represented 2.3 per cent of the value of total exports in 2005.

32. Argentina is facing a problem of sustainability of exploitable resources.[25] It has tackled this by taking regulatory measures that have allowed resources to recover, while attempting to reconcile biological sustainability, economic activity and stable employment. Initiatives have been taken to maintain the various fishery resources at their maximum sustainable yield, promote the development of non-traditional fisheries, restore Argentina's presence in international fisheries-related forums, and promote the activities of the Integrated Fisheries Control System – SICAP *(Sistema Integrado de Control de las Actividades Pesqueras).*

33. The Federal Council of Fisheries – CFP *(Consejo Federal Pesquero)* was created by the Federal Fisheries Law (Law No. 24.922), and is responsible for developing national fisheries policy.[26] The State has exclusive dominion and jurisdiction over all living resources present in Argentina's Exclusive Economic Zone (EEZ)[27] and on the Argentine continental shelf as of 12 miles; living resources in Argentina's internal waters and territorial sea adjacent to its coastlines, extending up to 12 nautical miles, fall under the dominion of the provinces on the seaboard.

34. In Argentina's EEZ, fishing is reserved for vessels listed in the national register and flying the national flag. The captains and officers must be of Argentine nationality. Seventy-five per cent of the remaining crew members must be Argentine or foreigners with over 10 years of proven permanent residence in Argentina. The Federal Fisheries Law provides for exceptions to the national flag requirement in certain circumstances, for example on the basis of international treaties approved by law on the catching of unexploited or under-exploited species, under certain conditions.

[21] *Ibid.*
[22] Decree No. 133/99 and Resolutions Nos. 610/99, 152/00 and 22/01.
[23] MEP (2006b)
[24] FAO (2005).
[25] *Ibid.*
[26] Law No. 24.922 of 9 December 1998, partially enacted on 12 January 1998.
[27] The EEZ extending 200 miles from the baselines.

35. The Federal Fisheries Law stipulates that an authorization from the relevant authority is required in order to engage in fishing activities. In addition, a fishing quota must be allocated or a fishing permit obtained if the species is not subject to a quota. The Law provides for the creation of a system of Individual Transferable Quotas (ITQs), though this had not yet come on stream in October 2006.

36. Argentina has signed bilateral fisheries agreements only with Uruguay (Treaty of Rio de La Plata and its maritime coast).[28] The agreement with the European Union was terminated in 1998.

(3) MINING AND HYDROCARBONS

(i) Main features

37. In 2005, mining and quarrying accounted for 5.4 per cent of the GDP (2.5 per cent in 2000).[29] In 2001, 36,000 workers were employed in metallurgical plants, 21,000 in the oil and gas industry, 16,000 in mineral extraction, and 7,000 in the cement industry. Exports of mining products totalled some US$6.9 billion in 2004 (including fuels). High international prices have encouraged investment in the sector, which rose from US$220 million in 2003 to US$1.29 billion in 2004. Mining activities are mostly in private hands, both foreign and national. There are only two State-owned enterprises in the sector.[30]

38. Argentina is the fourth largest producer of crude oil in Latin America. Crude production averaged some 105,842 m^3/day in 2005, of which 22 per cent was exported.[31] Argentina's network of pipelines is over 6,000 kilometres long. There are 10 refineries, which had a total capacity of 625,000 bpd in 2004. Most crude oil and natural gas production is in the hands of multinational companies. The main player in the hydrocarbons market is Repsol-YPF (formerly *Yacimientos Petrolíferos Fiscales*).

39. Argentina is the third largest producer of natural gas in Latin America, and exported some 13 per cent of output in 2005. About one third of the output supplied to the Argentine market is for industrial consumption, another third goes to the electricity industry, some 20 per cent is for residential purposes, 9 per cent for the production of natural gas for vehicles (NGV) and the rest for other uses. Gas distribution is in the hands of nine private licence-holders, whilst two private companies control transportation. Argentina is linked by pipeline to neighbouring countries, to which it exports natural gas (to Chile in particular); at the same time it imports gas from Bolivia. As growth in demand has outstripped supply, there have been shortages of natural gas on the Argentine market. The Government has reacted with measures revolving around an Energy Plan, and leading, *inter alia,* to the creation of an Electronic Gas Market – MEG *(Mercado Electrónico del Gas)*.[32]

[28] FAO (2005).

[29] MEP, *Información economica*, consulted at: http://www.mecon.gov.ar/peconomica/basehome/infoeco.html.

[30] *Yacimientos Mineros de Agua de Dionisio (YMAD)* and *Fomento Minero de Santa Cruz.*

[31] Argentine Petroleum and Gas Institute – IAPG *(Instituto Argentino del Petróleo y del Gas).*

[32] The creation of the MEG follows the same line established in Decree No. 2731/93, pointing to the need to "ensure the existence of a competitive market with conditions allowing optimum price formation, to the benefit of consumers". See also the Electronic Gas Market website at: http://www.megsa.com.ar.

(a) Mining (excluding hydrocarbons)

40. The legal framework for mining includes the Mining Code, approved by Decree No. 456/97 of 21 May 1997, and Law No. 24.196 (Mining Investment Law), its amendment (Law No. 25.429 of 21 May 2001), its regulations contained in Decree No. 2686/93, as amended by Decree No. 1089/03 of 7 May 2003. It further includes Law No. 24.224 of 8 July 1993 (Mining Reorganization), Law No. 24.228 of 26 July 1993 (Federal Mining Agreement), Law No. 24.498 of 14 June 1995 (Mining Updating), Law No. 24.523 of 9 August 1995 (National Mining Trade System), Law No. 24.228 of 7 July 1993 (Federal Mining Agreement) and Law No. 24.585 of 1 November 1995 (environmental protection for mining activities).

41. Mines are the private property of the nation or the provinces, depending on the territory on which they are located.[33] Nevertheless, the Mining Code accords individuals the right to seek, exploit and hold them as owners. Although the Federal Government coordinates mining activities, the provinces are responsible for setting their own policies and managing their mining resources.

42. Argentina has notified the WTO that it uses various laws as instruments for the granting of subsidies (in different forms) to the mining sector.[34] The notification states that those laws are intended to encourage mining activities so as to further the country's development, ensure the rational exploitation of mining resources, generate employment and diversify regional economies. The notification[35] indicated the amounts disbursed for the 2001-2005 period; the 2005 total was Arg$ 42.5 million (approximately US$14.7 million).[36]

43. Law No. 24.196 sets the rules for the fiscal treatment of investment in mining (except for hydrocarbons, cement production and sand for construction). The Law grants fiscal stability for 30 years for investment in the sector, including foreign exchange and tariff regimes (but excluding VAT and exchange parity). Capital investment in projects benefits from the optional regime for writing off the IG (profits tax) over three years. Capital goods imported for use in mining operations are exempt from import duties, including the statistical tax. The Law allows for a 100 per cent profits tax deduction of all amounts invested in prospecting and exploration.

44. Law No. 24.196 also grants incentives in the form of lower royalty rates: provinces that adopt the regime contemplated in the Law may charge a royalty of up to 3 per cent on the value of the mineral extracted. In early 2006, only seven out of 23 provinces were charging royalties. Some provinces apply royalties inversely to the mineral's value added in the provincial territory.[37] In addition to the applicable royalties, Law No. 24.224 of 8 July 1993 provides that companies in the sector must pay a mining royalty comprising a fixed amount per mine and an additional amount for every 100 m^2 explored.

(b) Hydrocarbons

45. The Energy Secretariat of the Ministry of Federal Planning, Public Investment and Services (MPFIS) is the body responsible for proposing, coordinating, applying and monitoring national policy

[33] Article 7 of the Mining Code.

[34] WTO documents G/SCM/N/48/ARG/Suppl.1-G/SCM/N/60/ARG-G/SCM/N/71/ARG-G/SCM/N/95/ARG of 7 October 2004 and G/SCM/N/123/ARG of 25 September 2006.

[35] *Ibid.*

[36] *Ibid.*

[37] Investment Promotion Agency, Secretariat of Industry, Trade and Small and Medium-Sized Enterprises of the Ministry of the Economy and Production (2006).

in the energy sector.[38] The MPFIS Undersecretariat for Fuel is responsible for proposing, coordinating, implementing and monitoring national policy in the hydrocarbons sector.[39] The MPFIS also regulates the gas industry.

46. The regulatory framework for the exploration and exploitation of hydrocarbons includes the Mining Code and Law No. 12.161 of 21 March 1935, both of limited application; Law No. 17.319 of 23 June 1967 (Hydrocarbons Law), which remains in force only for permits and concessions already granted (currently the majority); as well as Law No. 26.154 of 11 October 2006, which introduced promotional regimes for the exploration and exploitation of hydrocarbons. Law No. 24.145 of 24 September 1992 and the subsequent 1994 constitutional reform transferred to the provinces the control of hydrocarbons deposits situated on their territory.

47. Between 1994 and 2003 exploration permits covering areas located in the provinces were granted under the "areas in transfer" regime (*régimen de "áreas en transferencia"*). The process was jointly managed by the National Government and the government of the province in which the area was located. On the basis of Decree No. 546/03, the provincial governments began managing their resources independently, either in full or partial adherence to Law No. 17.319 in the case of permits and concessions, or by means of contracts drawn up by the provinces themselves.

48. The permits and concessions granted exclusively by the Federal Government are still under federal jurisdiction. They continue to be governed by Law No. 17.319, which generally applies to the entire country in respect of the processing and transportation of hydrocarbons and foreign trade therein. The permits and concessions granted under the "areas in transfer" regime between 1994 and 2003 are being transferred to provincial jurisdiction. In 2004, through Law No. 25.943, the National Government awarded to ENARSA the offshore areas not yet subject to permits and concessions.

49. Companies holding concessions under Law No. 17.319 must pay royalties of up to 12 per cent for natural gas and petroleum exploitation. The Central Government ceded those royalties to the provinces, except for royalties corresponding to offshore areas, which it still collects. The amount collected in 2005 was US$988 million for crude oil, US$70 million for natural gasoline, condensate and liquefied petroleum gas (LPG), and US$627 million for natural gas. Moreover, concessions operated under Law No. 17.319 are subject to an annual surface fee per unit of area and to the general profits tax regime. The authorities have stated that the surface fee collected is negligible.

50. As described in Chapter III(3)(ii), export duties are levied on hydrocarbons. The export duty on crude oil varies depending on international oil prices and may fluctuate between 25 and 45 per cent. In the case of natural gas exports, the nominal rate has been 45 per cent since July 2006[40], with a special system of adjustment. The export duty on LPG is 20 per cent.[41]

51. Resolution No. 938/2006 of the Secretariat of Energy authorized the charging of differential prices for gasoline bought for vehicles with foreign licence plates at service stations in border areas. Resolution No. 959/2006 of the Secretariat of Energy made it compulsory to collect the differential price as of 16 August 2006 for gas oil and as of 31 August for gasoline.

52. Under Title III of Law No. 23.966 and its amendments, petroleum products are subject to the Fuels and Natural Gas Transfer Tax, which varies between 62 and 70 per cent for different types of

[38] MEP, Secretariat of Mines, *Misiones y Funciones*, consulted at: http://mineria.mecon.gov.ar/.
[39] Secretariat of Energy, Undersecretariat for Fuel (2006).
[40] MEP Resolution No. 534/2006 of 14 July 2006.
[41] Resolution No. 335/2004 of 11 May 2004.

gasoline, and is 19 per cent on gas/diesel oil. If the resulting tax is less than a certain minimum, that minimum must be paid.[42] Owing to gas oil shortages, the Government has twice had to suspend application of the Fuels and Natural Gas Transfer Tax to imported gas oil, in 2002 and in 2004.

53. Since 1 January 2002 and under the powers delegated by Law No. 25.414, the production and importation of regular grade petrol and natural gas have also been subject to a Water Infrastructure Tax of Arg$0.05 per litre of gasoline or cubic metre of gas, instituted by Decree No. 1.381 of 1 November 2001, as amended. This charge is payable only at one stage of the production/distribution process and is subject to a system of advance payments.

54. Law No. 24.076 and supplementary regulations govern the distribution and transportation of natural gas. The National Gas Regulatory Authority – ENARGAS (*Ente Nacional Regulador del Gas)*[43] is responsible for regulating and applying those rules. ENARGAS approves the rates that may be charged for the regulated services.

55. In 2002, the Public Emergency policy framework (Law No. 25.561 and supplementary regulations) froze the rates charged by natural gas distributors and stipulated the renegotiation of the contracts of privatized companies, including price setting and adjustment clauses. As of July 2006, renegotiations had been concluded with just one (Gas Natural Ban S.A.) of the 11 companies.[44] In 2004, ENARGAS approved price increases for large users. Since 2002, several agreements have also been concluded between the authorities and producers in order to stabilize the prices of natural gas, LPG and gas oil.[45]

56. To assure the supply of liquid hydrocarbons and their derivatives, (gas oil in particular), the Government issued Resolution No. 25/2006 in October 2006 containing new rules on the marketing, intermediation, distribution and/or production of gas oil.[46] The Resolution obliges refining companies and/or wholesale and/or retail sellers "to cover in a reasonably justified manner the entire demand for gas oil, in the amounts requested from them in keeping with customary market practices". The amounts marketed must be at least as much as those supplied in the same month of the preceding year, plus the positive correlation existing between the increased demand for gas oil and the increase in GDP, cumulated from the reference month up to the current date. The Domestic Trade Secretariat was empowered to apply the procedures foreseen in Law No. 20.680 of 20 June 1974 (see Chapter III(4)(ii)).

57. Through Decree No. 1396/2001 issued in 2001, the Government declared the production and marketing of biodiesel for use purely as fuel or as a base for mixing with gas oil or as an additive for gas oil to be of national interest.[47] The Decree accords some tax incentives, for example, a 10-year waiver of the Liquid Fuels and Natural Gas Tax and exemption from the Presumed Minimum Profits Tax for companies producing biodiesel. In 2006, Law No. 26.093 of 19 April instituted the Regulatory and Promotion Regime for the Sustainable Production and Use of Biofuels.

[42] The minimum payable (in Arg$ per litre) was 0.5375 on leaded or unleaded gasoline of over 92 octanes; 0.5375 on other leaded or unleaded gasoline; and 0.15 on gas oil, diesel oil and kerosene.

[43] See also: http://www.enargas.gov.ar.

[44] Public Utility Contracts Renegotiation and Analysis Unit (2006a).

[45] They include the Agreement for the Stabilization of Natural Gas Prices at the Point of Entry into the Transportation System, concluded on 2 April 2004 and effective until 31 December 2006.

[46] Resolution No. 25/2006 of 11 October 2006.

[47] Decree No. 1396/2001 of 4 November 2001.

58. Since 2003, Argentina has concluded several international energy integration agreements, including that with Bolivia (North-eastern Argentine Gas Pipeline (*Gasoducto del Noreste Argentino*)), with Brazil (Transitional Energy Exchange Agreement (*Acuerdo Transitorio de Intercambio de Energía*)), with Venezuela and Brazil (South American Gas Interconnector (*Iniciativa del Gran Gasoducto del Sur*)), and with Venezuela and Bolivia (initiative to create a multistate petroleum enterprise (*Iniciativa para la creación de una empresa petrolera multiestatal, PETROSUR*)).

(4) MANUFACTURING

(i) Overview

59. Manufacturing's share of GDP rose from 19.4 per cent in 1998 to 23.3 per cent in 2005 (including food processing), due in large measure to the expansion of the domestic market, the sector's renewed competitiveness following the devaluation of the peso and a general contraction in the share in GDP of activities oriented toward domestic trade (construction services and real estate) (see also Chapter I). In 2004, the last year for which data are available, the manufacturing industries that contributed most to the volume of trade for the sector were food processing (29.2 per cent), petroleum (18.9 per cent), the chemical industry (12.4 per cent), the steel and metallurgy industry (10.8 per cent) and the automotive industry (9.4 per cent).

60. The bulk of industrial activity is concentrated in three provinces, namely Buenos Aires (35 per cent), Santa Fe (21 per cent) and Córdoba (11.5 per cent). In 2005, the manufacturing sector employed 26 per cent of Argentina's labour force.

61. The balance of trade for the manufacturing sector was reversed in 2002 as imports declined drastically and exports remained stable. Some 90 per cent of exports of manufactures can be attributed to huge conglomerates and multinational corporations, many of which have majority foreign participation. The leading exports in 2004 were machinery and transportation equipment (9.1 per cent of the total), followed by chemicals (8.5 per cent) and other semi-manufactures (mainly hides) (5.2 per cent) (see Table AI.1).

62. Through its Secretariat of Industry, Trade and Small and Medium-Sized Enterprises, the Ministry of the Economy and Production is responsible for formulating industrial policy and devising, funding and applying instruments to further the sector's development and growth; it acts as the authority responsible for implementing promotional schemes.[48] Several activity-specific incentives are available to the manufacturing sector, more particularly to the automotive and naval industries (see below).

(ii) Support measures

63. In 2006, the simple average MFN tariff rate for the manufacturing sector (ISIC definition) was 10.6 per cent (see Chapter III(2)(iv)). The highest average tariffs are applied to products such as knitted and crocheted fabrics (33.2 per cent); made-up textile goods (except wearing apparel) (32.4 per cent); clothing (31.8 per cent); footwear (27.3 per cent); motor vehicles (20.8 per cent); sporting goods (20.4 per cent); and leather products (except footwear) (20 per cent). During the period under review, safeguards (including under the transitional safeguard mechanism of the Agreement on Textiles and Clothing) and anti-dumping measures were adopted to protect various

[48] Decree No. 1359/2004 of 5 October 2004.

manufacturing industries (see Chapter III(2)(vii)). Other measures that affected such industries during the review period include non-automatic licensing (see Chapter III(2)(vi)).

64. In addition to border measures, the Government assists the manufacturing sector through horizontal fiscal incentive schemes (see Chapter III(4)(iii)), as well as export promotion schemes such as export free zones or temporary admission (see Chapter III(3)(iv)). Special arrangements also apply to the production of capital goods under the capital goods, information technology and telecommunications regime (see Chapter III(4)(iii)).

65. The industrial specialization regime (REI), established in 1992[49], was terminated in 1996 without new contracts having been concluded.[50] During the period under review, however, some enterprises continued to receive benefits previously accrued under the regime which included measures such as the concessional entry of imported inputs linked to export performance requirements. In September 2001, Resolution No. 86 was adopted for the purpose of winding up the regime. Under this resolution, the beneficiaries of the regime with programmes approved before 20 August 1996 were allowed, over a period of 90 days, to apply for the corresponding tariff relief certificate for increases in their exports prior to 31 December 1999. Tariff relief certificates equivalent in value to U$S96,204,964.08 were issued.[51]

66. The manufacturing sector also benefits from special credit facilities for R&D projects and technological development and innovation through the Scientific and Technological Research Fund (FONCyT) and the Argentine Technological Fund (FONTAR). During the period 1997 to 2004, FONTAR committed Arg$350 million to almost 2,000 projects; some 64 per cent of this financing concerned manufacturing.[52] Small and medium-sized enterprises are eligible for an interest subsidy regime and can access credit facilities through Mutual Guarantee Societies (S.G.R.).[53]

67. In 2004, a framework agreement on the financing of the shipbuilding industry was concluded. Under this framework, in July 2006, eight agreements to finance 15 shipyards were signed. As a result, over 10 years, Arg$149 million in subsidies will be granted for projects worth Arg$430 million.[54]

(iii) Motor vehicles

68. The automotive industry has been the most dynamic manufacturing sector in recent years. Argentina's motor vehicle equipment manufacturers lost competitiveness with the devaluation of the real in 1999, and many of them transferred their activities to Brazil. Since the devaluation of 2002 the industry has been regaining competitiveness. With the disappearance of the smaller producers, the sector has become more concentrated. Since the devaluation of the peso the sector has grown more export-oriented, but production capacity remains underutilized (in 2005, the average capacity utilization rate was 37 per cent). The automotive industry is open to foreign investment and there is a strong foreign presence.

[49] Decree No. 2641/1992 of 29 December 1992.

[50] Decree No. 977/96 of 20 August 1996.

[51] Ministry of the Economy, information consulted at: http://www.mecon.gov.ar/hacienda/cgn/cuenta/2001/tomo_ii/50a.htm.

[52] National Agency for the Promotion of Science and Technology, FONTAR Statistics, consulted at: http://www.agencia.secyt.gov.ar/fontar_estadistica.php.

[53] Law No. 24.467 of 15 March 1995.

[54] "Apoyo a la industria naval y mercante", article in *Pesca y Puertos*, 17 July 2006, consulted at: http://www.pescaypuertos.com.ar/20060717_leasing.html.

69. In 2006, average nominal tariff protection for the motor vehicle sector (ISIC 3843) stood at 20.8 per cent. Nine tariff headings (including passenger motor vehicles, chassis-built motor vehicles, public transport vehicles and heavy goods vehicles) were subject to an MFN import quota until August 2000, when it was abolished with the entry into force of Decree No. 660 of 1 August 2000.

70. Imports of cars and light utility vehicles from outside the MERCOSUR zone, together with imports of heavy commercial vehicles as from 2006, are subject to a 35 per cent tariff, with the exception of self-propelled agricultural and highway machinery which pays 14 per cent. On the other hand, autoparts (with some exceptions) pay a CET of 14, 16 or 18 per cent. Autoparts that are not produced in MERCOSUR pay a CET of 2 per cent; however, as a list of these parts not produced in MERCOSUR had not been agreed, on 23 July 2004 Argentina adopted Resolution No. 497/2004, which establishes a list of products not manufactured in Argentina, provided that they are intended for motor vehicle production, and subjects them to a 2 per cent tariff.

71. Activity in the automotive industry is governed by various sectoral agreements, for example, the 35th Additional Protocol to the Economic Complementarity Agreement (ECA No. 14) between Argentina and Brazil, the 31st Additional Protocol to ECA No. 35 between Argentina and Chile, and other trade agreements such as the bilateral agreement with Uruguay (ECA No. 57) and the MERCOSUR Agreement with Mexico (ECA No. 55).

72. To promote the recovery of the autoparts industry, which suffered severely during the crisis, an Incentives Regime to improve the competitiveness of local autoparts was established.[55] This provides for the granting, for a maximum period of three years, of a benefit consisting in the payment of a cash refund on the value of purchases of local autoparts, i.e., those with a non-local content of not more than 30 per cent. Such parts must be intended for production and must be purchased by manufacturers of cars, utility vehicles with a load capacity of up to 1,500 kg, trucks, chassis with and without cabs and buses, engines, gearboxes and axles with differentials. To obtain this benefit, such enterprises must submit a project for the production of new platforms or new autoparts, as the case may be, which must be approved by the Application Authority.

73. Since 2003, the automotive sector has been subject to a new general regime known as the in-factory customs regime (RAF). As at October 2006, enabling regulations had been adopted only for the automotive sector (see Chapter III(2)(iv)) and four firms were benefiting from the RAF: Toyota Argentina S.A., Daimler Chrysler Arg S.A.F.I.C.I.M., Ford Argentina S.C.A., and Peugeot Citroen Arg. S.A.

74. In July 2006, the new Automotive Agreement signed by Argentina and Brazil, incorporated in the 35th Additional Protocol to ECA No. 14, entered into force for a period of two years. This Agreement modified the export deviation coefficient (Flex[56]), which now has to be measured for the period July 2006-June 2008. At the end of this period the ratio of import value to export value should correspond to a Flex of not more than 1.95 (2.6 under the previous agreement), provided that the ratio does not exceed 2.10 in the first 12 months (July 2006-June 2007). Automotive products are traded between Argentina and Brazil with a 100 per cent tariff preference and, as distinct from the previous agreement, the new Agreement does not contain any Argentine local content requirement.[57]

[55] Decree No. 774/2005, of 5 July 2005.

[56] Flex regulates the amount that can be imported for each dollar exported to the partner country.

[57] For more details, see *Acuerdo Sobre la Política Automotriz Común Entre la República Argentina y la República Federativa del Brasil* (Agreement on the Common Automotive Policy between the Argentine Republic and the Federative Republic of Brazil), consulted at: http://www.aladi.org/.

75. To be treated as originating in MERCOSUR, vehicles and autopart assemblies must incorporate at least 60 per cent of parts manufactured in MERCOSUR; however, in the case of new models it is possible to make use of progressive integration programmes which moderate the requirement as follows: 40 per cent at the beginning of the first year, 50 per cent at the beginning of the second, and 60 per cent at the beginning of the third.

76. Under the bilateral Agreement with Uruguay, Argentina grants duty-free access to Uruguayan exports of all products included in the tariff universe covered by the Agreement, provided that they comply with the rules of origin established therein. Cars and light commercial vehicles (with a load capacity of up to 1,500 kg), trucks and autoparts also benefit from duty-free access in conformity with MERCOSUR's origin requirement (60 per cent), and may also enter under preferential conditions of origin (50 per cent), but subject to quantity and value limits which in 2006 were set at 20,000 units, 800 units and US$60 million, respectively.

77. In September 2002, Mexico signed an agreement with MERCOSUR to create a free trade area for the automotive sector by 30 June 2011[58]; the agreement came into force in January 2003.[59] The agreement provides for a transition period between each of the MERCOSUR countries and Mexico. In the case of Argentina, a tariff quota of 50,000 units was established for cars, vehicles with a gross vehicle weight of not more than 8,845 kg, and motor vehicles for the transport of 10 or more persons. On 1 May 2006 free trade in these products came into effect. Trade in agricultural machinery was freed from the moment the agreement entered into force. Tariffs on NALADISA heading 8407.34.00[60] were set at zero per cent from the commencement of the agreement. Other imported autoparts pay CET rates of 14, 16 and 18 per cent, as the case may be.

78. In 2002, the 31st Additional Protocol to ECA No. 35 was signed. This established free trade between Argentina and Chile in cars; light commercial vehicles (with a load capacity of up to 1,500 kg); trucks; road tractors for semi-trailers; chassis with engines; buses; and autoparts, as from 2006.

79. Argentina's latest notification to the WTO concerning trade-related investment measures (TRIMs) dates from 1997 and covers only measures adopted under the automotive regime, specifically local content and trade balancing requirements.[61] Several questions were raised by WTO Members regarding steps taken to abolish TRIMs.[62] In November 2001, the WTO Council for Trade in Goods granted Argentina until the end of 2003 to bring its policies into compliance with the TRIMs Agreement.[63] In 2002, Argentina notified the WTO that it had reduced the local content requirement from 30 to 20 per cent, that further reductions were planned and that the range of goods to which the local content requirement applied had been narrowed down to cars, light utility vehicles and the corresponding autoparts.[64]

[58] Economic Complementarity Agreement (ECA) No. 55, consulted at: http://www.aladi.org/.

[59] Decree No. 4.458 of 5 November 2002.

[60] Reciprocating piston engines of a kind used for the propulsion of vehicles (other than parts of railway or tramway locomotives or rolling stock) of a cylinder capacity exceeding 1,000 cc.

[61] WTO document G/TRIMS/N/1/ARG/1/Add.1 of 26 May 1997.

[62] See the questions and replies in WTO documents G/C/W/222 (European Communities) of 31 July 2000, G/C/W/223 (United States) of 1 August 2000, and G/C/W/224 (Japan) of 2 August 2000.

[63] WTO documents G/L/460 and G/L/497 of 7 August 2001 and 9 November 2001, respectively.

[64] WTO document G/L/602 of 14 January 2003.

80. The local content requirement was abolished on 31 December 2005, in accordance with Article 23 of Protocol XXXI to ECA No. 14, while the trade-balancing requirement with countries other than Brazil was abolished by Decree No. 660/2002 and Protocol XXX to ECA No. 14.

81. Argentina has also notified the WTO of the addresses of the *Boletines Oficiales* (Official Journals, hereinafter O.J.) of the different provinces in which TRIMs, if there were any, would be published.[65]

(5) ELECTRICITY

(a) Special features of the sector

82. In 2004, installed generation capacity was 26,000 MW, of which 53.1 per cent depended on natural gas and 33 per cent was hydroelectric. Most of the hydroelectric power stations are in private hands, although the two largest are State-owned. Argentina has two nuclear power plants with a third under construction.[66] The electricity sector is characterized by a strong foreign presence. Argentina is interconnected with the Brazilian, Paraguayan and Uruguayan power systems and is a net exporter of electricity to those countries.

83. The Argentine electricity market was deregulated in 1991. The reforms introduced ended with a vertical market structure divided into three segments: generation, distribution and transport. All activities are open to the private sector, but each segment of the market has its own characteristics. Generation is totally open to the private sector and a considerable number of enterprises are involved (43 in 2004). Distribution and transport are subject to regulation. Although there are also many distributors (some 65), three enterprises (Edenor, Edesur and Edelap) hold the concessions in the areas under federal jurisdiction, in Greater Buenos Aires zone and La Plata, areas of high demand. In the transport market, which is entirely in private hands, competition is more limited, since 95 per cent of the high-voltage electricity is transported by a single private company, *Compañía Nacional de Transporte Energética en Alta Tensión* (Transener). For the purposes of transport by trunk distribution the country is divided up into six regional areas, each operated by a different company.

84. Almost all of Argentina's electrical power demand is supplied through the Wholesale Electricity Market (MEM), in which producers, transporters, distributors, large users and marketers all participate. Since 1 March 2006 the MEM has been interconnected with the Patagonian System, which covered 6 per cent of the demand. The distributors absorb about three quarters of the power generated, while the rest is consumed by large users, self-generators, marketers and other distributors, or is exported. In 2005, 73 per cent of the power generated was traded on the spot market and 21 per cent on the forward market, while the rest was exported or purchased directly by large users. Although thanks to the MEM liberalization has been substantial at wholesale level, this is not the case at retail level. The small users (with a demand of less than 30 kW) are customers of the distributors within a geographical area in which the latter have exclusivity and are subject to regulated tariffs.

85. As a result of deregulation, the electricity sector underwent extensive transformation leading to a substantial increase in investment (about US$2.3 billion in the period 1992-2002) accompanied by a substantial fall in tariffs. It is estimated that following deregulation average distribution tariffs decreased by about 30 per cent in peso terms.[67] Electricity prices in Argentina are among the lowest in Latin America. The average price of power in May 2006 was Arg$57.70/MWh (around

[65] WTO document G/TRIMS/N/2/Rev.14 of 22 September 2005.
[66] See http://www.eia.doe.gov/emeu/cabs/argentna.html#elec.
[67] National Electricity Regulatory Authority, (2004).

US$0.02 per kWh).[68] A surcharge is applied to the tariffs paid by wholesale market buyers, i.e., the distributors and large users. This surcharge feeds the National Electrical Power Fund (FNEE), in accordance with Law No. 15.336, O.J. of 22 September 1960.[69] Under Resolution No. 1.872/2005, O.J. of 7 December 2005, this tax is currently set at Arg$0.0054686/kWh (see below).

86. The privatized enterprises recorded high rates of return up until 2002, when because of the emergency measures adopted in that year (see Chapter I), tariffs were set in pesos. As the debts of these companies were denominated in dollars, there were problems with losses and defaults, falls in market valuation and reduced investment in the sector. The subsequent economic recovery led to a substantial increase in demand and problems with the supply of natural gas for the sector and the provision of electricity. In response, the Government adopted a series of emergency measures, such as an increase in the price of natural gas for large users; a reduction in natural gas exports to Chile to ensure that the domestic market was kept supplied[70]; and recourse to imports from Bolivia; together with energy-saving measures on the consumption side, which included rebates where energy was saved and surcharges in cases of overconsumption.[71]

(b) Legal framework

87. The Energy Secretariat of the MEP is responsible for the formulation and implementation of sector policy. The privatized sector is regulated by the National Electricity Regulatory Authority (ENRE), a self-governing body under the jurisdiction of the Energy Secretariat; ENRE is authorized to supervise the performance of concession agreements by monitoring end-user tariffs in the areas operated by Edenor, Edesur and Edelap.[72] The provincial distributors are regulated by their respective provincial authorities. The Wholesale Electricity Market Administration Company – CAMMESA (*Compañía Administradora del Mercado Mayorista Eléctrico S.A.*) is entrusted with administration of the MEM and technical and economic dispatch, as well as with the coordination of the centralized operation of the Argentine Interconnection System (SIN).

88. The legal framework for the electricity sector in Argentina comprises Law No. 24.065, O.J. of 16 January 1992 (Electrical Power Regime), and Decree No. 1398/92, which incorporates the Regulations for Law No. 24.065. This legislation divided up the electricity sector into segments and provided for each segment to be partially or wholly privatized. Law No. 24.065 authorized generators to conclude supply contracts directly with distributors and large users. The Law describes electricity transport and distribution as a public service, but stipulates that priority in carrying out these activities must be given to private enterprises operating under government concession; these concessions are for a fixed term and must specify the usage charge regime.[73] The Law imposes limits on economic concentration in the sector, prohibiting vertical integration but not cross holdings, albeit non-majority, between generators and distributors.

[68] CAMMESA (wholesale electricity market management company) 2006.

[69] Amended by Article 70 of Law No. 24.065, O.J. of 16 January 1992; Article 5 of Law No. 25.019, O.J. of 26 October 1998; Article 74 of Law No. 25.401, O.J. of 4 January 2001; and Article 1 of Law No. 25.957, O.J. of 2 December 2004.

[70] In this connection, the authorities have noted that the reduction in exports is based on the Hydrocarbons Law and is intended to guarantee domestic supplies.

[71] Energy Secretariat Resolution No. 415/2004, O.J. of 28 April 2004.

[72] See http://www.enre.gov.ar/.

[73] The legal definition of transport includes transformation and access to any other installation or service.

89. The end-user market has been divided into a regulated segment (end users) and another open to competition (large users). In the regulated segment the distributor holding the concession is guaranteed a monopoly, but must satisfy the whole of the demand that it is required to meet under the terms of the concession agreement; the tariffs are regulated. The large users are agents of the MEM and therefore free to procure electricity on the market.

90. Law No. 24.065 requires distributors to purchase power on the market at a stabilized (predetermined) seasonal price which can be adjusted quarterly. These rules apply to the privatized distribution companies; the provincial enterprises are regulated by the particular rules of each province. The generators sell power on the market at hourly spot prices determined marginally, but for the power sold the generators receive a uniform tariff at each point of delivery. Transport is paid for by means of a system of fixed and variable charges. Transporters and distributors are obliged to allow third parties indiscriminate access to any transport capacity in their systems that is not already contractually committed.

91. Electricity transport and distribution activities require a concession; generation requires one only in the case of hydroelectric energy if the power exceeds 500 kW. Concessions are valid for 10 years and can be renewed for similar periods. Transporters and distributors must apply the tariffs approved by ENRE (these tariffs fall within the federal jurisdiction).[74] Distributors may not use cross-subsidies between categories of users, and price discrimination is also prohibited. However, they may use specific subsidies to cover tariff differentials in cases of predetermined users.

92. Under the distribution concession agreements, prices are worked out quarterly by CAMMESA and approved by the Energy Secretariat. The distribution costs themselves are adjusted every six months in line with prices in the United States. Between privatization and June 2006, the tariffs of the electricity distributors changed 19 times. However, in 2002, Public Emergency and Exchange Regime Reform Law No. 25.651 of 7 January 2002 suspended the adjustment clause system, opening up a contract renegotiation process. By June 2006 the contracts with Edenor, Edesur (not yet ratified by the Executive) and Edelap (Executive (P.E.N.) Decree No. 802/2005 of 14 July 2005) had been renegotiated, together with those of two distributors and six transport enterprises.[75] The contract renegotiated with Edelap authorized an average increase of 23 per cent in distribution and connection costs following a transition period beginning on 1 May 2005 during which the distributor's average tariff may not increase by more than 15 per cent. The agreement with Transener (Executive (P.E.N.) Decree No. 1.462/2005 of 2 December 2005) authorized an average tariff rise of 31 per cent as from 1 June 2005, during a transition period to last until ENRE has completed a comprehensive tariff review.[76]

93. Law No. 24.065 created the National Electrical Power Fund (FNEE), constituted by a surcharge on the tariffs paid by buyers on the MEM. In 2006, pursuant to Energy Secretariat Resolution No. 1.872/2005, this surcharge was Arg$0.0054686/kWh. Resolution No. 1.872/2005 provides for 79.44 per cent of total FNEE revenue to be used to finance the Subsidiary Fund for Regional End-User Tariff Compensation (60 per cent of this percentage) and the Fund for the

[74] Concession contracts include an initial tariff schedule valid for five years, adjustable under a system of maximum prices fixed by ENRE for successive five-year periods.

[75] The legal instruments approving the renegotiated contracts are available at: http://www.uniren.gov.ar/ audiencias_publicas/acuerdo_aa_edelap.pdf.

[76] See http://www.uniren.gov.ar/audiencias_publicas/aa_transener_00.pdf.

Electrical Development of the Interior (40 per cent).[77] Of the remainder, 0.7 per cent is to go towards financing wind power development and 19.86 per cent to the Trust Fund for Federal Electrical Transport established by Energy Secretariat Resolution No. 657 of 3 December 1999.

94. The MEM Stabilization Fund consists of a seasonal price stabilization mechanism. There is an approved price at which the distributors buy on the wholesale spot market for three months. The differences between the fixed seasonal price and the spot market price are covered by the Fund, which serves to stabilize the price. Every quarter the accumulated differences are reallocated to the following periods. The Fund was in deficit in 2005 and 2006, due to arrears of payment on the MEM and reduced income, which led the authorities to establish a debt consolidation mechanism and to authorize an Arg$150 million loan to support the MEM price stabilization system. This is linked with the Seasonal Market. There is a stabilization fund (administered by CAMMESA), to which the differences produced between the seasonal and spot market prices are directed.

(6) SERVICES

(i) Main features and multilateral commitments

95. In 2005, the services sector accounted for 55.3 per cent of GDP at current prices, a percentage which rises to about 62 per cent if electricity, water and gas supplies and construction are included; this level is well below the 78 per cent recorded in 2000.[78] The loss of share by the services sector can be largely attributed to the increase in goods production, which benefited from the devaluation of the peso in 2001, whereas the output of services received less of a stimulus as most prices are established on the domestic market.[79] The commercial services and real estate services subsectors were the most important in 2005; their shares of GDP were 11.8 and 10.9 per cent, followed by transport and communications, with 9 per cent, with financial services accounting for 4.4 per cent of GDP.

96. Under its horizontal commitments within the framework of the GATS, Argentina has not stipulated limitations on market access or national treatment with respect to cross-border supply (mode 1) or consumption abroad (mode 2) in any of the sectors included in its schedule of specific commitments (Table AIV.2). The only limitation imposed on commercial presence (mode 3) relates to the conditions for acquiring land in frontier areas (150 km in land frontier areas and 50 km in coastal areas). Where supply through the presence of natural persons (mode 4) is concerned, commitments have been bound only with respect to the presence of managers, executives and specialists, in relation to both market access and national treatment, the other categories being left unbound. Argentina accepted commitments in 6 of the 12 sectors specified in the GATS. The commitments relating to specific sectors comprise: business services, communications services; construction and related engineering services; financial services; distribution services; and tourism and travel-related services.[80]

[77] The Subsidiary Fund for Regional End-User Tariff Compensation is distributed among the provinces for the construction of high-voltage lines and to prevent mismatches between provincial tariffs, the result being redistribution to the provinces with fewer resources.

[78] MEP online information, http://www.mecon.gov.ar/download/infoeco/apendice1.xls.

[79] According to the authorities, it should also be taken into account that when output is measured at current prices, services GDP falls substantially given the improvement in the relative prices of tradeables, but that when the calculations are made at constant prices the decline is much smaller.

[80] WTO document GATS/SC/4 of 15 April 1994.

97. As a result of its participation in the extended negotiations on telecommunications, Argentina broadened its commitments in this sector (see below).[81] The only exemption from the principle of MFN treatment that Argentina listed in the Annex on Article II exemptions is that relating to the provision of satellite facilities of geostationary satellites operating fixed satellite services, a measure which is subject to conditions of reciprocity.[82] Argentina ratified the Fourth Protocol on Telecommunications annexed to the General Agreement on Trade in Services by adopting Law No. 25.000, O.J. of 27 July 1998. Argentina also participated in the extended negotiations on financial services but did not submit any new offer.

98. Within the context of the Doha Round negotiations on services, Argentina submitted an initial offer in April 2003. The authorities have noted that the offer improved the commitments bound in supply mode 4 by incorporating the following categories of service providers: businessmen, professionals and specialists, intra-corporate transfers, and representatives of foreign enterprises.

99. By Law No. 25.623, O.J. of 15 August 2002, Argentina ratified MERCOSUR's Montevideo Protocol on Trade in Services. This Protocol, signed in 1997, aims to liberalize services over a 10-year period. The Protocol entered into force on 7 December 2005, after having been ratified by Argentina, Brazil and Uruguay.

(ii) Telecommunications

(a) Main features

100. In March 2006, there were about 9.5 million fixed telephone lines installed in Argentina (8.9 million in service), compared with 3.5 million (3.1 million in service) in 1990, before the sector was liberalized.[83] With regard to mobile telephony, in March 2006 the total number of terminals was around 23.9 million.[84] Total teledensity (fixed telephones plus mobiles) was 85 per cent in March 2006. In 2004, local telephony contributed 40 per cent of fixed telephony turnover. In 2005, the telecommunications sector accounted for 5.4 per cent of GDP.[85]

101. Up to 2000, the Argentine telecommunications market was characterized by the presence of segments with different degrees of competition: with limitations in the fixed and mobile telephony sectors, and freer competition for other services. The privatization and liberalization process begun in 1989 required all services to be provided on a competitive basis, with the temporary exception of the basic telephone service (BTS); this was to be provided by two private licensees, for which purpose the country was divided into two regions.[86] The right of cooperatives (Independent Operators) to provide services, mainly in the interior of the country, was also recognized. In 1998, regulations governing the transition to competition in telecommunications were issued, and in 1999 four new companies were granted licences to provide services on a competitive basis. Decree No. 465 of 13 June 2000 and its amendments formally deregulated the market.[87] The exclusivity regime ended in November 2000, after which all services, national and international, were offered on a competitive basis as a

[81] WTO document GATS/SC/4/Suppl.1 of 11 April 1997.
[82] WTO document GATS/EL/4 of 11 April 1997.
[83] See http://www.indec.mecon.ar/nuevaweb/cuadros/14/sh_comunicac2.xls.
[84] See http://www.cnc.gov.ar/indicadores, and http://www.secom.gov.ar/municipios/section.asp?MID=10&Seccion_Id=61.
[85] Supervisory Authority of the National Communications Commission (2006).
[86] Telefónica de Argentina S.A. in the southern region and TELECOM Argentina STET FRANCE TELECOM S.A. (now TELECOM Argentina S.A) in the northern region.
[87] Article 1 of Decree No. 465/2000, O.J. of 13 June 2000.

consequence of the implementation of the Fourth Protocol to the GATS Agreement and as established by Decree No. 764/00. However, the situation of legal duopoly "allowed companies to develop dominant positions: strength in facilities (networks), in services (telephony in all its forms, data transmission), market concentration (many captive customers) and financial resources (monopoly income)".[88]

102. As at October 2006, the fixed telephony market was still dominated by two "historical operators" (Telefónica and Telecom Argentina), which together hold a 90 per cent market share. In the case of mobile telephony, there are currently three operators in the market (Movistar, Telecom Personal and CTI).

103. As a result of the adoption of the Public Emergency Law, the tariffs of the historical providers were frozen and the contracts were declared subject to renegotiation. As steps in the renegotiation process, the Government signed Letters of Understanding with Telefónica and Telecom Argentina, most recently in the first quarter of 2006.[89] Through these letters the licensees undertook to achieve the long-term goals relating to standard of service established in Decree No. 62/90 by 31 December 2010, while the Government approved, *inter alia*, a correction factor for the termination of incoming international calls.[90] As at October 2006, the ratification of new contracts by the Executive was still pending.

104. The prices of mobile communications reflect the increased competition in the sector. In August 2006, the fixed charges for private users of the two main mobile communications services providers were fluctuating between Arg$23.4 and Arg$151.1, depending on the number of free calls or minutes; the cost per additional minute varied between Arg$0.23 and 0.52.[91]

(b) Laws and regulations

105. The institutions involved in applying the telecommunications legislation are: the Ministry of Federal Planning, Public Investment and Services, the Communications Secretariat (SECOM), and the National Communications Commission (CNC). SECOM is responsible, *inter alia*, for helping the Ministry of Federal Planning, Public Investment and Services to formulate, propose and execute telecommunications and postal policies, while supervising their implementation and compliance with the corresponding regulations. SECOM is also responsible for developing draft general regulations on the provision of communications services, and approving Argentina's radio-frequency band allocation table.[92] The CNC, a decentralized SECOM body, is responsible for monitoring the telecommunications sector.[93] The CNC helps SECOM to update and develop the Basic Technical Telecommunications Plans and issue the general regulations for the services within its jurisdiction. The CNC is authorized to impose penalties in cases of infringement of the rules applicable in the sphere of telecommunications. Decree No. 764/00 provides for the participation of the MEP's Consumer Protection Secretariat in specific activities.

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[88] Communications Secretariat (2006).

[89] See http://www.uniren.gov.ar/audiencias_publicas/ce_telefonica.pdf, and http://www.uniren.gov.ar/audiencias_publicas/ce_telecom.pdf.

[90] The formula for calculating the correction factor is: $TLL_h = TLL_b * \text{Factor } Z$, where TLL_h is the value of the call corrected, $TLL_{b\ n}$ is the termination value of the international call, and $Z = T*C$, where T = national currency units per dollar, and C is a constant whose value has been fixed at 3. If the peso depreciates relative to the dollar with respect to a reference exchange rate (3), the tariff is corrected upwards.

[91] See http://www.cnc.gov.ar/ServTelefonico/Movil/precios.asp.

[92] See http://www.secom.gov.ar/municipios/ver.asp?MID=10&tipo=nota&id=346.

[93] See http://www.cnc.gov.ar/.

106. Law No. 19.798, O.J. of 23 August 1972 (Telecommunications Law), has been progressively amended and supplemented to allow for sector liberalization. Decree No. 731/89, O.J. of 14 September 1989, and its amending Decree No. 59/90, O.J. of 12 January 1990, began the privatization and reform of the sector. The basic telephone service was privatized by Decree No. 60/90, O.J. of 12 January 1990, which divided the country into two regions for the provision of basic telephone services. Decree No. 62/90 approved the basis and conditions for the privatization of the assets of ENTel, the National Telecommunications Company, including the respective licences for providing BTS, under an exclusivity regime comprising a two-year transition period, a five-year period of exclusivity, and the right to a three-year extension conditional on fulfilment of the duly established targets and commitments. Decrees Nos. 264/98 and 266/98 opened up the market to competition by directly liberalizing firstly public telephony and then telephony in rural areas, and after that, in 1999, by incorporating the total liberalization of local, domestic long-distance and international telephone services. Decree No. 264/98 of 13 March 1998 authorized the granting of licences for the provision of local and long-distance telephone services in new areas, but erected temporary barriers to the entry of new players into the market. Under the powers conferred by Decree No. 264/98, in 1999 the Communications Secretariat granted licences for the provision of services on a competitive basis to four new companies.

107. In the extended negotiations on basic telecommunications under the GATS, Argentina made a commitment not to impose any limitation on access to the telecommunications markets after 8 November 2000, except in the case of international satellite services. Law No. 25.000, enacted on 1 July 1998, approved the Fourth Protocol annexed to the GATS, and Decree No. 764/2000 of 3 September 2000 implemented the liberalization of the market as from 8 November 2000.

108. Decree No. 764/2000, liberalizing the telecommunications market, established a new regulatory framework which guarantees equality and freedom of trade and industry in the telecommunications market, without barriers to the incorporation of new operators or obstacles to the incorporation of new technologies and services. Under the new framework, starting in November 2000, a single licence of unlimited validity, known as the Single Telecommunications Services Licence, was granted. The licence authorizes the provider to offer any type of registered telecommunications service, with or without its own infrastructure, throughout the territory of Argentina, and the granting of the licence is independent of the allocation of the facilities required to provide the service. This regime requires the submission of a technical plan and an investment plan. There are no restrictions on the participation of foreign capital. Licences may be transferred or assigned, subject to authorization. The obtaining of a licence is independent of the use of the frequencies of the radio-frequency spectrum, which has to be authorized by SECOM.

109. To resell services it is necessary to obtain a single telecommunications services licence. Ground or satellite radio communication system and television services for subscribers using the radio-frequency spectrum require prior authorization by the implementing authority.

110. The regulations in force distinguish between Dominant Providers (*Prestadores con Poder Dominante*) and the rest. The former are defined as those providers whose income generated by the provision of the service exceeds 75 per cent of the total income generated by all the providers of the service in question, in a specified area or nationally, as the case may be. Likewise, Significant Providers (*Prestadores con Poder Significativo*) are those whose income generated by the provision of the service exceeds 25 per cent of the total income generated by all the providers of the service in question, in a specified area or nationally, as the case may be. Moreover, each of the basic telephone service licensees in the northern and southern regions is considered to be an "Historical Provider" within the meaning of Decrees Nos. 2347/90 and 2344/90, both published in the Official Journal of 7 January 1991.

111. Except where no effective competition is considered to exist, telecommunications services providers can freely establish their tariffs and invoicing periods for the provision of local, domestic long-distance and international telephony services in each local basic telephone service area. In these cases, the providers for the areas in question must respect the maximum tariffs established by the CNC, in accordance with the provisions of Annex I to Decree No. 62/90 and its amending legislation. In mid-2006, only the historical providers were subject to controlled tariffs.[94] The historical providers will be free to set the tariffs for local, domestic long-distance and international long-distance telephone services in a local basic telephone service area once effective competition exists.

112. Decree No. 764/2000 adopted, as Annex II, the National Interconnection Regulations (RNI), which introduced a set of interconnection procedures, standards and principles. The RNI stipulate that prices are to be determined freely and that they must be "fair, reasonable and non-discriminatory" (Art. 26). Significant or dominant providers are required to submit a Reference Interconnection Bid, in which they must indicate the maximum prices applicable to each of the interconnection components. SECOM may intervene to set the price at the request of any of the parties involved in an interconnection agreement, if there is disagreement with respect to conditions or prices. In this case, SECOM determines the prices of the network components and functions in terms of the cost of efficient supply, which the Regulations take to mean a cost not greater than the arithmetic mean of the prices in effect in countries with competitive market systems, such as Australia, Canada, Chile, the European Union, New Zealand and the United States.

113. The General Regulations on the Universal Service (RGSU), also adopted by Decree No. 764/2000 (Annex III), extend its coverage beyond the basic telephone service and provide for subsidies for high-cost areas, customers and groups of customers, and specific services which cannot be offered or provided under cost conditions that meet commercial standards. The subsidies can only be used to pay costs relating to the provision of the universal service and are calculated in terms of net costs. To finance the application of the universal service, the RGSU created a Universal Service Trust Fund, which was to be implemented from 1 January 2001. In November 2006, this Fund had still to be constituted.

114. Law No. 25.239, O.J. of 31 December 1999, imposed a tax of 4 per cent on the amount invoiced to the user for providing cellular or satellite telephone services. Moreover, under Decree No. 1185/90, O.J. of 28 June 1990, and its amending legislation providers must pay a control, inspection and verification tax on the provision of telecommunications services, together with taxes, duties, tariffs and charges for the use of the radio-frequency spectrum. For providers with a teledensity of not more than 15 per cent in a specified service and area there is the possibility of exemption from payment of the tax on the income earned by providing that service in that area, as well as on that earned by providing the universal service.

(iii) Financial services

(a) Main features

115. Argentina's financial services sector includes the financial system (public and private banks, and non-banking entities such as finance companies, and credit funds), insurance companies and participants in the securities market and the Administrators of the Retirement and Pension Funds (AFJP) of the capitalization system.

[94] In accordance with Resolutions SC No. 672/99 (Telecom Argentina STET-France Telecom S.A.) and Nos. 986/99 and 18969/99 (Telefónica de Argentina S.A.).

116. Argentina's specific commitments on financial services are contained in its initial schedule of concessions. Argentina did not submit an offer in the extended negotiations on these services within the framework of the GATS. Argentina bound, without limitations, consumption abroad and commercial presence in relation to all types of bank loans and deposits, financial leasing, guarantees and commitments, money market instruments, foreign exchange, derivative products, and advisory services, among others, but left unlisted new financial services unbound.[95] In the field of insurance, Argentina bound cross-border supply and consumption abroad for maritime and air transport insurance services and reinsurance and retrocession services. Commercial presence in the case of the services mentioned, together with life, accident and health and non-life insurance services, was bound in practice for enterprises already operating in Argentina in 1994, since it was subject, as far as market access is concerned, to the limitation of suspension of authorization of the establishment of new entities. In its GATS schedule of commitments, Argentina made being a member and shareholder of the Securities Exchange a prerequisite for engaging in stock market transactions.

(b) Banks and other financial intermediation institutions

Main features

117. As at May 2006, Argentina's financial system, which includes the entities regulated by the BCRA, consisted of 72 banks, 16 finance companies and 2 credit funds. Of the banks, 13 out of 72 were public and 59 private.[96] Among the public banks, 3 were national and 10 provincial or municipal. Among the private banks, 34 were domestic-capital institutions, 13 were local foreign-capital banks, 11 were branches of foreign banks, and 1 was a private cooperative bank. Of the 16 finance companies, 4 were domestic-capital and 12 foreign-capital.

118. The number of banks declined sharply during the last decade, falling from 169 in 1995 to 72 in 2006. The number of private banks decreased from 138 to 59, mainly due to mergers, although quite a few licences (44) were also revoked. The number of public banks fell from 31 to 13, mainly as a result of the privatization of 13 of them. Most of the consolidation of the banking system took place before 2000, which is said to have improved the efficiency of the system.[97]

119. Although most of the financial system, in terms of both the number of institutions and assets and loans, is in private hands, the public banks continue to make an important contribution. Of the top 10 Argentine banks in terms of assets, three are public banks: *Banco de la Nación Argentina* (BNA), the largest in the country in terms of assets and loans, deposits and net worth; *Banco de la Provincia de Buenos Aires* (second in assets and fifth in loans), and *Banco de la Ciudad de Buenos Aires* (sixth largest in assets and loans).[98] The BNA operates as a State commercial and development bank.[99]

120. The economic and financial crisis of 2001/2002 resulted in a considerable exodus of deposits from the system. The generalized outflow observed in last quarter of 2001 led to the implementation of a series of restrictions on withdrawals, in order to protect the savings and assets of economic agents

[95] Argentina has excluded from these concessions financial operations by the Government and State-owned enterprises. WTO document GATS/SC/4 of 15 April 1994.

[96] BCRA (2006a).

[97] Basu, Ritu *et al*. (2004). This study concludes that banking sector consolidation through mergers and privatizations during the period December 1995 to December 2000 had a positive and significant effect on bank performance and reduced the risk of insolvency, but that acquisitions did not have the same effect.

[98] See http://www.bcra.gov.ar/sisfin.

[99] See http://www.bna.com.ar/institucional/institucional.asp.

in general. Decree No. 1570/01 established temporary restrictions on withdrawals of cash (*corralito*), which were limited to Arg$250 or US$250 per week, and temporarily prohibited transfers abroad, with the exception of those corresponding to foreign trade transactions, the use of credit or debit cards abroad, and the settlement of financial transactions. In January 2002, the convertibility regime was abandoned and this was followed by a substantial depreciation of the peso (see also Chapter I). In February 2002, the maturity of time deposits (*corralón*) was extended and, with some exceptions, bank deposits and assets were converted into pesos at an exchange rate of Arg$1 to the dollar for assets and Arg$1.4 to the dollar for liabilities. The banks were seriously affected by the conversion of dollar deposits and assets into pesos at different exchange rates, since it substantially increased their liabilities in relation to their assets.[100] An attempt was made to offset the direct effects of asymmetrical pesoization by means of a "compensation bond" (BODEN $2007), with entities also being given the opportunity to subscribe to dollar bonds (BODEN US$2012) at a rate of Arg$1.40 to the US dollar for the amount of their negative net foreign-currency position.

121. Following the devaluation and the moratorium on the repayment of public-sector debt, which represented 50 per cent of bank assets, there was a significant increase in credit risk.[101] This was later aggravated by a series of legal actions (*amparos*) brought by depositors seeking to have deposits refunded in the original currency. In this connection, the BCRA allowed the book losses corresponding to the differences resulting from the implementation of these measures to be booked as assets and then amortized over a period of 60 months. In response to the crisis, the authorities also introduced a series of temporary measures which resulted in more flexible regulation of the banks. For example, permission was given to deduct partially from taxable income (IG) the net losses due to the application of the exchange rate determined by the Executive, a valuation mechanism for government bonds (and loans) was established to allow for a gradual convergence to market value, and coefficients were fixed for temporarily reducing the capital requirements on non-financial public-sector financing granted up to 31 May 2003 and the capital charge on interest rate risk, together with a timetable for the convergence of these coefficients.[102]

122. Credit levels have been recovering since the end of 2003, but at the end of 2005 were still below 1998 levels. After deteriorating considerably during the financial crisis, bank solvency and profitability indicators have gradually improved. The net worth/net assets ratio was 13.26 per cent in May 2006, compared with 11.8 per cent in December 2004. The non-performing loan ratio (loans more than 90 days in arrears as a percentage of total gross loans) has been dropping and in June 2005 stood at 7 per cent. As at May 2006, 93.3 per cent of financial system debtors were in good standing, 1.93 per cent of debt was considered irrecoverable, and with respect to the rest there was some risk of insolvency.

Legislative framework

123. Financial activity in Argentina takes place within a legal framework that includes various laws, decrees, regulations and BCRA circulars. The main provisions relating to the regulation of the banking system and other financial entities can be found in Law No. 21.526, O.J. of 21 February 1977

[100] Barajas, Adolfo *et al.* (2006). This study shows that the financially sounder banks were less affected by withdrawals of deposits, generally having a better net position in dollar terms and greater capitalization, which contributed to a reduced perception of risk.

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

[102] BCRA (2006b).

(Law on Financial Entities) and its amendments.[103] The application of this Law and, in general, the supervision of the financial intermediation system is the responsibility of the BCRA, under its Charter and the extended powers conferred on it by Law No. 25.782, O.J of 31 October 2003. The BCRA operates through the Supervisory Authority for Financial and Foreign Exchange Entities (SEFyC).

124. The Argentine legislation is governed by the principle of national treatment for foreign capital. The establishment of new financial entities, their expansion, merger and changes in their capital or functions require the prior authorization of the BCRA, which must take into account considerations of timeliness and fitness, such as the characteristics of the project, market conditions, the record and responsibility of the applicants and their financial experience. In general, private financial entities must be established in the form of a limited company, with the exception of: branches of foreign entities; commercial banks, which may also be established in the form of a cooperative society; and credit funds, which may also be established in the form of a cooperative society or civil association. Financial entities may hold shares in other financial entities, subject to authorization by the BCRA, but are prohibited from operating commercial, industrial, agricultural or other business enterprises.

125. The minimum capital requirement depends on the Argentine jurisdiction within which the entity's main activity is carried on, with reduced requirements in those areas which are comparatively less well supplied with banking services. For the financial entities operating as at 30 June 2005, the requirement is that prescribed for their area but with a maximum of Arg$15 million. For entities authorized to operate as of 1 July 2005 the amounts vary between Arg$5 million and Arg$25 million.

126. The opening of branches in Argentina, whether domestic or foreign financial entities, requires the prior approval of the BCRA and depends on compliance with the prudential regulations concerning minimum capital, liquidity, solvency, risk and return. For foreign entities to establish branches in Argentina, the country of origin must have a consolidated supervisory regime, and the capital required must be located effectively and permanently in Argentina. Representative offices of foreign financial entities also require the prior authorization of the SEFyC, which is contingent upon the record and responsibility of the entity to be represented and its representative and upon the country of origin (except in the case of a neighbouring country) having a consolidated supervisory system.

127. As distinct from private institutions, provincial and municipal financial entities may establish branches within their jurisdictions only after having first notified the BCRA, which may object if the qualifying requirements are not met. Before an Argentine financial entity can acquire more than 5 per cent of the capital or the votes in another such entity domiciled abroad, it must first obtain authorization from the SEFyC; the authorization of the SEFyC is also a prerequisite for establishing representative offices abroad. For financial entities to establish branches abroad, they must first obtain the authorization of the BCRA.

128. The SEFyC has adopted the basic rules on capital adequacy established by the Basel Committee on Banking Supervision and requires a ratio of total capital to risk-weighted assets of at least 8 per cent. The capital requirements of each financial entity are determined by taking into account the risks implicit in its various assets. Three types of risk are considered: credit or counterparty, interest rate and market. Entities must maintain a basic minimum capital fixed by the BCRA, which is the greater of the basic capital previously defined and the sum of the capital

[103] Contained in Laws No. 22.051, O.J. of 20 August 1979, No. 22.529, O.J. of 26 January 1982, No. 22.871, O.J. of 10 August 1983, No. 24.485, O.J. of 18 April 1995, and No. 24.627, O.J. of 18 March 1996, and in Decree No. 214/2002, O.J. of 4 February 2002.

requirements for credit risk and interest rate risk (for assets not quoted on the securities market). The minimum capital requirement for credit risk is determined by weighting the requirements for the different assets according to their risk. Moreover, entities must comply with a capital requirement for market risk calculated daily, for assets traded on securities markets. The capital requirement obtained by adding up the above is weighted by means of a rating factor determined by the SEFyC on the basis of the entity's performance and which varies between 0.97 (better) and 1.15 (worse).

129. To facilitate compliance with the bank solvency regulations following the crisis period, from 1 January 2004 up to the end of 2008 a coefficient that temporarily reduces the capital requirement for non-financial public-sector financing granted up to 31 May 2003 is being applied, together with, up to the end of 2006, another coefficient that temporarily reduces the capital charge on interest rate risk.

130. The banks can receive financial assistance from the BCRA for temporary illiquidity, if, among other requirements, the liquidity ratio of the requesting entity is less than 25 per cent. Assistance is offered for a period of 90 days, which can be renewed for periods of the same length. Law No. 25.780, O.J. of 8 September 2003, stipulates that the BCRA is authorized to exclude certain assets and liabilities from a bank's restructuring process. This Law also provides that when a financial entity goes into liquidation, priority should be given to the refunding of the deposits made by natural and/or legal persons up to the amount of Arg$50,000, followed by larger deposits and by liabilities originating in commercial facilities granted to the entity that directly affect international trade. Bank deposits are protected by the Deposit Guarantee Fund, in accordance with Law No. 24.485, O.J. of 18 April 1995. The Fund is administered by *Seguro de Depósitos S.A.* (SEDESA), a limited company created by Decree PEN No. 540/95. The Fund covers several types of deposits in pesos and foreign currency up to Arg$30,000 per depositor and entity. The Fund dealt with 27 cases between October 1996 and November 2005 (16 since 1999), disbursing a total of Arg$2,135.4 million. On 30 June 2006, the available balance in the Fund amounted to Arg$1,440.3 million (some US$480 million).[104]

131. Decree No. 32/01, O.J. of 27 December 2001, created the Banking Liquidity Fund (FLB) for injecting liquidity into the financial system in times of crisis, with resources contributed by the financial entities, in proportion to the private-sector deposits held, and by the State. SEDESA was given provisional responsibility for administering the FLB as a trustee. As from 2002, the contributions of the entities were suspended by the BCRA (Communiqué "A" No. 3582).[105] In 2002, the FLB granted only two loans, which were subsequently written off in April of that year.[106] The FLB is no longer in operation, and in early 2007 its liquidation was in the process of being completed. Any equity contributed by financial entities has been returned to them, and what remains to be determined is appropriate compensation to be paid to those that provided the funds.

132. The SEFyC requires financial entities to provide periodic reports on their asset position and compliance with technical, operational and institutional regulations. It is mandatory to report share transfers or capital contributions made in a form that is not proportional to shareholdings which, considered individually or collectively over a six-month period, represent 5 per cent or more of the capital and/or votes, as well as subscriptions to shares on stock markets in Argentina or abroad. Significant changes in the capital ownership of foreign enterprises that control financial entities established in Argentina must also be notified.

133. The BCRA is responsible for authorizing the operations of foreign exchange entities, in accordance with the provisions of Law No. 18.924, O.J. of 28 January 1971, and its Regulatory

[104] See http://www.sedesa.com.ar/saldo_fgd.php.
[105] See http://www.sedesa.com.ar/que_es_sedesa.htm.
[106] SEDESA (2003).

Decree No. 62/71 (as amended by Decree No. 427/79), which may be established as exchange houses, exchange agencies or exchange offices. The minimum capital requirement depends on the kind of entity involved and the jurisdiction within which it is to be set up. Moreover, to operate as a broker, either individually or in partnership, the authorization of the BCRA is required.

134. Credits and debits entered in current accounts, together with all movements of funds in financial entities, are subject to the tax on debits and credits in current accounts, in accordance with Law No. 25.413, O.J. of 26 March 2001, and Decree No. 380/01 of 30 March 2001 and amendments. The general rate is 6 per mil for credits; for movements of funds it is 12 per mil, for transactions covered by the tax exemption or social works regime it is 2.5 or 5 per mil; for credit card payments a rate of 0.75 per mil is applied. Under Law No. 23.427, O.J. of 3 December 1986, and amendments a tax of 2 per cent is levied on the capital of cooperatives.[107]

(c) Securities market

135. The securities market in Argentina is mainly concentrated in the *Mercado de Valores de Buenos Aires* (Merval) and although there are markets operating in other cities, they collectively represent barely 1 per cent of the Merval volume.[108] There are also other types of entities such as stock exchanges without an associated securities market, clearing houses, a futures and options clearing house, an electronic open market, a securities depository, and futures and options markets.

136. There are 133 stockbrokers and brokerage firms operating in the securities market. The value of the stocks traded on the Merval in 2005 amounted to Arg$145.523 billion (US$48.35 billion).[109] Two thirds of the stock market turnover in 2005 was in public-sector securities; share turnover accounted for 13.7 per cent of the total. Total market capitalization on 31 December 2005 was Arg$771.321 billion (US$254.561 billion), equivalent to 145 per cent of GDP, with the 10 largest companies accounting for over 90 per cent.[110] At the end of 2005, there were 195 investment funds in operation with assets of Arg$9.5 billion (US$3.15 billion); the assets of the Retirement and Pension Fund Administrators (AFJP) totalled Arg$67.92 billion (US$22.7 billion).

137. The Merval is a self-regulated entity. Its capital consists of shares; provided they meet certain requirements, the shareholders (natural or legal persons) are authorized to act as stockbrokers or brokerage firms, for the purpose of buying and selling securities for their own account or for the account of third parties. The main functions of the Merval are related with the coordination, settlement, supervision and guaranteeing of market operations. The Merval is empowered to take disciplinary action against stockbrokers and brokerage firms that fail to comply with the rules and regulations of Argentina's stock market system, pursuant to Law No. 17.811 (see below), or with the rules of the Merval itself. The main function of the Argentine Capital Market Institute (IAMC), an integral part of the Merval, is to advise stockbrokers and brokerage firms and promote the use of the capital market through its publications and training courses.

138. The National Securities Commission (CNV), a national self-governing technical body, with jurisdiction throughout Argentina, is responsible for monitoring the stock market institutions and the public offer and trading of securities issued by private and semi-public companies. The CNV also

[107] National Investigations and Fiscal Analysis Directorate, Public Revenue Undersecretariat, Finance Secretariat, Ministry of the Economy and Production (2006).

[108] As at August 2006, the Córdoba, Mendoza and Rosario securities markets and the *Mercado de Valores del Litoral* were in operation. National Securities Commission (2006).

[109] *Mercado de Valores de Buenos Aires, S.A.*, Argentine Capital Market Institute (2006).

[110] National Securities Commission (2006).

oversees the secondary securities markets and their brokers, as well as the public offer of forward, futures and options contracts, their markets and clearing houses, and their brokers.[111] The CNV administers the register of stockbrokers and that of the natural and legal persons authorized to offer securities to the public. The CNV is authorized to apply sanctions in cases of infringement of the securities market laws and regulations.

139. Law No. 17.811 on the Public Offer of Securities, as amended by Laws No. 22.000, O.J. of 24 May 1979, and No. 24.241 on Trusts, O.J. of 16 January 1995, and by Decree No. 677/01, O.J. of 28 May 2001, regulates the whole of the securities market, including the public offer of securities, the organization and operation of the stock market institutions and the conduct of stockbrokers and others engaged in securities trading.[112] Under this Law, the authorization of the CNV must be obtained before securities issued by private or semi-public companies can be offered to the public.

140. Securities markets must be set up as limited companies with registered shares and must be associated with a stock exchange, which, in its turn, must be established as a civil association with legal personality or as a limited company. Securities markets can only deal in securities whose listing has been authorized by the relevant stock exchange, which depends on their having previously been authorized by the CNV for public offer. Stockbrokers must be registered with and shareholders in the securities market in which they are to operate, as well as being members of the relevant stock exchange; there are no nationality or residence restrictions on being a shareholder, but to operate as a stockbroker or brokerage firm it is necessary to be domiciled in the City of Buenos Aires, within a radius determined by the Board of the Merval. The securities markets supervise the stockbrokers and can exercise disciplinary powers if the law is broken. These disciplinary measures may include suspension or expulsion.

(d) Insurance

Main features

141. In the last 10 years there has been a decline in the number of insurers, which was accentuated by the crisis of 2001-2002. The devaluation and debt moratorium produced severe imbalances between the assets and liabilities of the insurance companies which had to face surrenders and legal actions by the insured. The authorities have pointed out that, during this period, the policy of the Insurance Supervisory Authority was directed toward safeguarding the insured, by seeking to strengthen the market and establish emergency rules for dealing with the crisis. The authorities have also noted that, since 2004, the insurance market has been growing again, albeit with changes in the structure and dynamics of the various categories of insurance.

142. On 30 June 2006, there were 188 enterprises operating in the Argentine insurance market as compared with 247 in 1999. Of the 188 functioning enterprises, 23 were operating exclusively in retirement insurance, 46 only in life insurance, 16 only in employers' liability insurance and the other 103 in non-life or mixed (non-life and life) insurance. Most of these enterprises are private, with national or foreign capital, five are branches of foreign enterprises, and three are State-owned. As at 30 June 2005, there were 84 enterprises operating in the reinsurance market, as compared with 114 in

[111] See http://www.cnv.gov.ar/.

[112] The legal framework of the securities market includes: Law No. 20.643 on the Regime for the Purchase of Private Securities, O.J. of 11 February 1974; Law No. 23.299 on the Registration of Private Securities, O.J. of 8 November 1985; Law No. 23.576 on Negotiable Bonds, O.J. of 27 July 1988; and Law No. 24.083 on Mutual Funds, O.J. of 18 June 1992.

1999.[113] The authorities have indicated that as at 30 June 2006 there were 89 enterprises enrolled in the Reinsurers Register, most of them established abroad. The authorities have also noted that the reduction in the number of reinsurers reflects the financial crisis and the reorientation of the reinsurance strategy by the international reinsurers.

143. As at June 2006, insurance market premiums were valued at Arg$15.914 billion (some US$5.305 billion). Casualty and property insurance accounted for 70 per cent of the total, while 30 per cent corresponded to personal insurance (life, retirement and personal injury). In 2005, insurance contributed 2.8 per cent to GDP. As at 30 June 2006, per capita direct premium was Arg$359 (US$117). Between 1995 and 2004 the insurance business was loss-making, due to high operating costs, a fragmented market structure, and an unfavourable underwriting experience, a situation partly offset by the profitability of the financial structure. During this period, the insurance companies accumulated losses totalling Arg$4.29 billion (US$1.4 billion), equivalent to 82 per cent of their net worth in 2005.[114] However, the insurance sector has been returning to profitability: as at 30 June 2006, the bottom line for the year was showing a profit of Arg$686 million (US$229 million).

Legal framework

144. The regulatory and supervisory authority for the sector is the National Insurance Supervisory Authority (SSN), a decentralized public agency operating under the Financial Services Undersecretariat of the MEP.

145. Law No. 20.091 on Insurance Entities and their Supervision, O.J. of 7 February 1973, and its amendments, regulates the insurance business in Argentina.[115] Law No. 24.241, O.J. of 18 October 1993, established the Integrated Retirement and Pensions System, creating provident retirement and life insurance. Under Law No. 24.557 on Occupational Risks, O.J. of 4 October 1995, every employer has to be insured through an Occupational Risk Insurer (ART). The resolutions of the SSN also constitute the regulatory framework for the insurance market. Resolution No. 21.523/92 and amendments contain the General Regulations of the Insurance Business. SSN Resolution No. 24.805/96 and amendments constitute the regulatory framework for reinsurance.

146. Public Emergency Law No. 25.561, O.J. of 7 January 2002, and Decree No. 214/2002 introduced measures that had a significant effect on the operation of the insurance market. Decree No. 558/2002 was issued to prop up insurers by authorizing the SSN to intervene and manage the processes of insurance company regularization and reorganization. In the case of life and retirement insurance companies, the SSN adopted Resolution No. 28.905/2002 laying down the rules for planning their restructuring.

147. The Insurance Entity Law applies to insurers and reinsurers throughout the territory of Argentina. To operate as an insurer or a reinsurer in Argentina it is necessary to obtain the prior authorization of the SSN. Only the following may carry out insurance and reinsurance transactions: (a) limited companies, cooperatives and mutual funds; (b) foreign branches or their agencies, if the laws of the country of domicile provide for reciprocity; and (c) national, provincial or municipal, official or joint bodies and entities. To obtain authorization to operate, companies must have been established for the sole purpose of carrying out insurance transactions, and all the capital required

[113] See http://www.ssn.gov.ar/storage/info-estadistica/mercado/.

[114] Undersecretariat of Financial Services, Secretariat of Finance, Ministry of the Economy and Production (2006).

[115] Other relevant laws are Law No. 17.418 on Insurance Contracts, O.J. of 6 September 1967, and Law No. 22.400 on the registration of insurance intermediaries, O.J. of 18 February 1981.

must have been paid up. The supervisory authority therefore establishes as a uniform and general standard for all insurers the minimum amount of capital and the corresponding rules with which the insurers must comply. Moreover, the authorization of new operators is subject to the expediency of their role in the insurance market. Insurers are not allowed to operate in any branch of insurance unless they have been expressly authorized to do so. Changes in the memorandum or articles of association or in the registered capital require the prior approval of the SSN.

148. Insurance for risks that could arise on Argentine territory can only be taken out through companies established in the country. Law No. 12.988, O.J. of 11 July 1947, prohibits the insuring abroad of persons, goods or any insurable interest within the national jurisdiction.

149. Insurance entities can take out reinsurance with national reinsurers, with foreign reinsurers that operate in their country of origin and register with the SSN, and, through the intermediation of a broker, with foreign reinsurers not registered with the SSN. In this latter case, the reinsurance broker must be registered with the SSN and the reinsuring enterprise must be accredited by an international rating agency. For a reinsurer to register with the SSN it must meet, *inter alia*, the following requirements: show that it has a minimum capital of US$30 million and appoint a representative with broad administrative and legal powers, who must establish legal residence in the Autonomous City of Buenos Aires.

150. Insurance intermediation, which includes advising the insured and insurable, is governed by Law No. 22.400 on the Insurance Intermediaries Regime, O.J. of 18 February 1981. As at 30 June 2005, 24,870 natural persons and 387 legal persons were enrolled in the Register of Insurance Intermediaries, as compared with 18,346 natural persons and 386 legal persons in 1995, respectively.

151. Premiums and commissions are freely determined by the insurers, but in the case of commissions the SSN is authorized to establish minima and maxima. Where premiums are concerned, the SSN may approve, by resolution, uniform minimum premiums net of commission if the stability of the market is affected and at the request of any of the insurers' associations, after hearing the other associations. According to the authorities, no use is being made of these powers.

152. Insurance premiums are subject to a tax at a rate which varies depending on whether the enterprise is established in Argentina or abroad, in which case it is higher. For enterprises established in Argentina, the rate is 0.1 per cent in general, in accordance with Decree No. 687/98, O.J. of 17 June 1998, and 2.5 per cent for industrial accidents; for insurers established outside Argentina, the rate is 23 per cent. Revenue from insurance premiums totalled Arg$8.1 million (US$2.7 million) in 2005, and Arg$6.2 million (US$2.1 million) in the first nine months of 2006.

(iv) Air transport and airports

(a) Main features

153. Argentina's National Airport System (SNA) is composed of a total of 54 airports, of which 8 are international. The main airport (Ezeiza) is located 22 km outside the City of Buenos Aires and handles 85 per cent of international traffic. The number of passengers carried on scheduled domestic flights was 5 million in 2004 and 2.32 million in the first half of 2005; the number of passengers carried on international flights was 1.83 million and 918,000, respectively.[116] As at August 2006, 28 national and international airlines were operating on a regular basis in Argentina. Moreover, there

[116] See http://www.aerocomercial.gov.ar/estadisticas/ofertaydemanda.html.

were some 50 authorized facilities for providing technical services, of which 11 were Argentine and the rest foreign. Argentina has made no commitments with respect to air transport under the GATS.

(b) Air transport services

154. Public policy for the air transport sector is established and implemented by the Commercial Air Transport Undersecretariat of the Transport Secretariat of the Ministry of Federal Planning, Public Investment and Services, the aeronautical authority under the Aviation Code. The Undersecretariat supervises commercial air transport services, analyses and proposes policies for the sector, and participates in the negotiation of bilateral agreements.[117] The Undersecretariat must approve the routes, flight frequencies, capacity and timetables of domestic and international scheduled air transport services. The Air Force's National Airworthiness Board (DNA) administers the National Aircraft Register and grants operating permits.[118]

155. The main provisions relating to air transport and the services linked directly or indirectly with the use of public and private aircraft in Argentina are contained in the Aviation Code (Law No. 17.285, O.J. of 23 May 1967) and amendments. Registration in the National Aircraft Register confers Argentine nationality on the aircraft, annulling any previous registration. In order to own an Argentine aircraft, a natural person must be an actual resident of Argentina; if there are several co-owners, then the majority, whose rights exceed half the value of the aircraft, must maintain their actual residence in Argentina. In the case of a company, it must have been established under Argentine law and have its registered office in Argentina. Persons who perform aviation duties on board Argentine-registered aircraft and those who perform aviation duties on the ground must be in possession of a certificate issued by the DNA (Decree No. 1.954/1977, O.J. of 14 July 1977). The revalidation of certificates issued abroad is governed by agreements concluded between the issuing countries and Argentina; if there is no such agreement, revalidation is subject to reciprocity.

156. Domestic (cabotage) air services are reserved for Argentine enterprises or nationals. However, on grounds of public interest, the Executive may authorize such enterprises to provide such services on condition of reciprocity. Natural persons providing domestic air transport services must be Argentinian and maintain their actual domicile in Argentina. Where enterprises are concerned, they must have been established and have their registered offices in Argentina, and they must be controlled and managed by persons actually domiciled in Argentina. In the case of a partnership, at least half plus one of the partners must be Argentine citizens domiciled in the country and own a majority of the equity; in the case of a joint-stock company, a majority of the shares, corresponding to a majority of the countable votes, must be registered and owned by Argentine nationals actually domiciled in the country, a criterion applicable both to natural persons and to legal persons actually domiciled in Argentina (Decree No. 52/1994, O.J. of 21 January 1994). The chairman of the board, the managers and at least two thirds of the directors must be Argentine nationals.

157. The provision of domestic air transport services requires a concession in the case of scheduled services or an authorization in the case of unscheduled air transport. Concessions are granted on specified routes and for a period of not more than 15 years, which can be extended on request, and are non-exclusive. Flight crews must be Argentine nationals; for technical reasons a percentage of foreign personnel may exceptionally be authorized for a period of not more than two years. Aircraft assigned to domestic transport services must be Argentine-registered; exceptionally, to ensure the provision of those services or for reasons of national expediency, foreign-registered aircraft may be used.

[117] See http://www.aerocomercial.gov.ar/institucional/objetivos.html.

[118] See http://www.dna.org.ar/dnaportal/institucional/Home/home.htm.

158. Foreign enterprises may provide international air transport services, under international conventions or agreements to which Argentina is party, or with the prior authorization of the Executive. The authorization granted to foreign enterprises must contain at least the same obligations as those imposed on Argentine enterprises providing similar services.

159. The Aviation Code authorizes the subsidizing of air transport services on routes of public interest. Law No. 19.030 (Regulations on the Provision of Commercial Air Services), O.J. of 27 May 1971, also stipulates that "the National Executive shall economically complement national carriers holding concessions to provide scheduled air services if as a result of the imposition of uneconomical fares on routes or segments of routes declared to be of public interest for the Nation, the commercial operation of the totality of the routes declared to be of public interest proves to be loss-making". Moreover, the Executive is empowered to subsidize the operation of aerial work services of the same nature.[119]

160. Decree No. 1.654/2002 imposed a state of emergency on commercial air transport throughout Argentine territory for domestic operators within the jurisdiction of the national authority while the Public Emergency Law was in force. Under the state of emergency imposed by this Decree, from 1 September 2002 national air transport enterprises were no longer required to take out commercial air insurance policies in Argentina, as stipulated by Law No. 12.988 of 1947, so as to reduce their insurance costs.

161. Executive (P.E.N.) Decree No. 1.012/06 declared the continuation of the state of aviation emergency and established the Aviation Fuel Compensation Regime (RCCA) to be applied to domestic scheduled air passenger transport services. Transport Secretariat Resolution No. 806/206 regulated this regime. Decree No. 1.012/06 also authorized the providers of domestic scheduled air passenger transport services to adjust fares, provided that they fell within the bands between the reference fare and the maximum fare for each of the points of origin/destination listed in Annex I to the Decree. Moreover, the above-mentioned Decree No. 52/1994, which had been suspended since 2000, was brought back into force to facilitate investment in the aviation industry.

162. Air carriers submit the fares for air transport services to the Commercial Air Transport Undersecretariat, the registering authority. Domestic airfares are deemed to have been approved if they fall within the fare band regime, in accordance with the levels established in Annexes I and II to Decree No. 1.012/2006. International airfares are deregulated and carriers, whether national or foreign, only have to register them. Nevertheless, bilateral understandings with other countries may contain fare clauses that provide for different criteria for approving the fares of designated carriers on bilateral routes.

163. Argentina is a party to several international air transport services agreements and conventions, including the Chicago Convention of 1944. Law No. 25.806, O.J. of 2 December 2003, ratified the Agreement on Subregional Air Services (Fortaleza Agreement) between the members of MERCOSUR, Bolivia, Chile and Peru, which is intended to facilitate the introduction of new subregional scheduled air services, on routes not actually operated within the framework of bilateral agreements. Argentina has bilateral air transport agreements with 22 countries.[120] Moreover, it has

[119] Decree No. 2.836/1971, O.J. of 13 August 1971, permits the subsidization of aerial work for the purposes of agricultural pest control or disaster management.

[120] Bolivia, Brazil, Canada, Denmark, France, Germany, Italy, Korea, Malaysia, Mexico, Netherlands, New Zealand, Norway, Paraguay, Russian Federation, Singapore, Spain, Sweden, Switzerland, United Kingdom, and United States.

concluded bilateral understandings on commercial air transport services with 23 countries.[121] Agreements that involve arrangements for the pooling, linking, consolidation or merging of services or business operations must be submitted for approval to the Commercial Air Transport Undersecretariat.

(c) Airports and auxiliary services

164. Argentina's airports are owned by the State. The administration of airfields and airports, with the exception of military airfields, and their supervision are the responsibility of the Transport Secretariat's National Airport System Regulatory Authority (ORSNA), established by Decree No. 375/97. However, the law allows the administration of airports to be put out to concession. As at August 2006, 33 of the National Airport System's 54 airports were being administered by concession-holders.[122]

165. Under Decree No. 1.142/2003, the Commercial Air Transport Undersecretariat is responsible *inter alia* for coordinating with ORSNA and the other airport authorities the activities relating to the provision of support services for commercial air transport and the development of the aviation infrastructure. ORSNA establishes the rules, systems and technical procedures required to administer, operate and maintain the airports that form part of the National Airport System and monitor compliance, and submits to the Executive draft proposals for the amendment and repeal of laws, decrees and/or resolutions relating to aviation. ORSNA has jurisdiction over airport matters and, in particular, those relating to the approval of tariff schedules for the services provided under the National Airport System, both by concession-holders and airport administrators.

166. The Argentine Air Force is responsible for overseeing security, the provision of air transit and/or air traffic control and/or flight protection services, aeronautical regulations and the provision of communications, meteorological, rescue and salvage services and, in general, for the technical aspects of the SNA. The Air Force's DNA administers the airworthiness rules and procedures.[123]

167. A concession or authorization is required to carry on any commercial air transport activity. Market access without restrictions and national treatment apply to all auxiliary services, with the exception of navigation services, which are reserved for the State. There are no limitations on domestic or foreign private participation in the provision of auxiliary services such as maintenance, contracts for which can be placed abroad. Technical aviation personnel must obtain a certificate of competency and a licence. Certificates of competency and licences granted abroad are valid in Argentina subject to revalidation.

168. Decree No. 698/2001 authorizes domestic air transport enterprises and/or their agents that hold concessions or authorizations to provide ground servicing for aircraft assigned to their own traffic or to that of third parties. The maximum tariffs for services relating to the use of public airports are approved by ORSNA. The procedures for determining the airport service tariffs for domestic and international traffic are laid down in Annex I (Initial Tariff Schedule) of Resolution No. 53/98, O.J. of 1 June 1998. The rates vary with increase in the weight of the aircraft. Decree No. 698/2001 amended, with respect to the tariffs applicable to domestic flights, the Initial Tariff Schedule approved by Decree No. 500/97 and amended by Decree No. 57 of 22 January 2001.

[121] Australia, Austria, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czech Republic, Ecuador, Greece, Israel, Italy, Luxembourg, Panama, Peru, Syria, South Africa, Turkey, United Arab Emirates, Uruguay and Venezuela.

[122] See http://www.orsna.gov.ar/contents/aeroports.html.

[123] See http://www.dna.org.ar/dnaportal/institucional/Home/home.htm.

Decree No. 698/2001 significantly reduced the landing and parking fees for domestic flights, but the tariffs applicable to international flights remained unchanged.

(v) Maritime transport

(a) Main features

169. Argentina has 33 main ports, 8 under provincial administration and the rest privately operated. The port of Buenos Aires is the country's main port for both general and container cargo, and in the period January-May 2006 it handled some 4.04 million tonnes of goods transported by river or by sea. Of the total cargo handled, 1.36 million tonnes corresponded to imports and 1.71 million to exports. San Lorenzo, San Martín and Rosario on the Paraná River are the country's main ports for cereals and oils.

170. As at August 2006, there were 27 shipping lines, with domestic or foreign capital, operating in Argentina. A substantial proportion of the international goods traffic uses foreign-flag vessels. Despite the steps taken by the authorities to implement policies to increase the volume of traffic using Argentine ships, the Argentine merchant fleet has been shrinking. In 2002, the national merchant fleet had 70 units, as compared with 149 in 1991. However, in response to incentives, 55 vessels were registered under the national flag between August 2004 and April 2006; in August 2006, the Argentine fleet consisted of 212 units. Argentina has no maritime transport commitments under the GATS.

(b) Maritime and river transport services

171. The Ports and Navigable Waterways Undersecretariat of the Transport Secretariat of the Ministry of Federal Planning, Public Investment and Services is responsible, among other things, for the formulation, implementation and monitoring of policies and plans relating to river and maritime transport.[124]

172. Law No. 20.094 (Shipping Law), O.J. of 15 January 1973, and Decree No. 4516 of 16 May 1973 and succeeding enactments on the Maritime, River and Lake Navigation Regime (REGlNAVE) contain the rules applicable to maritime and river transport. Decree No. 817/97 of 26 May 1992 on Port Activities introduced the deregulation of the waterborne transport sector, providing for it to develop within a context of free play between supply and demand, under conditions of reciprocity and with minimum requirements. The Decree contains rules for the administrative reorganization and privatization of maritime, river and lake transport activities. Decree No. 817/97 revoked the administrative provisions relating to the approval of tariffs, with the exception of those relating to conference freight. It requires shipowners and/or ship's brokers to communicate their tariffs, routes, schedules and standard of service to the Ports and Navigable Waterways Undersecretariat and that they be made public.

173. Decree Law No. 19.492 of 25 July 1944, ratified by Law No. 12.980, provides for coastal shipping and trade (cabotage) to be reserved for Argentine-flag vessels. This restriction also applies to cargoes which are ultimately to be exported and when during the voyage the vessel puts in at one or more foreign ports. In addition, it applies to transhipment, dredging and towing operations and any other service or commercial activity carried out in Argentine (maritime, river or lake) waters. Vessels providing cabotage services within Argentina must be owned by Argentine citizens or companies legally established in Argentina and registered as shipowners in the National Shipowners Register.

[124] Decrees Nos. 1.824/2004, 1.283/2003 and 1.142/2003.

174. Article 6 of Decree Law No. 19.492 of 25 July 1944 empowers the National Executive to authorize foreign vessels to provide national cabotage services if there are no Argentine units capable of providing them. A total of 94 exceptions were granted in 2005, and 50 in the first seven months of 2006.[125] There were also 16 exceptions granted for dredging in 2005 and 5 in the first half of 2006.

175. Decree No. 1.010/2004 repealed Decree No. 1.772/91, which had established a provisional suspension of flags regime in favour of the Argentine flag. A regime was created for Argentine shipowners under which they are granted facilities for bare-boat chartering of vessels in accordance with their gross registered tonnage under the national flag, with the exclusion of vessels and floating structures that can be built in Argentina.[126] Vessels eligible for the regime are authorized to carry out coastal and international operations, being considered to be under the national flag for a period of between one and three years from the date of enrolment in the Register. Vessels incorporated in the Register are placed under the temporary admission procedure. The requirements for enrolment in the Register include permanent domicile (natural persons) or establishment (legal persons) in Argentina, the registration under their ownership or the operation of at least one Argentine-flag vessel, or the conclusion of a shipbuilding contract with an Argentine shipyard and registration as a shipowner.

176. To promote shipbuilding in national shipyards, Decree No. 1.010/2004 authorizes, for up to 24 months, shipowners with vessels under construction in Argentine shipyards to use for coastal traffic foreign-registered vessels with characteristics similar to those of the vessels under construction and up to 100 per cent of the tonnage contracted, and to charter vessels intended for activities in support of off-shore petroleum operations for the equivalent of 200 per cent of the tonnage to be built in national shipyards. Decree No. 1.010/2004 also established an import regime for inputs, parts and/or components not produced in MERCOSUR, intended for the construction and repair in the country of vessels and floating structures classifiable in headings 8901, 8902, 8904, 8905 and 8906 of the MERCOSUR Common Nomenclature, at a tariff rate of zero per cent. Foreign-flag vessels and floating structures covered by Decree No. 1.010/2004 must have exclusively Argentine crews and modifications to and repairs to vessels and structures covered by the regime must be carried out in shipyards and workshops in Argentina.

177. Argentina participates in a number of international shipping agreements administered by the International Maritime Organization (IMO). Argentina is a signatory to the Inter-American Convention on Facilitation of International Waterborne Transportation (Convention of Mar del Plata) of 7 June 1963. Together with Bolivia, Paraguay, Uruguay and Brazil, Argentina is party to the Agreement on Facilitation of Navigation and Commercial Transport on the Paraguay-Paraná Waterway, approved by Law No. 24.385, O.J. of 21 November 1994, and has also signed bilateral river transport agreements with Bolivia, Brazil, Paraguay and Uruguay.

178. The Maritime Transport Agreement between Argentina and Brazil, signed on 15 August 1985 and approved by Law No. 23.557, O.J. of 18 July 1988, grants reciprocity in the transport of cargoes and reserves for vessels registered in the two countries the transport of goods between their ports, whether those goods be in commercial trade or transhipments for or from third countries. The Maritime Transport Convention between Argentina and Cuba of 13 November 1984, approved by Law No. 23.432, O.J. of 27 March 1987, reserves the carriage of their foreign trade for vessels registered in the two countries.

[125] Transport Secretariat (2006).

[126] Vessels to be used for fishing; for sporting or recreational or technical, scientific and/or research activities; for transporting passengers and/or vehicles, up to 5,000 tonnes; for transporting cargo, not self-propelled; for extracting sand and/or pebbles; and tugs and support and auxiliary craft. Floating structures include dredgers, landing stages, platforms, buoys, etc.

(c) Port services

179. Under Decree No. 1.824/2004, O.J. of 15 December 2004[127], the Ports and Navigable Waterways Undersecretariat is the authority responsible for formulating, implementing and monitoring policies relating to port services. The Undersecretariat supervises the operation of the *Administración General de Puertos Sociedad del Estado* (AGPSE), which administers the Port of Buenos Aires.

180. Law No. 24.093 (Port Law), O.J. of 26 June 1992, governs all matters relating to the authorization, administration and operation of State-owned and private ports. Decree No. 769/1993 on Port Activities contains the implementing regulations for Law No. 24.093. The Port Law classifies ports according to their ownership into national, provincial, municipal and privately owned, according to their use into public and private, and according to their purpose into commercial, industrial and recreational. It also establishes the conditions and requirements for the authorization of ports. The Port Law stipulates that private individuals may build, administer and operate public or private ports for commercial, industrial or recreational purposes, on public land or on their own property. Commercial and industrial ports must have the authorization of the Executive, which remains in force as long as they continue to operate. The Law requires the fees, prices and other consideration paid by users to be strictly proportional to the service provided.

181. Decree No. 817/92 provided for the dissolution of the AGPSE once the ports under its jurisdiction had been privatized, transformed or transferred. In the meantime, individual administrations were provisionally established, under the AGPSE, for six ports, namely: Buenos Aires, Rosario, Quequén, Bahía Blanca, Santa Fe, and Ushuaia. Decree No. 19/2003 provided for the elimination from the title of the AGPSE of the addition "in liquidation".

182. The fees charged by the ports under private administration are freely fixed. The fees charged in the Port of Buenos Aires and in those ports still under State administration are centrally fixed and a distinction is made between cabotage and international trade. For example, in the case of the charges for wharfage services and vessel taxes, cabotage vessels pay only 25 per cent of the charge or general tax at an exchange rate of Arg$1 to the US dollar. Similarly, the cargo tax structure favours internal transport operations, since the rate is US$3 per net registered tonne (NRT) for exports and US$1.50 for imports, and US$0.562, at an exchange rate of Arg$1 per US dollar by weight, for internal transport operations.[128]

183. Pilotage, marshalling and towing services are compulsory for foreign-flag vessels. Argentine-flag vessels with certain dimensions and draught can opt to dispense with the above-mentioned services if their captains or owners comply with certain requirements with regard to experience.

(vi) Professional services

(a) Main features

184. According to Article 41 of Law No. 24.521 (Higher Education), O.J. of 10 August 1995, to exercise a profession it is necessary to have the university diploma officially recognized by the Ministry of Education. Article 42 stipulates that officially recognized diplomas shall certify the academic training received and confer the right to exercise the profession throughout the national territory, subject to the powers of the provinces to regulate the professions.

[127] See http://www.transport.gov.ar/html/sub_ports.htm.

[128] See www.portbuenosaires.gov.ar.

185. Under Decree No. 2293/92, the freedom to exercise a profession is subject only to the requirement of a single registration, where appropriate. However, those professions whose exercise could place the health, safety, rights, property or education of the population directly at risk are regulated by the State. Article 43 of Law No. 24.521 specifies that for diplomas corresponding to professions regulated by the State, the Ministry of Culture and Education (MECYT) shall determine, in agreement with the Universities Council, the basic contents of the curriculum, the extent of the practical training requirements and the list of such diplomas, together with the professional activities reserved exclusively for their holders. Twenty-four professions have been declared to be of public interest and must be periodically accredited by the National Evaluation and University Accreditation Commission (CONEAU). These include medicine, pharmacy, biochemistry, veterinary science, architecture, dentistry and psychology, together with 18 engineering specialties, while the inclusion of lawyers, notaries, chartered accountants and actuaries among those who practise professions of public interest is under study.[129] According to the authorities, there are no professions reserved for Argentine nationals.

186. Under Law No. 24.521, O.J. of 10 August 1995, for foreign diplomas (whether awarded to Argentine nationals or to foreigners) to be recognized in Argentina and authorize the exercise of a professional activity they must have been revalidated by a National University (i.e. a public national-government university, not a provincial or private establishment). The recognition of studies pursued abroad which qualify the student to exercise a profession depends on the diploma being authenticated by the National University Management Directorate (DNGU) of the University Policy Secretariat of the Ministry of Culture and Education. For this purpose, the diploma must have been certified by the educational authorities and the Argentine Consulate in the country of origin and by the Ministry of External Relations in Buenos Aires, unless the country is party to the Hague Convention of 5 October 1961, in which case the diploma is exempt from the requirement of authentication by the Ministry.

187. Where Argentina has signed bilateral or multilateral agreements on the recognition of university diplomas, the system of equivalences applies. The diplomas issued by Bolivia, Colombia, Chile, Ecuador, Peru and Spain fall within this category.[130] The procedure for recognizing diplomas awarded by these countries for the exercise of a profession varies according to the agreement.

188. Decree No. 240/99 on Economic Deregulation contains provisions that deregulate the activities of a series of professional regimes. Specifically, the Decree annulled the previous provisions concerning the determination of scales establishing all forms of remuneration for professional services and inventoried the provisions revoked in the case of each of the main professions. Public or private entities, including professional associations and societies, are prohibited from obstructing the free negotiation of any form of remuneration. Decree No. 2284/91 annulled the restrictions on the supply of goods and services throughout Argentina, including all limitations on the exercise of professions.

189. Argentina has made full specific commitments in the professional services sector under the GATS, in various areas such as legal, accounting, auditing and book-keeping services, architecture and engineering. This applies to market access and national treatment both for cross-border supply and for consumption abroad and commercial presence. Argentina has also made commitments in

[129] CONEAU (2006).

[130] For diplomas issued by Ecuador, Spain and Colombia (for non-accredited professions only) and Peru, Ministerial Resolution No. 252/03 provides for a procedure that includes the formation of Assessment Committees of Specialists from CONEAU to analyse each application for the recognition of a degree and advise on the relevant academic requirements.

other sectors, which, in their turn, involve the concession of certain types of professional services such as information technology, communications, construction, distribution, financial, and tourism services, among other business services. The supply of services through the presence of natural persons is unbound with respect to market access and national treatment for all the sectors included in Argentina's GATS schedule, except for measures concerning the entry and temporary stay of managers, executives and specialists.[131] The authorities have pointed out that in presenting its initial offer in April 2003, Argentina significantly improved its level of commitments by incorporating the categories of businessmen, professionals and specialists, intra-corporate transfers, and representatives of foreign enterprises.[132]

190. In 1996, in accordance with Article VII.4 of the GATS, Argentina notified the WTO that it had ratified diploma recognition agreements with 10 countries.[133]

(b) Legal services

191. To practise as a lawyer it is necessary to have a national law diploma awarded by a public or private university or by a foreign university. In this latter case, the diploma must have academic validity under a bilateral treaty or have been revalidated by a national university. In all cases, to practise as a lawyer it is necessary to obtain professional authorization through enrolment in the Register of the *Colegio Legal de Abogados* (Law Association) of the corresponding jurisdiction. Under the Argentine constitutional system, each local jurisdiction adopts laws organizing and governing the power to regulate the professions by establishing the requirements for exercising the national university qualification.

192. There are various regimes of compulsory association for lawyers in Argentina's 22 local districts (21 provinces and the Autonomous City of Buenos Aires), while lawyers must register with the Judiciary in the Provinces of Santa Cruz and Chaco. There are 73 public law associations in the provinces and the Federal Capital. In some provinces there are several public law associations, and in others only a single professional association for the entire territory; lawyers enrolled in one association of a particular local jurisdiction may practise throughout the jurisdiction, even though it may have several associations.

193. Law No. 23.187, O.J. of 28 June 1985, contains provisions concerning the requirements for practising as a lawyer in the Federal Capital, together with provisions concerning registration and association. The provinces have similar procedures and requirements, with the exceptions mentioned in connection with the provinces of Santa Cruz and Chaco, where lawyers must register with the Judiciary. To practise as a lawyer in the Federal Capital it is necessary to possess a practising certificate issued by the competent authority and to be enrolled in the register of the *Colegio Público de Abogados* of the Federal Capital, except in the case of lawyers who plead before the Supreme Court. Lawyers must have an office or special domicile within the jurisdiction in which they are enrolled. In the case of the provinces, the laws governing the power to regulate the professions lay down requirements similar to those mentioned, but it is not necessary to be actually domiciled in the particular jurisdiction in which the profession might be practised in view of the fact that lawyers can practise anywhere in their provincial territory subject to enrolment in the register of the law association of their actual domicile.

[131] WTO document GATS/SC/4 of 15 April 1994.

[132] WTO document TN/S/O/ARG of 8 April 2003.

[133] WTO document S/C/N/13 of 27 February 1996. The various agreements involve Argentina and one or more of the following countries: Brazil, Bolivia, Colombia, Ecuador, the Holy See, Paraguay, Peru, Spain, Uruguay and Venezuela.

194. Since there are no nationality requirements, a foreign lawyer may open a law office, subject to compliance with the relevant immigration legislation. Foreign lawyers with national diplomas can enrol with the public law association of their Argentine domicile. Foreign diplomas need to be revalidated.[134]

195. Under Law No. 23.187, it is the *Colegio Público de Abogados* of the Federal Capital that monitors the exercise of the legal profession and is responsible for supervising registration within the geographical area of the Federal Capital. Registration is compulsory and entails the exercise of disciplinary powers over the person registered.

(c) Accounting and auditing services

196. The requirements relating to chartered accountancy and other economics diplomas are laid down in Law No. 20.488, O.J. of 23 July 1973, and in Resolutions of the Ministry of Culture and Education No. 1.560 of 1 September 1980 and No. 1.627 of 25 October 1983. Access to the Argentine market for foreign-trained accountants depends on revalidation of the professional diploma, professional accreditation and registration in Argentina. Foreign accountancy firms may set up and offer services in Argentina. Balance sheets must be certified by a public accountant whose signature must be attested by the professional economics council of its jurisdiction. The activities of accountants are regulated by the professional economics councils of the corresponding province or jurisdiction, which grant and administer the registration that enables the economics professions to be practised legally.[135] The rules to be followed are laid down in each jurisdiction in accordance with the legislation of each province or the Autonomous City of Buenos Aires. In the Autonomous City of Buenos Aires, for example, it is Law No. 466 of 3 August 2000 that governs the accountancy and other similar professions. The professional bodies approve technical standards and codes of ethics.

197. Argentina is not party to any agreement on the mutual recognition of accountancy qualifications. However, it does participate in several accounting procedure harmonization processes.[136] Argentina is involved in the MERCOSUR Integration Group on Accountancy, Economics and Administration (GIMCEA) with a view to harmonizing the rules on the exercise of the relevant professions within MERCOSUR. Argentina was also involved in the Working Party on Professional Services and replied to the questionnaire on accounting services.[137]

[134] Information available on the website of the *Colegio Legal de Abogados* of the Federal Capital: http://www.cpacf.org.ar/azul/A_ReqMatric.htm#extranje.

[135] Argentina's professional councils were established by law and are required to perform the functions stipulated in the corresponding legal provisions. These functions have been delegated by the State and may not be performed by other institutions. Each professional body has jurisdiction in its respective province.

[136] For example, through the Inter-American Accounting Association, the International Federation of Accountants and the International Accounting Standards Board.

[137] WTO document S/WPPS/W/7/Add.7 of 17 July 1996.

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