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Legal Aspects of the Argentine Price Control Regulations

Fernando C. Aranovich

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LEGAL ASPECTS OF THE ARGENTINE PRICE CONTROL REGULATIONS*

FERNANDO C. ARANOVICH**

I. INTRODUCTION	534
II. PRESENT REGULATION IN FORCE IN ARGENTINA: LAW No. 20.680	536
A. <i>Background</i>	537
B. <i>Scope</i>	538
C. <i>Implementing Authorities and Regulations</i>	538
D. <i>Powers Granted to the Executive Branch</i>	539
E. <i>Infringements</i>	540
F. <i>Penalties</i>	540
III. ADDITIONAL OBLIGATIONS ARISING FROM IMPLE- MENTING REGULATIONS	541

* This article was written in September 1987. Since then the Secretary of Trade has issued new resolutions and repealed others in order to instrument successive changes in executive policy on price control issues.

The most relevant amendments were introduced in Resolution No. 122/1987 (ADLA 1988, No. 10, p. 17) by which the Secretary of Trade enacted the so-called "new price control policy." Resolution No. 122/1987 lifted price controls on most products and services, now called "liberated products." It also released all commercial margin limits.

The Resolution maintained relative control over the manufacturers of various products (i.e., textiles, paper, chemicals, plastics, drugs, cement, steel, etc.) which are considered "price-leaders" in the Argentine economy. Such companies are required to file sworn statements with the Secretary of Trade on a monthly basis, reporting business costs in a detailed form and attaching their price lists for authorization to increase their prices.

In addition, the Secretary issued Resolution No. 132/1987 (ADLA 1988, No. 13, p. 32) which authorizes automatic price increases every two weeks for the so-called "liberated products."

** Associate, Klein & Mairal, Abogados, Buenos Aires, Argentina; L.L.B., University of Buenos Aires School of Law 1973; M.C.L., Southern Methodist University School of Law 1982; former advisor to the Secretary of State for Economic Planning of Argentina (Ministry of Economy) 1978-81; Professor of Economics, University of Buenos Aires School of Law 1975-87.

IV. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW	542
V. PENALTIES USUALLY IMPOSED BY THE IMPLEMENTING AUTHORITIES	543
VI. CONCLUSION	544

I. INTRODUCTION

In a system of free private enterprise, the competitive price system governs the majority of transactions between producers and consumers of goods and services and those between suppliers and consumers of factors of production such as land, labor, and capital. This system uses the laws of supply and demand to solve the three main economic problems: *what* is produced, *how* things are produced, and *for whom* they are produced. In many countries, governments dissatisfied with the results of an unregulated market intervene either directly, by providing funds or services, or by regulating the market in order to change those results. For example, governments may directly provide many free or low-cost services such as medical care, subsidized education, and social security payments for the needy.

At the same time, the government may affect the market results by changing the rules of the game. Thus, where imperfect competition and oligopoly prevail in modern mixed economies, governments influence the market through antitrust laws, public utility regulation, and direct control of prices. In Latin America, legislatures either have not enacted, or the respective governments do not appropriately enforce, antitrust laws to limit adequately the effects of oligopoly and imperfect competition on their economies. A poor understanding of economics by legislators and judges prevents antitrust laws from being effective. Politicians designing economic policy are very sensitive to levels of unemployment. Consequently, Latin American politicians usually reject monetary and fiscal policies that deliberately slow down the economy and lead to increased unemployment. Instead, they tend to oversimplify the complex problems of stabilizing prices in mixed economies. Rather than addressing the root cause of unstable markets, politicians resort to methods that reduce the matter to direct price fixing by public authorities.

The tradeoff between unemployment and inflation in the short run is depicted by the well-known Phillips Curve. Unfortunately,

however, the dramatic description of the dilemma that policymakers face, illustrated by the Curve, does not explain how to arrest inflation in a mixed economy.

How to avoid the tradeoff between inflation and unemployment is an open question in several countries. Peacetime wage and price controls have been used extensively in Scandinavia, the Netherlands, and in many Latin American countries, including the Republic of Argentina, in an effort to control inflation without increasing unemployment. Although in the short term these controls sometimes have been effective, over a longer period they have failed to withstand strong pressures in the economy for price increases. The most famous advocate for price control systems, John Kenneth Galbraith (head of the Price Section of the United States Office of Price Administration and Civilian Supply between 1941 and 1943) argues that price administration by government is important in any program to control inflation. Specifically, while fiscal and monetary policies should be emphasized to establish as close an equilibrium between supply and demand as possible, price control still will be needed to arrest the upward wage-price spiral. However, Galbraith himself limits the utility of such controls:

[W]age and price controls are probably necessary in a state of limited mobilization. They ought, however, to be employed under conditions of an approximate equilibrium of demand and supply. They are an adjunct of the monetary and fiscal measures which maintain this equilibrium. Their specific and rather limited function is to prevent the interaction of prices and wages where the imperative of maximized production requires full use of current resources, particularly of labor.¹

At the opposite end of the political spectrum, leading monetarist Milton Friedman argues that the controls are inherently immoral. By substituting the rule of men for the rule of law and for voluntary cooperation in the marketplace, the controls threaten the very foundations of a free society. By encouraging men to spy and report on one another, by introducing controls the public has an interest in evading, and making illegal actions that are in the public interest, the controls undermine individual morality.² He condemns controls harshly because during World War II,

1. J. GALBRAITH, *A THEORY OF PRICE CONTROL* 69 (1980).

2. Friedman, *Morality & Controls: I*, N.Y. Times, Oct. 28, 1971, at 41, col. 3, quoted in L. SILK, *THE ECONOMISTS* 82 (1976).

when price control was nearly universal, black markets and random rationing, favoritism, and bribery were so extensive that even 60,000 bureaucrats backed by 300,000 volunteers in the United States were unable to cope with millions of people looking for ways to get around wage and price controls which conflicted with their individual sense of justice.

Notwithstanding the limitations advocated by Galbraith and Friedman's counterargument attacking the immorality of price controls, Argentina has relied on various wage and price controls imposed by different administrations from time to time, since September 1930. Such controls have proven ineffective in combatting the chronic inflation of 20 to 100 per cent per year that sometimes has reached the point of hyperinflation.³ Argentine planners believe that the easiest and most effective way to abolish inflation is to centrally control prices and wages, and to allow selective increases only to the extent necessary to relieve sectoral pressures. But perfect public administration is even less common than perfect markets. The infrequent and short periods of decreasing inflation during a price control period show that it is difficult, if not impossible, to implement a policy that relies almost exclusively on price controls, regardless of the extensiveness of the central bureaucracy or the severity of its sanctions.⁴

In Argentina, not only were these controls marginally effective in fighting inflation, but they also damaged public morality and confidence and encouraged bribery, tax evasion, and black markets. Ultimately, the extent of controls imposed on companies limited the ability of businessmen to exercise their own independent judgment and deterred risk taking.

II. PRESENT REGULATION IN FORCE IN ARGENTINA: LAW No. 20.680

Argentine planners largely have ignored both Galbraith's description of the limited usefulness of price controls as well as Friedman's condemnation of these controls as both immoral and ineffective. Since price controls were first imposed in the 1930s and reinstated from time to time in laws enacted by the National Congress, several decrees issued by the Executive Power, and hundreds of implementing regulations have imposed maximum and/or mini-

3. See APPENDIX.

4. R. ALEMANN, CURSO DE POLITICA ECONOMICA ARGENTINA 441 (1981).

mum prices, profit margins, price-freezes, and "voluntary" price agreements between the government, trade unions, and chambers of commerce and industry. All such controls, without exception, have proven ineffective; between 1964 and 1984 prices rose more than 103,000,000 percent.⁵

A. Background

Law No. 20.680 ("the Law"), which has been in force since its enactment on June 24 1974, sets forth the legal framework of the price control regime.⁶

Many consider most of the provisions of the Law as constituting an excessive and authoritarian regulation of commerce;⁷ and, at different times, several attempts have been made to repeal or amend the Law. However, thus far such attempts have not been successful, and the Law, with the resulting price control regulations, remains in force and continues to be applied by the Administration. In several cases, the National Supreme Court of Justice has decided that those regimes used by the government to impose ceilings on prices, such as the Law and its implementing regulations, are not unconstitutional *per se*. These regimes are unconstitutional only if they are arbitrary, unreasonable, or disproportionate to the goals pursued by the regulations.⁸

The broad delegation of powers granted to the executive branch and/or several of its departments and officials has been seriously criticized by Argentine scholars, especially when such delegation affects personal freedom, relates to tax or criminal matters, or imposes limits on rights guaranteed by the National Constitution (i.e., rights to own property, to work, to associate, to teach and learn, to develop any legitimate industry, etc.).⁹ However, the Na-

5. See APPENDIX.

6. Law No. 20.680, ADLA XXXIV-C 2006 (1974). The Law and the decrees, resolutions, regulations, and orders relating to the control of prices and emanating from departments of the Argentine Federal Administration or of Provincial or Municipal Administrations are designated collectively herein as the "Price Control Regulations."

7. See, e.g., Goti, *Aspectos Penales de la Nueva Ley de Abastecimiento (Ley 20.680)*, 57 E.D. 843; Padilla, *Inconstitucionalidad de la Ley 20,680*, 112 E.D. 901; Aguilar, *Las Normas de Precios Maximos de Bienes y Servicios*, 1984-D L.L. 1276; and Aranovich, *El Control de Precios y la Clausura de Establecimientos*, *Ambito Financiero*, Apr. 9, 1987, at 16.

8. Vicente Martini e Hijos S.R.L., 37 L.L. 561 (C.J.N. 1945); Casa Ideal de Los Novios, 44 L.L. 604 (C.J.N. 1946).

9. For a discussion of the constitutional validity of a delegation of powers to the executive branch by the National Congress see G. BIDART CAMPOS, *MANUAL DE DERECHO CONSTI-*

tional Supreme Court of Justice upheld the extension of the regulatory powers vested in the executive by the Law or other statutes, holding that the delegations are valid where the legislative policy is clearly determined by the Congress, and the legislature cannot foresee all the particular, different, or variable aspects related to a specific matter such as the price control.¹⁰

B. Scope

The scope of the Law is extremely broad; it applies to all industrial and commercial enterprises, including natural persons engaged in selling, producing, manufacturing, or providing commodities, goods, or services.¹¹

C. Implementing Authorities and Regulations

Powers vested in the executive branch by the Law may be delegated by the President to any of the officers of the executive branch; pursuant to this allowance, the President has delegated his powers to the Secretary of Trade,¹² and the Legal Counsel of the Secretariat of Trade may impose fines. Any other penalty requires a resolution from the Secretariat of Trade.¹³

In accordance with these powers, the Secretary of Trade has issued several hundred regulations which implement, supplement, or interpret the Law. Provincial and municipal authorities also are empowered by the Law to enact regulations and impose sanctions in their respective jurisdictions.¹⁴ However, the large numbers of resolutions and orders issued pursuant to the Law, and the numerous amendments issued from time to time by the Secretary of Trade including express or tacit repeals, make it extremely difficult

TUCIONAL ARGENTINO 490 (1983); C. BIDEGAIN, CUADERNOS DEL CURSO DE DERECHO CONSTITUCIONAL 238 (1981); R. BIERSA, DERECHO CONSTITUCIONAL 379 (1957); M. DIEZ, DERECHO ADMINISTRATIVO 429 (1963); J. GONZÁLEZ CALDERÓN, DERECHO CONSTITUCIONAL ARGENTINO 346 (1918); M. MARIENHOFF, TRATADO DE DERECHO ADMINISTRATIVO 247, 429 (1965); H. QUIROGA LAVIÉ, DERECHO CONSTITUCIONAL 751 (1978); P. RAMELLA, DERECHO CONSTITUCIONAL 644 (1982); B. VILLEGAS BASAVILBASO, DERECHO ADMINISTRATIVO 189 (1954).

10. Ufio S.R.L., 304 Fallos 1900 (C.J.N. 1982); S.A. Radio Suipacha, 300 Fallos 272 (C.J.N. 1978).

11. Law No. 20.680, art. 1, ADLA XXXIV-C 2006 (1974).

12. Decree No. 3/1985, ADLA XLV-A 105 (1985).

13. Resolution No. 3/1985, ADLA XLV-A 328 (1985).

14. Law No. 20.680, arts. 3, 15, ADLA XXXIV-C 2006, 2010 (1974); Decree No. 1427/1985, art. 1, ADLA XLV-C 2080 (1985); Decree No. 2802/1976, art. 1, B.O. Nov. 24, 1976.

to determine which regulations are in fact applicable with regard to any given situation.

D. Powers Granted to the Executive Branch

The executive branch, including the Secretary of Trade in accordance with the power delegated to him, is empowered by the Law, *inter alia*, to:

a) establish maximum and minimum prices, profit margins and price-freezes at current or past price levels;

b) issue regulations and orders regarding the sale, marketing, distribution, and production of goods and services;

c) order any given firm to produce, manufacture, market, or distribute goods or render services;

d) set minimum production levels for any firm based on that firm's average and potential output;

e) temporarily intervene in mining, agricultural, forestry, fishing, transportation, or industrial companies and use all the necessary assets owned by such companies to produce, market, distribute or transport goods. Such intervention: (1) can be ordered only by an executive decree or a regulation issued by the Secretary of Trade; (2) can be ordered for a period of no more than 180 days (an extension of this period can be granted only by a new decree or resolution); and (3) is subject to judicial review;¹⁵

f) require the filing of statements, reports, balance sheets, account books, and any other document related to the company's activity with the Secretariat of Trade, and seize such documents for a period of not more than 30 working days; and g) reduce or temporarily eliminate customs duties and grant subsidies or tax exemptions if required in order to obtain a normal supply of goods and services.¹⁶

15. Article 26 of the Law also authorizes the executive to take or seize foods, assets, or commodities related to health, food, housing, clothing, education of the population, and inputs necessary for industry when these satisfy peoples' ordinary needs. In order to use such a broad power the executive must declare "a state of economic emergency." Padilla has harshly criticized these two sections of the Law. He argues that they clearly violate the inviolability of property guaranteed by Section 17 of the Argentine Constitution and that they contradict Law No. 21.499 which governs expropriation and temporary occupation of private assets in cases of urgent public need. He further argues that Law No. 21.499 replaces Law No. 20.680 as *lex posterior derogat prior*. See Padilla, *supra* note 7.

16. Law No. 20.680, art. 2, ADLA XXXIV-C 2006, 2007 (1974).

E. Infringements

The following acts, *inter alia*, are considered infringements of the Law and are therefore subject to penalties mentioned in Section F below:

- a) unjustified price increases (i.e., those price increases not resulting from a proportionate increase in costs);
- b) excessive profits;
- c) building up stocks in excess of ordinary plant or production requirements;
- d) creation of unnecessary business structures to act as intermediaries;
- e) destruction of goods and commodities;
- f) unjustified refusal to sell goods or render services;
- g) reduction of normal production levels;
- h) rerouting of supplies from one geographic area to other areas without cause;
- i) interruption of supply after the establishment of maximum prices or profit margins; and
- j) refusal to invoice or furnish evidence of sales.¹⁷

F. Penalties

The Law provides that any person or company subject to price control regulations who is engaged or is engaging in any acts or practices which constitute a violation of the Law or its regulations shall be subject, *inter alia*, to one or more of the following penalties:

- a) a fine not exceeding the equivalent of \$14,000 (at the official exchange rate in force on June 24, 1985).¹⁸ This amount can be increased up to three times the amount of the profits obtained as a result of infringements;
- b) arrest for up to ninety days;
- c) closure of the factory or commercial establishment for up to ninety days;

17. Law No. 20.680, art. 4, ADLA XXXIV-C 2006, 2008 (1974).

18. Resolution No. 626/1986, ADLA XLVI-C 2804 (1986).

d) cancellation of credit rating for financial transactions and ineligibility for loans made by financial entities;

e) confiscation of commodities and goods;

f) removal from the Registry of Government Suppliers for up to five years. The Government is also entitled to cancel contracts currently in force with the infringing person or firm; and

g) imprisonment of up to 4 years where the infringement is of a very serious nature.¹⁹

The penalties mentioned under points a, b, c, and f above can be doubled in the event of a second infringement by the same company or natural person.²⁰ Following three violations of the Law or its implementing regulations, the Secretary of Trade may order a permanent closing of the factory or commercial establishment. Additionally, when a corporation infringes the price control regulations, the Secretary of Trade and/or the relevant court can cancel the corporation's charter and fine members of the board of directors and corporate managers who are guilty of serious negligence. The fine shall consist of an amount not exceeding the equivalent of U.S. \$3,500, or imprisonment for up to twenty two days.

III. ADDITIONAL OBLIGATIONS ARISING FROM IMPLEMENTING REGULATIONS

Companies subject to the Law also must comply with various obligations pursuant to implementing regulations currently in force. They must:

a) request express authorization from the Secretary of Trade to sell new products, use new containers, use new methods of presenting products or services in the market, or introduce changes in size, weight or quality;²¹

b) maintain the May 11, 1987 level of sales and payment conditions;²²

c) as of September 1, 1986 stabilize prices at or below August 27, 1986 levels, with increases authorized monthly by the Secreta-

19. Law No. 20.680, art. 5, ADLA XXXIV-C 2006, 2008 (1974).

20. Law No. 20.680, art. 6, ADLA XXXIV-C 2006, 2008 (1974).

21. Resolution No. 50/1986, ADLA XLVI-B 1323 (1986); Resolution No. 228/1986, art. 16, ADLA XLVI-D 4414 (1986); and Resolution No. 100/1987, ADLA XLVII-A 396 (1987).

22. Resolution No. 238/1987, art. 4, ADLA XLVIII-B 1675 (1987).

riat of Trade by means of a resolution or a specific notice;²³

d) file a list of prices with the Secretariat of Trade including the authorized increase above the last price invoiced;²⁴

e) file a sworn statement with the Secretariat of Trade reporting the total domestic sales over the past twelve months;²⁵

f) file a detailed description of business costs, including the cost of domestic and imported raw materials and packaging, as well as salaries, social security contributions, public utilities, power, fuel, interest, freight, royalties, advertising, turnover tax, etc. with the Secretariat of Trade;²⁶ and

g) file a copy of the approved price lists with the relevant provincial authority.²⁷

IV. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Officials from the Secretariat of Trade, the City of Buenos Aires and each of the provinces of the Argentine Republic are empowered to verify prices charged and the sale and payment conditions fixed by companies subject to the price control regulations.²⁸ Alleged infringements give rise to an administrative proceeding subject to due process of law requirements. As a result of these proceedings, the accused party may be enjoined from further activities that give rise to those infringements and/or be subject to a fine or other penalty. Parties may seek judicial review of administrative decisions where the Secretary of Trade orders closure. However, such an order will not be suspended during the appeal process.²⁹ Fines usually are paid only after being upheld by the courts. Since the fines are not indexed to inflation, in real terms the final amount may be considerably lower than the original fine due to the loss of value during the appeal process.

On the other hand, legal actions challenging the price levels and seeking summary relief against arbitrary price levels have sel-

23. Resolution No. 228/1986, art. 2, ADLA XLVI-D 4414 (1986).

24. Resolution No. 228/1986, arts. 12, 17, ADLA XLVI-D 4415-16 (1986); Resolution No. 238/1987, art. 8, ADLA XLVIII-B 1678 (1987).

25. Resolution No. 100/1987, art. 8, ADLA XLVII-A 396 (1987).

26. Resolution No. 50/1986, ADLA XLVI-B 1323 (1986), Resolution No. 100/1987, ADLA XLVII-A 396 (1987).

27. Resolution No. 264/1986, ADLA XLVI-D 4426 (1986), Resolution No. 388/1986, ADLA XLVII-A 384 (1987).

28. Law No. 20.680, arts. 3 and 15, ADLA XXXIV-C 2007, 2010 (1974).

29. Law No. 20.680, art. 16, ADLA XXXIV-C 2010 (1974).

dom met with success in the courts. Courts rarely will modify price levels imposed by the Secretary of Trade due to the natural judicial reluctance to overrule the Administration in technical matters. Even though it may be possible to win damage claims against the government for losses suffered due to unreasonable price controls, the finding only would provide a late remedy. Moreover, because companies fear the Administration's reprisals, judicial relief is not widely sought.

V. PENALTIES USUALLY IMPOSED BY THE IMPLEMENTING AUTHORITIES

Some companies have been punished with heavy fines or closures. For example, in 1984, a multinational automobile maker was subject to a U.S. \$1,000,000 fine. Moreover, in 1986, several supermarkets and factories were closed down for short periods (2 to 5 days).

Notwithstanding the infrequency of penalties such as takeovers and arrests, in 1975 the Secretary of Trade, under strong pressure from trade unions, took over a major textile mill. After prolonged negotiations with officers from the Ministry of Economy, however, the plant was returned and damages were awarded to its owners.

Shortly thereafter, one of the main executives of the Argentine subsidiary of a multinational corporation was under arrest for a few days in 1976, accused of violating a price-freeze resolution issued by the Secretary of Trade in June 1976.

Decisions of the Legal Counsel of the Secretariat of Trade and resolutions of the Secretary of Trade that impose a penalty on a person or company subject to the price control regulations can be appealed to the Court of Criminal Economic Matters of the Federal District in the City of Buenos Aires, or to federal tribunals in other jurisdictions.³⁰ Concurrent with a constitutional challenge regarding the validity of a provision of the price control regulations at administrative proceedings, or before the corresponding court, it also is possible to reserve the right to appeal the decision to the Supreme Court of Justice. Depending on the particular circumstances of the case, the Supreme Court may then decide whether or not to hear the appeal.

30. *Id.*

VI. CONCLUSION

In late 1985, Galbraith was invited to lecture at universities, academic fora, and on television in Argentina. He summarized his impressions about the trip in an article published in April 1986. As Galbraith pointed out in this essay:

The deeper and more intractable causes of the inflation were claims on the economy far in excess of the ability of the system to supply claims by businessmen seeking higher earnings; by trade unions seeking more wages and benefits; by the generals protecting their turf; by numerous public industries, many under the auspices of the military, operating at astonishing losses; and by the civilian public services (approximately twenty per cent of all employment in Argentina is provided by the government, including the military).³¹

The excess of claims on the capacity of the economy has stepped up generalized price increases and pressures from the unions at a steadily accelerating rate. Although a comprehensive and temporary price freeze may be necessary to alter expectations about inflation, demand and supply need to be in close balance when the controls are lifted. Galbraith stated that effective tax increases and reductions of the budget claims on behalf of the public enterprises and overseas commitments are necessary to achieve this balance.³²

The Argentine Administration took only minor measures to balance the budget and reduce public expenditure. Monetary and fiscal policy did not back the generalized price control imposed on the economy. As a result, inflationary pressures still affect the economy, and the authorities insist on reducing inflation by means of a legal framework which has proven ineffective, unjust, and constitutionally questionable. The Argentine price control regulations are comprehensive, rigid, and strict. In theory, they grant to the government the power to close down a recalcitrant company and to arrest its executives. Judicial review is, in most cases, tardy and ineffective. While in practice such draconian measures seldom have been used, they do remain in the lawbooks. Again, although small and mid-sized local companies frequently flaunt the law with impunity, foreign controlled corporations feel more exposed due to

31. Galbraith, *A Journey to Argentina*, THE NEW YORKER, Apr. 21, 1986, at 70, 74.

32. *Id.* at 76.

their size and nationality and because their correct accounting practices simplify the detection of infringements.

APPENDIX†

CONSUMER PRICE AND WHOLESALE PRICE INDEXES, 1931-1984
 (Index Base 1960 = 100)

Year	Consumer Price Index	Wholesale Price Index
1931	2.41	1.56
1932	2.16	1.58
1933	2.44	1.51
1934	2.16	1.72
1935	2.29	1.70
1936	2.49	1.73
1937	2.55	1.98
1938	2.54	1.86
1939	2.58	1.89
1940	2.63	2.15
1941	2.70	2.21
1942	2.86	2.78
1943	2.89	3.04
1944	2.88	3.31
1945	3.45	3.59
1946	4.06	4.16
1947	4.61	4.31
1948	5.21	4.97
1949	6.83	6.12
1950	8.58	7.37
1951	11.75	10.98
1952	16.30	14.41
1953	16.95	16.08
1954	17.58	16.58
1955	19.75	18.06
1956	22.40	22.75
1957	27.94	28.24
1958	36.76	37.03
1959	78.56	86.41
1960	100.00	100.00
1961	113.70	108.30
1962	143.50	141.10
1963	180.80	181.70
1964	220.70	229.22
1965	283.80	284.02

1966	374.30	340.83
1967	483.70	428.02
1968	562.10	469.24
1969	604.70	497.63
1970	686.80	567.74
1971	925.30	791.95
1972	1,466.30	1,401.88
1973	2,350.40	2,103.53
1974	2,919.60	2,524.66
1975	8,329.47	7,384.48
1976	44,823.28	44,236.53
1977	123,737.08	110,356.00
1978	340,905.21	271,461.97
1979	884,685.41	676,746.66
1980	1,775,431.45	1,187,198.79
1981	3,631,765.40	2,488,367.77
1982	9,616,075.88	8,863,567.36
1983	42,677,021.59	40,852,182.66
1984	310,143,257.18	275,180,307.98

† *Estadísticas de la Evolución Económica de Argentina 1913-1984*, ESTUDIOS 122-23, Año IX, N° 39, Julio-Septiembre 1986.