

University of Miami Law School  
**Institutional Repository**

---

University of Miami Inter-American Law Review

---

1-1-1987

# Argentina

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

---

## Recommended Citation

*Argentina*, 18 U. Miami Inter-Am. L. Rev. 409 (1987)

Available at: <http://repository.law.miami.edu/umialr/vol18/iss2/7>

This Legal Memorandum is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## LEGAL MEMORANDA

### ARGENTINA

*The following is a review of recent legal and economic developments in Argentina.*

#### I. ARGENTINE-BRAZILIAN ECONOMIC INTEGRATION AGREEMENT

On July 29, 1986, the Argentine President, Raúl Alfonsín, and the Brazilian President, José Sarney, signed a new agreement on economic integration. This agreement covers the main principles for future cooperation by the two countries in various specific sectors. The agreement provides for a gradual, flexible program of balanced integration and economic cooperation (*Programa de Integración y Cooperación Económica*), involving the participation of various segments of the economy.

The agreement anticipates that, in the future, other Latin-American nations may join the bilateral effort. Thus, it may be viewed as a step toward the creation of a Latin-American common market. The success of the agreement depends to a great degree, on private initiative, as it is not contemplated that governmental units will be actively involved at every specific step.

#### *Implementation Commission*

A Commission has been established to implement the program (*Comisión de Ejecución del Programa*). In Argentina, this Commission consists of the Minister of Foreign Relations, the Minister of the Economy, the Secretary General and the Secretary of Industry and Foreign Trade. In Brazil, the Commission is comprised of the Minister of Foreign Relations, the Minister of the Treasury, the Minister of Industry and Commerce and the Secretary General of the Security Council. In addition, businessmen from both countries are eligible to sit on the Commission.

The Commission is required to hold working meetings every six months to evaluate the program's progress and make recom-

mentations to the presidents of both nations. The foreign ministers of each country will coordinate the work of the Commission. As the Commission's function will be an advisory one, it will defer to the recommendations of other authorities where appropriate.

*Protocolo I: Production and Sale of Capital Goods*

The first specific regime (*Protocolo*) connected with this agreement deals with the production and sale of capital goods. The parties are to determine which goods shall be subject to the agreement and included in a Common List (*Lista Común*). Since these goods are to be treated as national products in both Argentina and Brazil, custom duties (*Arancel*) will not be levied and administrative and judicial restrictions and/or quotas will not apply.

During the next four years, capital goods valued at U.S. \$2,000,000,000 are to be traded (U.S. \$800,000,000 in 1987, U.S. \$400,000,000 in 1988, U.S. \$50,000,000 in 1989, and U.S. \$750,000,000 in 1990).

If a trade imbalance of more than ten percent arises, other products can be added to the *Lista Común* and the central banks can formulate corresponding financial plans to correct the imbalance. If the ratio becomes more than twenty percent, provisions dealing with the investment fund (*Fondo de Inversiones, Protocolo No. 7*) shall apply. Imbalances greater than forty percent justify implementation of any measures deemed necessary if consistent with the foreign exchange situation.

With respect to public sector purchases, Brazilian and Argentine goods are to be treated equally in both countries and preferred over products manufactured elsewhere.

When bidding on public projects, Argentine and Brazilian companies, who do not deal in goods on the *Lista Común* but who do have financing from international institutions, will enjoy some preference.

A group has been established to regulate the importation of products from third countries (*Grupo de Coordinación y Seguimiento*), as well as a working group to study import and export levels and conformity with the program. The agreement additionally provides that not more than twenty percent of the value of the components (calculated on a F.O.B. basis) of the finished goods is to come from third countries.

The Argentine Minister of the Economy and the Brazilian Minister of the Treasury are to take all necessary measures to maintain a steady rate of exchange.

#### *Protocolo II: Wheat Trade*

The second Protocol deals specifically with wheat trade. A joint production project was formed (*Proyecto Integrado de Producción*) and working groups were established to study agricultural policies and logistical problems.

Argentina is to sell to Brazil 1,375,000 Tn. of wheat in 1987, 1,450,000 Tn. in 1988, 1,550,000 Tn. in 1989, 1,700,000 in 1990, and 2,000,000 Tn. in 1991. The grade, price, payment and delivery terms are to be jointly determined by the Argentine and Brazilian Grain Boards (*Junta Nacional de Granos de la Argentina, Junta Deliberativa de Trigo del Brasil*).

Argentina shall have privileged seller status as to Brazil. Brazil, in turn, shall enjoy the status of privileged buyer from Argentina. Should Argentina be unable to meet its commitments, it has a duty to notify Brazil in advance. The sales quota may be satisfied by sales of other grains equivalent to the value of the volume of wheat specified in the agreement.

#### *Protocolo III: Planning for Future Food Shortage*

The third Protocol envisions the possibility of eventual food shortages. Mechanisms to allow either country to satisfy the other's unmet demand will be specifically addressed. An ad hoc working group was established to study the situation and make suggestions.

#### *Protocolo IV: Expansion of Trade Between the Countries*

The fourth Protocol concerns the expansion of trade between Argentina and Brazil. The two countries will enter into relationships which will increase trade in a gradual and sustained manner, eventually including a broad spectrum of products. Additionally, trade deficits are to be minimized.

The existing trade agreement, (*Acuerdo de Alcance Parcial*), is to be renegotiated in Montevideo in August of 1986. An Annex to this provision promulgates criteria for the new agreement. The

goods on the *Lista Común* are to be excluded from the agreement.

*Protocolo V: Argentine-Brazilian Joint Business Ventures*

The fifth Protocol involves encouragement for new Argentine-Brazilian joint business ventures. A committee was established to formulate a charter for such ventures.

*Protocolo VI: Foreign Trade in Capital Goods*

The sixth Protocol is concerned with a financial setting for foreign trade in capital goods. The respective central banks (*Banco Central de la República Argentina and Banco Central del Brasil*) are to create working and technical conditions which will facilitate trade. The central banks will also initiate a plan which can go into effect in the event of trade imbalances and will set up contingent lines of credit to finance exports of the deficit trader country or imports of the surplus trader country.

*Protocolo VII: Investment Fund*

The seventh Protocol creates an investment fund of U.S. \$200,000,000. If there are trade imbalances of more than twenty percent, Argentina and Brazil may agree to increase the size of the capital fund. The increase will be applied to local investment in the country with the deficit, so as to improve its export capacity.

Similar contingent arrangements are to be created as other parts of the economy are integrated into the *Programa de Integración y Cooperación Económica*.

The Argentine Minister of the Economy and the Brazilian Minister of the Treasury are to determine the organization and structure of the fund.

*Protocolo VIII: Energy*

The eighth Protocol is about energy. The possibility of building a natural gas pipeline to transport gas to Brazil is one idea that has been raised for discussion.

Argentina and Brazil are to investigate and consider plans to unite in an effort to explore and exploit Argentine oil, with eventual technology exchanges between both countries.

The Garabí hydroelectric binational project is to be completed by the end of the year and the Pichi-Picún-Leufú hydroelectric binational project will be started later this year.

Both Argentina and Brazil are committed to active participation in OLADE (*Organización Latinoamericana de Energía*).

#### *Protocolo IX: Bio-Technology*

The ninth Protocol deals with bio-technology. It creates a special fund for the financing of research (*Centro Argentino-Brasileño de Biotecnología*) in bio-technology in two new research centers (*Polos Generadores de Conocimiento*). Argentina and Brazil are to contribute equally to the research centers and share equally in profits and management.

#### *Protocolo X: Monitoring of Agreement*

The tenth Protocol establishes a special center to monitor this agreement and its development (*Centro Argentina-Brasil de Altos Estudios Económicos*).

#### *Protocolo XI: Nuclear Accidents*

The eleventh Protocol is concerned with binational cooperation in the event of nuclear accidents. The country requesting aid should reciprocate by all available means. The requesting country retains, however, the right to manage the situation. The respective National Atomic Energy Commissions are to coordinate and execute any of these programs.

#### *Protocolo XII: Joint Manufacture of Airplanes and Parts*

The twelfth and final Protocol envisions the possibility of Argentine-Brazilian joint manufacture of airplanes and airplane parts.

By side-stepping the traditional across-the-board approach to Latin American integration, Argentina and Brazil have moved from a multilateral strategy toward a fundamentally bilateral scheme. Other nations, such as Uruguay, may join soon. Much will depend on maintaining political good will and economic success.

## II. ARGENTINA: EXCHANGE CONTROL RELAXED

On July 3, 1986, the Argentine Central Bank announced a partial liberalization of the foreign exchange market by removing the exchange control restrictions on some external payments and transfers. This liberalization covers twenty-five different types of operations and follows the recent submittal of a *Letter of Intent* to the International Monetary Fund (IMF) by the Argentine Government.

The new Central Bank regulations set forth two different regimes. On the one hand are regulations that apply *inter alia* to some foreign trade operations and payments for technical services and royalties. On the other is the establishment of mechanisms to deal with the cancellation of certain credits that matured before and including December 31, 1985. To date, most of the external payments and transfers have been made through the use of External Bonds (BONEX) issued by the Central Bank, which were subsequently exchanged for foreign currency through the secondary market.

*Communication "A" 901*

*Communication "A" 901* allows local financial entities, authorized to deal with foreign exchange, to sell foreign exchange directly (*i.e.* without having to obtain, on case by case basis, the prior authorization of the Central Bank) in connection with certain obligations incurred and accrued from July 7, 1986 onwards.

These obligations include:

(i) **Payment of royalties and technical services:** Financial entities shall require the filing of a certificate issued by a chartered public accountant (and legalized by the *Consejo Profesional de Ciencias Económicas*) covering the origin, existence and maturing of the debt, the method used in the calculations of royalties and the period taken into account, and evidence that the royalties were accrued in accordance with the respective contractual provisions.

The certificate shall also confirm compliance with all applicable transfers of technological regulations, as well as with all tax provisions. Additionally, it must assert that there is no other pending debt for the same concept.

(ii) **Payments under loans made to Argentine borrowers by international agencies and official (public) creditors.**

(iii) Payment of expenses incurred in connection with participation in trade fairs, up to U.S. \$10,000.

(iv) Sale of exchange to foreign tourists from countries other than neighboring countries.

(v) Payment of legal expenses incurred overseas in connection with exports, container rentals, and commissions to export agents (up to six percent of the value of traditional exports and up to ten percent in all other cases).

(vi) Payment of insurance premiums to Argentine companies covering commercial insolvency, in connection with exports.

(vii) Payment of remuneration for expatriate Argentine personnel (up to U.S. \$1,000 a month), and for foreign personnel performing services in Argentina.

(viii) Other exchange transactions freed are: remittances to foreign pension funds (up to a value of U.S. \$500 per year); book purchases and magazine subscriptions (with an annual maximum ceiling of U.S. \$1,000); postal, telephone and telex charges; patent rights expenses; cost of medical treatment abroad; registration fees paid for participation in international congresses (with an annual maximum ceiling of U.S. \$200); membership fees to international entities (valued to U.S. \$1,000 per year); and expenses for obtaining birth, baptismal, marriage, and foreign death certificates.

Notwithstanding the foregoing, those obligations which accrued prior to July 1, 1986 shall still require the Central Bank's prior authorization.

#### *Communication "A" 902*

*Communication "A" 902* authorizes public sector borrowers (as well as private sector borrowers with official guaranties) to automatically cancel (1) credits made by suppliers of technical services and (2) commercial loans to be repaid in a term exceeding one year with maturities falling due up to December 31, 1985.

(a) Credits matured and unpaid in the amount of U.S. \$50,000, to U.S. \$1,000,000 (or its equivalent in other foreign currencies), shall be paid as follows: (1) Matured and unpaid interest must be paid in cash, within five days counting from the date the respective agreement was reached with the supplier, plus penalty interest (if penalty interest was originally agreed upon in the respective contract, it will be paid at the lower of the contract rate or LIBOR

plus 1 3/8 %); (2) Matured and unpaid principal, with 1984 Series, External Bonds, up to ninety percent of its nominal value, is payable in two installments, fifty percent within five days from the agreement with the supplier, and the remaining fifty percent, up to one hundred eighty days from the date of the referred-to agreement.

(b) In the event that capital accrued and payable to a supplier is less than U.S. \$50,000, it shall be paid in cash, together with interest matured and payable (and penalty interest, if agreed upon in the original contract, at the lower of the contract rate of LIBOR plus 1 3/8 %).

*Communication "A" 902's authorization does not cover credits falling under the "Paris Club" rescheduling mechanisms nor financial credits which were renegotiated with the Foreign Commercial Banks' Committee.*

EMILIO J. CÁRDENAS  
CÁRDENAS, HOPE & OTERO MONSEGUR  
Abogados  
*Buenos Aires, Argentina*