

## IMPORT RESTRICTIONS IN ARGENTINA

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*"Import licensing is useful for certain objectives,  
but not to be used to restrict commerce."*<sup>2</sup>

### 1. INTRODUCTION

Over the past years the Argentinean Government has issued a series of resolutions seeking to establish the obligation for importers to obtain non-automatic import licenses as a previous requirement to Customs clearance. In spite of this import curbing resolutions, importers obtained precautionary measures from Argentinean courts and are consequently not obliged to submit such import licenses.

These resolutions, issued by the executive branch, aim to implement new control measures in order to track and control imports due to significant changes in imports flow.

Actually, these measures violate rules and regulations. They affect constitutional principles because they restrict international trade.

The purpose of this article is to analyze the measures set forth by the Argentinean Government in the light of international treaties, the National Constitution, and court rulings.

### 2. IMPORT LICENSES ANALYSIS

Up to this moment the Government has established approximately eighteen different non-automatic import licenses which apply to a wide range of tariff item numbers.

The Government has imposed these import licenses on the grounds of tracing imports, boosting national production and protecting employment.

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<sup>2</sup> Agreement on Import Licensing Procedures, GATT.



However, it seems that the actual intent of the licenses is to restrict imports and decrease deficit by reducing capital flow out of the country.

Importers interested in obtaining these licenses are forced to deal with a burdensome and bureaucratic procedure. This procedure involves filing the same documents several times before the same governmental body to obtain permits, certificates and licenses.

Since Argentina subscribed the GATT, applications for non-automatic licenses should be approved and issued within 30 or 60 days, depending on how applications are processed. However, these non-automatic licenses applications are being delayed, causing economic damages to importers and affecting trade flow.

Most recently, the Argentinean Government established a new obligation for importers, in line with the policy of restricting international trade. As from February 1<sup>st</sup>, 2012 importers are obliged to make an anticipated sworn statement of planned imports previous to placing a purchase order abroad.

The rationale offered by the Government for this last resolution is that anticipated information regarding imports will allow for a better articulation among different government offices and consequently enhance the results of an integral fiscal monitoring.

Different governmental bodies may request and review information provided in the sworn statement before the import is authorized. Consequently this may result in additional delays in imports operations.

### **3. LEGISLATION ANALYSIS**

The non-automatic import licenses imposed by the Government violate some constitutional principles.



*Equal treatment.* The Constitution sets forth that all Argentinean inhabitants have the right to trade and that foreign citizens enjoy the all the civil rights of the Argentinean inhabitants<sup>3</sup>, this right to trade being guaranteed to both Argentinean and foreigners.

*Reasonableness rule.* Governmental norms and actions must comply with the rule of reasonableness in order to be valid. This rule involves that a governmental action is valid only if the action is suitable or effective to achieve its aim and if the action does not impact excessively or disproportionately on the applicant's interest. Additionally, the governmental action should be the least costly means to pursue that aim.

These licenses are unnecessary and are not the least costly means to attain the goals. If the intent of the non-automatic licenses is to gather information for statistical purposes, the requirement to submit a non-automatic import license is arbitrary and unreasonable as this information can be obtained from the import clearance certificate<sup>4</sup>.

*International treaties.* The Constitution also establishes the prevalence of treaties executed by Argentina over domestic law<sup>5</sup>, that is, treaties have a higher hierarchy than laws. As a result, the import licenses introduced by domestic law can be considered as constituting a violation to international treaties.

Treaties executed by Argentina, especially the World Trade Organization Agreements, establish the obligation of country members to refrain from creating unnecessary obstacles to international trade, to grant equal treatment to domestic products as well as imported goods, to facilitate investment across international frontiers, to prevent governments from establishing restrictive import licenses and to comply with the requirements set forth by the Agreement for Import Licensing Procedures.

The World Trade Organization Agreements sets forth that "*non-automatic licensing shall not have trade-restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more*

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<sup>3</sup> National Constitution, Section 14 and 20.

<sup>4</sup> National Court of Appeals in Administrative Affairs, Room III, Luxor Company, 2/15/2007. Likewise, National Court of Appeals in Administrative Affairs, Room II, Whale International Trading SA, 12/5/2006,

<sup>5</sup> National Constitution, Section 27, 31 and 75, paragraph 22.



*administratively burdensome than absolutely necessary to administer the measure<sup>6</sup>.*"

Also, Argentina subscribed the Treaty of Asuncion which created MERCOSUR. This agreement set forth the integration of country members and provides for the elimination of non-tariff restrictions or equivalent measures.

The import licenses issued by Argentina do not seem to have been designed to honor these agreements. Import licenses were imposed in order to investigate some aspects of international trade, but they are actually used to delay and restrict the import of goods.

*Regulation of international trade.* The Federal Congress is invested with powers to regulate international trade<sup>7</sup>. However, these resolutions were issued by bodies of the executive branch which may be considered to be an intrusion of the executive branch upon the authority of the Federal Congress.

#### **4. CASE LAW ANALYSIS**

Irregularities regarding import licenses have been acknowledged by international and domestic courts, which have repeatedly ruled against these measures and protected international trade.

The Court of Arbitration of Montevideo established that the resolutions lack rules and fixed time periods to grant or deny a license. The uncertainty discourages the importers from carrying out imports and establishes an additional non-tariff protection to international trade<sup>8</sup>.

The Treaty of Asuncion aims to encourage trade and to clear trade hurdles. The free commercial flow is the pillar of the MERCOSUR as it was said by the Court of Arbitration of MERCOSUR<sup>9</sup>.

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<sup>6</sup> World Trade Organization Agreements, Article 3.

<sup>7</sup> National Constitution, Section 75, paragraph 1 and 13.

<sup>8</sup> MERCOSUR Arbitral Award, 4/28/1999.

<sup>9</sup> MERCOSUR Arbitral Award, 4/28/1999.



At a national level, Argentinean courts granted precautionary measures in order to allow individuals and companies to perform imports without submitting import licenses<sup>10</sup>.

The courts stated that the requirement to submit an additional import certificate to release goods is arbitrary and unreasonable, since there is no factual or legal reasons to subject customs release to the filing of a new certificate<sup>11</sup>.

Additionally, it was considered that the procedure of import licenses cause an unreasonable delay in the release of the goods<sup>12</sup>.

It is also understood that the measures taken by the Government must attend to their purpose and implementation. The measures limit commerce in different ways, they block imports of goods and unreasonably delay the clearance of imports<sup>13</sup>.

Argentinean courts considered import licenses unconstitutional because they curb imports by going against the requirements set forth by international treaties.

Additionally, these resolutions do not provide administrative authorities with guidelines to follow when deciding the granting or denial of import licenses. This might give administrative authorities freedom to act or judge on their own, which may lead to adopt arbitrary attitudes<sup>14</sup>.

## 5. CONCLUSION

Import licenses restrict commerce and international trade as well as domestic and international treaties.

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<sup>10</sup> National Court of Appeals in Administrative Affairs, Room V, Continental Do Brasil Produtos Automotivos Ltda, 3/31/2009. Likewise, National Court of Appeals in Administrative Affairs, Room III, Importadora Americana, 8/11/2009.

<sup>11</sup> National Court of Appeals in Administrative Affairs, Room V, Yuping Zhou, 12/11/2007; National Court of Appeals in Administrative Affairs, Room III, El Brujo SA, 3/3/2006.

<sup>12</sup> National Court of Appeals in Administrative Affairs, Room II, Multiscope SA, 2/5/2008. Likewise, National Court of Appeals in Administrative Affairs, Room I, Medidas Trading Company SA, 3/30/2006, National Court of Appeals in Administrative Affairs, Room II, Inmobox, 10/31/2007, National Court of Appeals in Administrative Affairs, Room V, Whale International Trading SA, 8/27/2007.

<sup>13</sup> National Court of Appeals in Administrative Affairs, Room IV, Zahieret SA, 5/10/2010.

<sup>14</sup> National Court of Appeals in Administrative Affairs, Room IV, Zahieret SA, 5/10/2010.



The delays in imports operations affect companies in their internal organization and cause serious economic damages.

In spite of all the above, importers may find a positive solution to this situation.

Legislation and favorable court rulings award importers with enough grounds to challenge the resolutions both before domestic courts and international bodies.