

Anticipated Import Affidavit and Services Payments Restrictions in Argentina: A Few Considerations After the first Months of Their Validity

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1 INTRODUCTION

In an effort to control the outflow of funds abroad, Argentine Government has enacted a series of new requirements that must be accomplished to complete imports of goods and the payment abroad of services rendered by non-Argentine residents.

Please note that before these new regulations were enacted, there were no restrictions for the payment of services rendered by non residents to residents, irrespective of the item (freight, insurance, royalties, technical assistance, fees, etc.), and/or for the payment of imports of goods, other than those existing to determine the genuineness and existence of the transactions.

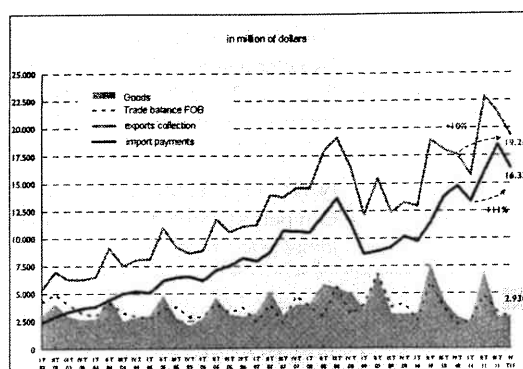
Herein below we will comment on the new regulations in force for an initial analysis.

2 RESTRICTIONS ON IMPORTS OF GOODS

First, we should point out that it seems that – currently – the main goal of the Argentine Government is to preserve a positive balance between exports receivables and imports payments. Having that idea in mind, it would be easier to understand the *rational* of the new regulation under analysis. Accordingly, we should bear in mind the chart that follows:

Having that idea and chart in mind, 2012 started with a new procedure or '*super license*' that includes all the import operations for consumption in Argentina. Despite speculation, about the inclusion of more tariff codes in the current non-automatic license regime (LNAI)² expected in

Transfer for Goods¹



March, after the change of administrative authorities on 10 December 2011, the Government issued a new regime or '*super license*' which directly includes all of the import sector, and, unlike the LNAI, it is applicable without distinction to all goods to be imported.

This new mechanism called '*Anticipated Import Affidavit (Declaración Jurada Anticipada de Importación "DJAI")*', in practice consists in a type of import permission request. On 10 January 2012, the General Resolution No. 3252 of the Federal Revenue Services Administration (AFIP) was published in the Official Gazette. The General Resolution sets forth an '*anticipated information regime applicable for all definite destination of importation for consumption*'. Ten days later, the grounds for this new regime were reinforced by introducing³ – the concept of '*single electronic window*' a concept backed by the World Customs Organization (WCO).

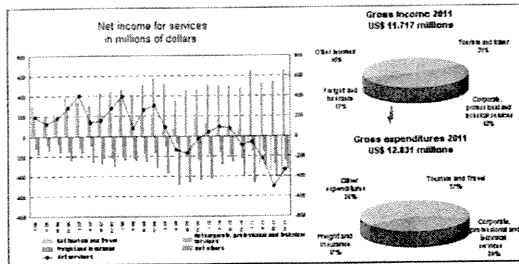
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¹ Data provided by the Central Bank of the Argentine Republic (CBRA).

² In summary, LNAI system implied that in order to complete imports of certain predefined goods, importers should obtain specific license granted by the Secretariat of Foreign Trade.

³ Through AFIP General Resolution No. 3255.



The concept of 'single electronic window' is defined as a process created for integrating and simplifying the performance of the different government agencies that participate in the management of import operation, and for such reasons it is actually encouraged by the WCO. The existence of the possibility of streamlining in a single procedure all of the prior governmental interventions over certain type of products⁴ would help to simplify all the procedures implied in import operations, removing obstacles and making the import process more efficient.

Notwithstanding the above, in practice, this new system of 'single electronic window' during the first two months of the DJAI unfortunately did not simplify the administrative management of import foreign trade operations. On the contrary, as of today it has been a new obstacle for import foreign trade.

Further, the DJAI system could be deemed to be inconsistent with other specific regulations.⁵ Said regulations, which would still be in full force and effect, overruled any interventions, authorizations or any administrative acts prior to the intervention of the customs authorities, for the importation of all goods, except for products that may be a hazard to human health or the environment, hygienic or sanitary products, etc. Therefore, any products other than the exceptions set forth in the abovementioned regulations should be imported without the requirement of administrative products prior to the dispatch. Consequently, this new general resolutions sanctioned by AFIP which set forth the DJAI regime could be deemed inconsistent with prior regulations that are still in force. Without a doubt, this aspect, which affects the validity and legality of the DJAI should be further analysed.

Notwithstanding the legal doubts, in these two months of DJAI – from a practical standpoint –, we believe that the most important problem affecting the import sector are the 'observations' that the Secretariat of Domestic Trade systematically makes on the DJAI applications filed by the importers.

Both the current trend and practical experience reveal that those companies that have a foreign trade deficit (i.e., more importations than exportations) will go through significant difficulties when filing this DJAI procedure. On the other hand, those companies which export more than they import should obtain the approval of their DJAI without any major obstacles.

In this sense, the experience of this first two months shows that in order to solve potential difficulties regarding the obtainment of DJAI, those companies which currently have an 'importer profile' should analyse the possibility of exporting products in order to compensate their own importations, or, at least, to reach an agreement with the Authorities so as to enable them to unlock any importation obstacles.

3 RESTRICTIONS ON SERVICES PAYMENTS

The Foreign exchange market in Argentina is subject to a very complex system of regulations enacted by the Central Bank of the Republic of Argentina (CBRA) and the AFIP. Among others, such regulations impose requirements to be fulfilled by Argentine residents transferring funds abroad to pay services rendered by non Argentine residents.

In addition to the measures above explained regarding restrictions to complete import transactions, and in an effort to reduce the foreign trade deficit related to payment of services abroad below described, a similar system was enacted.

Please note that in accordance with CBRA data, during 2011 Argentina services trade balance had a negative result of USD 1.2 billion.

Since 1 April 2012, other restrictions regarding payments of services abroad were imposed.⁶ In summary new regulations provide that to transfer funds abroad under certain services concepts local residents will need to produce (and file) an 'Affidavit Anticipated Declaration of Services' (*Declaración Jurada Anticipada de Servicios*) (DJAS), utilizing the same software platform and circuit explained above for obtaining a DJAI.

Royalties, professional services, trademarks and patents fall within the concepts comprised in the DJAS system.⁷ Nevertheless, new requirements apply only to services which retribution is:

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⁴ For example, any interventions by the National Food Agency (INAL) for any products in contact with food; electrical safety interventions of the Fair Trade Bureau in case of electrical products, etc.

⁵ Decree No. 2284/91 of Economic Deregulation (as well as deregulation of foreign trade, as ratified by sec. 29 of Law 24.307).

⁶ CBRA, Communication 'A' 5,295, AFIP Resolution 3276/12, and other.

⁷ Others are technical services, cultural and entertainment services, etc.

- equal or superior to USD 100,000;
- amount of each agreed installment is over USD 10,000;
- the agreement does not determine any amount to be paid; or
- also, if the service rendering is of continue execution, it will consider the sum of all amounts up to the deadline of the contract.

A DJAS can be observed by the Secretariat of Foreign Trade regarding the amount and/or the filed concept, and in such event, a very complex negotiation to achieve the necessary DJAS (without observations) will need to be accomplished with such authority regarding prices and foreign exchange balances. This negotiation process is similar to the one explained in section (B) above.

Complementing the referred DJAS system, CBRA has established that if the creditor of the owed amounts under concepts requiring the existence of DJAS have a corporate relationship (in summary, controlled or being subject to common control by) with the transferor, or is established

in certain relevant jurisdictions considered tax haven (i.e., Bahamas, Grand Cayman, etc.), or the payment must be credited with an account opened in a bank in such jurisdictions, then if the amount to be annually transferred under the relevant concept⁸ is higher than USD 100,000 an additional previous consent by CBRA will be required.

The request for CBRA's consent, its approval, and DJAS regulated system is very complex,⁹ therefore if amounts to be transferred will be lower than the explained limits, it is advisable to amend the agreements to expressly include this situation.

Even though the DJAS system is actually new, and has no precedents in Argentine foreign trade history, short term experience shows that to solve potential difficulties regarding the obtainment of DJAS, those companies which currently have an important '*payer profile*' should analyse the possibility of equilibrating its foreign exchange balance, or, at least, to analyse its current services contracts structure, to determine if new requirements could have a negative impact on future payments to be completed from Argentina.

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⁸ Under the analysed contract, and other contracts to same beneficiary using the same services concept.

⁹ CBRA Communication 'B' 10,321.