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ENERGY SELF-SUFFICIENCY AND THE SUPPLY OF THE DOMESTIC MARKET BRIEF CONSIDERATIONS TO THE ARGENTINE CASE

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I. INTRODUCTION

MOST hydrocarbon producing countries have long pursued the goal of achieving oil and gas self-sufficiency, and Argentina is no exception. Becoming self-sufficient is particularly important to these countries because it is often hard for them to depend on international sources of oil and gas, especially when prices are rising.

Argentine Law No. 17319 provides that the aim of the national hydrocarbon policy is "satisfying the domestic needs with the yield of the country's oil and gas fields, keeping enough reserves to assure that end."[3] The application of this goal has been subject to countless interpretations and debates over time. Nowadays, figuring out how Argentina should assure the oil and gas domestic supply is a dilemma that needs prompt resolution.

II. THE REGULATORY FRAMEWORK: BRIEF DESCRIPTION

The regulatory framework of the industry was framed at the beginning of the 1990s, in accordance with the deregulation of the industry initiated with the privatization of Argentina's National Oil Company, Yacimientos Petroliferos Fiscales ("YPF"), and National Gas Company ("Gas del Estado").

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3. Law No. 17319, June 30, 1967, [21220] B.O. 30.

Pursuant to the regulatory framework, private oil and gas companies were granted the right to own exploration and exploitation concessions, and to dispose freely of the produced hydrocarbons. Although exports still remained subject to the previous approval of the government, export duties were repealed. Private companies were also allowed to repatriate freely up to seventy percent of their revenue.[4]

Natural gas pipelines, previously owned by the government, were assigned to private companies and regulated as natural monopolies. Transport and distribution prices were regulated through a price cap system adjusted by the Producers Price Index ("PPI") of the United States and subject to a periodic revision.

In this regard, the regulatory framework seemed to work smoothly throughout the decade. As a result, Argentina managed to achieve the long-sought goal of hydrocarbon self-sufficiency and even became a hydrocarbon exporter. But the above system suffered considerable changes after the 2001 to 2002 Argentine economic crisis, which unraveled the self-sufficiency that had previously been attained.

III. THE ECONOMIC EMERGENCY

Argentina suffered a massive economic depression from 2001 to 2002. Excessive public spending and a severe monetary policy that pegged the Argentine peso to the U.S. dollar ("USD") caused the depression. The situation collapsed as a result of a run on the peso, revealing the inability of local banks to pay back deposits made in U.S. dollars. Five constitutional presidents had to resign in less than a month.

As a result, the government pesofied[5] all bank deposits and private debts, and devaluated the currency more than 300%. This government action was followed by the largest default of sovereign debt in history.

Default of sovereign debt and devaluation allowed the government to curb the spending deficit, but it also lead to a tremendous cut in the real wage of Argentine people. Devalued income in pesos made the domestic market unattractive as a consumption market and provided an edge for low cost exports.

IV. LEGAL REMEDIES FOR THE EMERGENCY

The political response of the government was to ensure the domestic supply of oil and gas at affordable prices. In order to achieve such a goal it returned to the long-standing tradition of government intervention.

A. Control of Domestic Prices

The first measure issued by the government as a result of the 2001 to

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4. Decree No. 158989, Jan. 4, 1990, [26794] B.O. 11.
5. *See* Law No. 25561, Jan. 7, 2002, [29810] B.O. 1.

2002 crisis was to freeze the domestic price of oil and natural gas.[6] Transport and distribution tariffs of natural gas utilities were converted into devaluated pesos. Adjustment of price caps according to PPI was declared void and further tariff revisions were suspended for an indeterminate period of time. As a result, many utility companies filed claims before the International Centre for Settlement of Investment Disputes ("ICSID").

Wellhead gas value was severely affected by the volumes of gas purchased at a below market price by domestic distribution companies. Instead of returning to direct regulation, producers were invited to sign several domestic supply and pricing agreements with the government, through which producers committed to deliver certain volumes of natural gas at what the government considered to be a reasonable price.

As low prices crowded out investment and insufficiency became apparent, the government gave preference to residential and commercial consumers, gas fired power plants, and Compressed Natural Gas ("CNG"), used as an alternative fuel by almost half of taxi drivers and a considerable number of other vehicles. The remaining was left to industries, which as a result of an unbundling process were prompted to purchase their gas at free market prices and had to face recurrent cuts during the winter.

Liquid hydrocarbons suffered similar restraints. Several diesel supply and pricing agreements were executed by the government with domestic producers. In turn, producers and local pump stations were urged not to increase gasoline and other fuels prices. Diesel, which is widely used for transport and for the crop harvest, had to be imported to complete the domestic supply.

B. Exchange Control Regulations

Exchange control regulations typically require the conversion of all incoming foreign currency into Argentine pesos. More importantly, the Central Bank usually establishes the official exchange rate at which the conversion must take place, a rate that is generally below market.

In this particular situation, the government did not establish an official exchange rate, but hydrocarbon companies were still urged to convert 100% of their income into pesos.[7] In contrast, local hydrocarbon laws granted them the right to repatriate freely up to seventy percent.[8]

Although the exchange control regime was later repealed, several administrative files for exchange offenses have been raised against hydro-

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6. *See* Law No. 25561 of Jan. 7, 2002, arts. 8-9 (pesofying the tariffs charged by public utilities and allowing the government to renegotiate those contracts).
7. Decree 16062001, Dec. 6, 2001, [29790] B.O. 4, and Decree 722002, established a general exchange-control regime, which provided for an obligation to convert into pesos all foreign currency originated in exports. Through Attorney General Opinion 2352002, the Attorney General understood that this new regime also included oil companies previously exempted.
8. Decree No. 158989, Jan. 4, 1990, [26794] B.O. 11.

carbon companies that failed to bring in the whole of their export revenue.

C. Export Duties and Restrictions

The 2002 Emergency Law authorized the government to levy a tax on hydrocarbon exports, with the purpose of providing some extra income while discouraging a feared flood of commodities towards the more attractive export market.[9] Export restrictions and duties have consistently been applied in the country after every significant devaluation of the currency.

As a first measure, the government established a domestic supply quota for crude and other fuels,[10] which was later repealed,[11] and levied a twenty percent export duty.[12] As the domestic situation deteriorated and international prices rose to more than USD 100/bbl, those percentages were increased significantly, as a domestic supply quota of diesel was reinstated.[13]

In November 2007, the government a ceiling price on oil exports at USD 42/bbl, the remaining being taxed increasingly according to the international prices increments.[14] Exports of gasoline, diesel, and other fuels were taxed on the same basis. The government would not allow oil companies to keep windfall profits.

Likewise, natural gas exports were restricted as long as producers were not able to supply adequately domestic demand. An export duty was first established at twenty percent and later increased to forty-five percent, tied to the regional price.[15] In practical terms, Argentine exporters ended up paying an export duty of forty-five percent over the import price from Bolivia, which was initially set at five USD/ MMBTU.[16] This implied in practical terms an export duty of 2.25 USD/MMBTU.

As the import price from Bolivia rose, the tax increased. When the political situation in Bolivia undermined its ability to deliver the gas committed to Argentina, the government authorized the import liquefied natural gas. Having liquefied natural gas facilities, Argentina arranged for a re-gasification ship to be moored in a port in the south of the Province of Buenos Aires. At the beginning of 2008, the basis for the calculation of the export duty was raised to the highest import price available (i.e. 15-17

9. Law No. 25561 of Jan 7, 2002.
10. Decree 867/2002, May, 24, 2002, B.O. 11
11. Energy Secretariat Resolution No. 341/2002.
12. Decree 310/2002, Feb 14, 2002 B.O. 4.
13. The Energy Secretariat Resolution No. 16792004 provided that no export authorizations would be released unless evidence was provided that the demand of all domestic refineries had been satisfied. Energy Secretariat Resolution No. 16792004, Dec. 24, 2004, [30555] B.O. 4.
14. Minister of Economy and Planification Resolution No. 3942007, Nov. 16, 2007, [31283] B.O. 10.
15. Minister of Economy and Planification Resolution No. 1272008, July 11, 2008, [31444] B.O. 23.
16. *Id.*

USD/ MMBTU).[17]

V. CONCLUSION

During the 1990s, the Republic of Argentina implemented a legal framework based on free-market policies that ended the country's dependency on foreign oil and fuels, achieved domestic supply, and allowed Argentina to become an exporter of hydrocarbons.

The acute economic crisis of 2001 to 2002 triggered an emergency package, which led to several investment disputes raised by utilities and other foreign owned companies with the ICSID. Export restrictions and duties substantially reduced the company-take part of the business and caused severe disruptions in the relationship with neighboring countries and companies.

Notwithstanding the aforementioned, there is a light at the end of the tunnel. The government has recently approved the Gas Plus Program, a means by which newly discovered gas may be sold at new (unregulated) prices. A similar program has been announced for petroleum and refinery that will allow for a substantial reduction in export duties. There is much expectation and hope that these programs will foster new investments and help solve Argentina's supply dilemma.

17. *Id.*