Argentinean Prohibition of certain tobacco products

This document refers to the prohibition of import, distribution, marketing, advertising, and any form of promotion and sponsorship, issued by the Government of Argentina on 27 March 2023 (Regulation #565/2023) (the “ban”), including heat-not-burn tobacco products (HTPs).

<table>
<thead>
<tr>
<th>Measure</th>
<th>Regulation #565/2023 of 27 March 2023</th>
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<tr>
<td>Authority</td>
<td>Health Ministry (Ministerio de Salud)</td>
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<td>Content</td>
<td>Prohibition of import, distribution, marketing, advertising, and any form of promotion and sponsorship in Argentinean territory of electronic systems or devices intended to inhale tobacco vapors or aerosols, commonly referred to as ”heated tobacco products”, including any type of accessory destined to the operation of such systems or devices, as well as to cartridges and tobacco sticks to be heated in such systems.</td>
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| WTO (GATT94) commitments | From the outset, the Argentinean ban appears to be inconsistent with the following provisions under the covered agreements of the WTO:  
Art. X:3. The ban is not being administer in a uniform, impartial and reasonable manner.  
Art. XI:1. The ban imposes a prohibition on the importation of HTPs that is not justified under the General Exceptions under Art. XX. This is, Argentina (i) did not consider trade restrictive alternatives, and (ii) at the same time allows conventional tobacco products without any restrictions.  

Article III:4: The prohibition appears to discriminate between conventional cigarettes and HTPs, contrary to the National Treatment Obligation of Article III:4 of the GATT 1994. The prohibition arguably gives rise to less favourable treatment of imported products (HTPs) as compared to the treatment the domestic “like” products (conventional cigarettes). |
| EU – Mercosur FTA commitments | Once the EU-Mercosur FTA is signed and enters in force, the Argentinean ban would not allow the EU and its producers to take advantage of the preferential tariff treatment Argentina is supposed to grant to EU’s HTP and would be inconsistent with several obligations of the FTA.  

The ban is a regulatory barrier inconsistent with commitments on import and export restrictions. This barrier will block preferential market access for HTPs negatively impacting investments in manufacturing facilities in EU Members.  
Although Argentina was still not obliged to EU-Mercosur obligations, the Authorities failed to comply with basic commitments under the Transparency Chapter, i.e. publication, opportunity to comment and conduct impact assessments. This might be an issue of concern with respect to future regulatory processes. |
| Systemic Concerns | There is systemic concern with the manner in which the Argentinean authorities are acting, i.e. lack of legal basis and transparency.  

Potential inconsistency with multilateral commitments (Art. X:3 and Art. XI:1 of the GATT 1994) that are incorporated in FTAs (in the process of entering into force or under negotiation), affecting investments in the EU and exports into Argentina.  

The ban nullifies the preferential access gained for HTPs in the EU-Mercosur FTA negotiations, where preferential tariffs are granted to products classified under HS 2403.99 (HS 2017 version). To the best of our knowledge a specific rule of origin was also negotiated with Mercosur to allow the importation from HTPs from the EU. |