

# Transfer Pricing The Argentine Case

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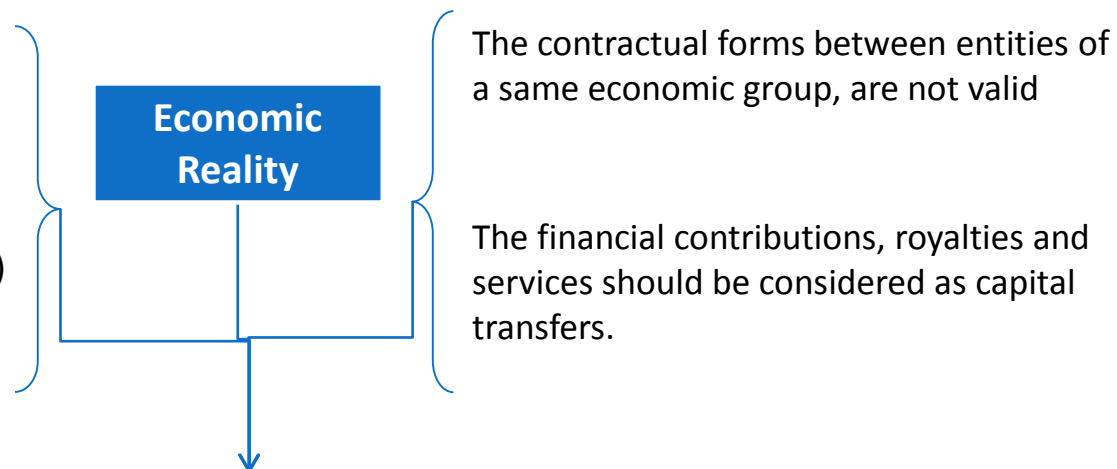
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# Legal framework: Economic Reality

The question of the valuation of the intragroup transactions worried Senator Lisandro de la Torre, when in his speech at the Congress in 1935 denounced the maneuvers of the Anglo company to avoid taxation both in Argentina and England.

## Supreme court cases:

- Refinerías de Maíz (1964)
- Parke Davis (1973)
- Mellor Goodwin (1973)
- Rheinstahl-Hanomag Cura (1973)
- Compañía Swift de La Plata (1973)
- Ford Motor Argentina (1974)



## Between 1973 and 1976 -Plan Gelbard (during the 3rd presidency of Peron)-:

- Law 20.628 Income Tax
- Law 20.557 of foreign investments in the country
- Law 20.794 on technology transfer

In addition, Law 20.557, article 18: companies belonging to foreign capitals, that benefited from promotional regimes within the country, would not be able to repatriate capitals while benefiting from the promotional benefits.

# Legal Framework: moving towards arm's length standard

## Civic-Military Coup 1976:

- New Law 21.382 of foreign investment (1976)
- Modification of Income Tax Law (1976)
- New Law 21.617 of technology transfer (1977)

*Arm's length  
standard or  
"transfer  
pricing"  
validation*

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    A[Civic-Military Coup 1976:  
• New Law 21.382 of foreign investment (1976)  
• Modification of Income Tax Law (1976)  
• New Law 21.617 of technology transfer (1977)] --> B[Arm's length standard or "transfer pricing" validation]
    B --> C[Legitimizing contracts between economically related enterprises]
  
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## *Legitimizing contracts between economically related enterprises*

The deductibility of the intragroup payments is validated as long as they adjust to the "normal" practices between independent parties

Law 25.063 of 1998: **Methods** for establishing the Argentine source profits are introduced, based on the arm's length principle and following the recommendations of the **OCDE** (1995 transfer pricing guidelines)

General Resolution of tax authorities N° 1122/ 2001: Requests the presentation of transfer pricing documentation (with related parties and with tax havens) to demonstrate that the prices have been settled as if they had been agreed between independent parties.

# Legislative framework: moving towards the 6th method

Law 20.628 from 1973 •Article 8: **When the export price is lower than the wholesale price at destination, it will be understood that there is an economic relation between the exporter in Argentina and the importer abroad**; and the valid price will be the wholesale price; the inverse will be valid for imports. The difference in prices will constitute net **profit of Argentine source**.

Law 25.063 from 1998 •Article 8: When the export price is lower than the wholesale price at destination, the valid price will be the wholesale price; the inverse will be valid for imports. The difference in prices will constitute net profit of Argentine source. •**It defines the assumptions under which two parties are considered to be related.**

Article 8 was amended again in 2003, to provide that in cases of transactions with related parties, as well as with parties located in low or zero tax jurisdictions, **article 15 of the LIG (OECD's TP Methods) should be applied.**

Law 25.784 of October 2003 •**The Sixth method is introduced**, replacing article 8, for the estimation of the transfer prices in the cases of commodities exports performed through international intermediaries, when such intermediaries do not demonstrate to have economic substance. According to the sixth method, the price in such transactions should be that of the market at the shipping day.

In this sixth paragraph, **economic substance** is defined as a) having real presence in the territory of residence, and assets, functions and risks of a similar weight to the volumes of transactions negotiated; b) its main activity must not constitute the obtaining of passive income, nor the intermediation of sales of goods from and to Argentina or with other members of the economic group; and c) its foreign trade operations with other members of the same economic group do not exceed 30 per cent of the total annual turnover of the entity. These conditions are cumulative, not alternative.

# Some Argentine court cases – all levels-

## “Economic reality” rulings by Supreme Court:

- Refinerías de Maíz (1964)
- Parke Davis (1973)
- Mellor Goodwin (1973)
- Rheinstahl-Hanomag Cura (1973)
- Compañía Swift de La Plata (1973)
- Ford Motor Argentina (1974)
- Kellogg Company (1985)

***Most rulings favoured the tax authorities demands.***

## Arm's length standard, OECD Methods, Comparables: ***Most rulings for multinational companies***

- Loussinian (Supreme Court, 1983), Akapol (Supreme Court, 2012): in relation to economic relation, ***court ruled against the tax authorities.***
- Cisco: National Fiscal Court, 2012: ***accepted deduction of intragroup services.*** The Tax authorities did not notice the contract distributor structure, and did not question it.
- Ericsson: National Fiscal Court, 2007: ***accepted deduction of interest payments.*** Tax authorities had questioned the formality of the loan and the thin capitalization.
- Comparables, comparability adjustments: Toyota (Appellations Court, 2012), Volkswagen (National Fiscal Court, 2010), Aventis Pharma (National Fiscal Court, 2010), BoehringerIngelheim (National Fiscal Court, 2012), Nidera y Laboratorios Bagó (National Fiscal Court, 2006). ***All lost by tax authorities.***
- Nobleza Picardo (National Fiscal Court, 2010), Toepfer Internacional (Appellations Court, 2012), Nidera SA, Oleaginosa Moreno Hermanos SACIFIA : in relation to 6th method. ***Most lost by tax authorities***

## Problems:

- Consideration of related parties
- Burden of the proof
- Comparability and comparability adjustments

# Data resources in Argentina

For customs information, the **INDIRA** system gives AFIP access to micro data (volumes, prices, invoicing details, etc.) from Argentina and other MERCOSUR countries, as well as some others, such as India. An agreement has been recently signed with the United States, and one previously with India, for sharing customs information, although not through the INDIRA database, since it is restricted to a bilateral exchange. However, customs data does not distinguish between related and unrelated parties. Customs micro data in this system –which works like an online database – can be accessed immediately and automatically by tax officials from the Sub General Directorate of Tax Auditing of the central administration. Where, for example, mismatches have been found, they send the relevant individual transaction data that have been screened by the central administration to the regional agency conducting the audit. Regional agencies cannot directly access the information.

AFIP has been using the **Osiris** database since 2011 to verify the comparables chosen and the validity of the comparability analysis presented by taxpayers on their transfer pricing reports. Before that, the AFIP had to trust the information on comparable companies presented by the taxpayers, or had to go through several difficult processes in order to find more information.

# Soybean sector

- ▶ Participation of soybean, soybean oil and soybean meal exports in Argentine total exports

Year	2010	2011	2012	2013
Soybean meal	12%	12%	13%	14%
Soybean oil	6%	6%	5%	5%
Soybean	7%	6%	4%	5%
Subtotal	25%	24%	22%	24%

Source: Trademap

# Export set under analysis

- ▶ Participation of the set of companies in the Argentine exports of soybean, soybean meal and soybean oil.

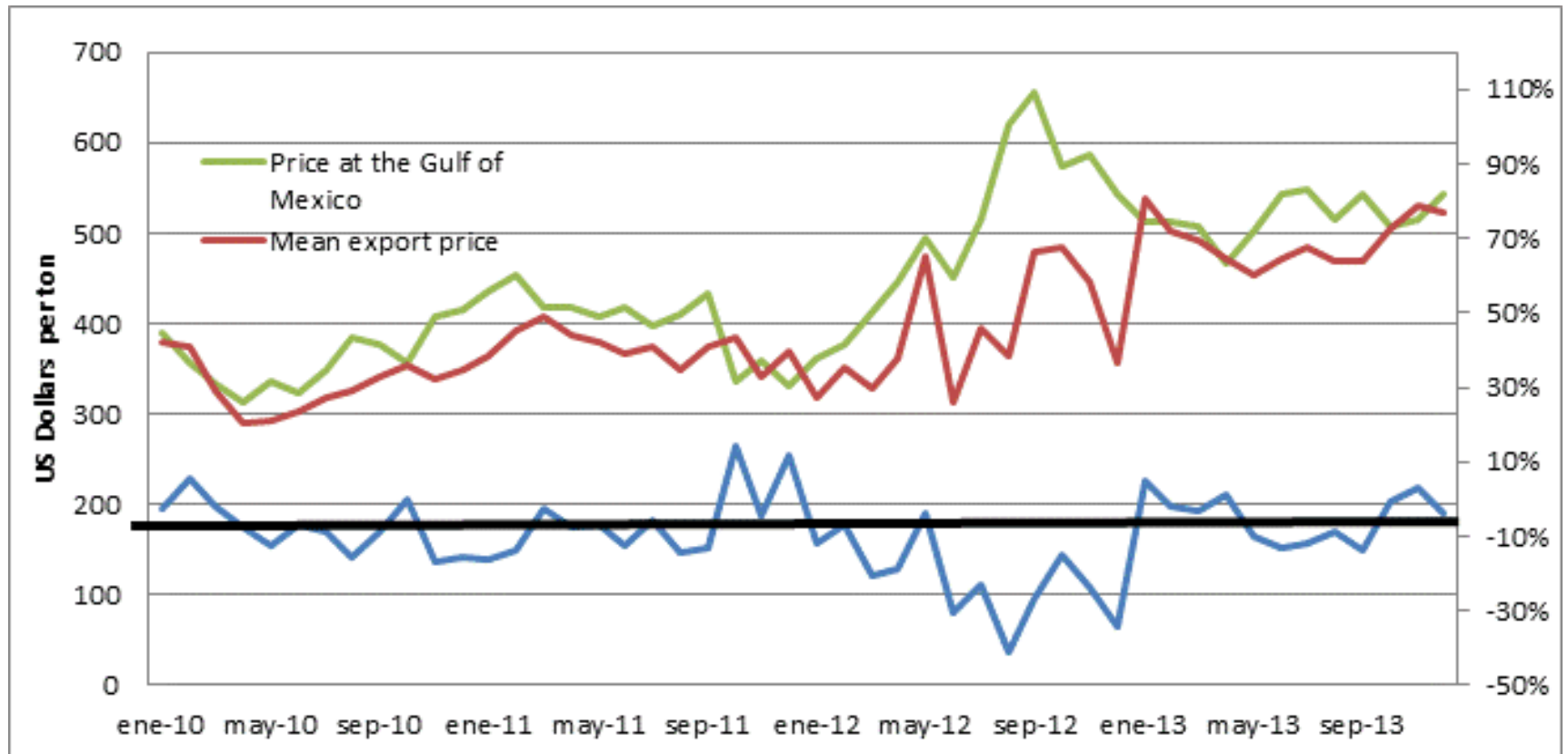
Year	2010	2011	2012	2013
Soybean meal	73%	68%	67%	69%
Soybean oil	81%	71%	71%	67%
Soybean	61%	51%	46%	48%

Source: Trademap



# Methodology

- ▶ Soybean meal – Daily Price difference. 2010/2013



Source: Reuters and Penta Transactions

# Data

- ▶ Export under-pricing by Price of soybean, soybean meal and soybean oil, of the set of exporters.

Year	Soybean meal	Soybean Oil	Soybean	TOTAL
2010	-672.689.866	-327.886.389	-242.665.029	-1.243.241.284
2011	-553.279.766	-257.674.139	-117.655.984	-928.609.890
2012	-1.134.870.549	-163.414.113	-212.319.241	-1.510.603.903
2013	-717.142.518	-251.908.091	-168.319.051	-1.137.369.659
2010	-11%	-10%	-8%	-10%
2011	-8%	-7%	-4%	-7%
2012	-16%	-5%	-15%	-13%
2013	-10%	-10%	-9%	-9%

Source: Reuters and Penta Transaction

# Financial Secrecy level of the cooperative jurisdictions

"Financial Secrecy Index"– TJN 2013	Cooperative jurisdictions – Argentine Tax Authorities 2014	"Tax havens" according to tax legislation until 2013 – Decree 1037/2000
1 Switzerland	Switzerland	
2 Luxemburg	Luxemburg	Luxemburg
3 Hong Kong		
4 Cayman Islands	Cayman Islands	Cayman Islands
5 Singapore	Singapore	
6 USA	USA	Guam (USA), Puerto Rico (free associated state)
7 Libanon		
8 Germany	Germany	
9 Jersey	Jersey	Jersey (Channel Islands)
10 Japan	Japan	

Thank you very much!

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