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ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

(DS444)

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

December 11, 2013

1. Madam Chairperson and members of the Panel, the United States would like to begin its closing statement by thanking the Panel and Secretariat for their work to date, and the work to come, in helping to resolve this dispute. There is a lot of evidence to go through in this dispute and that is no small task. We would also like to thank the interpreters for their assistance both yesterday and today.

2. Argentina has not denied the facts presented by the United States and co-complainants either in its submissions or in response to direct questions from the Panel today. Instead, Argentina has tried to devise arguments to shield these measures from all scrutiny by the Panel under Article XI of the GATT 1994 and other provisions of the WTO Agreement.

3. With respect to the DJAI Requirement, Argentina now argues that as an "import requirement" it is excepted from GATT Article XI by Article VIII. With respect to the RTRRs measure, Argentina argues that to make their *prima facie* case as to this discretionary unwritten measure, complainants must demonstrate that it is applied in every potential instance. Argentina cannot hide behind either of these arguments.

4. First, the DJAI Requirement is an import licensing requirement and a "restriction" under Article XI. There is nothing in Article VIII that exempts this measure, or any other measure, from the scope of Article XI. This is the case whether or not the DJAI Requirement is for "customs purposes."

5. Regardless, the DJAI Requirement is not for "customs purposes" and is an import licensing requirement within the meaning of the Import Licensing Agreement and Article XI of the GATT. Contrary to Argentina's argument, simply because a measure is "related to importation" does not mean that it is for "customs purposes." Argentina's position would render the entire Import Licensing Agreement meaningless. Argentina's interpretations would allow it and other

members to evade responsibility for anything "related to importation" and anything that could be characterized as a "formality" or "requirement."

6. Second, with respect to the RTRRs measure, as we explained in our second written submission and opening statement for this Panel meeting, we do not agree that the three-element set out by the Appellate Body in *US – Zeroing (EC)* applies to the facts of this case, contrary to what Argentina stated in its closing statement. As the Appellate Body pointed out in *EC – Large Civil Aircraft*, when it rendered moot the panel's findings on the LA/MSF Programme, it is not the case that "a complainant would necessarily be required to demonstrate the existence of a rule or norm of general and prospective application in order show that . . . a measure exists."[1]

7. Rather, as in *EC – Biotech*, the simple question is whether complainants have submitted sufficient evidence to make a *prima facie* demonstration of the existence of the RTRRs measure. We have. As counsel for Argentina pointed out today, in *EC – Biotech*, the evidence included dozens of statements by EC member state officials. Our evidence includes dozens of official government press releases and statements by government authorities, as well as statements by companies directly impacted by Argentina's conduct and hundreds of other pieces of documentary evidence. Moreover, as we explained in our opening statement, this evidence is also sufficient to satisfy the three-element test.

8. In this week's meeting, we highlighted some examples of this evidence. We would like to include one more which demonstrates that the RTRRs measure is sanctioned at the highest levels of the Argentine government. In a speech posted on the official website of the Argentine Presidency, President Fernández stated the following:

> [W]e have permanent agreements and permanent discussions with **all** of the

[1] *EC – Large Civil Aircraft (AB)*, para. 794.

> companies – with Pirelli too – to achieve this balance in the trade … and [Pirelli] is helping us… [W]e have closed a deal for Pirelli to export … honey, and we then allow them a few more imports as a prize for that conduct. See, towards those who behave well, we behave even better. . . . . You help me and I help you.[2]

9. In essence, Argentina's argumentation places the following question before the Panel: Can a Member avoid scrutiny under the WTO Agreements by declining to publish its measures and declining to confront evidence comprising hundreds and hundreds of documents demonstrating a discretionary, trade-restrictive measure? The answer is no.

10. For these and all the reasons we have set forth in our submissions, Argentina's arguments are not persuasive, and the United States has carried its burden of proof with respects to all of its claims in this dispute.

[2] Press Release, Presidencia [President of Argentina], Palabras De La Presidenta De La Nación Cristina Fernández En El Acto De Inauguración De La Ampliación De La Planta De Pirelli Neumáticos, En Merlo, Provincia De Buenos Aires (April 25, 2012) (JE-266).