

***ARGENTINA - MEASURES AFFECTING
THE IMPORTATION OF GOODS
(DS438/444/445)***

**RESPONSES OF THE UNITED STATES TO THE PANEL'S
SECOND SET OF QUESTIONS TO THE PARTIES**

January 14, 2014

Introduction

This submission contains U.S. responses to the second set of questions from the Panel.

46. (European Union, United States, Japan) Can the complainants identify the evidence on the record which in their view demonstrates that a requirement to make or increase investments in Argentina (including in production facilities) as a condition to import goods into Argentina operates as a separate requirement (i.e., not in combination with other trade-related requirements).

1. As an initial matter, the United States would note, with respect to Questions 46, 47, and 48, that the RTRRs measure does not necessarily involve the imposition of each RTRR separately. Rather, many of the RTRRs are imposed in combination with other RTRRs. As the United States has explained, the RTRRs measure requires, as a prior condition for permission to import goods, commitments of importers to (1) export a certain dollar value of goods; (2) reduce the volume or value of imports; (3) incorporate local content into products; (4) make or increase investments in Argentina; **and/or** (5) refrain from repatriating profits.¹

2. It is Argentina, not the United States, which has characterized the RTRRs measure as an “overarching” measure, comprised of individual measures.² That is not the case; despite Argentina’s attempt to reframe the case presented by complainants, there is only one measure at issue. The evidence submitted by the complainants demonstrates that, in any given instance of application of the RTRRs measure, Argentine authorities may choose one or several of these tools,³ and that it is not the case that the measure consists of disparate independent requirements. As a result, for the United States to prevail on its claims with respect to the RTRRs measure, it is not necessary for it to establish the independence of each of the RTRRs.

3. Further, the various requirements imposed by Argentina as a condition for permission to import are to some extent interrelated. For example, a requirement to invest in an Argentine production facility as a condition to import goods is linked to Argentina’s goals of promoting exports and import substitution, because the Argentine production facility can, in the future, produce goods for export markets or to substitute for imported products.

4. Nonetheless, record evidence does indicate that this particular RTRR – the requirement to make or increase investments in Argentina – has been imposed without other RTRRs simultaneously being imposed. One sector in which this is particularly obvious is the auto sector. In fact, the Ministry of Industry has repeatedly stated that automobile manufacturers could offset imports with exports “or, alternatively, [could offset imports by making] irrevocable

¹ See U.S. Second Written Submission, paras. 5, 111, 123; U.S. Second Opening Statement, paras. 62, 73.

² See, e.g., Argentina’s Second Written Submission, para. 105.

³ As the answers to Questions 46, 47, and 48 demonstrate, Argentina sometimes imposes only one requirement. However, in other cases, an importer must comply with multiple requirements. For example, Hyundai agreed to (1) reduce imports; (2) export nuts, wine, biodiesel and soya flour; and (3) make an irrevocable capital contribution of \$8 million. *Ministry of Industry Press Release June 13, 2011* (JE-86). Another auto manufacturer, Chery, agreed to increase exports and increase import substitution. *Id.*

capital contributions.”⁴ There are several examples of auto manufacturers committing to fulfill this RTRR, not in combination with other RTRRs. An Argentine government press release stated that Alfa Romeo agreed to balance its trade through a new \$2.5 million investment to construct a biodiesel production plant;⁵ and other press releases described Fiat's commitment to invest \$1.2 billion,⁶ Renault's commitment to invest \$175 million,⁷ General Motor's commitment to invest \$600 million,⁸ Ford's commitment to invest \$250 million,⁹ and Mercedes Benz's commitment to invest \$100 million.¹⁰ Additionally, Suzuki was reported to have committed to make an investment of 1.5 million pesos to compensate for its imports.¹¹

5. In addition to the autos sector, Argentina has required importers in a variety of other sectors to make commitments in compliance with this RTRR alone, not in combination with any other RTRRs. Examples include the agricultural machinery, electronics, motorcycle, pharmaceutical, tire, and consumer goods sectors. Evidence of such instances include the following:

- An official from AGCO, a U.S. agricultural machinery manufacturer, stated in a corporate earnings call that “[t]he deal you normally do is that as soon as you have agreed with the government, or have disclosed your plans for investment in local manufacturing in Argentina, they basically allow you more imports.”¹²

⁴ See, e.g., Press Release, Ministerio de Industria [Ministry of Industry], También la automotriz Kia se comprometió a equilibrar su balanza comercial [The car manufacturer Kia has also agreed to adjust its trade balance] (June 15, 2011), available at <http://www.prensa.argentina.ar/2011/06/15/20707-tambien-la-automotriz-kia-se-comprometio-a-equilibrar-su-balanza-comercial.php> (Arg.) (JE-87); *Ministry of Industry Press Release, March 25, 2011* (JE-1) (stating, “[f]rom now on, **imports must be compensated for by exports**, which have one year to be fulfilled, thereby taking 2012 exports into consideration; **or alternatively, an irrevocable capital contribution** can be made throughout 2011 in the amount of the net total of imports”) (emphasis added).

⁵ *Ministry of Industry Press Release April 20, 2011* (JE-85).

⁶ Press Release, Ministerio de Industria [Ministry of Industry], También la automotriz Kia se comprometió a equilibrar su balanza comercial [The car manufacturer Kia has also agreed to adjust its trade balance] (June 15, 2011), available at <http://www.prensa.argentina.ar/2011/06/15/20707-tambien-la-automotriz-kia-se-comprometio-a-equilibrar-su-balanza-comercial.php> (Arg.) (JE-88).

⁷ *Ministry of Industry Press Release August 5, 2011* (JE-90).

⁸ *Ministry of Industry Press Release June 15, 2011* (JE-236).

⁹ Press Release, Ministerio de Industria [Ministry of Industry], Ford presentó su Nuevo modelo de pick up, en el marco del plan de inversiones por US\$ 250 millones presentado al ministerio de Industria (July 3, 2012), available at <http://www.industria.gob.ar/ford-presento-su-nuevo-modelo-de-pick-up-en-el-marco-del-plan-de-inversiones-por-us-250-millones-presentado-al-ministerio-de-industria/> (Arg.) (JE-277).

¹⁰ “Mercedez Benz ratificó inversiones en la Argentina”, Ministerio de Industria, 5 December 2011, available at <http://www.prensa.argentina.ar/2011/12/05/26295-mercedes-benz-ratifico-inversiones-en-la-argentina.php> (JE-571/EU-257).

¹¹ “Suzuki armará motos en el país para evitar trabas a las importaciones”, *autoblog.com.ar*, 26 April 2011, available at <http://autoblog.com.ar/2011/04/suzuki-armara-motos-en-el-pais-para-evitar-trabas-a-las-importaciones/> (JE-573/EU-259).

¹² *AGCO Corp 2011 Q4 Earnings Call* (JE-199); see also Julieta Camandone, *Fiat comienza a producir cosechadores en el país* [Fiat Begins to Produce Locally], *EL CROSTINA* (Arg.), December 20, 2011, available at <http://www.cronista.com/negocios/Fiat-comienza-a-producir-cosechadores-en-el-pais-20111220-0078.html> (JE-188).

- The pharmaceutical company Biotoscana was reported to have released a statement announcing a \$10 million investment “in response to the measures implemented by” the Secretariat of Domestic Trade (*Secretaría de Comercio Interior* or “SCI”).¹³
- The CEO of Newsan, an electronics manufacturer, reportedly stated that the company’s decision to invest \$600 million over three years “responds to the requirement of the national Government to substitute imports with domestic production; thus the first stage is the production of small household appliances entirely destined for the domestic market.”¹⁴
- RIM (the manufacturer of Blackberry devices) and the U.S. company Hewlett Packard were reported to invest \$23 million and \$12 million, respectively, as a result of imposition of non-automatic licenses and the requirement to export in order to import.¹⁵

6. Argentina itself announced several commitments to make or increase investments (not in combination with other undertakings), reporting in press releases that Imperial Cord signed an agreement which involved an investment of 10 million pesos to manufacture bicycle tires,¹⁶ that Procter & Gamble would invest 557 million pesos,¹⁷ that Honda would invest \$3 million related to the production of motorcycles,¹⁸ that Metalsa S.A., an auto parts manufacturer, would invest \$37.8 million in a plant,¹⁹ that Pirelli would invest \$100 million in producing tires,²⁰ that

¹³ *La Nación* May 3, 2011 (JE-171) (describing a meeting between the Secretary of Domestic Trade Moreno and various chambers representing pharmaceutical companies in which he “instructed them to submit a business plan aimed at balancing imports with exports in the sector”).

¹⁴ “El Grupo Newsan avanza con inversión de más de \$600 millones en tres años”, Infobae, 12 December 2012, available at <http://www.infobae.com/notas/686285-El-Grupo-Newsan-avanza-con-inversion-de-mas-de-600-millones-en-tres-anos.html> (JE-589/EU-275).

¹⁵ “Blackberry y HP se instalan en la Argentina”, *Diario La Nación*, 19 July 2011, available at <http://www.lanacion.com.ar/1390666-blackberry-y-hp-se-instalan-en-la-argentina> (JE-574/EU-260).

¹⁶ Press Release, Ministerio de Industria [Ministry of Industry], El Ministerio de Industria impulsa la producción nacional de neumáticos para el sector de motos y maquinaria agrícola (August 20, 2012), available at <http://www.industria.gob.ar/el-ministerio-de-industria-impulsa-la-produccion-nacional-de-neumaticos-para-el-sector-de-motos-y-maquinaria-agricola/> (Arg.) (JE-206).

¹⁷ *President of Argentina Press Release* September 5, 2012 (JE-241).

¹⁸ Press Release, Ministerio de Industria [Ministry of Industry], Honda invertirá 3 millones de dólares para comenzar a producir motos en su planta de Campana (June 27, 2011), available at <http://www.industria.gob.ar/honda-invertira-3-millones-de-dolares-para-comenzar-a-producir-motos-en-su-planta-de-campana/> (Arg.) (JE-254).

¹⁹ Press Release, Ministerio de Industria [Ministry of Industry], *Metalsa invierte US\$ 38 M para producir estructuras metálicas para autos* (October 25, 2011), available at <http://www.industria.gob.ar/metalsainvierteus38mparaproducirestructurasmetalicasparaaautos/> (Arg.) (JE-256).

²⁰ Press Release, Ministerio de Industria [Ministry of Industry], La Presidenta inauguró junto a Giorgi la ampliación de una planta de Pirelli en Merlo que demandó US\$ 100 M y generará 300 empleo (April 25, 2012), available at <http://www.industria.gob.ar/la-presidenta-inauguro-junto-a-giorgi-la-ampliacion-de-una-planta-de-pirelli-en-merlo-que-demando-us-100-m-y-que-generara-300-empleos/> (Arg.) (JE-263). See also 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).

Bridgestone would invest 1.169 million pesos,²¹ that John Deere would invest \$130 million in a plant to manufacture agricultural machinery,²² and the opening of plants for a nutrition and animal health company and an office furniture manufacturer for a total investment of 24 million pesos.²³ Regarding the last two of these investments, Minister of Industry Giorgi stated: “We will continue to require the investment of those who want to sell here . . . in this international context, more than ever we have managed trade,”²⁴ meaning that those who import goods into Argentina must make an investments in order to balance their trade.

47. (European Union, United States, Japan) Can the complainants identify the evidence on the record which in their view demonstrates that a requirement to refrain from repatriating profits from Argentina to another country as a condition to import goods into Argentina operates as a separate requirement (i.e., not in combination with other trade-related requirements).

7. As noted in response to Question 46, each requirement that Argentina imposes pursuant to the RTRRs measure is not necessarily imposed as a separate requirement, without other RTRRs also being imposed. With respect to the requirement that importers refrain from repatriating profits from Argentina to another country as a condition for importing goods, it appears that Argentina does not frequently impose this requirement independent of other types of RTRRs.²⁵

48. (European Union, United States, Japan) Can the complainants identify the evidence on the record which in their view demonstrates that, other than in the motorcycle sector, a requirement to limit the volume of imports as a condition to import goods into Argentina operates as a separate requirement (i.e., not in combination with other trade-related requirements).

8. As noted in response to Questions 46 and 47, each requirement that Argentina imposes pursuant to the RTRRs measure is not necessarily imposed as a separate requirement, without other RTRRs.

9. Nonetheless, with respect to this particular RTRR, complainants have put evidence on the record which shows that Argentina has required importers to fulfill this commitment not in

²¹ “Bridgestone le anunció a la Presidenta que invertirá \$ 1.169 millones en Argentina”, Presidencia, 19 December 2012, available at <http://www.prensa.argentina.ar/2012/12/19/37149-bridgestone-le-anuncio-a-la-presidenta-que-invertira--1169-millones-en-argentina.php> (JE-588/EU-274).

²² Press Release, Ministerio de Industria [Ministry of Industry], John Deere anunció a Industria que en agosto presentará formalmente su línea de tractores y cosechadoras fabricados en la Argentina (June 27, 2012), available at <http://www.industria.gob.ar/john-deere-anuncio-a-industria-que-en-agosto-presentara-formalmente-su-linea-de-tractores-y-cosechadoras-fabricados-en-la-argentina/> (Arg.) (JE-279).

²³ “Giorgi inauguró dos plantas en General Rodríguez”, Ministerio de Industria, 24 January 2012, available at <http://www.prensa.argentina.ar/2012/01/24/27575-giorgi-inauguro-dos-plantas-industriales-en-general-rodriguez.php> (JE-582/EU-268).

²⁴ “Giorgi inauguró dos plantas en General Rodríguez”, Ministerio de Industria, 24 January 2012, available at <http://www.prensa.argentina.ar/2012/01/24/27575-giorgi-inauguro-dos-plantas-industriales-en-general-rodriguez.php> (JE-582/EU-268).

²⁵ See exhibits cited at U.S. First Written Submission, paras. 99-100.

combination with other RTRRs. In addition to the motorcycle sector (as noted by the question), Argentina has imposed this requirement in a number of other sectors:

- Supermarkets, as described *infra* in response to Question 49.
- Clothing companies, as discussed *infra* in response to Question 52.
- Pork importers have entered into commitments to self-limit their imports in order to continue to import pork.²⁶
- Argentina’s Minister of Industry Giorgi also required automobile manufacturers to submit plans for reducing imports from certain countries²⁷ before requiring further plans from the companies to balance their trade.

This evidence, together with the rest of the evidence submitted by complainants with respect to the requirement to limit the volume or value of imports,²⁸ demonstrates that Argentina imposed this RTRR as a prior condition for importation.

49. (European Union, United States, Japan) Can the complainants further explain how in their view the import reduction requirement allegedly imposed by the Argentine Government on supermarkets acts as a condition to have the right to import other products into Argentina. Please refer to the relevant evidence on the record.

10. The United States has shown, through citations to a number of sources on the record in this dispute, that SCI severely restricts imports by supermarkets.²⁹ For example, companies operating in this sector have reported that Secretary Moreno set out what supermarkets can and cannot import, restricting volumes of certain products but not others.³⁰ Secretary Moreno also told supermarket importers to restrict their foreign purchases and compensate with exports (*i.e.*, fulfill the “one-to-one” requirement) and that their import transactions would be reviewed and approved by SCI.³¹ Moreover importers have limited purchases in order to avoid potential

²⁶ See, e.g., Fernando Bertello, *Ya no se podrán importar jamones de España y de Italia*, LA NACIÓN (Arg.), May 9, 2012, available at <http://www.lanacion.com.ar/1471673-ya-no-se-podran-importar-jamones-de-espana-y-de-italia> (JE-189). See also Exhibits at U.S. First Written Submission, note 223.

²⁷ “Busca reducir en un 20% la importación de vehículos de terceros países”, Ministerio de Industria, 10 December 2010, available at <http://www.industria.gov.ar/buscan-reducir-en-un-20-la-importacion-de-vehiculos-de-terceros-paises/> (JE-477/EU-163).

²⁸ See, e.g., U.S. First Written Submission, paras. 84-85.

²⁹ See exhibits cited at U.S. First Written Submission, note 221; EU First Written Submission, paras. 163-68 & accompanying footnotes.

³⁰ See, e.g., “No importar nada que se produzca acá”, Diario Página12, January 5, 2012, available at <http://www.pagina12.com.ar/diario/economia/2-184781-2012-01-05.html> (JE-461/EU-147).

³¹ “Moreno se reunió con los supermercados para regular las importaciones”, Infobae, January 4, 2012, available at <http://www.infobae.com/notas/625140-Moreno-se-reunio-con-los-supermercados-para-regular-las-importaciones.html> (JE-462/EU-148); “Moreno controlará más la importación”, Diario La Nación, January 4, 2012, available at <http://www.lanacion.com.ar/1437621-moreno-controlara-mas-la-importacion> (JE-463/EU-149); “Por trabas a la importación, habrá menos ‘delicatessen’ en los super”, Diario Los Andes, 7 January 2012, available at <http://www.losandes.com.ar/notas/2012/1/7/trabas-importacion-habra-menos-delicatessen%E2%80%9D-super-617026.asp> (JE-472/EU-158); Moreno: ‘Los productos que podrían entrar al país no deben ser producidos a nivel

problems in the future,³² and Secretary Moreno reviews import purchase orders of supermarkets that imported more than \$500,000 in products, indicating that only those that failed to keep imports low would be subject to import controls.³³

11. This evidence, together with other evidence regarding the imposition of the RTRRs measure, demonstrates that supermarkets are required to limit the volume or value of imports as a prior condition for importation.

51. (European Union, United States, Japan) For each of the alleged restrictive trade-related requirements (RTRRs), can the complainants clarify when the specific RTRR was first imposed on economic operators in Argentina. Please indicate the evidence on the record supporting your assertion.

12. Because the RTRRs measure is unwritten, the precise date that Argentina began imposing the requirements on importers is not readily available. The evidence submitted by complainants indicates that some form of the individual RTRRs have been imposed as early as 2009.³⁴

13. Regardless of the earliest date by which Argentina first began imposing the RTRRs, the pertinent question in terms of this dispute is whether the RTRRs measure was in existence at the time the United States initiated this dispute in August 2012. On this matter the record is clear: the RTRRs have been in effect since at least 2011. The United States has demonstrated this with extensive evidence, including broad policy statements in official governmental sources, and by evidence of the imposition of the individual requirements to: (1) compensate imports with an equivalent amount of exports—the “one-to-one” policy; (2) limit the volume or value of imports; (3) incorporate local content into domestically produced goods; (4) make or increase investments in Argentina; and/or (5) refrain from repatriating funds from Argentina to another country.

14. Argentine government statements in 2011 refer specifically to the requirement to either compensate imports with an equivalent among of exports, or make or increase investments in Argentina. Government press releases refer to “the ‘one-to-one program’ for balancing trade (one dollar imported per dollar exported) that [Argentina’s Minister of Industry Débora] Giorgi

local, BUENOS AIRES ECONÓMICO (Arg.), January 3, 2012, *available at* <http://www.diariobae.com/diario/2012/01/03/6368-moreno-los-productos-que-podrian-entrar-al-pais-no-deben-ser-producidos-a-nivel-local%E2%80%9D.html> (JE-187). “Moreno mantuvo una reunión con supermercados para regular las importaciones”, 26noticias.com.ar, *available at* <http://www.26noticias.com.ar/moreno-mantuvo-una-reunion-con-supermercados-para-regular-las-importaciones-145091.html> (JE-456/EU-142); “Reunión entre Moreno y supermercadistas”, Diario Los Andes, 7 January 2012, *available at* <http://losandes.com.ar/notas/2012/1/7/reunion-entre-moreno-supermercadistas-617027.asp> (JE-468/EU-154); “Moreno explica el plan de control de importaciones a los supermercados”, eldiario24.com, 4 January 2012, *available at* <http://www.eldiario24.com/notas.php?id=242716> (JE-469/EU-155).

³² Pablo Fernandez Blanco, *Desde el mes próximo volverán a aplicar trabas a las importaciones*, EL CRONISTA (Arg.), December 9, 2010, *available at* http://www.cronista.com/contenidos/2010/12/09/noticia_0078.html (JE-184).

³³ “El Gobierno anticipó que revisará compañías que importan por más de u\$s500.000”, Diariobae, January 4, 2012, *available at* [http://www.diariobae.com/diario/2012/01/04/6423-el-gobierno-anticipo-que-revisara-companias-que-importan-por-mas-de-u\\$s500.000.html](http://www.diariobae.com/diario/2012/01/04/6423-el-gobierno-anticipo-que-revisara-companias-que-importan-por-mas-de-u$s500.000.html) (JE-464/EU-150).

³⁴ See Carlos Mazoni, *Trabas a las importaciones [Obstacles to Imports]*, LA NACION (Arg.), August 23, 2009, *available at* <http://www.lanacion.com.ar/1165656%ADtrabas%ADa%ADlas%ADimportacionesH> (JE-249).

and Moreno demanded” at the start of 2011.³⁵ A 2011 press report explained that “[t]he Ministry of Industry, headed by Débora Giorgi, has begun urging importers of finished products that are affected by non-automatic licenses to ‘guarantee the new dollar-for-dollar [policy]:’ in other words, that for each dollar paid for imports, another should be generated by exports, or [they must] report capital investments or reserves.”³⁶

15. Also in 2011, the Ministry of Industry described the “one-to-one” policy with respect to the auto industry in broad terms in an official press release from March 2011, which stated:

From now on, **imports must be compensated for by exports**, which have one year to be fulfilled, thereby taking 2012 exports into consideration; **or alternatively, an irrevocable capital contribution** can be made throughout 2011 in the amount of the net total of imports.

Compensation must be made with exports from the importing firm or a company belonging to the same group.

Automakers must commit to their export plans by means of an affidavit.³⁷

16. In addition, in 2011, there were a large number of instances of application of the requirements to compensate imports with exports and make or increase investments in Argentina. For example, both requirements were imposed on automobile manufacturers starting in 2011.³⁸

17. With respect to the requirement to reduce the volume or price of imports, Minister Giorgi was reported to have made a request to automobile manufacturers in December of 2010,³⁹ and in February of 2011, an Argentine official made clear that the request was tied to importation:

“So far they have not presented the plans we requested and that is why now they are banned from entering high cylinder premium vehicles” said officials who added that to reach a trade balance in the short term “the 20% cut in imports informed to companies in December could be elevated further.”⁴⁰

³⁵ Press Release, Ministerio de Industria [Ministry of Industry], Giorgi, Boudou y Moreno subscribieron el plan de exportaciones e importaciones de General Motors [Giorgi, Boudou, and Moreno Sign General Motors Export-Import Plan] (May 2, 2011), available at http://www.industria.gob.ar/giorgi-boudou-y-moreno-suscribieron-el-plan-de-exportaciones-e-importaciones-de-general-motors/?upm_export=html (Arg.) (“*Ministry of Industry Press Release May 2, 2011*”) (JE-4); see also Press Release, Ministerio de Industria [Ministry of Industry], Compromiso de automotriz para equiparar su balanza [Automaker Pledges to Correct Trade Balance] (April 6, 2011), available at <http://www.prensa.argentina.ar/2011/04/06/18215-compromiso-de-automotriz--para-equiparar-su-balanza.php#> (Arg.) (JE-5) (“[Minister] Giorgi noted ‘Vehicle import companies and domestic automakers will be able to import the same amount, in dollars, that they export, and they will have one year to achieve this one-to-one ratio.’”).

³⁶ Pedro Ylarri, *Faltarán más ropa, juguetes, y electrónicos importados [Due to Restrictions on Imports, Clothes, Toys, and Electronics Will Be in Short Supply]*, PERFIL (Arg.), July 17, 2011, pp. 22-23 (JE-6).

³⁷ *Ministry of Industry Press Release, March 25, 2011* (JE-1) (emphasis added).

³⁸ See U.S. First Written Submission, Sections III.B.1.a, III.B.4.

³⁹ *MercoPress February 7, 2011* (JE-173).

⁴⁰ *MercoPress February 7, 2011* (JE-173).

Thus, by at least February 2011, Argentina was imposing the requirement to reduce the volume or price of imports as a prior condition to importation.

18. With respect to the requirement to increase importers’ incorporation of local content in their products, Argentina imposed this requirement by February 2011 at the latest, when Minister Giorgi instructed agricultural machinery producers to submit import substitution plans. According to a Ministry of Industry Press Release issued on February 11, 2011:

[Minister Giorgi] called on agricultural machinery importers and Argentine manufacturers to balance the US\$450 million trade deficit in the tractor, seeder, and sprayer sector this year. Giorgi told them that they will have to increase exports and replace imports with domestically manufactured machinery. . . . Giorgi ordered the John Deere, Agco, and Claas representatives to submit a plan for replacing imports with domestic production and using more Argentine parts.⁴¹

By December 2011, agricultural machinery manufacturers had submitted the plans demanded by Minister Giorgi, committing them to invest in local production facilities that reportedly would incorporate locally manufactured parts.⁴² Over the course of 2011 and 2012, Argentina expanded this requirement to the automobile, auto part, truck and motorcycle manufacturing, and mining sectors as well as to white goods importers and others.⁴³

19. Finally, Argentina also imposed the requirement to refrain from repatriating profits in 2011 on automobile manufacturers, in conjunction with other RTRRs. Importers that were required to comply with this RTRR in 2011 included General Motors,⁴⁴ Peugeot,⁴⁵ Scania⁴⁶ and Renault Trucks.⁴⁷ Argentina also imposed this requirement on metal processing and mining companies in 2011.⁴⁸

⁴¹ Ministry of Industry Press Release February 11, 2011 (JE-197).

⁴² Julieta Camandone, *Fiat comienza a producir cosechadores en el país [Fiat Begins to Produce Locally]*, EL CROSTINA (Arg.), December 20, 2011, available at <http://www.cronista.com/negocios/Fiat-comienza-a-producir-cosechadores-en-el-pais-20111220-0078.html> (JE-188); *Argentina: Investment in Agricultural Machinery to Reach USD 530 Million in 2012*, CROSTINA (Esmerl trans.), January 13, 2012 (JE-198).

⁴³ See generally U.S. First Written Submission, Section III.B.3.

⁴⁴ Press Release, Presidencia [President of Argentina], Anuncio de nuevas inversiones en GM: discurso de la Presidenta [Announcement of New Investments in GM: Address by the President] (November 15, 2011), available at <http://www.presidencia.gov.ar/discursos/25520> (Arg.) (JE-244).

⁴⁵ Press Release, Ministerio de Industria [Ministry of Industry], Peugeot acordó con el Gobierno equilibrar su balanza comercial [Peugeot agrees with Government to balance its imports and exports] (November 17, 2011), available at <http://www.prensa.argentina.ar/2011/11/17/25750-peugeot-acordo-con-el-gobierno-equilibrar-su-balanza-comercial.php> (Arg.) (JE-245).

⁴⁶ Ministry of Industry Press Release November 21, 2011 (JE-101).

⁴⁷ Ministry of Industry Press Release February 7, 2012 (JE-103).

⁴⁸ Ministry of Industry Press Release December 23, 2011 (JE-209); *Pan American Silver 2011 Q4 Earnings Conference Call* (JE-223); *Goldcorp 2012 Second Quarter Report* (JE-225).

20. In sum, the evidence demonstrates that at least by 2011, Argentine officials had made the decision to impose each of the RTRRs as a prior condition for importation and had in fact applied each of the requirements to importers of goods into Argentina.

52. (European Union, United States, Japan) With regard to the "price control" requirement, the complainants state that certain clothing companies such as Nike, Adidas, Lacoste, Zara, Falabella and Levi's agreed with the Argentine Government to halt price rises in order to continue importing goods into Argentina (see, European Union's first written submission, para. 181; United States' first written submission, para. 85; Japan's first written submission, para. 91; exhibits JE-174, JE-260, JE-437/EU-123 and JE-515/EU-201). Can the complainants clarify whether this halt in price rises refers to a freeze in the total value of imports or to a freeze in the price at which products are sold in the Argentine market.

21. Although the reporting on the clothing importers' agreement with Argentina to halt prices does not precisely describe what the halt in prices refers to, it is consistent with the other evidence with respect to this requirement⁴⁹ that the halt in price refers to the unit price of imports. A reduction in the unit price of imports would lower the total value of the imported products, and it may also be reflected in the market price of the products. In this way, the requirement impacts both import and market prices.

54. (European Union, United States and Japan) According to some of the evidence submitted with the complainants' second written submissions (exhibits JE-758 and JE-764), complying with the requirement to export a certain value of goods from Argentina related to the value of imports (the one-to-one requirement) does not necessarily guarantee the approval of a DJAI. Can the complainants provide comments on how these assertions are compatible with the argument that complying with the one-to-one requirement is necessary in order to import goods into Argentina. If the one-to-one requirement is a condition necessary but not sufficient, please explain what other conditions must be met for economic operators to be allowed to import goods into Argentina.

22. As the United States has noted in its submissions,⁵⁰ the RTRRs measure and DJAI Requirement are separate measures, although Argentina does use the discretion afforded by the DJAI system to enforce the RTRRs measure. An importer's fulfillment of any requested RTRRs may be a necessary, but not sufficient, prerequisite to obtaining approval of a DJAI submission.

23. Even if an importer complies with the demanded RTRRs, Argentine authorities could continue to withhold a DJAI approval for any reason, or none whatsoever as was the case with respect to the instances that were the subject of Argentine domestic litigation.⁵¹ Due to the highly discretionary nature of the DJAI Requirement, and the lack of any published criteria for the evaluation and approval of DJAI applications, only Argentina is in a position to explain what other conditions must be met for economic operations to be allowed to import goods into Argentina.

⁴⁹ See U.S. First Written Submission, Section III.B.2 & accompanying footnotes.

⁵⁰ See, e.g., U.S. Responses to First Panel Questions, paras 18-19; U.S. Second Written Submission, para. 40; U.S. Second Opening Statement, paras. 9-10.

⁵¹ *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Yudigar S.A.* (JE-59); *Fity SA* (JE-302).

56. (European Union, United States and Japan) With reference to the proposal submitted by Unión de la Industria Cárnica Argentina (UNICA), Cámara Argentina de la Industria de Chacinados y Afines (CAICHA), Asociación Argentina de Productores de Porcinos (AAPP) and the Consejo Argentino de Productores (CAP), dated 7 May 2012 (exhibit JE-441/EU-127), can the complainants indicate whether: (a) the proposal was approved by the Secretary of Domestic Trade; and, (b) the pork products and inputs referred to in paragraph 5 were eventually released. Please indicate the evidence that supports your response and the dates in which these events took place.

24. The United States incorporates by reference the answer of the European Union to Question 56.

94. (European Union, United States and Japan) According to some of the evidence on the record (exhibits JE-1, JE-82, JE-86, JE-95 and JE-398/EU-84), the Argentine Government requires economic operators to compensate imports with exports made by the same economic operator or by any other company of the same group, not necessarily operating in the same sector. Please explain how this is consistent with the statements (see exhibit JE-379/EU-65) that economic operators can comply with the one-to-one requirement by, inter alia, using an exporter as an intermediary to sell products to a buyer in a third country (exportación por cuenta y orden) or by concluding an agreement with an exporter to consider the exporter's transactions as its own transactions.

25. This question concerns the activity of exporters referred to as “*exportacion blue*,” whereby exporters sell “credits” for their exports to importers, who can use them to demonstrate that their imports are balanced with exports.⁵² This activity is described in detail by Company Y in exhibit JE-307.⁵³ Through these transactions, an importing company claims the exports, such that the importer appears to be exporting goods, even though the export is made on behalf of the entity selling the export credit. Advertisements by the *Asociacion de Importadores y Exportadores*⁵⁴ and the *Cámara de Importadores de la Republica Argentina*⁵⁵ for seminars regarding navigating the RTRRs measure state that they cover, respectively, “exports on behalf

⁵² See Veronica Dalto, *En Busca de Crédito: Exportadores ya Recurren a Importadores Como Alternativa a los Bancos* [Searching for Credit: Exporters Now Resort to Importers as an Alternative to Banks], EL CRONISTA (Arg.), July 27, 2012, available at <http://www.cronista.com/finanzasmercados/En-busca-de-credito-Exportadores-ya-recurren-a-importadores-como-alternativa-a-los-bancos-20120727-0064.html> (JE-63); *Los Importadores Financian y Subsodian Exportaciones Para Compensar sus Balanzas* [Importers Finance and Subsidize Exports to Offset Their Balances], BUENOS AIRES ECONÓMICO (Arg.), August 7 2012, available at <http://www.diariobae.com/diario/2012/08/07/15796-los-importadores-financian-y-subsodian-exportaciones-para-compensar-sus-balanzas.html> (JE-64).

⁵³ VP of Company Y Affidavit, paras. 19-30 (JE-307); see also U.S. First Written Submission, para. 56.

⁵⁴ Press Release, Asociación e Importadores y Exportadores, Seminario: La exportación por cuenta y orden de terceros como herramienta para poder compensar las importaciones [Seminar: Exports on behalf of and to the order of third parties as a tool to offset imports] (August 30, 2012), available at <http://www.enfoque21.com/agenda/eventos/la-exportacion-por-cuenta-y-orden-de-terceros-como-herramienta-para-poder-compensar-las-importaciones-67.html> (Arg.) (JE-78).

⁵⁵ Press Release, Chamber of Importers of Argentina, Seminario - Compensación de Importaciones con Exportaciones [Seminar Offset of Imports with Exports] (November 14, 2012), available at <http://www.uapered.org.ar/temp/cira.pdf> (Arg.) (JE-79).

of and to the order of third parties as a tool to offset imports” and “exporting on behalf of and to the order of third parties.”

26. The *exportacion blue* activity is consistent with the requirement that importers must compensate imports with exports through the same company, or another company in the same group, because the exports are attributed to the company purchasing the credit (the importing company), even though made on behalf of another party (the actual exporting company).

102. (European Union, United States, Japan, Argentina) According to some of the evidence on the record, the Argentine Secretary of Domestic Trade declared that import controls would not focus on small and medium enterprises (exhibits JE-3, JE-8, JE-139 and JE-348/EU-34). However, more recent exhibits on the record (exhibits JE-765, JE-787/EU-437 and JE-791/EU-441) suggest that small and medium enterprises may be the operators that are most affected by import restrictions. According to these exhibits, small and medium enterprises have problems to get their DJAIs approved. Can the parties comment on this point.

27. As the United States has noted,⁵⁶ the DJAI Requirement is highly discretionary and can be applied in a varying manner over time. The RTRRs measure also affords Argentine officials a high degree of discretion as to how it is applied to different sectors, groups of companies, or individual importers. For these reasons, it would not be surprising if Argentine officials exercise their discretion under the DJAI and RTRRs measures differently at different times.

28. The exhibits cited by the Panel indicate that Argentina may have broadened or shifted its focus in the exercise of its discretion under these measures, so as to now use its discretion to impose greater restrictions and requirements on small and medium enterprises. The fact that Argentina’s use of its discretion under the measures may change over time according to Argentina’s policy goals does not change the fact that both measures are generally applicable to all importers of goods into Argentina. Every importer of goods must comply with the DJAI Requirement and is subject to a non-transparent and discretionary approval process. The RTRRs measure similarly has no limit on its application; Argentine officials may demand compliance with RTRRs from any importer seeking permission to import goods.

126. (European Union, United States, Japan) In its second written submission (paragraphs 154-158), Argentina has referred to alleged shortcomings of the surveys submitted by the complainants (exhibits JE-56, JE-297, JE-312, JE-719/EU-405, JE-726/EU-412, JE-750 and JE-754). Please provide your comments on Argentina's statements and your views on the probative value of such surveys.

29. As a threshold matter, Argentina mischaracterizes the U.S. reliance on these exhibits when it states that they are the “principal evidence relied on by the complainants” to support the claims related to the DJAI Requirement.⁵⁷ As the United States explained in its opening statement at the second substantive meeting of the Panel,⁵⁸ the surveys are only one element of the extensive evidence submitted by the United States and its co-complainants, which includes,

⁵⁶ See, e.g., U.S. Responses to First Panel Questions, para. 9.

⁵⁷ Argentina’s Second Written Submission, para. 154.

⁵⁸ U.S. Second Opening Statement, para. 32.

first and foremost, the legal instruments establishing the DJAI Requirement as a non-automatic, discretionary import licensing requirement.

30. Turning to the surveys themselves, they are not, and do not purport to be, scientific. Nor do they set out to demonstrate that all applications made through the DJAI system are delayed or denied, or that a certain percentage is delayed or denied. Rather, they demonstrate that Argentine officials *do in fact withhold permission to import* through the DJAI system either to extract RTRR commitments from importers or for other reasons. The experiences of the surveyed companies support this fact.

31. In particular, the experiences of the 45 diverse companies responding to the U.S. Chamber of Commerce survey (JE-56), and the ten companies responding to the Government of Japan survey (JE-312) are probative of how the DJAI system operates and confirms that the DJAI Requirement is a discretionary, non-automatic import licensing system, consistent with its design and all of the rest of the evidence concerning its application.

32. Further, Argentina’s criticisms do not impact the probative value of the surveys. For example, the fact that the U.S. Chamber of Commerce survey does not provide a precise number of applications covered, the *total* number of all DJAI applications from the United States, or the volume of value of trade represented⁵⁹ does not detract from the experience of the respondents as described in the survey results. The important fact is that survey respondents experienced the withholding of permission through the DJAI Requirement, contingent on compliance with the RTRRs measure, consistent with the U.S. claims in this dispute. Similarly, these types of features do not impact the probity of the survey undertaken by the Government of Japan, as alleged by Argentina.⁶⁰

33. Further, the selection of the sample companies was not “discretionary,” as alleged by Argentina.⁶¹ As the United States explained in its first set of responses to questions from the Panel,⁶² the survey was sent to members of the U.S. Chamber of Commerce, which has over three million members. Of the recipients of the survey request, 45 companies provided voluntary feedback.

34. With respect to the surveys produced by the American Chamber of Commerce in Argentina (“AmCham Argentina”), JE-297, JE-719/EU-405 and JE-726/EU-412, Argentina summarily concludes that they “contain the same types of flaws” as the U.S. Chamber of Commerce and Government of Japan surveys.⁶³ For the reasons discussed, the so-called “flaws” cited by Argentina do not impact the probative value of the experience of importers responding to the surveys. Rather, the AmCham Argentina surveys provide further evidence of the operation of the DJAI Requirement as a discretionary, non-automatic import licensing requirement used to implement the RTRRs measure. For example, the August 2012 AmCham Argentina survey found 64 percent of respondents had observed improvements in the number of

⁵⁹ Argentina’s Second Written Submission, para. 155.

⁶⁰ Argentina’s Second Written Submission, para. 156.

⁶¹ Argentina’s Second Written Submission, para. 155.

⁶² U.S. Responses to First Panel Questions, para. 51.

⁶³ Argentina’s Second Written Submission, note 129.

DJAI applications achieving the “*salida*” status, but that 44 percent had also reported presenting Argentine government officials with a “compensation plan” which had been approved.⁶⁴ This demonstrates that Argentine officials were demanding compliance with the RTRRs measure as a prior condition for importation.

35. The surveys are consistent with the complete body of evidence presented by the complainants, and demonstrate that the survey respondents’ imports to Argentina were restricted. They are therefore probative of the complainants’ claims with respect to both the DJAI Requirement and the RTRRs measure.

127. (European Union, United States, Japan, Argentina) Please provide your views on the responses received from the WCO Secretariat on 2 December 2013, in respect of the consultation made by the Panel to clarify certain features of the WCO SAFE Framework.

36. The WCO Secretariat’s letter helps to confirm that the DJAI Requirement does not specifically implement the SAFE Framework, nor is it in accordance with that Framework. The WCO Secretariat has stated that the SAFE Framework “focuses on the security risk related to terrorism;” “aims to facilitate – as much as possible – legitimate trade;” “contains very specific time limits for the submission of advance cargo data to Customs;” and sets out “data elements strictly limited to the maximum that should be required” for those purposes.⁶⁵

37. In contrast, the DJAI Requirement meets none of these standards. It does not focus on risks of terrorism; it does not facilitate, but rather impedes, trade; its information submission requirements and timelines exceed the maximums established in SAFE; and “none” of the purported reasons for agency participation are “covered by the SAFE Framework.”⁶⁶

38. The WCO Secretariat’s letter thus provides further support for finding that the DJAI procedure is used in ways very different from SAFE. Indeed, as Argentine officials and courts have described, the DJAI is used for “import substitution”⁶⁷ and as “a ban – albeit a temporary one – on imports.”⁶⁸

39. These official statements have particular resonance when one considers that Argentina’s existing customs procedures – not the DJAI Requirement – provide for the submission of information after importation that determines whether and how imported goods will be inspected and that determines their disposition for customs purposes.⁶⁹

⁶⁴ “COMEX – Situación del Comercio Exterior”, AmCham, August 2012 (JE-726/EU-412).

⁶⁵ WCO Responses on the Interpretation of the SAFE Framework, pp. 2 - 7 (Dec. 2, 2013).

⁶⁶ WCO Responses on the Interpretation of the SAFE Framework, pp. 2 - 7 (Dec. 2, 2013); U.S. Second Opening Statement, para. 47.

⁶⁷ Ministry of Industry Press Release June 19, 2012 (JE-44).

⁶⁸ See *Yudigar S.A.* (JE-59); see also *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Fity* (JE-302).

⁶⁹ See U.S. Second Written Submission, para. 86.