

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

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

February 4, 2014

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<i>EC – Biotech</i>	Panel Report, <i>European Communities – Measures Affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006
<i>EC – IT Products</i>	Panel Reports, <i>European Communities and its member States – Tariff Treatment of Certain Information Technology Products</i> , WT/DS375/R / WT/DS376/R / WT/DS377/R, adopted 21 September 2010
<i>EC – Large Civil Aircraft (AB)</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011
<i>EC – Large Civil Aircraft (Panel)</i>	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/R, adopted 1 June 2011, as modified by Appellate Body Report, WT/DS316/AB/R
<i>EC – Sardines (AB)</i>	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> , WT/DS231/AB/R, adopted 23 October 2002
<i>India – Autos (Panel)</i>	Panel Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002
<i>Thailand – Cigarettes (Panel)</i>	Panel Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , WT/DS371/R, adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R
<i>US – Oil Country Tubular Goods Sunset Reviews (AB)</i>	Appellate Body Report, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i> , WT/DS268/AB/R, adopted 17 December 2004
<i>US – Wool Shirts and Blouses (AB)</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997, and Corr.1
<i>US – Zeroing (EC) (AB)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1

Introduction

1. In this submission, the United States comments on Argentina's January 14, 2014, responses to the Panel's December 19, 2013, second set of questions. The lack of a comment on any particular response by Argentina does not imply that the United States endorses Argentina's response. Rather than repeat prior U.S. positions on the issues in this dispute, the U.S. comments focus on additional points that the Panel may find useful.

55. (Argentina) Can Argentina confirm whether the Secretary of Domestic Trade received a 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). If so, can Argentina confirm whether this proposal was approved by the Secretary of Domestic Trade. Can Argentina also confirm whether the pork products and inputs referred to in paragraph 5 of this proposal were eventually released.

2. In its response, Argentina acknowledges that that its Secretary of Domestic Trade ("SCI") received the proposal submitted jointly by four pork producer associations;¹ this acknowledgement supports the conclusion that the Secretary met with the associations regarding the pork producers' RTRR commitments. In fact, the introduction to the proposal discusses this meeting, while other sections of the proposal outline the pork producers' agreement to restrict the volume of importation of their products.² The proposal also memorializes the understanding between the parties that the pork producers are required to submit information regarding their import-export commitments and price lists as part of their DJAI application approval process,³ demonstrating the direct linkage between this RTRRs commitment and the granting of DJAI approvals.

57. (Argentina) With respect to the loans of the Programa Fondo del Bicentenario (Bicentenario Program, referred to in exhibits JE-166, JE-197, JE-201, JE-217, JE-251, JE-252, JE-263, JE-367/EU-53, JE-368/EU-54, JE-397/EU-83, JE-424/EU-110, JE-517/EU-203, JE-528/EU-214, JE-538/EU-224, JE-539/EU-225, JE-540/EU-226, JE-573/EU-259, JE-581/EU-267, JE-620/EU-306, JE-631/EU-317, JE-636/EU-322, JE-637/EU-323, JE-638/EU-324, JE-640/EU-326, JE-641/EU-327, JE-685/EU-371), can Argentina explain: (a) What is/are the objective(s) pursued by this program of loans; and, (b) Which are the criteria that economic operators have to fulfil in order to benefit from these loans.

58. (Argentina) With respect to Bonos de Bienes de Capital K (K Capital Goods Bonds, referred to in exhibit JE-794/EU-444), can Argentina explain: (a) What is/are the objective(s)

¹ Argentina's responses to second set of Panel questions ("Argentina's Responses to Second Panel Questions"), para. 1.

² Commitments proposed by the Unión de la Industria Cárnica Argentina ("UNICA"); the Cámara Argentina de la Industria de Chacinados y Afines ("CAICHA"); Asociación Argentina de Productores de Porcinos ("AAPP"); and the Consejo Argentino de Productores ("CAP") (JE-441/EU-127).

³ See Commitments proposed by the Unión de la Industria Cárnica Argentina ("UNICA"); the Cámara Argentina de la Industria de Chacinados y Afines ("CAICHA"); Asociación Argentina de Productores de Porcinos ("AAPP"); and the Consejo Argentino de Productores ("CAP"), para. 8 (JE-441/EU-127).

pursued by this program of bonds; and, (b) Which are the criteria that economic operators have to fulfil in order to benefit from these bonds.

3. The United States will comment on Argentina's responses to Panel Questions 57 and 58 together.

4. Panel Questions 57 and 58 address certain Argentine programs – not at issue in this dispute – that apparently are intended to promote economic goals similar to those promoted by the measures at issue in this dispute – the DJAI Requirement and the RTRRs measure. The United States takes no view on Argentina's description of these other programs. The United States would note, however, that the existence of other programs intended to achieve import substitution and other economic goals in no way disproves that Argentina has simultaneously imposed the DJAI Requirement and the RTRRs measure to further the same or similar economic policy goals. These programs reinforce each other, and are not mutually exclusive. As Argentina has described, it employs both the “carrot” (incentives programs) and “stick” (the RTRRs measure) approaches to administering trade.⁴

59. (Argentina) In an official press release dated 22 August 2013 (exhibit JE-770), the Argentine Minister of Industry refers to mesas de integración (working groups) that aim to develop strategic sectors and strengthen and expand domestic suppliers. The Minister mentioned a non-exhaustive list of sectors in which domestic producers are being encouraged to substitute imports: agricultural machinery, mining, oil and gas, automotive sector, motorcycles, electronics and house appliances. The evidence on the record also contains references to different "working groups" (Mesas), namely: (i) "Mesas de Trabajo" (exhibits , JE-218, JE-219, JE-782/EU-432 and JE-786/EU-436); (ii) "Mesas de Integración Nacional" or "Mesa Nacional de Integración" (exhibits JE-202, JE-203, JE-204, JE-205, JE-211, JE-212, JE-279 and JE-569/EU-255); and, (iii) "Mesa de Desarrollo de Proveedores" (exhibits JE-521/EU-207 and JE-522/EU-208). Can Argentina indicate: (a) the sectors for which these "mesas" (working groups) have been established; (b) the dates of establishment for each sector and whether there is any specific time-frame for the operation of these "mesas"; (c) whether these "mesas" are established within the framework of the Plan Estratégico Industrial 2020 (PEI 2020); (d) whether these "mesas" are the same policy instrument and, if not, please explain the differences between them; and, (e) who participates in each of these "mesas" and in what capacity.

5. The United States notes that the evidence indicates that Argentine officials have used the *mesas* to communicate the necessity of complying with the RTRRs measure and to monitor

⁴ Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: el que más rápido integre piezas nacionales es el que más va a ganar (March 22, 2012), available at <http://www.industria.gob.ar/giorgi-el-que-mas-rapido-integre-piezas-nacionales-es-el-que-mas-va-a-ganar/> (Arg.) (JE-203) (“Giorgi ratified ‘the State policy of administering trade through the carrot and the stick, because the companies that take advantage of internal demand have to create Argentine employment.’”). 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) (“We have closed a deal for Pirelli to export that 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. . . . I believe that we have to understand that the collaboration and help must be mutual. You help me and I help you, and so, between the two of us, we move things forward.”).

compliance with respect to certain targeted sectors and supply chains. For example, as explained in an official press release of the Argentine government regarding the agricultural machinery sector:

[Minister of Industry Giorgi] reiterated her demand to the agricultural machinery sector to reverse the 450 million dollar deficit registered in 2010. Giorgi spearheaded the 'Mesa' of National Machinery Integration where the [providers of agricultural parts] met to comply with the objective to reach a goal of local integration higher than 50%.⁵

Thus, regardless of what other activities the *mesas* undertake, they also have served as a forum to assist Argentina in implementing the RTRRs measure with respect to particular sectors.

60. (Argentina) Exhibit JE-787/EU-437 refers to two ways whereby the Secretariat of Domestic Trade (SCI) seeks to facilitate the management of a large number of DJAIs: (i) self-limitation agreements ("acuerdos de autolimitación") between private operators; and, (ii) a centralized pre-assessment of the DJAIs carried out by a business chamber that would decide which DJAIs meet the requirements necessary to be sent to the Secretariat of Domestic Trade. In particular, exhibit JE-787/EU-437 refers to the Cámara Argentina de Máquinas de Oficina, Comerciales y Afines -CAMOCA- as the entity applying this first filter on the suitability of the DJAIs in that sector. Can Argentina explain: (a) how these two options work in practice; (b) what is the role of the Argentine Government in the negotiation and signature of self-limitation agreements; and, (c) what is the role of the Argentine Government with respect to the criteria used by CAMOCA, and other business chambers, to decide which DJAIs can further proceed in the assessment process.

6. Argentina does not address most of the issues raised in Panel Question 60. Rather, Argentina relies on its prior arguments that the numerous press reports submitted by co-complainants in this dispute are of no probative value, and argues that that its officials do not sign self-limitation agreements and that private business chambers cannot intervene in the DJAI system.⁶ Notably, Argentina does not deny that the two options described by the press report at Exhibit JE-787/EU-437 are used. That is, Argentina does not deny that the Argentine government does *negotiate* self-limitation agreements; or that private chambers liaise between Argentine officials and member companies in order to facilitate at least some approvals through the DJAI system.

⁵ Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: el que más rápido integre piezas nacionales es el que más va a ganar (March 22, 2012), available at <http://www.industria.gob.ar/giorgi-el-que-mas-rapido-integre-piezas-nacionales-es-el-que-mas-va-a-ganar/> (Arg.) (JE-203). See also Terminales de maquinaria agrícola que producen en la Argentina incorporaran ejes y transmisiones fabricados en el país", Ministerio de Industria, 27 February 2013, available at <http://www.industria.gob.ar/terminales-de-maquinaria-agricola-que-producen-en-la-argentina-incorporaran-ejes-y-transmisiones-fabricados-en-el-pais/> (JE-543/EU-229).

⁶ Argentina's Responses to Second Panel Questions, paras. 13-14.

7. Contrary to Argentina’s assertion that the cited press report is of “no probative value,”⁷ this report, and others like it, are consistent with the other record evidence and serve as part of the whole body of evidence showing that Argentina uses the DJAI Requirement to enforce the RTRRs measure and restrict the importation of goods. This particular press report includes quotations of identified officials of the business chambers regarding the operation of the DJAI system together with the RTRRs measure. Argentina has provided no basis for the Panel to conclude that this evidence should not be considered along with all of complainants’ other evidence concerning the DJAI system and the RTRRs. Indeed, Argentina has submitted no evidence that the quotes or other facts in this or other articles are false, nor has Argentina provided a reason that the publication at issue would fabricate them. These statements are made all the more credible by the absence of any denial by Argentina of the basic facts reported.

8. For these reasons, Exhibit JE-787/EU-437 supports the conclusion that the DJAI system is used to restrict imports and to enforce the RTRRs measure. The article describes efforts by business chambers to use collective information to streamline approval by SCI of self-limitation agreements for their members with the goal of increasing predictability in obtaining DJAI approvals. As the article states:

“The agreements [of self-limitation] permit a fine-tuned administration of trade with respect to detection of equilibrium between national production, employment and imports,” indicated to this newspaper [Pagina12] Gerardo Venutolo, head of Adimra

...

“We support the agreements, since everything that helps minimize arbitrariness and increase the predictability in the agility of the DJAI is welcome,” stated Miguel Ponce, from the Chamber of Importers (CIRA).

...

Moreno approved Carlos Simone, the head of the Argentine Chain of Machinery for Offices, Businesses, and Related Items (Abbreviated CAMOCA), to concentrate all the DJIA orders from [CAMOCA-member] companies and implement a preliminary filter of “non-viable” orders. Various CAMOCA-member companies have an import substitution project for LED lamps with which they seek to equilibrate their trade balance and so that they can be able to import.

Simone’s judgment is that “parts, components, inputs, and products not manufactured” can be imported “although without profligacy, with responsibility.” Products of any type that have replacements in the local industry will not run [into] the same luck. The intention is that Moreno decides based on “more orderly information.” Simone carried out yesterday his first submission of 29 DJAIs after having rejected eleven submissions. For the director [Simone], this plan can improve the management of imports for small and medium sized enterprises. CAMOCA groups together the electronic enterprises like PC Arts,

⁷ Argentina’s Responses to Second Panel Questions, para. 13.

Bangho, Exo, and Novatech, and also makers of toner cartridges and packaging products.⁸

9. Further, the article contains confirmation by Secretary Moreno regarding the operation of the DJAI system in conjunction with the RTRRs measure:

Moreno clarified that “those local producers that have not presented their price lists to the Secretary of Interior Commerce will be able to participate in the negotiations, but will not sign the written record. The referenced importers who are not present will not obtain DJAIs, nor will those without approved price lists and positive balance of foreign exchange.”⁹

10. This evidence, together with the rest of the evidence submitted by the United States and co-complainants, demonstrates that Argentina enforces compliance with the RTRRs measure through the DJAI system.

61. (Argentina) According to some of the evidence on the record (exhibits JE-403/EU-89, JE-477/EU-163, JE-478/EU-164, JE-483/EU-169, JE-484/EU-170, JE-485/EU-171, JE-486/EU-172 and JE-487/EU-173), in 2011 economic operators in Argentina in the automotive and motorcycle sectors were required to reduce their imports by 20% and 40%, respectively. Can Argentina confirm whether this reduction referred to the volume of imports or to the value of the imports.

11. Contrary to Argentina's characterization, Minister Giorgi issued the government's first request to auto manufacturers in Argentina to reduce auto parts imports by 20 percent, if the company had no manufacturing plant in a MERCOSUR country, and to develop import reduction plans in 2010.¹⁰ By early February 2011, the auto manufacturers apparently had not produced such plans, and in response to this inaction, a government official stated: “So far they have not presented the plans we requested and that is why now they are banned from entering high cylinder premium vehicles” and “the 20% cut in imports informed to companies in December could be elevated further.”¹¹ With respect to motorcycles, Exhibit JE-483/EU-169 quotes the representative of Harley Davidson Argentina, Silvina Ortiz de Rozas, as stating that Argentina allowed Harley to import only 60 percent of what it normally imports.¹² “This quota means that brands in a demanding market cannot fulfill their orders,” Mr. de Rozas stated,

⁸ “Para descomprimir los precios, Moreno flexibiliza el 'cepo' para alimentos, juguetes y textiles”, iprofesional.com, 2 August 2012, available at <http://www.iprofesional.com/notas/141844-Para-descomprimir-los-precios-Moreno-flexibiliza-el-cepo-para-alimentos-juguetes-y-textiles> (JE-473/EU-159).

⁹ “Para descomprimir los precios, Moreno flexibiliza el 'cepo' para alimentos, juguetes y textiles”, iprofesional.com, 2 August 2012, available at <http://www.iprofesional.com/notas/141844-Para-descomprimir-los-precios-Moreno-flexibiliza-el-cepo-para-alimentos-juguetes-y-textiles> (JE-473/EU-159).

¹⁰ *MercoPress February 7, 2011* (JE-173).

¹¹ *MercoPress February 7, 2011* (JE-173).

¹² David Cayón, “Por trabas para importer sacan de la venta hasta 2012 las motos Harley Davidson”, 21 September 2011 (JE-483/EU-169).

adding that Harley had to cancel sales for 155 units.¹³ Multiple exhibits, including those cited in the Panel’s question, confirm the existence of the requirement.

12. The statistics cited by Argentina do not disprove the adoption of the RTRRs in the autos sector. First, it is unclear what tariff lines Argentina employed for its calculations: Argentina notes, without any further details, that “passenger vehicles, trucks, tractors, seeders, planters, transplanter and its parts” are included in the cited statistics.¹⁴ Second, the United States has shown that imports of motor vehicles from the U.S. were significantly restricted in 2011. In particular, the United States in Exhibit US-3 provided information related to the motor vehicle tariff lines which were subject to a *Certificado de Importación* (“CI”) Requirement in 2011, when the demands were being made. An evaluation of those tariff lines reveals that in the 12 month period following the imposition of the motor vehicle CI, imports from the United States dropped by 31 percent, and imports from the world dropped 43 percent.¹⁵

62. (Argentina) In its questions Nos. 13 and 14, the Panel asked Argentina to comment on the documents provided by the complainants as exhibits JE-306, JE-307 and JE-328/EU-14. In response, Argentina expressed its opinion on the evidentiary value of those documents, but did not address the substance of the information contained therein. Can Argentina provide its views on the information contained in the declarations submitted as exhibits JE-306, JE-307 and JE-328/EU-14.

13. Argentina’s only comment on the probative value of the documents provided as Exhibits JE-306, JE-307 and JE-328/EU-14 is that they do not “demonstrate in any way the existence of an overarching RTRR measure as the one alleged by complainants.”¹⁶ To the contrary, these exhibits are highly probative of the U.S. claims.

14. As a threshold matter, to the extent that Argentina argues that the United States must demonstrate some “overarching measure,” that is not the case. It is the burden of the United States to demonstrate the existence of the measure that *the United States* alleges to exist, not the one that Argentina would prefer for it to challenge. For that reason, to the extent that Argentina describes features of a measure that the United States and co-complainants do not allege to exist, one can disregard its argumentation.

15. Further, the two affidavits and the document prepared by the notary public are probative of the existence of the RTRRs measure, as well as the restrictive nature of the DJAI Requirement. As explained *infra* in comments to Argentina’s responses to Panel Questions 63-92, complainants have submitted evidence of over a hundred individual instances of imposition of the RTRRs measure. The evidence at Exhibits JE-306, JE-307 and JE-328/EU-14 form just a subset of this evidence; together, these many instances substantiate Argentina’s adoption and enforcement of the RTRRs measure.

¹³ David Cayón, “Por trabas para importar sacan de la venta hasta 2012 las motos Harley Davidson”, 21 September 2011 (JE-483/EU-169).

¹⁴ Similarly, it is unclear what tariff lines and products are included in Argentina’s motorcycle import statistics. Without further information, the United States will not comment on the data.

¹⁵ Motor Vehicles Analysis (US-3).

¹⁶ Argentina’s Responses to Second Panel Questions, para. 19.

16. In addition, Exhibits JE-306 and JE-307 give a more detailed picture of the experience of traders with the RTRRs measure and DJAI Requirement by explaining the U.S. companies' interactions with SCI. In particular, both companies had DJAI applications which SCI placed in the "observed" status, and officials of both companies were both contacted by SCI by telephone and told that they were required to undertake RTRRs. After notifying the government of their plans, both companies then had many of their DJAI applications released to the "salida" status.¹⁷

63. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and General Motors (referred to in exhibits JE-4, JE-82, JE-86, JE-87, JE-90, JE-91, JE-92, JE-95, JE-236, JE-244 and JE-400/EU-86).*

64. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and AGCO (referred to in exhibit JE-577/EU-263).*

65. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Renault Trucks Argentina (referred to in exhibits JE-103 and JE-590/EU-276).*

66. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Claas (referred to in exhibits JE-209 and JE-442/EU-128).*

67. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Mercedes Benz (referred to in exhibits JE-4, JE-5, JE-82, JE-84, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92, JE-95 and JE-613/EU-299).*

68. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Volkswagen (referred to in exhibits JE-4, JE-5, JE-80, JE-81, JE-82, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92 and JE-95).*

69. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Alfa Romeo (referred to in exhibits JE-4, JE-82, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92 and JE-95).*

70. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Porsche (referred to in exhibits JE-4, JE-5, JE-81, JE-82, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92 and JE-95).*

71. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Peugeot Citroën (referred to in exhibits JE-4, JE-82, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92, JE-95 and JE-245).*

72. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Fiat (referred to in exhibits JE-82, JE-86, JE-87, JE-88, JE-90, JE-91, JE-92, JE-95 and JE-201).*

¹⁷ See generally VP of Company X Affidavit (JE-306); VP of Company Y Affidavit (JE-307).

73. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Hyundai (referred to in exhibits JE-86, JE-87, JE-90, JE-91 and JE-92).*
74. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Ford (referred to in exhibits JE-86, JE-87, JE-90, JE-91, JE-92 and JE-95).*
75. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and KIA (referred to in exhibits JE-87, JE-90 and JE-92).*
76. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Nissan (referred to in exhibits JE-89, JE-90, JE-91 and JE-92).*
77. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Renault (referred to in exhibits JE-90, JE-91 and JE-92).*
78. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Chery (referred to in exhibits JE-82, JE-86, JE-87, JE-90, JE-91, JE-92 and JE-95).*
79. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Alfacar (Mitsubishi) (referred to in exhibits JE-90, JE-91 and JE-92).*
80. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Ditecar (Volvo, Jaguar and Land Rover) (referred to in exhibits JE-90, JE-91 and JE-92).*
81. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Volvo Trucks (referred to in exhibit JE-209).*
82. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Tatsa (referred to in exhibit JE-209).*
83. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Indumotora Argentina (Subaru) (referred to in exhibits JE-91 and JE-92).*
84. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and BMW (referred to in exhibit JE-92).*
85. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Pirelli (referred to in exhibit JE-424/EU-110).*
86. *(Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and Thermodyne Vial (referred to in exhibit JE-102).*

87. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and the chamber to which supermarket VEA belongs (referred to in exhibit JE-499/EU-185).

88. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and supermarkets (referred to in exhibit JE-501/EU-187).

89. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and the Cámara Argentina de Publicaciones (referred to in exhibit JE-129).

90. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government and the Cámara Argentina del Libro (referred to in exhibit JE-133).

91. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government, the Instituto Nacional de Tecnología Industrial (National Institute of Industrial Technology, INTI), and representatives of the automobile and autoparts industry (referred to in exhibit JE-530/EU-216).

92. (Argentina) Can Argentina confirm the existence of an agreement signed between the Argentine Government (Ministry of Industry), the Instituto Nacional de Tecnología Industrial (National Institute of Industrial Technology, INTI), the Asociación de Fábricas Argentinas Terminales de Electrónica (Afarte) and the Cámara Argentina de Industrias Electrónicas, Electromecánicas y Luminotécnicas (Cadieel) (referred to in exhibit JE-564/EU-250).

17. In its combined response to Panel Questions 63-92, Argentina does not deny the existence of agreements whereby companies in the automobile, truck, tire, books and other publications, agricultural machinery, supermarket, and electronics sectors promised to undertake specific RTRR commitments. Rather, Argentina provides a cursory response indicating that these agreements do not support the complainants' claims. Contrary to Argentina's assertions, these 30 individual instances of application of the RTRRs measure are probative of the existence of the RTRRs measure.

18. The Argentine government press releases describing individual agreements, together with the rest of the evidence assembled by complainants, account for well over one hundred demands on individual companies, groups of companies, or sectors. Argentina's contention – that all of these actions are unrelated, one-off instances – is inconsistent with the extensive body of evidence submitted by complainants, which also includes statements by Argentine officials regarding the existence of the RTRRs measure. In short, the evidence on the record in this dispute shows that Argentina imposes the RTRRs measure on importers, as described by the United States.

19. In addition to the agreements cited in the Panel's question, this evidence includes announcements by Argentine government sources of the eight commitments outlined in Panel Question 97 related to white goods, footwear and apparel, consumer goods, tires, and agricultural machinery. Additional evidence of instances of the imposition of the RTRRs measure includes those demands or commitments discussed in the U.S. first written submission with respect to six

motorcycle companies,¹⁸ a group of audiovisual companies including at least two U.S. companies,¹⁹ agricultural companies,²⁰ four individual electronics companies,²¹ six additional clothing companies,²² a retailer, a toy company, a pharmaceutical association and pharmaceutical companies, an auto software and services company,²³ four pork producer associations,²⁴ at least two mining companies,²⁵ and seven alcoholic drink brands.²⁶ In total this evidence accounts for at least 71 instances of RTRR demands on individual companies, groups of companies, or sectors. Further, if each demand or commitment extracted from each company were counted on an individual basis, the number would increase significantly.

20. Over 70 additional instances of Argentina's imposition of demands or commitments are described in the non-public sources submitted by the complainants. These sources include affidavits and accompanying documents of two U.S. companies;²⁷ the document produced by the notary public regarding EU exporters,²⁸ which describes eight agreements and commitments; the U.S. Chamber of Commerce survey, which reports that Argentine authorities had imposed demands or conditions on at least 34 respondents in connection with approvals of import authorizations under the DJAI system;²⁹ the Government of Japan survey which describes nine respondents which were required to comply with the RTRRs measure in conjunction with the DJAI Requirement;³⁰ and the AmCham surveys, one of which reports that all but a "handful" of 32 responding companies had reached an agreement with SCI including an export compensation plan.³¹

21. This evidence relates to those commitments that the complainants have been able to obtain because they have been publicly reported by Argentina, in the press, in companies' earnings calls, in surveys, or they have been reported to the EU, Japan, or the United States directly. Given the lack of transparency of Argentina's measures, there were surely many other, unreported instances of application of the RTRRs measure. In sum, the evidence of individual applications, together with statements by Argentine officials describing this measure, demonstrates that the agreements are not unrelated, one-off instances, but rather that Argentina imposes the RTRRs measure on importers as described by the United States.

¹⁸ U.S. First Written Submission, para. 65.

¹⁹ U.S. First Written Submission, paras. 71-72; *Ámbito Financiero* November 24, 2011 (JE-136).

²⁰ U.S. First Written Submission, paras. 75-76.

²¹ U.S. First Written Submission, paras. 78-80.

²² U.S. First Written Submission, paras. 81-82, 85.

²³ U.S. First Written Submission, paras. 83, 98.

²⁴ U.S. First Written Submission, para. 85.

²⁵ U.S. First Written Submission, para. 92.

²⁶ U.S. First Written Submission, para. 97.

²⁷ *VP of Company X Affidavit* (JE-306); *Company X DJAI* (JE-303); *Company X Letter* (JE-304); *Company X E-mail* (JE-305); *VP of Company Y Affidavit* (JE-307).

²⁸ Document produced by Mr. Richard Rodríguez, Notary Public in Geneva, dated 13 June 2013 (JE-328/EU-14).

²⁹ *U.S. Chamber of Commerce Report* at 4-5 (JE-56).

³⁰ *Japan Industry Survey* at 2 (JE-312).

³¹ DJAI - Declaración Jurada Anticipada de Importación", AmCham, p. 4, April 2012 (JE-720/EU-406). *See also* "COMEX – Situación del Comercio Exterior", AmCham, August 2012 (JE-726/EU-412).

93. (Argentina) (Argentina) In its question No. 16, the Panel asked Argentina to provide a copy of the agreements listed in Annex 1 to the Panel's list of questions dated 30 September 2013. If Argentina confirms the existence of one or more of the agreements identified in questions Nos. 63 to 92 above, can Argentina provide a copy of such agreements.

22. Argentina is incorrect in alleging that the United States has access to companies' agreements with SCI "by virtue of the fact that they relate to economic operators who are [U.S.] nationals."³² The U.S. government does not have the ability to compel private companies to provide these documents for purposes of WTO dispute settlement. As the United States has previously explained,³³ the companies are reluctant to provide documents in their possession because of the discretionary nature of Argentina's system. In particular, private actors are concerned that their submission of information in this dispute may result in negative, retaliatory action with respect to pending or future import licenses. As a result, Argentina is the sole party in possession of the agreements of U.S. exporters.

23. The Panel, in its communication of October 22, 2013, noted Argentina's failure to provide copies of the agreements requested in Panel Question 16 and reminded the parties of the requirement for their collaboration pursuant to Article 13 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") as well as of its authority to draw appropriate inferences from a Member's refusal to provide information. In its communication of November 6, 2013, the Panel reiterated its request to Argentina of October 22, 2013, and again reminded Argentina of the Panel's authority to draw appropriate inferences.³⁴

24. As the Panel itself has noted, Argentina's refusal to respond to the Panel's requests may result in the Panel drawing the inference that these agreements would confirm the existence of the RTRRs measure and thus further support the conclusion from other evidence submitted that the RTRRs measure as described by the United States does, in fact, exist.

95. (Argentina) In its opening oral statement (paragraphs 5 and 8), Argentina has noted that the government has set objectives of "trade balancing", "import substitution", and "increasing exports". Can Argentina explain what are the policy instruments that the Argentine Government uses to pursue these objectives.

25. In its response to Panel Question 95, Argentina discusses a number of other policy instruments that, according to Argentina, it has adopted to achieve economic policy goals – such as import substitution – that are similar to the goals that underlie the DJAI Requirement and the RTRRs measure. Those other policy instruments, however, are not at issue in this dispute. Further, the United States notes that Argentina does not claim that the instruments it cites are the exclusive measures it uses to pursue these objectives. For example, Argentina states that: "In

³² Argentina's Responses to Second Panel Questions, para. 21.

³³ U.S. Second Written Submission, Annex, para. 16.

³⁴ To the extent that the Panel's request of November 6, 2013, was made pursuant to its authority under Article 13 of the DSU, the United States notes that Argentina has provided no explanation for its refusal to produce these agreements. The United States recalls that Article 13.1 of the DSU urges that a "Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate."

addition, the Argentine Government uses specific tools *such as . . .*”³⁵ Regardless of what other means Argentina uses to pursue the objectives of trade balancing, import substitution and increasing exports, the evidence submitted by the complainants in this dispute demonstrates that Argentina employs the DJAI Requirement and RTRRs measure for this purpose.

26. For example Argentine authorities have variously described the RTRRs measure as requiring companies to maintain a “trade balance,” whereby “imports must be compensated for by exports,” or by an “irrevocable capital contribution,”³⁶ and explained that the approval of import applications involves the “consider[ation of] the balance of foreign exchange, as well as the pace of the company’s prices.”³⁷ Similarly, an official Argentine government press statement issued shortly after the institution of the DJAI Requirement stated that the DJAI regime would “protect Argentine industry and facilitate the participation of monitoring officials from Argentine chambers of industry – who have been working with sensitive products,” and will lead to “productive growth with social inclusion and sustained development.”³⁸

27. This evidence, together with all the rest of the evidence complainants have submitted, demonstrates that the DJAI Requirement and RTRRs measure serve as restrictions on the importation of goods and that they are aimed to protect domestic industry and foster import substitution and export promotion.

96. (Argentina) In its opening oral statement (paragraph 24), Argentina has stated that “[e]ven if the alleged ‘overarching measure’ were expressly limited to the five ‘requirements’ identified in the complainants’ panel requests, the complainants would still have to demonstrate that these constituent unwritten ‘requirements’ actually exist in order to demonstrate the content of the ‘overarching RTRR measure’ that they allegedly comprise.” Can Argentina explain what is, in its view, the type of evidence that would be required to demonstrate the existence, nature and content of an unwritten measure of this type.

28. Rather than answer the question that the Panel asked in Question 96 – what type of evidence would be required, in Argentina’s view, to demonstrate the existence of the RTRRs measure – Argentina argues that a specific legal test must be met to show the existence of an unwritten measure. The United States has two basic responses to Argentina’s argument. First, Argentina has not established that any single legal test or framework is necessarily appropriate for examining the existence of an unwritten measure. Second, Argentina’s proposed legal test does not seem inconsistent – at least as applied in the present dispute – from the evidence and

³⁵ Argentina’s Responses to Second Panel Questions, para. 26 (emphasis added).

³⁶ Ministry of Industry Press Release, March 25, 2011 (JE-1).

³⁷ Buenos Aires Económico January 31, 2012 (JE-3).

³⁸ Ministry of Economía Press Release, March 27, 2012 (JE-284) (emphasis added). See also Press Release, Ministerio de Economía, La AFIP creó nuevos procedimientos de control de los destinos de importaciones (March 29, 2012), available at <http://www.prensa.argentina.ar/2012/03/29/29376-la-afip-creo-nuevos-procedimientos-de-control-de-los-destinos-de-importaciones.php> (Arg.) (JE-285) (stating “[t]his measure seeks to create a more secure and transparent trade system that **protects Argentine industry** and promotes productive growth with social inclusion and sustained employment in the productive sector”) (emphasis added).

arguments set out by United States, and indeed the United States has shown the existence of an unwritten RTRRs measure under the approach advocated by Argentina.³⁹

29. Argentina argues that complainants must show the existence of three elements that were present with respect to the unwritten measure at issue in *US – Zeroing (EC)*.⁴⁰ In *EC – Large Civil Aircraft*, however, the Appellate Body explicitly rejected the application of the factors used in *US – Zeroing (EC)* to all unwritten measures. Specifically, in that dispute, the Appellate Body stated that it did not “consider that a complainant would necessarily be required to demonstrate the existence of a rule or norm of general and prospective application in order to show that such a measure exists.”⁴¹ Indeed, the factors to be examined to establish the existence of an unwritten measure necessarily must be tied to the specific content of the unwritten measure at issue. For example, a dispute may involve a challenge to an unwritten measure that applied only to a single product, shipment, or exporter. In that case, it would make so no sense to examine whether the unwritten measure was of “general application.”

30. As the United States has explained,⁴² the framework of *US – Zeroing (EC)* does not apply to this case. As with all facts asserted in a dispute, if a party “adduces evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption.”⁴³ The evidentiary elements articulated by the Appellate Body in *US – Zeroing (EC)* do not apply to the RTRRs measure because, unlike the zeroing disputes, this dispute does not concern a “norm or rule” that allegedly governs the administrative application of another measure.⁴⁴ Rather, the RTRRs measure is an independent measure: namely, a decision by Argentina to impose RTRRs as a prior condition for importation.

31. A better analogy than the administrative practice at issue in *US – Zeroing (EC)* is presented by the measure at issue in *EC – Biotech*.⁴⁵ The measure alleged by the complainants in that dispute was the EC’s moratorium on the approval of biotech products, not a “norm or rule” of administrative application.⁴⁶ The panel noted that the relevant question was “whether the evidence supports the Complaining Parties’ assertion.”⁴⁷ The two disputes differ in many respects, but some of the evidence in this dispute is qualitatively similar to that which was provided in *EC – Biotech*, although a much greater volume is presented here. The *EC – Biotech*

³⁹ Argentina is also incorrect in arguing that the United States must demonstrate the existence of some “overarching” feature the RTRRs measure. Argentina has re-characterized the U.S. claim as relating to disparate measures connected by an overarching measure. Argentina’s Second Written Submission, para. 75. The United States has not described the measure this way and neither have any of the other complainants. As noted above, it is the burden of complainants to demonstrate the existence of the measure that *they* allege to exist, not the one that Argentina would prefer for them to challenge. For that reason, to the extent that Argentina describes features of a measure that complainants do not allege, one can disregard its argumentation.

⁴⁰ Argentina’s Second Response to Panel Questions, paras. 37, 40-41, 45-50.

⁴¹ *EC – Large Civil Aircraft (AB)*, para. 794.

⁴² U.S. Second Written Submission, paras. 102-109; U.S. Second Opening Statement, paras. 62-66.

⁴³ *US – Wool Shirts and Blouses (AB)*, p. 14. See also *EC – Sardines (AB)*, para. 270.

⁴⁴ See U.S. Second Written Submission, paras. 102-109; U.S. Second Opening Statement, paras. 64-66.

⁴⁵ See also U.S. Second Written Submission, paras. 106-07.

⁴⁶ *EC – Biotech*, para. 7.456.

⁴⁷ *EC – Biotech*, para. 7.459.

panel considered evidence including press releases, fact sheets and other statements of the European Commission; speeches and news reports concerning statements of Commissioners; and statements by member State officials, as well as individual applications of the moratorium.⁴⁸ The panel concluded that this evidence supported the complaining parties’ assertion that the EC applied a moratorium during the relevant time period.⁴⁹ In comparison, the complainants in this dispute have described a much greater number of instances of the application of the RTRRs measure, and provided a larger volume of evidence as to its existence, and have therefore met their burden of proof.

32. Although mainly relying on *US – Zeroing (EC)*, Argentina also argues that *EC – Biotech* supports its theory that for a measure to have “general and prospective application” it must be applied in all potential instances of application.⁵⁰ Argentina’s reliance on this dispute is misplaced, first, because the panel in that dispute did not make use of the three factors set out in *US – Zeroing (EC)*. Thus, *EC-Biotech* is not instructive regarding the “general and prospective application” factor examined in *US – Zeroing (EC)*. Second, the only reason that the unwritten measure at issue in *EC – Biotech* was found to be imposed on all relevant product applications was that this was the nature of the specific measure that the complainants alleged and proved to exist.⁵¹ Nothing in the panel’s analysis can be read to state or imply that every unwritten measure must be imposed in all eligible instances. In the present dispute, although the RTRRs measure *applies* to all imports, complainants do not allege that Argentina uses the measure to *impose* conditions on each and every import. Thus, Argentina has no basis for arguing that complainants must show that the unwritten measure at issue in this dispute has been imposed on each and every import.

33. Even if the Panel were to examine the factors used in *US – Zeroing (EC)*, notwithstanding that this dispute does not involve an allegation of a “norm or rule” of administrative practice, the evidence presented by the United States would likewise show the existence of an unwritten measure. However, before discussing how the evidence in this dispute is consistent with the three factors that were applied in *US – Zeroing (EC)*, the United States notes that Argentina is incorrect in asserting that a measure must be imposed in every potential instance of application in order for a complainant to succeed in establishing its existence or that it has “general and prospective application.”

34. Based on an examination of the pertinent evidence before the panel in *US – Zeroing (EC)*, the Appellate Body concluded that the evidence was sufficient “to identify the precise content of the zeroing methodology; that the zeroing methodology is attributable to the United States, and that it does have general and prospective application.”⁵² But contrary to Argentina’s assertions, the Appellate Body *did not* state or imply that the methodology had to actually be used in *each potential instance* of application in order for the EC to be able to establish the existence of the unwritten measure.

⁴⁸ *EC – Biotech*, paras. 7.524-7.531.

⁴⁹ *EC – Biotech*, para. 7.1272.

⁵⁰ Argentina’s Responses to Second Panel Questions, paras. 37, 40 45.

⁵¹ *EC – Biotech*, para. 7.450.

⁵² *US – Zeroing (EC) (AB)*, para. 204.

35. The United States has presented more than sufficient evidence even if the Panel were to examine each of the three elements used by the Appellate Body in *US – Zeroing (EC)*, as the United States has explained in its prior submissions.⁵³ In particular, the United States has demonstrated: (1) that the RTRRs measure is attributable to Argentina; (2) the precise content of the RTRRs measure; and (3) that the RTRRs measure has general and prospective application.

36. With respect to the first element, Argentina does not even argue that the measure is not attributable to Argentina,⁵⁴ likely because many sources, including Argentine officials and official press releases, repeatedly describe the measure as enforced by Argentina.⁵⁵

37. With respect to the second element, the evidence submitted by the United States also demonstrates the precise content of the RTRRs measure. Pursuant to the RTRRs measure, Argentine officials require, as a prior condition for importation, commitments to export a certain dollar value of goods; reduce the volume or value of imports; incorporate local content into products; make or increase investments in Argentina; and/or refrain from repatriating profits. The evidence of the content is contained in Section III.B of the U.S. First Written Submission. The United States further notes that the content of the unwritten measure cannot be identified with greater precision than that contained in the measure itself. Here, given that the unwritten measure at issue leaves Argentine officials with discretion on which commitments to require, the description of the measure necessarily cannot be stated with greater precision.

38. Finally, the RTRRs measure satisfies the third element; it has general and prospective application. To be sure, it cannot be the case that every unwritten measure must be of general application – a dispute might well involve an unwritten measure that only applies narrowly. But the RTRRs measure at issue in this dispute does in fact happen to be of general application. Also, as explained above, even under the reasoning of *US – Zeroing (EC)*, this element does not require that complainants demonstrate that the unwritten measure is in fact imposed in every potential instance of application. Complainants have satisfied this element not only through the widespread and frequent application of the measure, but also through statements by Argentine officials indicating that the RTRRs measure is both general and prospective in application.⁵⁶

39. The third element does not require that complainants demonstrate that the RTRRs measure is in fact imposed in every potential instances of application. The RTRRs measure is not limited in its application to any particular imports;⁵⁷ Argentine officials have discretion to apply the RTRRs measure to any individual import transaction.⁵⁸ Thus, it “is intended to have general application,” as Argentine officials may apply it to any imports.⁵⁹

⁵³ U.S. Second Opening Statement, paras. 69-84.

⁵⁴ See Argentina’s Second Written Submission, Section III.C.

⁵⁵ See, e.g., U.S. Second Opening Statement, para. 72 & accompanying footnotes.

⁵⁶ See, e.g., U.S. Second Opening Statement, para. 82.

⁵⁷ See Argentina’s Second Opening Statement, para. 27 (emphasis added)

⁵⁸ For that reason, the U.S. statement at paragraph 86 in its first written submission (cited repeatedly by Argentina, see, e.g., Argentina’s Second Opening Statement, para. 29) that there is evidence that the import substitution RTRR has been applied in “certain industries” is consistent with the discretionary nature of the measure. The fact that this RTRR, like all of the RTRRs, is applied selectively is consistent with the U.S. description of the measure.

⁵⁹ *US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 187.

40. To the extent that Argentina argues that the discretionary features of the RTRRs measure render it nonexistent, or the Panel incapable of examining it, Argentina fails to present any basis for its position. As the United States has explained, extensive record evidence shows that the measure exists, has been used in numerous instances, and affects multiple sectors.

41. Further, Argentina has no basis for arguing that complainants must provide evidence of its application in *each* of potentially hundreds of thousands of import transactions. Rather, the United States has met its burden of proof and provided “evidence consist[ing] of considerably more than a string of cases, or repeat action.”⁶⁰ In particular, the United States has submitted multiple statements by Argentine government officials describing the measure,⁶¹ as well as statements by company officials⁶² and trade associations⁶³ describing the measure. For example, information communicated by trade associations originating with SCI indicated that *all* DJAI submissions that SCI placed under “observation” were required to provide information regarding trade balancing.⁶⁴

42. Argentina’s reliance on the on *Thailand – Cigarettes (Philippines)* – where the panel did not find the existence of an unwritten measure – is misplaced. Here, the United States has presented significantly more evidence than that which was offered in *Thailand – Cigarettes (Philippines)*. That panel was the only one which considered three elements separately. It found, based on only eight pieces of documentary evidence, that the Philippines had met two out of the three elements. The panel’s conclusion that the Philippines had failed to demonstrate general and prospective application, was based on the fact that almost all of the evidence related only to the valuation of imports from one importer.⁶⁵ In contrast, in this dispute there are hundreds of pieces of evidence demonstrating that the measure is applied across importers and sectors.

⁶⁰ *US – Zeroing (EC) (AB)*, para. 204.

⁶¹ See, e.g., U.S. Second Opening Statement, para. 82; see also Press Release, Ministerio de Industria [Ministry of Industry], Argentina ya sustituyó importaciones por 4.000 millones de dólares en el primer semestre del Año (August 23, 2011), available at <http://www.industria.gob.ar/argentina-ya-sustituyo-importaciones-por-4-000-millones-de-dolares-en-el-primer-semestre-del-ano/> (Arg.) (“Due to the government’s requirement to substitute imports in key industrial sectors, global investment firms such as BlackBerry (cellular phones), Case New Holland (agricultural machinery), Nokia (electronics), Glenmark (laboratory), Mercedes (trucks), Yamaha (motorcycles), Honda (cars and motorcycles), Moura (batteries), Nike (clothing and footwear), Converse (footwear), Samsung (electronics), Hewlett Packard (hardware) and Suzuki (motorcycles), among others, arrived and began to produce domestically.”).

⁶² See, e.g., *AGCO Corp 2011 Q4 Earnings Call* (JE-199) (in which an AGCO official stated “the 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”); *Bloomberg November 2, 2011* (JE-96) (in which an importer stated “[w]hen the government decided that we would have to offset imports with exports, we were ready and prepared because that’s what we do . . .”); *LOJACK CO., 2012 Q3 Earnings Conference Call – Final, Fair Disclosure Wire, November 7, 2012 (“LOJACK 2012 Q3 Earnings Call”)* (JE-172) (in which a company officials stated, “at a high level what they’re requiring is people who are importing to also export a similar amount of goods in order to get, if you will, credits to allow them to import”).

⁶³ See, e.g., *CAC, Details of Procedures and Experiences* (JE-755); U.S. First Written Submission, paras. 35-37 & accompanying footnotes (describing instructions obtained from SCI regarding DJAI observations which included the requirement that applicants explain their “export program/project or “calculate its trade balance”).

⁶⁴ See U.S. First Written Submission, paras. 35-37 & accompanying footnotes.

⁶⁵ *Thailand – Cigarettes (Philippines) (Panel)*, paras. 7.124-26.

43. Likewise, *EC – Large Civil Aircraft* provides no support for Argentina’s argument. The United States notes that the Appellate Body declared the panel’s findings with respect to the LA/MSF Programme “moot and of no legal effect” having found that the alleged measure was not within the panel’s terms of reference.⁶⁶ As a result, the findings cited by Argentina, which were challenged by the United States, were never adopted by the Dispute Settlement Body. Furthermore, as noted *supra* the Appellate Body criticized the panel’s application of the three factors used in *US – Zeroing (EC)*, noting that it did not “consider that a complainant would necessarily be required to demonstrate the existence of a rule or norm of general and prospective application in order to show that such a measure exists.”⁶⁷ For these reasons, the panel report in *EC – Large Civil Aircraft* does not provide useful guidance in considering what evidence is necessary to demonstrate the existence of an unwritten measure.⁶⁸

44. The United States has provided more than enough evidence to demonstrate the existence of the RTRRs measure. Furthermore, to the extent that the Panel applies the three elements Argentina argues that complainants must meet, the evidence is also more than sufficient to satisfy that those elements, as the United States further explained in its Opening Statement at the second meeting of the Panel.⁶⁹

97. (Argentina) In its question No. 17, the Panel asked Argentina to provide information on the commitments announced by private economic operators in Argentina that were listed in Annex 2 to the Panel’s list of questions dated 30 September 2013. Can Argentina provide the information requested in question No. 17 and explain the nature and content of: (a) the commitments announced by Bridgestone (exhibit JE-267 and JE-588/EU-274); (b) the commitments announced by Honda (exhibit JE-254); (c) the commitments announced by Acindar (exhibit JE-262); (d) the commitments announced by Electrolux (exhibit JE-145); (e) the commitments announced by Nike (exhibit JE-159); (f) the commitments announced by Apache (exhibit JE-208); (g) the commitments announced by Procter & Gamble (exhibit JE-241); (h) the commitments announced by Walmart (exhibit JE-376/EU-62); and, (i) the commitments announced by Scania (exhibits JE-101 and JE-411/EU-97).

45. In its response, Argentina makes the sweeping claim that “[a]t most, this evidence demonstrates that these economic operators have pledged to increase investment and production

⁶⁶ *EC – Large Civil Aircraft (AB)*, para. 796.

⁶⁷ *EC – Large Civil Aircraft (AB)*, para. 794.

⁶⁸ In any event, the evidence in *EC – Large Civil Aircraft* differs qualitatively and quantitatively from that which has been presented by the United States in this dispute, where numerous pieces of evidence demonstrate the existence of the RTRRs measure. The *EC – Large Civil Aircraft* panel concluded that none of the individual pieces of evidence positively demonstrated the existence of the alleged unwritten LA/MSF Programme, and that some of the evidence was “clearly contradictory.” *EC – Large Civil Aircraft*, para. 7.577. For example, the panel found that the intergovernmental institutional structures did not tend to show that there was an LA/MSF Programme, *EC – Large Civil Aircraft*, paras. 7.558-62, 7.566, and that the 11 statements by the EC and member State officials lacked significant probative value because they did not directly address the LA/MSF Programme and only discussed two of the contracts. *EC – Large Civil Aircraft*, para. 7.569. The documents submitted by complainants in this dispute contain direct evidence as to the existence and operation of the RTRRs measure from governmental sources or impacted companies. Further, all evidence submitted by complainants with respect to the RTRRs measure is consistent with, and reinforces, the existence of the RTRRs measure.

⁶⁹ See U.S. Second Opening Statement, paras. 69-84.

in Argentina, consistent with Argentina's macro-economic objectives of fostering domestic production and increasing exports."⁷⁰ Argentina has no basis for this assertion. In its response, Argentina addresses only three of the nine commitments announced by private sector economic operators cited by the Panel in Question 97.⁷¹ Moreover, a review of the evidence addressed by Question 97 reveals that it discusses specific requirements imposed by Argentina on specific companies, as a prior condition for importation of goods.

46. For example, with respect to Honda, an official Argentine press release announced that Honda was making an "investment of 3 million dollars to begin producing motorcycles in the plant that the firm has in Campana, allowing it to increase planned production for 2012 by 28,000."⁷² That same press release describes the RTRRs measure as it is applied to the motorcycle sector:

The Ministry of Industry ordered a new measure for motorcycle importers, for the purpose of equalizing the trade balance of the sector. Thus, for each imported motorcycle, two should be assembled domestically, or one unit should be produced with at least half of the parts being components manufactured in Argentina. As such, the importers that do not own assembly plants in Argentina or that do not have production projects should begin to make up for their motorcycle imports with exports of motorcycle parts produced domestically.⁷³

Thus, anyone who chooses to import motorcycles is required to balance their trade in the sector.

47. With respect to Electrolux, an official Argentine press release announced that the company would begin exporting appliances from Argentina and explained that: "The firm's director stated, in addition, that Electrolux committed to comply with the requirements that the government imposes on companies, so that for every dollar imported there is another that is exported."⁷⁴

48. With respect to Scania, an Argentine official press release quotes the Ministry of Industry as stating: "as part of the Government's requirement for car manufacturers to adjust their trade balances, Scania undertook to capitalize profits of USD 56.8 million accumulated until the 2010 period and reinvest the profits generated during this year and the next."⁷⁵ The press release also states: "The Agreement includes the USD 40 million investment that the company announced to the President today and the increase in exports by local suppliers to other Scania plants, which

⁷⁰ Argentina's Responses to Second Panel Questions, para. 52.

⁷¹ Argentina's Responses to Second Panel Questions, paras. 52-57.

⁷² 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).

⁷³ 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).

⁷⁴ *President of the Republic of Argentina Press Release August 25, 2011* (JE-145).

⁷⁵ *Ministry of Industry Press Release November 21, 2011* (JE-101).

will reach USD 45 million. In this way Scania will be able to reverse its trade balance and achieve a surplus of USD 40 million in 2012.”⁷⁶

49. Other press releases do not explicitly state that the requirement is a prior condition for importation. However, they do explain that the importers are *required* to undertake the commitment, and it is clear from the context that the commitments are a prior condition for importation.

50. For example, with respect to Apache, Argentina ignores the context when it argues that Apache merely “promised” to achieve “a local integration greater than 50% for the tractor being developed in partnership with the Indian company Sonalika.”⁷⁷ This “promise” must be understood in light of a prior meeting described in an Argentine official press release which stated: “The Minister of Industry, Debora Giorgi, demanded the leading manufacturers of agricultural machinery meet the commitment of local integration of parts and components.”⁷⁸ Minister Giorgi further stated that “[t]he government is working [to ensure] that agricultural machinery is increasingly made of components manufactured in the country” . . . “initiatives like this one are the result of the requirement that companies comply with the commitments contracted in their investment plans.”⁷⁹ In that press release, Apache was described as being in the “approval process” with its plan.⁸⁰ Thus, the subsequent press release, three months later, describes the commitment to incorporate local content that was subsequently approved by Argentina.⁸¹

51. Further, this requirement must be understood in context of the similar requirements being imposed on similar companies who participated in the same meetings as Apache. These include the agricultural machinery producers that are described in the U.S. First Written Submission.⁸²

⁷⁶ Ministry of Industry Press Release November 21, 2011 (JE-101).

⁷⁷ Argentina’s Responses to Second Panel Questions, para. 56 (quoting Press Release, Ministerio de Industria [Ministry of Industry], Apache anunció a Giorgi la fabricación de un tractor integrado con más de un 50% de partes y piezas nacionales [Apache informed Giorgi about the manufacture of a tractor integrated with more than 50% of domestic parts and pieces] (June 14, 2012), available at <http://www.industria.gob.ar/apache-anuncio-a-giorgi-la-fabricacion-de-un-tractor-integrado-con-mas-de-un-50-de-partes-y-piezas-nacionales/> (Arg.) (JE-208)).

⁷⁸ Press Release, Ministerio de Industria, Giorgi exigió a fabricantes de maquinaria agrícola presentar en un mes proyectos concretos de integración (March 21 2012), available at <http://www.industria.gob.ar/giorgi-exigio-a-fabricantes-de-maquinaria-agricola-presentar-en-un-mes-proyectos-concretos-de-integracion/> (Arg.) (JE-202).

⁷⁹ Press Release, Ministerio de Industria, Giorgi exigió a fabricantes de maquinaria agrícola presentar en un mes proyectos concretos de integración (March 21 2012), available at <http://www.industria.gob.ar/giorgi-exigio-a-fabricantes-de-maquinaria-agricola-presentar-en-un-mes-proyectos-concretos-de-integracion/> (Arg.) (JE-202).

⁸⁰ Press Release, Ministerio de Industria, Giorgi exigió a fabricantes de maquinaria agrícola presentar en un mes proyectos concretos de integración (March 21 2012), available at <http://www.industria.gob.ar/giorgi-exigio-a-fabricantes-de-maquinaria-agricola-presentar-en-un-mes-proyectos-concretos-de-integracion/> (Arg.) (JE-202).

⁸¹ See Press Release, Ministerio de Industria [Ministry of Industry], Apache anunció a Giorgi la fabricación de un tractor integrado con más de un 50% de partes y piezas nacionales [Apache informed Giorgi about the manufacture of a tractor integrated with more than 50% of domestic parts and pieces] (June 14, 2012), available at <http://www.industria.gob.ar/apache-anuncio-a-giorgi-la-fabricacion-de-un-tractor-integrado-con-mas-de-un-50-de-partes-y-piezas-nacionales/> (Arg.) (JE-208).

⁸² U.S. First Written Submission, paras. 67, 87-91.

52. For these reasons, the exhibits cited by the Panel in Question 97, together with the rest of the evidence assembled by complainants, demonstrate the existence of the RTRRs measure.

98. *(Argentina) In its question No. 18, the Panel asked Argentina to provide information on the exigencias (demands) made by the Argentine Government to private economic operators in Argentina that were listed in Annex 3 to the Panel's list of questions dated 30 September 2013. Can Argentina provide the information requested in question No. 18 and explain the nature and content of: (a) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to increase exports, substitute imports and submit an import substitution plan, referred to in exhibit JE-197; (b) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to comply with the commitments undertaken with regard to the integration of local parts in manufacturing referred to in exhibit JE-202; (c) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to increase the integration of local parts in manufacturing and to reverse trade deficit referred to in exhibit JE-203; (d) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to reach 55% of integration of domestic production in manufacturing referred to in exhibit JE-543/EU-229; (e) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to increase the level of integration of domestic production in manufacturing referred to in exhibit JE-549/EU-235; and, (f) the exigencias (demands) made by the Argentine Government to private economic operators in Argentina to substitute imports in a range of key industry sectors, which according to exhibit JE-252 led to investments by BlackBerry (mobile phones), Case New Holland (agricultural machinery), Nokia (electronics), Glenmark (lamps), Mercedes (trucks), Yamaha (motorcycles), Honda (car and motorcycles), Moura (batteries), Nike (clothing and footwear), Converse (footwear), Samsung (electronics), Hewlett Packard (hardware) and Suzuki (motorcycles), among others.*

53. Contrary to Argentina’s response to Panel Question 98, the exhibits cited therein support a finding that the RTRRs measure exists as described by the United States. Argentina mischaracterizes these exhibits and ignores explicit evidence that describes the imposition of RTRRs. Further, Argentina refuses to explain the content of the “*exigencias*” described in its own press releases.

54. First, with respect to the agricultural sector, regardless of what other incentives and strategies Argentina may employ to encourage development in that sector,⁸³ Argentina also imposes the RTRR measure that *requires* companies to undertake import substitution. Exhibit JE-197, an official Argentine press release, states the following:

Giorgi met with representatives from the enterprises John Deere, Agco, and Class, **and ordered** them to present a plan of import substitution for national production and incorporate more national parts. . . . Giorgi told them that they will have to

⁸³ See Argentina’s Responses to Second Panel Questions, para. 59.

increase exports and replace imports with domestically manufactured machinery.⁸⁴

As the United States has previously explained, subsequent press releases and statements by AGCO officials confirm the fact that a commitment to comply with the RTRRs measure is a prerequisite for agricultural machinery producers to import into Argentina.⁸⁵

55. This is also confirmed by Exhibit JE-202, which describes another meeting between Argentine officials and agricultural machinery producers. As noted *supra* in U.S. comments on Argentina's response to Panel Question 97, this exhibit explains that Minister of Industry Giorgi demanded that agricultural machinery producers make import substitution commitments. Further, that exhibit explains that "[Giorgi] stated that the sustainability and competitiveness of the sector depend on the level of integration; many [enterprises] already understand and **the others don't have an option, the [enterprise] which does not develop local providers will wind up with a tractor half finished.**"⁸⁶ Minister Giorgi's comments indicate that enterprises not complying with the import substitution requirements will have their imports restricted and be unable to complete production.

56. In the official press release included as Exhibit JE-203, Minister Giorgi acknowledges the combination of various incentives, referred to as "carrots," as well as the RTRRs measure "sticks" in the promotion of import substitution in the agricultural machinery sector.⁸⁷ Thus, the press release states that:

The minister **reiterated her demand** to the agricultural machinery sector to reverse the 450 million dollar deficit registered in 2010. Giorgi spearheaded the 'Mesa' of National Machinery Integration where the [providers of agricultural parts] met to comply with the objective to reach a goal of local integration higher than 50%.⁸⁸

57. Minister Giorgi held another meeting with the agricultural sector in February of 2013, described at Exhibit JE-543/EU-229, where she discussed the requirements that would be placed on the sector for the coming year.⁸⁹ Again, although the Ministry of Industry press release

⁸⁴ *Ministry of Industry Press Release February 11, 2011* (JE-197).

⁸⁵ See U.S. First Written Submission, paras. 87-91.

⁸⁶ Press Release, Ministerio de Industria, Giorgi exigió a fabricantes de maquinaria agrícola presentar en un mes proyectos concretos de integración (March 21 2012), *available at* <http://www.industria.gob.ar/giorgi-exigio-a-fabricantes-de-maquinaria-agricola-presentar-en-un-mes-proyectos-concretos-de-integracion/> (Arg.) (JE-202) (emphasis added).

⁸⁷ Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: el que más rápido integre piezas nacionales es el que más va a ganar (March 22, 2012), *available at* <http://www.industria.gob.ar/giorgi-el-que-mas-rapido-integre-piezas-nacionales-es-el-que-mas-va-a-ganar/> (Arg.) (JE-203).

⁸⁸ Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: el que más rápido integre piezas nacionales es el que más va a ganar (March 22, 2012), *available at* <http://www.industria.gob.ar/giorgi-el-que-mas-rapido-integre-piezas-nacionales-es-el-que-mas-va-a-ganar/> (Arg.) (JE-203) (emphasis added).

⁸⁹ "Terminales de maquinaria agrícola que producen en la Argentina incorporaran ejes y transmisiones fabricados en el país", Ministerio de Industria, 27 February 2013, *available at* <http://www.industria.gob.ar/terminales-de-maquinaria-agricola-que-producen-en-la-argentina-incorporaran-ejes-y-transmisiones-fabricados-en-el-pais/> (JE-543/EU-229).

outlines benefits that are available to entities that furthered the government's goal, as described by Argentina,⁹⁰ the Ministry also mandated compliance and continued to use "sticks." In fact, the requirement to substitute imports is described in more formal terms as an "order" that has been "ratified:"

The Minister of Industry **ratified the order** of the National Government to reach, before the end of the year, a grade of local integration of 55% in the entire national agricultural machinery [sector]. In this meeting, they also agreed on the possibility to substitute, in one year, the import of 45,000 engine blocks.⁹¹

The official Argentine press release at Exhibit JE-549/EU-235 provides a brief update and description of this same order for 2013.⁹² The release notes that AGCO had detailed progress on a new plant in relation to the order and demands for that year. From the publicly available statements by AGCO officials, it is clear that their actions were taken in order to be able to import into the country.⁹³

58. Finally, the official press release at Exhibit JE-252 more broadly discusses Argentina's import substitution policy across sectors and confirms that the RTRRs measure is generally applicable. Again, despite the fact that Argentina may offer incentives for import substitution,⁹⁴ Argentina also requires companies to substitute imports, balance their trade and/or comply with other RTRRs in order to further Argentina's goals. This is made clear by the following statement in the press release at Exhibit JE-252:

Due to the government's **requirement to substitute imports in key industrial sectors**, global investment firms such as BlackBerry (cellular phones), Case New Holland (agricultural machinery), Nokia (electronics), Glenmark (laboratory), Mercedes (trucks), Yamaha (motorcycles), Honda (cars and motorcycles), Moura (batteries), Nike (clothing and footwear), Converse (footwear), Samsung (electronics), Hewlett Packard (hardware) and Suzuki (motorcycles), among others, arrived and began to produce domestically.

...

The automotive sector is one of those industries that have advanced most in the import substitution process. **The demand by the Government that end producers and importers balance their imports with exports brought about**

⁹⁰ Argentina's Responses to Second Panel Questions, para. 61.

⁹¹ "Terminales de maquinaria agrícola que producen en la Argentina incorporaran ejes y transmisiones fabricados en el país", Ministerio de Industria, 27 February 2013, available at <http://www.industria.gob.ar/terminales-de-maquinaria-agricola-que-producen-en-la-argentina-incorporaran-ejes-y-transmisiones-fabricados-en-el-pais/> (JE-543/EU-229) (emphasis added).

⁹² "Prometen aumentar la integracion local de maquinaria agricola", Ministerio de Industria, 13 April 2013, available at <http://www.prensa.argentina.ar/2013/04/13/39856-prometen-aumentar-la-integracion-local-de-maquinaria-agricola.php> (JE-549/EU-235).

⁹³ See, e.g., Table of Exhibits Rebutting Argentina's Second Written Submission, pp. 1-4 (US-6).

⁹⁴ Argentina's Responses to Second Panel Questions, para. 63.

agreements that will enable the balance of trade of the end producer sector to go from a deficit of USD 3.344 billion in 2010 to a surplus of USD 844 million in 2012, representing an improvement in the balance of the domestic automotive industry of USD 4.2 billion in two years.

The **technological hub of Tierra del Fuego stands as an emblem of this process**. Just the push for the manufacture of local products on the island generated substitution in the amount of 600 million dollars and, in the first quarter of 2011, the production of the principal articles was seven times that of 2010. In 2009, only 4% of the cellular phones sold in the country were produced locally. Last year, the number was 40%, and this year the devices manufactured here will constitute more than half.

Similarly, the domestic production of portable computers more than quadrupled and rose to 289,000 in 2010 and to 1,300,000 in 2011, and its domestic market share rose from 18% last year to 42% for this year.⁹⁵

59. In its response, Argentina avoids discussing the passages of the press releases that discuss the “exigencias,” or demands, that are the focus of this question. That is because Argentina cannot deny that the press releases in fact describe demands made pursuant to the RTRRs measure. This evidence, together with the rest of the evidence outlined in this submission and prior submissions of the United States, satisfies the U.S. burden of demonstrating the existence of the RTRRs measure.

99. (Argentina) Argentina has objected to the probative value of newspaper articles provided as evidence by the complainants. In its response to Panel question No. 42, Argentina indicated that journalistic material, regardless of its source, cannot be "considered to have any probative value", because it can only be treated "as opinion pieces tainted with the ideology of those who wrote them and collected from third sources". In its question No. 42, the Panel had identified 28 media sources cited by the complainants and asked Argentina to clarify whether its objections extend to these sources. Can Argentina provide a response to Panel question No. 42 and clarify whether the objections it has expressed extend to any of the sources of exhibits that were provided by the complainants and identified in that question.

60. As the United States has explained before,⁹⁶ Argentina has provided no reason for the Panel to disregard any of the media sources presented by complainants, including *La Nación*, *Clarín*, or their affiliates. In particular, Argentina has not demonstrated the existence of “an open conflict”⁹⁷ between the media sources and the Argentine government.⁹⁸ Nor has it explained why, under its theory, the news sources would systematically, and on such a wide-

⁹⁵ Press Release, Ministerio de Industria [Ministry of Industry], Argentina ya sustituyó importaciones por 4.000 millones de dólares en el primer semestre del Año (August 23, 2011), *available at* <http://www.industria.gob.ar/argentina-ya-sustituyo-importaciones-por-4-000-millones-de-dolares-en-el-primer-semestre-del-ano/> (Arg.) (JE-252) (emphasis added).

⁹⁶ U.S. Second Written Submission, Annex, paras. 58-63.

⁹⁷ Argentina's Responses to Second Panel Questions, para. 65.

⁹⁸ *See, e.g.*, Argentina's First Written Submission, paras. 26-34.

spread basis, fabricate facts related to Argentina’s import restrictions; how *Clarín* influences affiliated publications in which it has a partial stake;⁹⁹ or how a minority ownership stake in Papel Prensa S.A. enables the *Clarín* Group to “exert a decisive influence on the information published by the rest of the media.”¹⁰⁰ Because Argentina is advancing these arguments, it has the burden to support them with evidence and argumentation. It has not done so.

61. Further, as the United States explained *supra* in comments on Argentina’s response to Panel Question 60, the evidence of the RTRRs measure submitted by the United States is cumulative and mutually reinforcing. The quotations in press reports attributed to identified officials of the business chambers regarding the operation of the DJAI system, together with the RTRRs measure are supported by, and consistent with, an extensive body of other evidence. In these circumstances, Argentina has no basis for arguing that the Panel should disregard any particular piece of evidence.

62. Argentina has alleged that the news sources “can only be treated as opinion pieces . . . because they respond to an editorial line, tainted by the ideology of their authors and, in many cases, taken from third sources.”¹⁰¹ The United States, however, has not cited these documents for any statements of the authors’ opinions or ideology. Rather, the documents are cited to support the facts set out therein, and the existence of those facts is supported by the whole body of evidence presented by complainants. Nor has Argentina submitted any evidence that those facts are false. Further, the facts reported in the many various news sources are consistent with each other and with the rest of the evidence submitted in this dispute, including governmental statements; legal instruments and official guidance; publications from trade associations, industry sources and other organizations; domestic Argentine court cases, statements by company officials in earnings calls and filings; surveys by the U.S. Chamber of Commerce, the American Chamber of Commerce in Argentina, and the government of Japan; affidavits of company officials; a notarial certification of agreements; and international news sources. As a result, there is no basis for the Panel – as Argentine requests – to disregard evidence consisting of quotations of government and company officials and other facts reported in news sources.

100. (Argentina) The complainants have provided transcripts of conference calls organized by public companies (earning calls in exhibits JE-163, JE-172, JE-199, JE-222, JE-223, JE-227, JE-736, JE-737, JE-738, JE-739, JE-740, JE-799, JE-800, JE-802, JE-803, JE-804, JE-821). Can Argentina provide its views on the content of the information contained in these transcripts and more specifically on the description contained in some of these conference calls of the trade-restrictive measures allegedly adopted by the Argentine Government.

63. Argentina mischaracterizes earnings calls when it states that they provide “no elaboration” on the import restrictions being discussed.¹⁰² For example, Argentina makes this

⁹⁹ Argentina’s Responses to First Panel Questions, Response to Question 42 (showing that a *Clarín* subsidiary has a 50 percent ownership of an entity which has an 80 percent stake in *Diario Los Andes* and *La Voz del Interior*); Argentina’s Responses to Second Panel Questions, para. 65.

¹⁰⁰ Argentina’s Responses to Second Panel Questions, para. 66.

¹⁰¹ Argentina’s Responses to Second Panel Questions, para. 64.

¹⁰² Argentina’s Responses to Second Panel Questions, para. 68.

claim with respect to the Lojack earnings call.¹⁰³ However, a Lojack company official stated in the call that Argentina is:

requiring . . . people who are importing to also export a similar amount of goods in order to get, if you will, credits to allow them to import. So, the focus of our Argentina licensee has been to work with the government to pull together a plan where they can export other products having nothing to do with automotive or anything else to give them sufficient credits to allow them to import.¹⁰⁴

64. Argentina also attempts to discount this evidence by arguing that it does not demonstrate the existence of an “overarching measure.” This argument fails for two reasons. First, in making this assertion, Argentina implicitly acknowledges that the evidence does demonstrate individual instances of application. And, for the reasons discussed *supra* in the U.S. comments on Argentina’s response to Panel Questions 63-92, the many pieces of evidence demonstrating individual applications of the RTRRs measure do support the conclusion that the measure exists. Second, as the United States has explained, Argentina’s argument that the RTRRs measure must contain an additional feature referred to as “overarching” is unavailing. The United States has not alleged that the measure contains any such additional feature.

101. (Argentina) The complainants have provided a newswire of the quarter report of a mining company (exhibit JE-225) and a management's discussion and analysis of that report (exhibit JE-226). Can Argentina provide its views on the content of the information contained in these exhibits, and more specifically on the description of the trade-restrictive measures allegedly adopted by the Argentine Government.

65. Despite Argentina’s assertions, Exhibits JE-225 and JE-226 support the fact that the RTRRs measure was applied to mining companies, including Goldcorp. The United States notes that there is no mention in either JE-225 or JE-226 of a “written resolution” or a written legal measure of any kind, as Argentina alleges; and so those allegations are unsupported. Second, even if Argentina was correct that Goldcorp’s statements did concern one such written resolution, Resolution 13/2012 adopted on May 28, 2012, it is clear from the context of the statement that mining companies were facing other restrictions, namely the RTRRs measure. Goldcorp’s second quarter report stated:

In respect of government regulations, the Company became subject to import restrictions enacted in Argentina relating to equipment, materials and services required for the construction of the Cerro Negro project. **In addition, new** import substitution requirements were announced in May 2012 requiring the Company to submit its import programs for review 120 days in advance. These new regulations may subject the Company to delays in the project schedule.¹⁰⁵

¹⁰³ Argentina’s Responses to Second Panel Questions, para. 68 & note 52.

¹⁰⁴ LOJACK 2012 Q3 Earnings Call (JE-172).

¹⁰⁵ GOLDCORP INC., 2012 Second Quarter Report, July 25, 2012 (JE-226) (emphasis added).

66. Further, Goldcorp's President and CEO described import restrictions on April 26, 2012, prior to the adoption of Resolution 13/2012, as follows:

Basically, what is [sic] happened is -- the list of items for which we are supposed to look internally **has been expanded**. And it's a matter of getting through this bureaucratic process of working through that list and determining whether the items that we are trying to bring in can or cannot be sourced in-country. There is a delay and disruption factor associated with just going through that process -- even if you can, then, ultimately import what you plan to import, you need a license.

And then, the other side of it is -- if it's determined that you can source that piece of equipment or that material in-country, then you have to go do that.¹⁰⁶

Thus, even if Resolution 12/2013 was one of the measures discussed in Goldcorp's Second Quarter Report, the evidence indicates that mining companies also have to comply with the RTRRs measure.

67. This conclusion is also supported by statements of the Chief Operating Officer of another mining company, Pan American Silver, in February of 2012, also before the adoption of Resolution 13/2012 or any other resolutions cited by Argentina:

We are finding it quite challenging to adapt our Manantial Espejo operation to the heightened importation restrictions in Argentina, where it has become very time consuming to import the necessary spare parts, particularly for our mobile mining fleets, despite enormous efforts from ourselves and our primary equipment suppliers.

Our mobile mine equipment availabilities are running well below expectations and this has caused shortfalls in mining rates delaying access to anticipated higher grade ores.

In addition to increasing our efforts to find domestic purchasing alternatives, which have had limited success, we are stepping up efforts again offshore purchasing in order to allow for even greater lead times, which we anticipate will eventually allow us to catch up with the delivery of critical spare parts and components necessary to move to a more normal equipment availability.¹⁰⁷

68. These instances of application of the RTRRs measure support the conclusion that Argentina has adopted and applies the RTRRs measure as described by the United States in the mining sector.

¹⁰⁶ GOLDCORP INC., Q1 2012 Goldcorp Earnings Conference Call – Final, FD (Fair Disclosure) Wire, April 26, 2012 (JE-227) (emphasis added).

¹⁰⁷ Pan American Silver 2011 Q4 Earnings Conference Call (JE-223).

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.

69. Argentina again asserts in response to Panel Question 102 that the Panel should assign no probative value to news sources. For the reasons that the United States has stated elsewhere in its submissions,¹⁰⁸ and *supra* in its comments on Argentina’s responses to Panel Questions 60 and 99, Argentina has no valid basis for arguing that the Panel should not take account of evidence from news reports.¹⁰⁹ This evidence has probative value in demonstrating the existence and application of the RTRRs measure.

103. (Argentina) Can Argentina confirm whether only agencies that have acceded to the DJAI mechanism may make observations on DJAI applications. In case agencies that have not acceded to the DJAI mechanism are able to make observations on DJAI applications, can Argentina: (a) provide a list of all these agencies; (b) indicate the criteria upon which these other agencies may make observations; (c) indicate the criteria upon which these other agencies may lift observations; (d) provide a list of products in respect of which these other agencies may make observations; (e) in respect of the previous questions, identify the applicable laws and regulations.

70. Argentina’s response to Panel Question 103 inaccurately states the number of agencies that may make observations on a DJAI submission. Contrary to Argentina’s response, it is not only SCI, SEDRONAR and ANMAT that are able to evaluate DJAI submissions and make observations.¹¹⁰ As the evidence and previous Argentine submissions establish, three entities under AFIP – the Directorate for Taxes (“DGI”), the Directorate for Customs (“DGA”), and the Directorate for Social Security (“DGRSS”) – can also comment.¹¹¹ Moreover, as with SCI, SEDRONAR and ANMAT, Argentina has only provided a cursory explanation for the purpose of these entities’ participation in the DJAI system and no information on the criteria for which they make observations or lift them.¹¹²

104. (Argentina) Can Argentina indicate the medium by which the Argentine Government publishes or makes available the accession instruments of the agencies that have acceded to

¹⁰⁸ See U.S. Second Written Submission, para. 113.

¹⁰⁹ See, e.g., Argentina’s Responses to Second Panel Questions, paras. 13, 74.

¹¹⁰ Argentina’s Responses to Second Panel Questions, para. 77.

¹¹¹ Argentina’s Responses to First Panel Questions, Annex 4. The United States notes that Argentina appears to deny that these entities are distinct sub-agencies within AFIP that intervene independently. Argentina’s Second Written Submission, para. 183. However, Argentina contradicts that statement when it goes on to explain that each sub-agency intervenes for different reasons, *id.*, and in its response to Panel Question 125, which shows that each sub-agency intervenes separately. Argentina’s explanation makes it clear that AFIP does not intervene for all three sub-agencies, but that each is an independent participant in the DJAI system.

¹¹² See Argentina’s Responses to First Panel Questions, Annex 4; Argentina’s Second Written Submission, para. 183.

the DJAI mechanism or any renewal of such accession instruments. In addition, indicate whether the instruments of accession related to the following agencies have been published in any medium accessible to importers in Argentina: (a) Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking (SEDRONAR); (b) National Drugs, Food and Medical Technology Administration (ANMAT); (c) National Agriculture and Food Quality and Health Service (SENASA); and, (d) National Grape-Growing and Wine Production Institute (INV).

71. Argentina’s response to Panel Question 104 highlights the extent to which it has failed to meet the requirements of Articles 1.4(a), 1.6 and 3.3 of the Import Licensing Agreement with respect to the DJAI Requirement.¹¹³ Argentina does not deny that it has failed to publish the accession instruments referenced in the Panel’s Question.¹¹⁴ Furthermore, Argentina’s statement that “importers are able to know which agencies will be involved in the DJAI . . . from the very moment they register the DJAI in the Maria system”¹¹⁵ does not help Argentina. Providing such summary information at such a late stage and only to the small subset of importers who have already begun an actual import transaction breaches the obligation of Article 1.4(a) to publish:

rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement . . . in such a manner as to enable governments and traders to become acquainted with them.¹¹⁶

On the contrary, importers are unable to know even this basic information before they actually need to import goods and submit a DJAI application in the Maria system. And, governments (and any other entity not engaged in a specific importation transaction) would never have access to such information, as it not published in any medium available such persons.

72. In order to comply with its obligations under Article 1.4(a) to publish the rules and all information concerning the procedures for submission of DJAI applications in such a manner as to enable governments and traders to become acquainted with them, Argentina must do more than impose an import licensing requirement and leave importers and governments guessing as to which agencies may indefinitely block their prospective imports on undefined grounds for indefinite periods of time at the whim of the agency in question. Instead, Argentina must actually publish – make generally available in an appropriate medium, and in a manner that allows traders and governments to become familiar with them and to know them in a more or less complete way – the rules and all information that relates to the process for securing

¹¹³ Argentina’s failure to comply with Articles 1.4(a), 1.6, and 3.3 of the Import Licensing Agreement is explained in detail in prior U.S. submissions and as discussed further *infra* in comments on Argentina’s response to Panel Question 125. See U.S. First Written Submission, paras. 138-162, 181-192, 202-206; U.S. First Opening Statement, paras. 54-59.

¹¹⁴ See also U.S. First Written Submission, para. 21.

¹¹⁵ Argentina’s Responses to Second Panel Questions, para. 78.

¹¹⁶ Import Licensing Agreement, Art. 1.4(a) (emphasis added).

consideration of, and a decision on, a DJAI application, or any exceptions, derogations or changes to such rules.¹¹⁷

105. (Argentina) According to the evidence on the record, the accession instruments related to the National Agriculture and Food Quality and Health Service (SENASA, exhibit ARG-49) and the National Grape-Growing and Wine Production Institute (INV, exhibit ARG-50) were signed in February 2012. In its first written submission, Argentina indicated that these instruments of accession are "not yet in force". Can Argentina: (a) describe what further steps are required for an accession instrument to enter into force once it is signed by the Federal Public Revenue Administration (AFIP) and the agency concerned; (b) explain whether SENASA and INV are currently entitled, or have been entitled, to make observations on DJAIs; and if so, (c) specify the periods of time within which these agencies have been entitled to make observations on DJAIs. Please make reference to the relevant laws and regulations.

73. Argentina’s response to Panel Question 105 further confirms that it has not adequately published the instruments related to the operation of the DJAI system. Argentina states that the accession agreements will become operative when technological integration occurs enabling the agencies to participate in the electronic DJAI system.¹¹⁸ Thus, even if a Member or trader were to know that SENASA and INV had concluded accession instruments, there is no way for a Member or trader to also know whether technological integration has occurred allowing the agency to participate. Further, Argentina has published no information regarding the products for which the agencies will place observations, or the criteria they will use to place and lift those observations.

108. (Argentina) An official press release from the Argentine Government dated 19 June 2012 (exhibit JE-44) contains the following public statement by the Minister of Industry: "[The Minister] explained that each advanced sworn import declaration (DJAI) that is approved, with the breakdown sent by the manufacturer of stoves, refrigerators or any other major appliances, is reviewed by INTI [the National Institute of Industrial Technology], which comes under the Ministry of Industry". In light of this official press release, can Argentina: (a) indicate whether INTI is part of the DJAI mechanism; (b) confirm whether INTI can make observations on DJAI applications; and, if so, (c) indicate what are the criteria by which this agency may make observations on DJAIs and provide a copy of the law or regulation that contains such criteria (indicating the specific provision).

74. Argentina asserts that INTI does not participate directly in the DJAI system and that Exhibit JE-44 refers to INTI’s receipt of information for already-approved DJAI requests. Although INTI may not intervene and place observations with respect to DJAI applications, Exhibit JE-44 demonstrates that INTI does participate in the imposition of the RTRRs measure.

¹¹⁷ See *EC – IT Products*, paras. 7.1084-85 (describing the requirement to “publish [measures] . . . in such a manner as to enable governments and traders to become acquainted with them” as requiring, “[a] manner of publication . . . that would give power to or supply governments and traders with knowledge of the particular measures that is ‘adequate’ so that traders and Governments may become ‘familiar’ with them, or ‘known’ to them in a ‘more or less complete’ way”).

¹¹⁸ Argentina’s Responses to Second Panel Questions, para. 80(a).

This exhibit is an official press release from the Argentine Government, and describes statements by Minister of Industry Giorgi as follows:

She explained that each approved advance sworn import declaration (DJAI), along with the disassembled parts sent by the manufacturer of stoves, freezers or other major appliances, is reviewed by National Industrial Technology Institute (INTI), which comes under the Ministry of Industry.

Then an import-substitution timeline is drawn up based on the products' technological sophistication and convenience. Thus, some parts **will be substituted immediately** (because there are local suppliers), some in three months, and **other parts will be given** a period of 3-6 months.¹¹⁹

75. This statement indicates that the import substitution timeline is completed by INTI and imposed on importers of white goods, such as stoves, freezers and other major appliances. Although the use of the DJAI mechanism as a means for enforcement is not made explicit here, the DJAI is used to identify imports initially, and so it stands to reason that it would also be used to monitor compliance with an import substitution timeline. Further, the conclusion that the importers of white goods are required to undertake import substitution as a prior condition for future permission to import is consistent with the rest of the evidence presented by the United States with respect to the enforcement of the RTRRs measure.

110. (Argentina) In its question No. 23, the Panel asked Argentina to identify in an attached table, inter alia: (i) the reasons that each agency of the Argentine Government that participates in the DJAI procedure may invoke to observe a DJAI; (ii) the specific provision of the relevant legal instruments justifying the reasons for the placement of observations on DJAIs. In response, Argentina has identified laws that confer the power to place observations on DJAIs on a number of agencies. However, with the exception of the AFIP, in its response to the question, Argentina did not indicate the reasons for which the participating agencies may place observations on DJAIs. In the case of the Secretariat of Domestic Trade (SCI), beyond the general functions that are conferred on the SCI by the following laws: Decree 2085/2011 (exhibit ARG-16); Law 22.802 on Fair Trade; Law 19.227 on Markets of National Interest; Law 19.511 on Legal Metrology; and Law 24.240 on Customer Protection (exhibit ARG-32), can Argentina indicate: (a) the specific reasons or criteria by which the SCI may make observations on DJAIs; and, (b) the specific provision of the relevant legal instrument where these reasons or criteria are established.

111. (Argentina) In connection with the previous question, in the case of the National Drugs, Food and Medical Technology Administration (ANMAT), beyond the general functions that are conferred on ANMAT by Decree 1490/92 (exhibit ARG-26), can Argentina indicate: (a) the specific reasons or criteria by which the ANMAT may make observations on DJAIs; and, (b) the specific provision of the relevant legal instrument where these reasons or criteria are established.

¹¹⁹ Ministry of Industry Press Release June 19, 2012 (JE-44) (emphasis added).

112. (Argentina) In connection with Panel question No. 0, in the case of the Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking (SEDRONAR), beyond the general functions that are conferred on SEDRONAR by the following laws: Law 23.737 (exhibit ARG-27); Law 26.045 (exhibit ARG-44); Decree 1095/1996 (exhibit ARG-45); and Resolution SEDRONAR 213/2010 (exhibit ARG-46), can Argentina indicate: (a) the specific reasons or criteria by which the SEDRONAR may make observations on DJAIs; and, (b) the specific provision of the relevant legal instrument where these reasons or criteria are established.

76. The United States will comment on Argentina’s responses to Panel Questions 110-112 together.

77. In its responses to Panel Questions 110-112, Argentina has belatedly¹²⁰ identified – for the first time – what it suggests are the provisions that give the reasons and criteria establishing when SCI and other agencies may make observations on DJAIs. However, Argentina’s response does little more than summarize the legal authorities governing the agencies’ competency; the response does not shed light on the reasons that the agencies may invoke to observe a DJAI, or the criteria for the removal of an observation.¹²¹

78. Argentina argues that it is not necessary for it to stipulate the criteria for placing observations and lifting them because the relevant laws that the agencies enforce predate the creation of the DJAI.¹²² However, the fact is that neither the legal authorities of the participating agencies nor the legal instruments establishing the DJAI system contain any criteria related to the agencies’ participation in the DJAI system. This feature renders the system inconsistent with Article XI:1 of the GATT 1994. Due to the lack of criteria or limits on their review of applications, agencies have full discretion to withhold permission to import for virtually any undisclosed reason. Thus, the DJAI system is a discretionary, non-automatic import licensing system.

79. Argentina’s response also reveals how broad the discretion is for the participating agencies and confirms that they have nothing to do – as Argentina has argued – with “customs purposes.” As a threshold matter, Argentina cites no authority for the proposition that SCI, ANMAT and SEDRONAR’s participation in the DJAI system is limited to the provisions it cites in its response. To the contrary, there is extensive evidence demonstrating that Argentina relies upon other grounds – including compliance with the RTRRs measure – as a basis for DJAI observations.¹²³ In fact, with respect to SCI, Argentina states in response to Panel Question 123

¹²⁰ Argentina failed to provide substantive answers to similar questions previously posed by the Panel. Argentina’s Responses to First Panel Questions 23-25.

¹²¹ Argentina’s Responses to Second Panel Questions, paras. 105-115.

¹²² Argentina’s Responses to Second Panel Questions, paras. 85-86, 105, 108.

¹²³ See, e.g., U.S. First Written Submission, paras. 34-47; CAC, *Details of Procedures and Experiences*, pp. 3-4 (JE-755); *SCI Resolution 1*, preamble (JE-41) (stating the DJAI Requirement is used for “preventing negative effects on the domestic market, since the qualitative and/or quantitative importance of imports to be made has the effect of impacting domestic trade”); President of Argentina Press Release January 23, 2012 (JE-45) (stating the DJAI Requirement is for preserving “economic stability”); Roberto Navarro, *El Plan 2012* (JE-8) (English translation incomplete); *Ministry of Economia Press Release, March 27, 2012* (JE-284).

that it can make observations and request relevant information on the prospects and forecasts of market supply and for that purpose request information “regarding those products elaborated in Argentina which will be allocated in the domestic market as well as those that will be exported and to determine whether the needs of domestic supply are satisfied.”¹²⁴ Further, “SCI may require to know the export plans for products produced domestically as well as the expected imports in order to know, from all these additional factors, the needs and perspectives of supply in the domestic market, especially regarding continuity of imports and its impact on prices.”¹²⁵

80. Argentina also does not provide, as the Panel’s questions ask, any “specific reasons or criteria by which” the agencies “may make observations.” Argentina has yet to reveal under what circumstances a correctly completed DJAI application will be placed under observation by SCI or any other agency, as required by Article 3.3 of the Import Licensing Agreement. As discussed at length in prior U.S. submissions, this absence of any apparent legal basis for, or constraint on, Argentine authorities’ observations has also contributed to the many instances of unreasonable and non-uniform application of the DJAI Requirement (in breach of Article X:3(a) of the GATT 1994).¹²⁶

81. The information that Argentina does provide reveals that the agencies’ discretion is not meaningfully limited. To take SCI, Argentina provides a laundry list of provisions that SCI supposedly implements through its participation in the DJAI system.¹²⁷ Further, at least one of the cited provisions – Article 1 of SCI Resolution 63 (April 25, 2011) – is so broad in scope as to be meaningless in its restriction on the reasons that DJAI may place an observation. As Argentina describes this provision:

among those [objectives and for the compliance and control of the different aspects contemplated by the law] is the objective to warrant a secure and efficient system of distribution and commercialization of food and that also warrants that the centralization of supply and demand is made in appropriate markets so as to ensure its transparency, its proper location, its ability to serve the area of influence and the optimal conditions for the preservation and commercialization of products.¹²⁸

This vague description provides no information regarding the reasons under the relevant provision¹²⁹ that SCI reviews DJAI submissions and the criteria for placing observations.

82. Similarly, Argentina’s description of ANMAT’s relevant authority lacks discernible limits on its authority to intervene in the DJAI system. Argentina states that Article 3 of Decree

¹²⁴ Argentina’s Response to Second Panel Questions, para. 126.

¹²⁵ Argentina’s Response to Second Panel Questions, para. 126.

¹²⁶ See generally U.S. First Opening Statement, paras. 54-56; Selected Evidence Supporting GATT Article X:3(a) Claim (US-1).

¹²⁷ Argentina’s Responses to Second Panel Questions, paras. 91-104.

¹²⁸ Argentina’s Response to Second Panel Questions, para. 104.

¹²⁹ According to Argentina, the relevant provisions are “Resolution SCI Nr. 63, dated April 25th 2011, in its Article 1^o” and “Article 2^o of Law 19,227 and Decree Nr. 3872, dated September 14th 1971”. Argentina’s Response to Second Panel Questions, paras. 103-104.

1490/92 “grants ANMAT authority over **everything pertaining to** the control and monitoring of the sanitation and quality of drugs, chemical products, reagents, pharmaceutical forms, medicines, diagnostic elements, biomedical materials and technology, and every other product of use and application in human medicine.”¹³⁰ SEDRONAR also does not have criteria for the evaluation of DJAI applications. For example, according to Argentina, Article 14 of Decree 1095/96, empowers SEDRONAR “to authorize importation and exportation of certain chemical substances that may be used in the illegal manufacturing of narcotic drugs and psychotropic substances,” but it provides no insight into what criteria it uses to authorize such imports.

83. The domestic laws cited in Argentina’s responses have no relationship to the “customs purposes” that it alleges undergird the DJAI Requirement. All of the provisions cited by Argentina relate to detailed requirements associated with internal regulations lacking a clear relationship to international trade. Argentina cannot merely apply the label “customs formality” to the multifarious requirements alleged to be implemented through the DJAI Requirement to avoid scrutiny of them under the GATT 1994 and Import Licensing Agreement. Argentina states, for example, that: “Given that the DJAI procedure is a customs formality, it was not considered necessary to establish specific rules to determine the criteria that these agencies have to follow for the evaluation of the information required through the DJAI procedure.”¹³¹ Article VIII of the GATT 1994 does not create such an exception for “customs formalities” to the obligations in the other provisions the GATT 1994.

84. Argentina also provides no explanation regarding the nexus between the DJAI Requirement (and its many trade restrictive and non-transparent features) and the legal provisions that it cites. Further, the cited provisions, as described by Argentina, have nothing to do with the information elements required in a DJAI submission, which involve basic identifying information regarding shipping and arrival dates, import filer information, tax identification code, tariff information, and description, type, quality, grade, value and condition of imported products.¹³² It would be difficult – if not impossible – for Argentine authorities to evaluate compliance with the various internal regulatory laws and regulations based on these data elements. For example, DJAI submissions do not involve the submission of the types of manuals, product safety specifications, or energy efficiency ratings that must be known in order to assess compliance with the standards enforced by SCI.¹³³ The lack of any relationship between the actual DJAI submission and Argentina’s purported reasons and criteria for making DJAI observations belies the assertion that Argentina uses information from DJAI submissions in order to carry out the legal provisions that Argentina references.

85. In sum, Argentina’s unsupported assertions provided in response to Panel Questions 110-112, do nothing to rebut complainants’ showing that the DJAI Requirement is inconsistent with Argentina’s obligations under the GATT 1994 and the Import Licensing Agreement. Indeed, Argentina’s responses confirm that the DJAI is a discretionary, non-automatic import licensing system that restricts imports and operates in a nontransparent and arbitrary manner.

¹³⁰ Argentina’s Response to Second Panel Questions, para. 106 (emphasis added).

¹³¹ Argentina’s Response to Second Panel Questions, paras. 85, 105, 108.

¹³² See generally U.S. First Written Submission, paras. 18-19.

¹³³ Argentina’s Response to Second Panel Questions, paras. 96, 101.

115. (Argentina) A number of exhibits on the record suggest that the Secretariat of Domestic Trade (SCI), at the time when it places observations on DJAIs, may require prospective importers to provide information concerning their volume of exports during past years and their estimates of exports for coming years, as well as the prices at which they sell their products in the Argentine market, as part of the information that is required to lift observations on DJAIs. The same exhibits indicate that the SCI allegedly may require that importers make export commitments as a condition for the SCI to lift observations on DJAIs. (See exhibits JE-2, JE-46, JE-47, JE-48, JE-49, JE-50, JE-51, JE-52, JE-54, JE-55, JE-268, JE-269, JE-298, JE-728/EU-414, JE-729/EU-415, JE-730/EU-416, JE-732/EU-418+ and JE-755). Can Argentina: (a) Confirm whether the SCI requires prospective importers to provide information concerning their volume of exports during past years and their estimates of exports for coming years; (b) Confirm whether the SCI requires prospective importers to provide information concerning the prices at which they sell their products in the Argentine market; (c) Confirm whether the SCI requires prospective importers to undertake export commitments; and, (d) Indicate the medium by which it has informed importers of the need to present the information identified above or the need to undertake export commitments.

86. Argentina fails to respond to Panel Question 115; does not deny the accuracy of the exhibits cited therein; and does not dispute that SCI requires importers to provide information regarding exports volumes and prices and to undertake export commitments.

87. As Argentina’s response confirms, none of Argentina’s legal instruments stipulate what information or action may be necessary in order to resolve an observation placed on a DJAI application.¹³⁴ The exhibits cited in the Panel’s question, however, do indicate some of the information that SCI requires. In particular, SCI requires importers to provide past and future price lists, import and export volumes, and information with respect to their plan to balance trade. For example, the Argentine Chamber of Commerce produced a guide on how to obtain DJAI approvals that states:

D) DJAIs UNDER “OBSERVED” STATUS

Experience indicates that the steps to be taken are as detailed below, it should be noted that these steps are necessary, but often not sufficient:

The following must be presented to the Secretariat of Domestic Trade - SCI

- Presentation of commitment to export for the year 2012
- This commitment must be captured through a formal letter, signed by the highest authority or legal representative of the company (certified by a bank or notary), assuming the obligation to export the equivalent to the intended import during the year.
- Presentation of commitment to export for the year 2013

¹³⁴ The United States agrees that, in order to submit a DJAI application in the first instance, an applicant must provide the information set out in *AFIP Resolution* 3255 and its Updated Annex. (Contrary to Argentina’s assertion, *Resolutions* 3252 and 3256 do not contain any provisions detailing information to be submitted.)

- Presentation of price lists
- Presentation of categorized price lists
- Presentation of the detail of exports completed, including the export and import of foreign exchange.

Steps to take once the above is completed

1. Submit the DJAI again and/or send a physical letter of complaint for the approval of the DJAI under “observed” status
2. Send an e-mail with the same content as the letter
3. Send a form by email of the DJAI under “observed” status
4. Place phone call to confirm the receipt of letters and/or email
5. Request a personal interview¹³⁵

88. Further, the evidence indicates that SCI provided importers with information as to its requirements by communicating through trade associations.¹³⁶ In addition, SCI has also communicated its requirements to individual companies by telephone.¹³⁷

116. (Argentina) Can Argentina confirm whether, at the time when the Secretariat of Domestic Trade (SCI) places observations on DJAIs, it may require that prospective importers provide the following information: (i) a description of the product to be imported; (ii) quantity; (iii) unit of measure; (iv) unit price; (v) total price; (vi) origin; (vii) tariff classification; (viii) expected date of shipping from the exporting country; and/or (ix) expected date of arrival to Argentina. If so, can Argentina explain: (a) the medium by which it has informed importers of the need to present the previous information; (b) whether this information is requested through the so-called "nota de pedido" allegedly sent by the SCI (exhibits JE-274, JE-275 and JE-314); and, (c) how can a DJAI applicant provide information such as transport documents, quantity, codes, capacity and type of containers, approximate shipping date (per item), before the merchandise has been purchased and shipped.

89. In its response to Panel Question 116, Argentina asserts, without citing any evidence, that “the DJAI must be submitted prior to customs clearance and not necessarily before the merchandise is purchased.”¹³⁸ This statement, however, is contradicted by the evidence:

¹³⁵ CAC, *Details of Procedures and Experiences*, pp. 3-4 (JE-755).

¹³⁶ See U.S. First Written Submission, paras. 35-37.

¹³⁷ See *VP of Company X Affidavit* at 1-2 (JE-306); *VP of Company Y Affidavit*, para. 13 (JE-307); *U.S. Chamber of Commerce Report*, p. 8 (JE-56).

¹³⁸ Argentina's Responses to Second Panel Questions, para. 119.

Resolution 3252 states that the DJAI application must be submitted “prior to issuance of an order form, purchase order, or similar document used to purchase items from abroad.”¹³⁹ Further, both *Resolution 3252* and *Comunicación A 5274* of the Central Bank of Argentina¹⁴⁰ provide that a DJAI application must be approved before an importer can access foreign exchange for the purpose of paying for the import transaction. As the United States has previously explained,¹⁴¹ at the stage a DJAI submission must be made – prior to the issuance of a purchase order – information that is needed for “customs purposes” to determine classification, origin and valuation of an item is not available.¹⁴²

90. In sum, Argentina’s response to Panel Question 116 is not supported by Argentina’s own legal instruments.

117. (Argentina) Can Argentina clarify what are the criteria upon which the validity of a DJAI may be extended for an additional 180 days.

91. Argentina’s response further confirms the discretionary nature of the DJAI system. Argentina states that the process for granting extensions to the validity of a DJAI application is discretionary, based on unspecified “broad criteria”¹⁴³ and is granted so long as the request is “reasonabl[e].”¹⁴⁴

92. Further, Argentina’s response is incomplete. The response appears to only address instances where a DJAI application has entered the “salida” status, but the importer has been unable to complete the import because of “matters of logistics, transportation, or others.”¹⁴⁵ However, a DJAI application that remains in “observada” status for 180 days also becomes “void” at that time, as the time limit is counted from the point of registration, not from the transition to “salida” status.¹⁴⁶ Argentina is silent on whether a DJAI application would be extended under those circumstances, or if the lapse of 180 days acts as an effective final denial of the application.

¹³⁹ *AFIP Resolution 3252*, art. 2 (JE-15).

¹⁴⁰ *AFIP Resolution 3252*, art. 6 (JE-15); *Comunicación A 5274 del Banco Central de la República Argentina* [Communication A 5274 from the Central Bank of Argentina], January 30, 2012, para. 1(d) (JE-40).

¹⁴¹ See, e.g., U.S. Second Written Submission, para. 84.

¹⁴² See *AFIP Resolution 3252*, Art. 6 (JE-15); *Comunicación A 5274 del Banco Central de la República Argentina* [Communication A 5274 from the Central Bank of Argentina] January 30, 2012, 1.a, and Section 4.1 (JE-40) (stating, “To Financial Institutions, To foreign exchange companies, agencies, offices and brokers: We write to inform you of the following provisions relating to foreign payments for imports of goods - ... The institution handling the operation must verify that the following requirements are satisfied before processing it. The “Advance Import Affidavit (DJAI)” established by AFIP in General Resolution 3252/12 and supplementary provisions, has “Approved” status . . .”).

¹⁴³ Argentina’s Responses to Second Panel Questions, para. 120.

¹⁴⁴ Argentina’s Responses to Second Panel Questions, para. 120.

¹⁴⁵ Argentina’s Responses to Second Panel Questions, para. 120.

¹⁴⁶ See *AFIP Resolution 3255*, Updated Annex, Section D(d), (h) (JE-16); Argentina’s Responses to Second Panel Questions, para. 122.

118. (Argentina) Can Argentina indicate, how long has it taken, in practice and according to AFIP's records, for observed DJAIs to attain exit status, from the time in which observations have been placed by an authorized agency.

93. Argentina's response does not address the Panel's question. Complainants have adduced extensive evidence showing that DJAI submissions are subject to delays of as long as six months or more, resulting in a *de facto* denial of the import license. Such delays are a persistent and constant feature of the DJAI system, as reflected in the rulings issued by Argentine courts, in surveys covering many thousands of import transactions, in affidavits provided by importing company officials, and in many other sources of evidence.¹⁴⁷

121. (Argentina) In its opening oral statement (paragraph 12), the European Union notes that in its first written submission Argentina repeatedly uses the expression "customs formalities" (formalidades aduaneras), whereas in its second submission it uses the expression "import formalities" (formalidades de importación). Can Argentina explain the difference between the two expressions.

94. The United States refers the Panel to its prior explanations that the DJAI procedure is not a "formality" under Article VIII of the GATT 1994, and that in any event, the question is not relevant to the U.S. claims in this dispute.¹⁴⁸

123. (Argentina) A newsletter issued by the Argentine Chamber of the Plastic Industry (exhibit JE-52) states that the SCI requires importers to provide a formal letter reporting their estimates of imports and exports, for the purpose of knowing "how much [a company] commits to import, but fundamentally to export (trade balance)". Furthermore, a communication distributed by the Argentine-Chinese Chamber of Production, Industry and Commerce to its members (exhibit JE-268) states that importers must present to the SCI an export commitment letter whereby they commit to equilibrate its trade balance. In the light of these documents, can Argentina confirm whether the SCI requires prospective importers to commit to export during the process of review of observations in the DJAI procedure.

95. Contrary to Argentina's assertions,¹⁴⁹ the communications from chambers of commerce to their members have significant probative value. The chambers have it as their mission generally to assist their members in doing business in Argentina, and they achieve this mission in part by providing guidance on compliance with relevant requirements. The business chambers have every incentive to report accurate information to their membership, and such information is commonly based on communications from government officials¹⁵⁰ or their members' experiences¹⁵¹ regarding the requirements traders must meet. Multiple trade associations have

¹⁴⁷ See generally U.S. First Written Submission, paras. 27-29; Japan's First Written Submission, paras. 30, 38-40; Selected Evidence Supporting GATT Article X:3(a) Claim (US-1).

¹⁴⁸ U.S. First Opening Statement, Sections III, IV.A; U.S. Second Written Submission, Sections II.C, III; U.S. Second Opening Statement, Sections II.A, III.B.

¹⁴⁹ Argentina's Responses to Second Panel Questions, para. 125.

¹⁵⁰ *PlastiNoticias*, Newsletter (JE-52).

¹⁵¹ See, e.g., CAC, *Details of Procedures and Experiences* (JE-755) (explaining in the introduction that the document was developed "based on the experiences of several partners and operators in Foreign Trade").

provided instructions to their member importers regarding submitting a formal letter or other submission which includes a plan to balance their trade to SCI in order to receive DJAI approvals.¹⁵² Similar communications repeated by multiple chambers and associations further support the credibility of this evidence. Further, the Argentine Chamber of the Plastic Industry (*Camara Argentina de la Industria Plastica* or “CAIP”) confirmed in its newsletter that it had received information regarding the how traders should resolve their DJAI observations directly from SCI.¹⁵³

96. The requirement to obtain approval of a formal letter reporting “how much [a company] commits to import, but fundamentally to export (trade balance)” or committing to equilibrate the company’s trade balance serves as a restriction on imports within the meaning of Article XI:1 of the GATT 1994. That is because importers are only able to import goods to the extent that they are able to balance their imports with exports.¹⁵⁴

97. Argentina appears to argue that the SCI’s request of import and export plans relates to its functions “to ensure the supply of the domestic market” and “to know . . . the needs and perspectives of supply in the domestic market, especially regarding continuity of imports and its impact on prices.”¹⁵⁵ Argentina’s unsupported assertions of the rationale behind SCI’s requests are unpersuasive in light of the extensive evidence presented by complainants.¹⁵⁶ Indeed, other than a desire to promote economic goals such as import substitution or trade balancing, SCI has no basis for requesting export plans in connection with making decisions on placing or lifting DJAI observations. Further, SCI’s requirements are not mere information requests, as noted, but require importers to affirmatively comply with Argentina’s restriction on the importation of goods.

98. Finally, Argentina’s statement that the “only information required of prospective importers as part of the DJAI procedure is that expressly listed in Resolutions AFIP 3252, 3255 and 3256/2012”¹⁵⁷ is misleading. Although the only information required to submit and register a DJAI application is set out in *AFIP Resolution 3255* and its Updated Annex,¹⁵⁸ Argentine agencies participating in the DJAI system can and do request further information when they lodge observations. As Argentina stated in its First Written Submission, “[i]f . . . any observations previously made are lifted *as a result of supplementary information* provided by the importer, the DJAI moves to ‘*salida*’ (“exit”) status.”¹⁵⁹ The evidence demonstrates that SCI

¹⁵² See Information Bulletin, Industrial Union of the West (JE-46); CAC, *Details of Procedures and Experiences* (JE-755); U.S. First Written Submission, paras. 35-37 & accompanying footnotes.

¹⁵³ *PlastiNoticias, Newsletter* (JE-52) (“We transcribe the information received via email on 22/02/2012 from the *Secretaría de Comercio Interior*, which indicates the procedure that must be followed by importers whose sworn affidavits prior to importation (DJAI) have the “OBSERVADA” status and with a legend that states “INTERVENCION DE LA SCIN”).

¹⁵⁴ See *India – Autos (Panel)*, paras. 7.277-78; U.S. First Written Submission, paras. 132-35.

¹⁵⁵ Argentina’s Responses to Second Panel Questions, para. 126.

¹⁵⁶ See U.S. First Written Submission, paras. 30-47.

¹⁵⁷ Argentina’s Response to Second Panel Questions, para. 127.

¹⁵⁸ As noted in the U.S. comments to Argentina’s response to Panel Question 115, *Resolutions 3252* and *3256* do not contain any provisions detailing information to be submitted.

¹⁵⁹ Argentina’s First Written Submission, para. 221 (emphasis added).

requires information as to importers’ plans to balance their imports into Argentina with exports as a prerequisite for the lifting of observations.¹⁶⁰

125. (Argentina) According to Argentina’s oral response to Panel questions at the second substantive meeting (question identified in writing as No. 53), as soon as an importer or customs broker registers a DJAI, the MARIA system will indicate which agencies are entitled to make observations. Can Argentina provide a Screen Shot of a DJAI application at that stage.

99. Argentina’s response to Panel Question 125 highlights the extent to which the DJAI Requirement fails to meet the requirements of Articles 1.4(a), 1.6 and 3.3 of the Import Licensing Agreement, as explained in detail in prior U.S. submissions.¹⁶¹

100. First, Argentina’s response highlights that Argentina has failed to publish, as required by Article 1.4(a) of the Import Licensing Agreement, sufficient information for governments and traders to become familiar with “the rules and all information concerning procedures for the submission of applications,”¹⁶² which include the procedures that a DJAI applicant must follow (*e.g.*, information submission requirements, deadlines, etc.) to resolve Argentine agency “observations.” Argentina has not published such rules or information in any law, regulation, or other official guidance material.

101. The screen shot provided in Argentina’s response does not constitute such a publication for at least two reasons. First, this screen shot is not available for viewing by any importer (or WTO Member) until such importer has actually made a DJAI submission. As such, Argentina does not “publish” it – *i.e.*, it does not make it make generally available in an appropriate medium – in a manner that allows traders and governments to become familiar with and know the relevant procedures.¹⁶³ Second, the screen shot provides no meaningful guidance, as it consists entirely of internal codes that are unintelligible to persons other than Argentine authorities. In this respect, throughout this entire proceeding, Argentina has never disputed that it has failed to publish sufficient information for governments or traders to become familiar with at least the following:

- The type of submissions (written, oral, mode of transmission), as well as the content of submissions that DJAI applicants are required to provide in response to agency “observations”;
- As part of the DJAI application process, the type of communication to which DJAI applicants are entitled when an agency lodges an “observation” in the course of considering a DJAI application – *e.g.*, whether the relevant agency is required to provide a communication in writing that describes their reasoning, underlying factual and legal grounds, and the steps the company must take to resolve the situation;

¹⁶⁰ See U.S. First Written Submission, paras. 30-47.

¹⁶¹ See U.S. First Written Submission, paras. 138-162, 181-192, 202-206; U.S. First Opening Statement, paras. 54-59.

¹⁶² Import Licensing Agreement, Art. 1.4(a).

¹⁶³ See U.S. First Written Submission, paras. 143, 147, 156.

- Which importation transactions (that is, of which goods) may be blocked by each of the participating agencies, in connection with the DJAI application process;
- The complete list of agencies participating in the DJAI system and the reasons they may place an observation on a DJAI, in connection with the DJAI application process;
- Contact information necessary to reach a responsible person at an observing agency;
- What types of requirements Argentine authorities are authorized to impose on DJAI applicants in connection with the DJAI application process as a condition of releasing an “observation” and thereby allowing the DJAI application to be granted; and
- The time periods that apply to DJAI “observations,” including any time periods for agencies to respond to additional information provided by applicants, in connection with the DJAI application process.¹⁶⁴

102. Relatedly, Argentina’s response highlights the extent of Argentina’s breach of Article 3.3 of the Import Licensing Agreement, based on Argentina’s failure to “publish sufficient information for other Members and traders to know the basis for granting and/or allocating [DJAI] licenses.”¹⁶⁵ Article 3.3 requires Argentina to publish such information regarding those bases – information that is simply not published, whether in the screenshot provided by Argentina or in any other laws, regulations or other governmental guidance materials.

103. Finally, Argentina’s response highlights that under the DJAI Requirement importers may be required to approach more than one administrative body in connection with their DJAI applications, contrary to Article 1.6 of the Import Licensing Agreement.¹⁶⁶ Argentina’s response (including the screen shot) also makes clear that importers may be required to approach as many as six different administrative bodies. Not only does this number exceed the maximum limit of three administrative bodies described in Article 1.6, but Argentina has not demonstrated that it is “strictly indispensable” to require importers to approach more than three administrative bodies, as Article 1.6 requires.

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.

104. Argentina’s response to Panel Question 127 suggests that the WCO has validated Argentina’s purported reliance on the WCO SAFE Framework as a basis to justify the DJAI Requirement and its many trade restrictive and non-transparent features.¹⁶⁷ Argentina, however,

¹⁶⁴ See U.S. First Written Submission, para. 161.

¹⁶⁵ Import Licensing Agreement, Art. 3.3.

¹⁶⁶ See U.S. First Written Submission, paras. 21-22, 125.

¹⁶⁷ These trade restrictive and non-transparent features include the unlimited discretion afforded to participating agencies to deny DJAI applications for any reason, or no reason at all; the lack of transparency regarding “observation” procedures; the imposition of RTRRs as a condition of lifting “observations;” the extended period of delays; and the unreasonable and non-uniform administration of the DJAI Requirement generally.

has no basis for this suggestion. Rather, the WCO Secretariat’s letter does not support Argentina’s contention that the DJAI Requirement and its trade restrictive and non-transparent features are called for under the SAFE Framework.

105. First, Argentina states that, “the responses of the WCO are within the framework of the concepts of ‘risk’ and ‘risk management’ that Argentina applies.”¹⁶⁸ Yet, nothing in the WCO Secretariat letter supports Argentina’s extremely open-ended “application” of what it describes as “risk management.” Argentina’s claim that the WCO Secretariat has validated Argentina’s purported “risk management” approach cannot be squared with the WCO Secretariat’s own statement that “none” of Argentina’s purported reasons for the DJAI system are “covered by the SAFE Framework as interpreted by the (majority of) Members.”¹⁶⁹

106. Second, Argentina states that the WCO has made clear “that customs functions are not confined to the SAFE framework and that the SAFE framework contributes to the enhancement of customs in the exercise of their customs functions.”¹⁷⁰ This is not correct. The WCO Secretariat letter does not address at all the meaning of “customs purpose” as that term is used within the Import Licensing Agreement or in any other context.

107. Third, Argentina alleges that “the data required by the DJAI is contained in the extensive list of items provided in the ‘WCO Data Model’.”¹⁷¹ In fact, Argentine authorities require importers to provide, pursuant to the DJAI observation process, extensive information that is not foreseen under the WCO Data Model at all. This unrelated information includes information such as the “balance of foreign exchange as well as the pace of the company’s prices,”¹⁷² information on the importer’s supply chain, the importing company’s other imports and exports, and other information broadly related to the economic policy goals that actually underlie the DJAI Requirement.¹⁷³ Furthermore, the DJAI system omits the vast majority of data elements set forth in the WCO Data Model that relate to cargo security.¹⁷⁴

108. In its response, Argentina makes other extraneous statements that fail to support its contentions in this dispute. For example, Argentina attempts to explain away the inconsistencies between the SAFE Framework’s time limits for advance cargo declarations, and the DJAI Requirement’s mandate that importers secure DJAI approvals before issuing purchase orders and securing foreign exchange financing. Argentina states: “Given that DJAI procedures are useful to pursue other customs objectives that go beyond the traceability of supply chains, the

¹⁶⁸ Argentina’s Responses to Second Panel Questions, para. 130.

¹⁶⁹ WCO Responses on the Interpretation of the SAFE Framework, p. 3 (Dec. 2, 2013).

¹⁷⁰ Argentina’s Responses to Second Panel Questions, para. 130.

¹⁷¹ Argentina’s Responses to Second Panel Questions, para. 135.

¹⁷² See, e.g., *DJAI User Manuel*, pp. 13-18 (JE-13); *Juguetes y Negocios.com*, *Cómo Liberar Declaraciones de Importación Centro Despachantes de Aduana* [How to Release Declarations of Importation from the Center for Customs Brokers] (March 6, 2012) (JE-2); *Moreno Aclaró que Sus Controles Sobre las Importaciones Se Aplicarán A Cien Empresas que Consumen 80% de las Divisas* [Moreno Clarified that His Import Controls Will Apply to the One Hundred Companies that Use 80% of Available Foreign Exchange], *BUENOS AIRES ECONÓMICO* (Arg.), January 31, 2012 (JE-3); *Boletín Informativo* [Information Bulletin], *Union Industrial del Oeste* [Industrial Union of the West], *Bienes de Capital* [Capital Goods Report] (March 21, 2012) (JE-46).

¹⁷³ See generally U.S. First Written Submission, paras. 11, 32-47.

¹⁷⁴ See generally U.S. Opening Statement at First Panel Meeting, para. 31.

information required in the DJAI procedure to allow the customs risk assessment is not necessarily framed within the time limits recommended by the SAFE framework.”¹⁷⁵ However, as a general matter, the DJAI Requirement fails to identify what those “other customs objectives” are and how such “other customs objectives” necessitate application of this (and many other) trade restrictive features of the DJAI Requirement. More specifically, prior to the issuance of a purchase order, information that would be needed for “customs purposes” to determine classification, origin and valuation, or for the assessment of other unidentified risks relating to the merchandise at issue, would simply not be available. At that early stage, prior to physical identification (or even manufacture) of the goods to be imported – let alone their packing, containerization and loading – such information could not be provided with any precision.¹⁷⁶

109. Additionally, after acknowledging that the only consensus among WCO Members is that the SAFE Framework is intended to combat terrorist threats, Argentina nonetheless argues that some “other Members use the same measures as are put forward in SAFE ‘to combat other threats’, such as IPR infringements and product safety issues.”¹⁷⁷ Yet the DJAI Requirement does not identify any cargo security risks that it would purport to combat, and with respect to other potential risks, Argentina has listed excerpts from certain internal laws having no apparent relationship to “customs purposes,” let alone importation of products.¹⁷⁸ Furthermore, outside of these *post hoc* justifications advanced for the first time at this late stage of these proceedings, Argentine officials have cited broader economic policy priorities as a basis for the DJAI Requirement, including “preventing negative effects on the domestic market, since the qualitative and/or quantitative importance of imports to be made has the effect of impacting domestic trade,”¹⁷⁹ and “protect[ing] Argentine industry and facilitat[ing] the participation of monitoring officials from Argentine chambers of industry – who have been working with sensitive products,” to better ensure “productive growth with social inclusion and sustained development.”¹⁸⁰ Argentina has simply not demonstrated in any way how or why the many trade restrictive and non-transparent features of the DJAI Requirement are needed to combat purported risks that it has left vague and has failed to identify with clarity.

110. Finally, Argentina acknowledges that it has signed more than 20 information exchange agreements with other countries “for the analysis and prevention of customs risk.”¹⁸¹ Argentina’s successful negotiation of these agreements when needed raises further questions about its need for a trade restrictive and non-transparent “ban . . . on imports”¹⁸² of the type that

¹⁷⁵ Argentina’s Responses to Second Panel Questions, para. 142.

¹⁷⁶ See generally U.S. Second Written Submission, para. 84.

¹⁷⁷ Argentina’s Responses to Second Panel Questions, para. 133.

¹⁷⁸ See Argentina’s Responses to Second Panel Questions, paras. 85-113.

¹⁷⁹ *SCI Resolution 1*, preamble (JE-41).

¹⁸⁰ *Ministry of Economía Press Release, March 27, 2012* (JE-284). See also Press Release, Ministerio de Economía, La AFIP creó nuevos procedimientos de control de los destinos de importaciones (March 29, 2012), available at <http://www.prensa.argentina.ar/2012/03/29/29376-la-afip-creo-nuevos-procedimientos-decontrol-de-los-destinos-de-importaciones.php> (Arg.) (JE-285) (stating “[t]his measure seeks to create a more secure and transparent trade system that protects Argentine industry and promotes productive growth with social inclusion and sustained employment in the productive sector”) (emphasis added).

¹⁸¹ Argentina’s Responses to Second Panel Questions, para. 145.

¹⁸² See *Yudigar S.A.* (JE-59); See also *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Fity SA* (JE-302).

the DJAI Requirement represents. The existence of these agreements, and the existence of separate customs procedures that Argentina actually does use later in the importation process for customs purposes,¹⁸³ belie Argentina's claims that the DJAI Requirement is necessary to assess customs risks, let alone other risks with no asserted relationship to customs purposes or imported products.

¹⁸³ See generally U.S. Second Written Submission, paras. 83-87; U.S. First Written Submission, para. 48.