

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

**FIRST WRITTEN SUBMISSION OF  
THE UNITED STATES OF AMERICA**

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<i>Brazil – Retreaded Tyres (Panel)</i>	Panel Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R
<i>China – Publications and Audiovisual Products (Panel)</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R
<i>China – Raw Materials (Panel)</i>	Panel Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/R / WT/DS395/R / WT/DS398/R / and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R/ WT/DS395/AB/R/WT/DS398/AB/R
<i>Colombia – Ports of Entry</i>	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R and Corr.1, adopted 20 May 2009
<i>EC – Bananas III (AB)</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/R, adopted 25 September 1997
<i>EC – Bananas III (Ecuador) (Panel)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Ecuador</i> , WT/DS27/R/ECU, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R,
<i>EC – Bananas III (Guatemala and Honduras) (Panel)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Guatemala and Honduras</i> , WT/DS27/R/GTM, WT/DS27/R/HND, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R
<i>EC – Bananas III (Mexico) (Panel)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Mexico</i> , WT/DS27/R/MEX, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R

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<i>EC – Bananas III (US) (Panel)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States</i> , WT/DS27/R/USA, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R
<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 – Poultry (AB)</i>	Appellate Body Report, <i>European Communities – Measures Affecting the Importation of Certain Poultry Products</i> , WT/DS69/AB/R
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<i>India – Quantitative Restrictions (Panel)</i>	Panel Report, <i>India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products</i> , WT/DS90/R, adopted 22 September 1999, upheld by Appellate Body Report WT/DS90/AB/R
<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>Turkey – Rice</i>	Panel Report, <i>Turkey – Measures Affecting the Importation of Rice</i> , WT/DS334/R, adopted 22 October 2007
<i>US – Underwear (AB)</i>	Appellate Body Report, <i>United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear</i> , WT/DS24/AB/R, adopted 25 February 1997

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<i>EEC – Minimum Import Prices (GATT Panel Report)</i>	GATT Panel Report, <i>EEC – Programme of Minimum Import Prices, Licenses, and Surety Deposits for Certain Processed Fruits and Vegetables</i> , BISD 25S/68, adopted 18 October 1978
<i>EEC – Quantitative Restrictions Against Imports from Hong Kong (GATT Panel Report)</i>	GATT Panel Report, <i>EEC – Quantitative Restrictions Against Imports of Certain Products from Hong Kong</i> , BISD 30/S/129, adopted 12 July 1983
<i>Japan – Semi-Conductors (GATT Panel Report)</i>	GATT Panel Report, <i>Japan - Trade in Semi-Conductors</i> , L/6309 - 35S/116, adopted 4 May 1988

**TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full Name</b>
<i>AFIP</i>	Administración Federal de Ingresos Públicos (“Administration of Public Revenue”)
<i>ANMAT</i>	Administración Nacional de Medicamentos, Alimentación y Tecnología Médica (“National Administration of Medicine, Food, Medical Technology”)
<i>CAFMA</i>	Cámara Argentina de Fabricantes de Maquinaria Agrícola (“The Argentine Association of Agricultural Machinery Manufacturers”)
<i>CAIP</i>	Cámara Argentina de la Industria Plástica (“The Argentina Chamber of Plastic Industry”)
<i>CAL</i>	Cámara Argentina del Libro (“The Argentine Association of Books”)
<i>CAP</i>	Cámara Argentina de Publicaciones (“The Argentine Association of Publishers”)
<i>CAPECO</i>	Cámara de Productores y Exportadores de Cereales y Oleaginosos (“The Argentine Association of Producers and Exporters of Grains and Oilseeds”)
<i>CI</i>	Certificado de Importación (“Import Certificates”)
<i>CIF</i>	Cámara de la Industria Farmacéutica (“Pharmaceutical Industry Association”)
<i>CUIT</i>	Importer’s Tax Identification Number
<i>DGA</i>	Dirección General de Aduanas (“Directorate-General of Customs”)
<i>DJAI</i>	Declaraciones Juradas Anticipadas de Importación (“Advance Sworn Import Affidavit”)
<i>INTI</i>	Instituto Nacional de Tecnología Industrial del Ministerio de Industria (“National Institute of Industrial Technology of the Ministry of Industry”)
<i>INV</i>	Instituto Nacional de Vitivinicultura (“Institute for Grape Growing and Wine Production”)
<i>MERCOSUR</i>	Mercado Común del Sur (“Southern Common Market”)
<i>RTRR</i>	Restrictive Trade Related Requirements
<i>SCI</i>	Secretaría de Comercio Interior (“Secretariat of Domestic Trade”)
<i>SEDRONAR</i>	Secretaría de Programación para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico (“Secretariat for the Prevention of Drug Addictions and Drug Trafficking Eradication”)
<i>SENASA</i>	Servicio Nacional de Sanidad y Calidad Agroalimentaria (“Agri-Food Health and Quality Administration”)



## **I. INTRODUCTION**

1. This dispute concerns blatant disregard for obligations in the WTO agreements by a Member country. The WTO agreements establish a rule-based trading system for Members, importers, exporters, and producers. The disciplines in the agreements are aimed at ensuring that goods flow between countries unencumbered by restrictions aimed at protecting domestic economies – measures which harm both individual economies and the world economy as a whole as protectionism breeds protectionism among trading partners. Argentina has flouted these disciplines and compounded its disregard for its obligations by attempting to avoid scrutiny at the WTO, including under the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), by conducting its activities according to unpublished rules.

2. Specifically, Argentina imposes licensing procedures which it uses to restrict imports of goods with the aim of protecting the domestic economy. Argentina often withholds approval of these licenses unless the importer agrees to take actions to restrict imports, export goods, make investments, refrain from repatriating profits, or use local content in its production. These measures are inconsistent with several provisions of both the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”) and the *Agreement on Import Licensing Procedures* (“Import Licensing Agreement”).

3. Argentina attempts to conceal these activities by declining to publish many of the rules related to their operation, as required by the WTO agreements. Despite Argentina’s attempts to conceal the nature of its measures, the evidence presented by co-complainants in this dispute reveals their existence and widespread operation. In particular, Argentina’s licensing regime and the requirements it places on importers restrict imports in violation of Article XI:1 of the GATT 1994. In addition, Argentina’s import regime is non-transparent and arbitrary, failing to comply with the publication, administration and notification provisions of Articles X:1 and X:3(a) of the GATT 1994, as well as Articles 1.4(a), 3.2, 3.3 and 5 of the Import Licensing Agreement. Finally, Argentina’s licensing procedures fail to meet the requirements of Articles 1.6 and 3.5(f) of the Import Licensing Agreement related to the operation of a licensing regime.

4. Argentina’s trade restrictive measures, and its failure to provide transparency for those measures, are at odds with fundamental disciplines of the WTO agreements. This is precisely the type of situation that needs to be addressed by the WTO dispute settlement system. Accordingly, the United States is asking the Panel to find that Argentina may not restrict imports in a manner inconsistent with its WTO obligations and, at the same time, avoid the scrutiny afforded under the DSU and other WTO agreements by refusing to publish and notify the rules related to their operation.

## **II. PROCEDURAL BACKGROUND**

5. On August 21, 2012, the United States requested consultations with the Government of Argentina pursuant to Articles 1 and 4 of the DSU, Article XXII of the GATT 1994, Article 6 of the Import Licensing Agreement, Article 8 of the *Agreement on Trade-Related Investment*

*Measures*, and Article 14 of the *Agreement on Safeguards*.<sup>1</sup> Pursuant to this request, the United States, together with the Governments of Japan and Mexico, held consultations with Argentina on September 20 and 21, 2012. The parties failed to reach a mutually satisfactory resolution to this dispute.

6. The United States requested the establishment of a panel on December 6, 2012, pursuant to Articles 1 and 4 of the DSU, Article XXII of the GATT 1994, and Article 6 of the Import Licensing Agreement.<sup>2</sup> The Dispute Settlement Body considered this request at its meetings of December 17, 2012, and January 28, 2013, and established a single Panel on January 28 to consider this dispute, together with those initiated by the European Union and Japan.<sup>3</sup>

### III. FACTUAL BACKGROUND<sup>4</sup>

7. In recent years, Argentina has pursued aggressive policies of what it describes as “trade management” and “import substitution.”<sup>5</sup> The primary goals of these policies are to protect domestic industry by restricting the importation of foreign products and to promote a shift to local production. To further these goals, Argentina subjects imported goods to several types of administrative and licensing requirements and other restrictions on trade, including those which are at issue in this dispute: the *Declaraciones Juradas Anticipadas de Importación* (“advance import affidavit”) (“DJAI”) Requirement, and the Restrictive Trade Related Requirements (“RTRRs”).<sup>6</sup>

8. The DJAI Requirement is a non-automatic import licensing procedure that serves to restrict imports and that applies to almost all importations of all goods.<sup>7</sup> In order to place a

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<sup>1</sup> Request for Consultations by the United States, WT/DS/444/1, circulated Aug. 23, 2012.

<sup>2</sup> Request for the Establishment of a Panel by the United States, WT/DS444/10, circulated Dec. 12, 2012 (“U.S. Panel Request”).

<sup>3</sup> DS438 and DS445, respectively.

<sup>4</sup> The United States also incorporates into this submission all the facts and evidence included in the EU first written submission in DS448 and in Japan’s first written submission in DS445.

<sup>5</sup> See, e.g., Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “Este Gobierno cree y aplica administración del comercio” [Giorgi: “Administration Has Established and Is Implementing Trade Management”] (February 25, 2011), available at <http://www.industria.gob.ar/?p=6234> (“*Ministry of Industry Press Release February 25, 2011*”) (JE-9); Press Release, Ministerio de Industria [Ministry of Industry], Amplian el universo de productos importados monitoreados por el sistema de licencias no automáticas [More Imports Subject to Non-Automatic Licensing] (February 15, 2011), available at [http://www.industria.gob.ar/?p=6053&upm\\_export=print](http://www.industria.gob.ar/?p=6053&upm_export=print) (Arg.) (“*Ministry of Industry Press Release February 15, 2011*”) (JE-7).

<sup>6</sup> The U.S. Panel Request also included claims related to the *Certificados de Importación* (“CIs”). U.S. Panel Request, p. 3-4. Argentina repealed the resolutions establishing the CIs on the last working day before the meeting of the Dispute Settlement Body where the co-complainants made their second request for the establishment of the panel, and the panel was composed. *Ministerio de Economía y Finanzas Públicas, Procedimientos para el Trámite de las Licencias de Importación. Derogaciones* [Import Licensing Procedures, Repeals], *Resolución 11* (“*MEFP Resolution 11*”), Jan. 25, 2013, [32.570], B.O. 8. (Arg.) (“*MEFP Resolution 11*”) (JE-39); Constitution of the Panel Established at the Request of the European Union, the United States and Japan at 1, WT/DS438, WT/DS444/11, WT/DS445/11, circulated May 28, 2013 (noting that the panel was established Jan. 28, 2013). For that reason, the United States is not pursuing its claims with respect to the CIs.

<sup>7</sup> See *infra* note 43 for a discussion of narrow exceptions to the DJAI Requirement.

purchase order or initiate a foreign exchange transaction to purchase foreign goods, importers into Argentina must first electronically submit a DJAI, which at least seven Argentine governmental agencies then have an opportunity to review.<sup>8</sup> If any of the governmental agencies registers an “observation” (*observación*) of the DJAI, then the importer may not proceed with the import transaction until the relevant agency (or agencies) decides that it is satisfied with the importer’s response. The legal framework for the DJAI system imposes virtually no constraints on the government agencies’ discretion in registering or resolving “observations,” and in practice, DJAIs often remain in an “observed” (*observada*) status for long periods of time without explanation, or until an import complies with RTRRs.

9. Pursuant to the RTRRs, Argentina withholds permission to import, including approvals of DJAIs, unless an importer agrees to: (1) offset the value of its imports with an equivalent value of exports; (2) reduce the price or volume of imports; (3) incorporate local content into domestically produced goods; (4) make or increase investments in Argentina (including in production facilities); and/or (5) refrain from repatriating funds from Argentina to another country. Although Argentina has failed to publish legal instruments establishing the RTRRs, statements of Argentine government officials, official government press releases, numerous press reports, industry surveys and statements by company officials confirm their existence and operation. This evidence demonstrates that Argentina has applied the RTRRs to importers across industries.

10. Argentine authorities have variously described the RTRRs as requiring companies to maintain a “trade balance,” whereby “imports must be compensated for by exports,” or by an “irrevocable capital contribution,”<sup>9</sup> 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.”<sup>10</sup> Government officials and observers often describe one component of the RTRRs as a “one-to-one” measure. For example, in March 2009, Argentina’s Secretary of Domestic Trade, Guillermo Moreno, stated: “for every dollar’s worth [that companies] import, they must export one.”<sup>11</sup> Government press releases also refer to “the ‘one-to-one program’ for balancing trade (one dollar imported per dollar exported) that [Argentina’s Minister of Industry Débora] Giorgi and Moreno demanded” at the start of 2011.<sup>12</sup> A press report explained that

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<sup>8</sup> See *infra* para. 21 for a description of participating agencies.

<sup>9</sup> Press Release, Ministerio de Industria [Ministry of Industry], Una Importadora Automotriz Podrá Compensar Exportando [Automobile Importers May Compensate by Exporting] (March 25, 2011), available at <http://www.prensa.argentina.ar/2011/03/25/17834-una-importadora-automotriz-podra-compensar-exportando.php> (Arg.) (“*Ministry of Industry Press Release, March 25, 2011*”) (JE-1).

<sup>10</sup> 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, available at <http://www.diariobae.com/diario/2012/01/31/7534-moreno-aclaro-que-sus-controles-sobre-las-importaciones-se-aplicaran-a-cien-empresas-que-consumen-80-de-las-divisas.html> (“*Buenos Aires Económico January 31, 2012*”) (JE-3).

<sup>11</sup> *Buenos Aires Económico January 31, 2012* (JE-3).

<sup>12</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi, Boudou y Moreno subscribieron el plan de exportaciones e importaciones de General Motors [Giorgi, Boudou, and Moreno Sign General Motors Export-Import

“[t]he Ministry of Industry, headed by Débora Giorgi, has begun urging importers of finished products that are affected by non-automatic licenses to ‘guarantee the new dollar-for-dollar [policy]:’ in other words, that for each dollar paid for imports, another should be generated by exports, or [they must] report capital investments or reserves.”<sup>13</sup>

11. Argentina’s RTRR and DJAI measures are part of a coordinated policy to restrict imports, which Minister Giorgi described as the government’s “strategy of using managed trade” for purposes of “import substitution” and “to keep domestic products on the internal market.”<sup>14</sup> This strategy is pursued through the DJAI either together or separately from the RTRR. As explained by Secretary Moreno, DJAI approvals are often contingent upon compliance with the RTRR: “When we analyze the [DJAI], we will take into account the balance of foreign exchange, as well as the evolution of the company’s prices. We will do this on a company-by-company basis.”<sup>15</sup> The goal of these “trade management” policies is to protect domestic industry through restricting the importation of foreign products, and to promote a shift to local production, as high-ranking Argentine officials have repeatedly confirmed.<sup>16</sup>

12. Argentina’s President Cristina Fernandez has acknowledged Argentina’s managed trade policy, and the use of licensing to enforce that policy. As reported in the Argentine daily newspaper *La Nación* in 2011:

Yesterday President Cristina Kirchner defended trade restrictions as a way of encouraging companies to invest in the country and create local jobs. She acknowledged that the Government is often criticized for its “heavy hand” in enforcing complex non-automatic import licensing renewal requirements for hundreds of industrial products. “For Argentina, we will continue to be heavy-handed. If that’s what it means to be heavy-handed – to increase employment in Argentina, to increase production in Argentina, to make more parts in Argentina, then it is our duty to do it for 40 million Argentines,” said the President . . . .<sup>17</sup>

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

<sup>13</sup> Pedro Ylarri, *Faltarán más ropa, juguetes, y electrónicos importados* [Due to Restrictions on Imports, Clothes, Toys, and Electronics Will Be in Short Supply], PERFIL (Arg.), July 17, 2011, at 22-23 (JE-6).

<sup>14</sup> *Ministry of Industry Press Release February 15, 2011* (JE-7).

<sup>15</sup> Roberto Navarro, *El Plan 2012*, DEBATE, January 27, 2012, <http://www.revistadebate.com.ar/2012/01/27/4993.php> (last visited Sept. 27, 2012) (JE-8) (English translation incomplete).

<sup>16</sup> See, e.g., *Ministry of Industry Press Release February 25, 2011* (JE-9).

<sup>17</sup> *Cristina Kirchner Defendió las trabas a las importaciones* [Cristina Kirchner Defends Import Restrictions], *La Nación* (Arg.), September 7, 2011 (JE-10).

13. This section provides a detailed overview of the DJAI Requirement and the RTRRs and explains how Argentina uses these measures to further its policy of “trade management”.<sup>18</sup> Before addressing these matters in detail, however, it is important to emphasize that the RTRRs work in conjunction with the DJAI Requirement to restrict imports. As explained below, the DJAI Requirement provides Argentina’s economic (and other) agencies with broad discretion to grant or deny permission to import. These agencies use this discretion to condition permission to import on private actors’ compliance with the RTRRs, thereby causing substantial restrictions on a broad range of imported products.

#### A. DJAI REQUIREMENT

14. Argentina’s Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos*, or “AFIP”) issued *Resolution 3252* on January 5, 2012, establishing the DJAI Requirement. The DJAI Requirement became effective as of February 1, 2012. On January 20, 2012, AFIP issued *Resolution 3255*, which sets out guidelines for managing and processing DJAI applications. Through *Resolutions 3552* and *3255* and other legal instruments and guidelines, Argentina maintains the DJAI Requirement as a discretionary non-automatic import licensing system.

15. The DJAI Requirement obliges importers to file a DJAI with AFIP prior to issuing a purchase order, production order or similar document to the foreign exporter.<sup>19</sup> Pursuant to Article 3 of *Resolution 3252*, AFIP must make the information contained in the DJAI application available to those governmental agencies that “accede” to the DJAI system, “in accordance with their functions.”<sup>20</sup> The “accession,” or participation, of an agency in the DJAI system, is effected through “an agreement” between the agency and AFIP.<sup>21</sup> Participating agencies have access to the information provided by importers in the DJAI and, as is explained further below, may make observations (“*observaciones*”) on a DJAI application. If an agency makes an observation, the importer cannot proceed on the transaction until the observation is addressed.

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<sup>18</sup> Argentina also uses other means to pursue the goals of import restriction and substitution. For example, in December of 2012, Argentina and Mexico announced the reinstatement of an agreement whereby Argentina provides duty-free treatment to autos from Mexico, in exchange for Mexico’s agreement to reduce the volume of autos exported to Argentina. *Mexico Said It Would Drop a Complaint over Import Curbs Against Argentina Before the World Trade Organization after the Two Countries Signed a More Limited Automobile Trade Pact*, REUTERS, December 14, 2012, available at <http://www.reuters.com/article/2012/12/14/us-mexico-argentina-wto-idUSBRE8BD16B20121214> (“*Reuters December 14, 2012*”) (JE-12). Minister Giorgi stated that the new deal “reduces the amount of cars imported from Mexico by about 33 percent, and should restart the flow of trade between the two countries.” *Id.*

<sup>19</sup> *Administración Federal de Ingresos Públicos* [AFIP], *Declaración Jurada Anticipada de Importación* [Advance Import Affidavit], *Resolución 3252*, art. 2, January 5, 2012, [32.314] B.O. 7 (“*AFIP Resolution 3252*”) (Arg.) (JE-15).

<sup>20</sup> *AFIP Resolution 3252*, art. 3 (JE-15).

<sup>21</sup> See *Administración Federal de Ingresos Públicos*, *Ventanilla Unica Electronica del Comercio Exterior* [Electronic Single Window for International Trade], *Resolución 3256*, January 26, 2012 [32.327] B.O. 21 (“*AFIP Resolution 3256*”) (Arg.) (JE-14) (establishing agreement template).

16. *Resolution 3252* and *Resolution 3255* contain little information about the purpose of the DJAI Requirement. *Resolution 3252* mentions “promot[ing] multisector coordination among different government agencies”; and “increas[ing] cooperation among these agencies” through the “availability of strategic information.”<sup>22</sup> According to *Resolution 3255*, the DJAI system “facilitates the creation of a process integrating the management of government agencies participating in foreign trade operations” and was established “for purposes of creating a computerized tool suitable for facilitating the uninterrupted transfer of commercial information regarding import operations among all governmental agencies involved in foreign trade operations within their areas of jurisdiction.”<sup>23</sup> Apart from these vague statements, the measures establishing the DJAI system provide no guidance regarding the bases upon which a DJAI application may be granted, or not granted.

17. Up until the last workday before the establishment of the Panel, Argentina maintained product-specific non-automatic import licenses on products falling in over 600 tariff lines.<sup>24</sup> These predecessor import licenses were imposed pursuant to a series of resolutions which established product-specific “import certificates” (*Certificado de Importacion*, or “CI”).<sup>25</sup>

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<sup>22</sup> *AFIP Resolution 3252*, preamble (JE-15).

<sup>23</sup> *Administración Federal de Ingresos Públicos, Ventanilla Unica Electronica* [Electronic Single Window], *Resolución 3255* (“*AFIP Resolution 3255*”), preamble & art. 1, January 20, 2012 [32.323] B.O. 14 (Arg.) (JE-16).

<sup>24</sup> *MEFP Resolution 11* (JE-39). The tariff lines are listed in JE-17, along with the corresponding resolutions.

<sup>25</sup> *Ministerio de Economía y Obras y Servicios Públicos, Defensa del Consumidor* [Consumer Protection], *Resolución 977* (“*MEOP Resolution 977*”), August 6, 1999 [29.206] B.O. 8 (Arg.) (JE-18); *Secretaría de Industria, Comercio y Minería, Defensa del Consumidor* [Consumer Protection], *Resolución 736* (“*SICM Resolution 736*”), October 1, 1999 [29.243] B.O. 12-13 (Arg.) (JE-19); *Ministerio de Economía y Producción, Establécese un mecanismo de verificación previo al libramiento a plaza de productos del sector calzado, con el objeto de efectuar el seguimiento y control de las importaciones. Certificado de Importación de Calzado para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur* [Ordering the Establishment of a Mechanism for Verification Prior to the Placing on the Market of Footwear Sector Products in order to Monitor and Control Imports. Certificate for the Import of Footwear for Specific Goods Falling within Tariff Positions of the Mercosur Common Nomenclature], *Resolución 486* (“*MEP Resolution 486*”), August 30, 2005 [30.728] B.O. 9-11 (Arg.) (JE-20); *Ministerio de Economía y Obras y Servicios Públicos, Defensa del Consumidor* [Consumer Protection], *Resolución 1117* (“*MEOSP Resolution 1117*”), September 15, 1999 [29.235] B.O. 3 (Arg.) (JE-21); *Secretaría de Industria, Comercio y Minería, Establécese el procedimiento para la tramitación del Certificado de Importación de papeles noencapados destinados a la impresión, escritura u otros fines gráficos, con exclusión del papel prensa* [Establishing a Procedure for the Processing of Import Certificates for Non-Coated Paper for Printing, Writing or Other Graphic Purposes, Excluding Newsprint], *Resolución 798* (“*SICM Resolution 798*”), October 26, 1999 [29.259] B.O. 10-11 (Arg.) (JE-22); *Ministerio de Economía y Producción, Unificación y armonización gradual del marco normativo del comercio exterior argentino. Establécese que la Secretaría de Industria, Comercio y de la Pequeña y Mediana Empresa coordinará las acciones necesarias a efectos de concretar dicha unificación. Sistematización de los trámites referidos a la obtención de licencias previas de importación de carácter automático y/o no automático. Inclúyense mercaderías comprendidas en posiciones arancelarias de la N.C.M. en el régimen de la Licencia No Automática Previa de Importación (LNAP)* [Gradual Unification and Harmonisation of the Regulatory Framework for Argentine Foreign Trade. It Is Hereby Established that the Secretariat of Industry, Trade and Small and Medium-sized Enterprises (SMEs) Shall Coordinate the Necessary Actions to Implement this Unification. Systematisation of the Procedures for Obtaining Automatic and/or Non-Automatic Prior Import Licences. Merchandise Covered by the Mercosur Common Nomenclature (N.C.M.) Tariff Headings Shall be Included in the System of Non-Automatic Prior Import Licensing (LNAP)], *Resolución 444* (“*MEP Resolution 444*”), July 5, 2004 [30.436] B.O. 3 (Arg.) (JE-23); *Secretaría de Industria, Comercio y de la*

*Pequena y Mediana Empresa, Institúyese el Certificado de Importación de Artículos para el Hogar (CIAH), el que será exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo* [Establishing the Import Certificate for Household Goods (CIAH), Required only for Requests for Final Import for Consumption], *Resolución 177 (“SICPME Resolution 177”)*, July 21, 2004 [30.447], B.O. 4-6 (Arg.) (JE-24); *Ministerio de Economía y Producción Establécese un mecanismo de verificación previo al libramiento a plaza de productos del sector juguetes, con el objeto de efectuar el seguimiento y control de las importaciones. Certificado de Importación de Juguetes para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur* [Establishing a Mechanism for Verifying Toy Sector Products Prior to Their Customs Clearance, with the Aim of Monitoring and Controlling Imports. Import Certificate for Toys, for Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature], *Resolución 485 (“MEP Resolution 485”)*, August 30, 2005 [30.728], B.O. 6-9 (Arg.) (JE-25); *Ministerio de Economía y Producción, Establécese para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur, el Certificado de Importación de Motocicletas, que será exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo* [Providing for Goods Included under Specific Tariff Positions in the Mercosur Market Common Nomenclature, the Certificate for the Import of Motorcycles, which Shall be Required Exclusively for Requests for Their Definitive Import and Use], *Resolución 689 (“MEP Resolution 689”)*, August 30, 2006 [30.980], B.O. 25-27 (Arg.) (JE-26); *Ministerio de Economía y Producción, Establécese para las mercaderías en estado nuevo, comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur, el Certificado de Importación de Cubiertas y Cámaras Neumáticas de Bicicletas, que será exigible exclusivamente para las solicitudes de destinación de importación definitiva* [Establishing for New Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature, the Import Certificate for Bicycle Inner Tubes and Tyres (C.I.C.C.N.B.), Required only for Requests for Final Import for Consumption], *Resolución 694 (“MEP Resolution 694”)*, September 5, 2006 [30.985], B.O. 6-8 (Arg.) (JE-27); *Ministerio de Economía y Producción, Establécese, para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Manufacturas Diversas, exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones,* [Establishing, for merchandise covered by particular tariff headings of the Mercosur Common Nomenclature (N.C.M.), the Import Certificate for Different Manufactured Goods, required only for requests for final import for consumption. Exemptions.], *Resolución 47 (“MEP Resolution 47”)*, August 15, 2007 [31.2220], B.O. 6-7 (Arg.) (JE-28); *Ministerio de Economía y Producción, Establécese, para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Partes de Calzado (C.I.P.C.), exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones,* [Establishing, for Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature (N.C.M.), the Import Certificate for Footwear Parts (C.I.P.C.), Required only for Requests for Final Import for Consumption. Exemptions.], *Resolución 61 (“MEP Resolution 61”)*, August 17, 2007 [31.223], B.O. 6-8 (Arg.) (JE-29); *Ministerio de Economía y Producción, Establécese un procedimiento para la tramitación del Certificado de Importación de Pelotas, que será exigible para las solicitudes de destinación de importación definitiva para consumo* [Establishing a Procedure for Issuing the Import Certificate for Balls, Required Only for Requests for Final Import for Consumption], *Resolución 217 (“MEP Resolution 217”)*, April 20, 2007 [31.139], B.O. 13 -14 (Arg.) (JE-30); *Ministerio de Economía y Producción, Establécese, para mercaderías comprendidas en las posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Productos Textiles (C.I.P.T.), exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones.* [Established for Merchandise Covered by the Tariff Headings of the Mercosur Common Nomenclature (N.C.M.), the Import Certificate for Textile Products (C.I.P.T.), Required Only for Requests for Final Import for Consumption. Exemptions.], *Resolución 343 (“MEP Resolution 343”)*, May 24, 2007 [31.162], B.O. 10-12 (Arg.) (JE-31); *Ministerio de Economía y Producción, Establécese para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Productos Metalúrgicos (C.I.P.M.)* [Established for Certain Goods Included in the Tariff Classifications of Common Mercosur Nomenclature (N.C.M.), the Importation Certificate for Metallurgical Products (C.I.P.M.)], *Resolución 588 (“MEP Resolution 588”)*, November 4, 2008 [31.528], B.O. 9-10 (Arg.) (JE-32); *Ministerio de Economía y Producción, Establécese para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el certificado de Importación de*

Importers were required to obtain CIs in order to import products classifiable in the relevant tariff lines. The resolutions addressed specific categories of products, including shoes,<sup>26</sup> paper,<sup>27</sup> household products,<sup>28</sup> toys,<sup>29</sup> motorcycles,<sup>30</sup> bicycle tires,<sup>31</sup> shoe parts,<sup>32</sup> balls,<sup>33</sup> textile products,<sup>34</sup> metal products,<sup>35</sup> yarns,<sup>36</sup> tires,<sup>37</sup> screws and similar products,<sup>38</sup> auto parts,<sup>39</sup> automobiles,<sup>40</sup> and miscellaneous manufactured and other products.<sup>41</sup> As will be discussed throughout this section, the DJAI Requirement essentially continues and expands the licensing requirements previously imposed through the CIs. Argentina described the purpose of the CI license requirements in terms that are similar to those used to describe the purpose of the DJAI Requirement – e.g., the need to “monitor” or “control” imports in the subject sector in light of “increased trade flows.”<sup>42</sup>

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*Hilados y Tejidos (C.I.H.T.)* [Establishing the Yarns and Fabrics Import Certificate (CIHT) for Certain Goods Classified under MERCOSUR Common Nomenclature (NCM) Tariff Headings], *Resolución 589* (“MEP Resolution 589”), November 10, 2008 [31.528], B.O. 10-12 (Arg.) (JE-33); *Ministerio de Produccion, Establécese, para mercaderías comprendidas en las posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Neumáticos (C.I.N.), exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo* [Establishing the Tire Import Certificate (CIN) for Certain Goods Classified under MERCOSUR Common Nomenclature (NCM) Tariff Headings, Required Solely for Applications for the Permanent Import of Goods for Consumption.], *Resolución 26* (“MP Resolution 26”), January 22, 2009 [31.578], B.O. 14-16 (Arg.) (JE-34); *Ministerio de Produccion, Modifícase la Resolución N° 343/07 que estableció el Certificado de Importación de Productos Textiles (C.I.P.T.)* [Modification of Resolution No. 343/07, which Established the Textile Products Import Certificate (CIPT)], *Resolución 61* (“MP Resolution 61”), March 4, 2009 [31.608], B.O. 13- 15 (Arg.) (JE-35); *Ministerio de Produccion, Establécese, para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de determinados productos. Modifícase la Resolución N° 588/08 del entonces Ministerio de Economía y Producción* [The Certificate of Importation for Certain Products Shall be Established for Goods Included in the Tariff Subheadings of the MERCOSUR Common Nomenclature (N.C.M.). Decision No. 588/08 of the Former Ministry of Economy and Production Shall be Amended.], *Resolución 165* (“MP Resolution 165”), May 18, 2009 [31.655] B.O. 42-44 (Arg.) (JE-36); *Ministerio de Produccion, Nomenclatura Común del Mercosur. Modificación.* [Mercosur Common Nomenclature. Amendment. ], *Resolución 337* (“MP Resolution 337”), August 24, 2009 [31.721], B.O. 15 - 18 (Arg.) (JE-37); *Ministerio de Industria, Nomenclatura Común del Mercosur. Modificación.* [MERCOSUR Common Nomenclature Amendment], *Resolución 45* (“MI Resolution 45”), February 14, 2011 [32.092], B.O. 27-33 (Arg.) (JE-38).

<sup>26</sup> *MEOSP Resolution 977*(JE-18); *SICM Resolution 736* (JE-19); *MEP Resolution 486* (JE-20).

<sup>27</sup> *MEOSP Resolution 1117* (JE-21); *SICM Resolution 798* (JE-22).

<sup>28</sup> *MEP Resolution 444* (JE-23); *SICPME Resolution 177*(JE-24).

<sup>29</sup> *MEP Resolution 485* (JE-25).

<sup>30</sup> *MEP Resolution 689* (JE-26).

<sup>31</sup> *MEP Resolution 694* (JE-27).

<sup>32</sup> *MEP Resolution 61*(JE-29).

<sup>33</sup> *MEP Resolution 217* (JE-30).

<sup>34</sup> *MEP Resolution 343*(JE-31).

<sup>35</sup> *MEP Resolution 588* (JE-32).

<sup>36</sup> *MEP Resolution 589* (JE-33).

<sup>37</sup> *MP Resolution 26* (JE-34).

<sup>38</sup> *MP Resolution 165* (JE-36).

<sup>39</sup> *MP Resolution 337*(JE-37).

<sup>40</sup> *MI Resolution 45* (JE-38).

<sup>41</sup> *MEP Resolution 47* (JE-28); *MP Resolution 61* (JE-35).

<sup>42</sup> See, e.g., *MEP Resolution 589*, preamble (“Significant changes in trade flows have been detected in some goods in the yarns and fabrics sector, the behavior of which warrants examination. Therefore, a temporary mechanism for



## 1. Application Procedures

18. Under the DJAI Requirement, importers of goods<sup>43</sup> into Argentina must submit an application containing certain information on the DJAI page of AFIP’s website “prior to issuance of an order form, purchase order, or similar document used to purchase items from abroad.”<sup>44</sup> DJAI applications are made using Argentina’s online MARIA Information System, and importers must submit “whatever data the MARIA kit requires”<sup>45</sup> for the DJAI application. That data at a minimum includes 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.<sup>46</sup> The predecessor CI requirements required the submission of a similar set of data.<sup>47</sup>

19. Approval of the DJAI application is a prerequisite to any import transaction in Argentina. Importers are required to apply for and obtain a DJAI “approval prior to issuance of an order form, purchase order or similar document.”<sup>48</sup> In addition, as explained in Communication A 5274/12 of the *Banco Central de la República Argentina* (Argentina’s Central Bank), in order to make foreign payments for imports, the importer must have an approved DJAI, that is, a DJAI application in “exit” (*salida*) status as explained below.<sup>49</sup>

## 2. Interagency Review and Non-Automatic Nature of DJAI Requirement

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the verification of such goods prior to customs release is necessary in order to monitor and control imports.”) (JE-33); *MEP Resolution 343*, preamble (“For the purposes of evaluating the behavior of imports of specific textile products, it is necessary to establish, as a temporary measure, a verification mechanism prior to the customs clearance of said merchandise, with the aim of monitoring and controlling these operations.”) (JE-31).

<sup>43</sup> See *AFIP Resolution 3255*, Updated Annex (JE-16). The following exceptions to the application of the DJAI requirement appear in the updated annex to *Resolution 3255*: “Reimport Regime”; “Import or Export Regime for compensating shipments of defective merchandise”; “Donations Regime”; “Samples Regime”; “Diplomatic Exemptions Regime”; “Import of merchandise with exemptions from duties and fees”; “Courier Regime”; “Postal shipments regime”; “Staggered shipments approved prior to February 1, 2012”; “Turnkey plant approved prior to February 1, 2012.” *AFIP Resolution 3255*, Updated Annex at Section B (JE-16). The updated annex cited in this submission is available on AFIP’s website ([http://www.afip.gov.ar/djai/archivos/ANEXO\\_24-02-2012.pdf](http://www.afip.gov.ar/djai/archivos/ANEXO_24-02-2012.pdf) (last visited Dec. 14, 2012)). The Updated Annex also includes a positive list of “sub-regimes” that are covered. *AFIP Resolution 3255*, Updated Annex at Section A (JE-16).

<sup>44</sup> *AFIP Resolution 3252*, art. 2 (JE-15).

<sup>45</sup> *AFIP Resolution 3255*, Updated Annex, Section D (JE-16).

<sup>46</sup> See *Administración Federal de Ingresos Públicos, Manual de uso para el Registro y Afectación de la “Declaración Jurada Anticipada de Importación (DJAI)”* at 12-20, [DJAI User Manual], (Version 6.0, July 2012) (“DJAI User Manual”) (JE-13); *AFIP Resolución 3255*, Updated Annex, Section E (JE-16).

<sup>47</sup> In particular, all CI applications were required to include information about the importer (name, the CUIT, home address, business address, telephone number and fax number), information about the exporter (name, address and country), and information about the good. Required information about the good included a description, including the brand (“*marca*”), model (“*modelo*”), and/or article (“*artículo*”), the tariff heading, total FOB, value, quantity, country of departure, and country of origin.

<sup>48</sup> *AFIP Resolución 3252*, art. 2 (JE-15).

<sup>49</sup> *Comunicación A 5274 del Banco Central de la República Argentina* [Communication A 5274 from the Central Bank of Argentina], January 30, 2012, para. 1(c) (JE-40).

20. The electronic DJAI system may assign an application one of five statuses, which appears in the electronic DJAI interface: “registered” (*oficializada*), “observed” (*observada*), “exit” (*salida*), “cancelled” (*cancelada*), and “voided” (*anulada*). At some point after the DJAI application is submitted, the application is designated as “registered.”<sup>50</sup> The information submitted by the importer is then made available to the government agencies that have “acceded” to the DJAI system. These agencies must “issue a decision” (*deberán pronunciarse*) “within the time frame indicated in [each agency’s] respective accession instrument.”<sup>51</sup> Following its “registration,” a DJAI is granted or approved only upon its reaching the “exit” status. A DJAI is placed in “observation” status whenever a participating agency registers an “observation,” which has the effect of suspending the grant or approval process.<sup>52</sup> As discussed further below, the DJAI is “voided” when the DJAI expires after 180 days or if the applicant cancels the application at any time. A DJAI is “cancelled” when an approved import transaction has been completed.<sup>53</sup> *Resolution 3255* provides that government agencies using the DJAI system “shall make the appropriate electronic observations,” within up to ten days of “registration” of the application.<sup>54</sup> If the established period passes without any observations, the “processing may continue on the import,”<sup>55</sup> meaning that the application enters the “exit” status<sup>56</sup> and the importer may proceed with the transaction. Despite the ten-day deadline set out in *Resolution 3255*, the Secretariat of Domestic Trade (*Secretaría de Comercio Interior* or “SCI”) has 15 days to act on a DJAI application.<sup>57</sup>

21. Based on available information, six agencies have acceded to the DJAI system, although there are only legal instruments related to SCI and AFIP. In addition, the National Administration of Medicine, Food, and Medical Technology (*Administración Nacional de Medicamentos, Alimentación y Tecnología Médica*, or “ANMAT”),<sup>58</sup> the Secretariat for the Prevention of Drug Abuse and Drug Trafficking (*La Secretaría de Programación para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico* or “SEDRONAR”),<sup>59</sup> the National Services of Food Quality and Safety (*Servicio Nacional de Sanidad y Calidad*, or “SENASA”), and the National Institute of Viticulture (*Instituto Nacional de Vitivinicultura* or

<sup>50</sup> *AFIP Resolution 3255*, art 2 & Updated Annex, Section D(g) (JE-16). It is unclear how long it takes for a submitted application to be assigned the status of “registered.”

<sup>51</sup> *AFIP Resolution 3252*, art. 4 (JE-15).

<sup>52</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>53</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>54</sup> *AFIP Resolution 3255*, art. 2 (JE-16).

<sup>55</sup> *AFIP Resolution 3255*, art. 2 (JE-16).

<sup>56</sup> *AFIP Resolution 3255*, Updated Annex, Section F(13) (JE-16).

<sup>57</sup> *Secretaría de Comercio Interior, Declaración Jurada Anticipada de Importación* [Advance Import Affidavit], *Resolución 1*, art. 2, January 13, 2012 [32.317], B.O. 7 (Arg.) (“*SCI Resolution 1*”) (JE-41). See also *Resolution 3255*, Updated Annex, Section F(12) (“The time allowed for participating agencies will depend on the agreement they sign with AFIP, but must not exceed ten (10) calendar days, unless a particular agency establishes other terms.”); *DJAI User Manual* at 7 (JE-13).

<sup>58</sup> *DJAI User Manual* at 9-10 (JE-13).

<sup>59</sup> *Administración Federal de Ingresos Públicos Declaración Jurada Anticipada de Importación* [DJAI] (“*AFIP DJAI WebSite*”), [www.afip.gov.ar/djai](http://www.afip.gov.ar/djai) (Arg.) (last visited December 14, 2012) (JE-42).

“INV”).<sup>60</sup> In addition, it appears that the National Industrial Technology Institute (*Instituto Nacional de Tecnología Industrial*, or “INTI”) also reviews DJAI applications.<sup>61</sup>

22. As is explained above, participating agencies may make “observations” (*observaciones*) on a DJAI application within certain time periods after registration of the application, in which case the electronic system shows the applicant that the DJAI application is in “observed” status.<sup>62</sup> Different agencies are prescribed different time periods for placing an observation on an application: for AFIP, the time period is 72 hours;<sup>63</sup> for SCI, the time period is 15 calendar days;<sup>64</sup> for ANMAT, the time period is four business days;<sup>65</sup> and for SEDRONAR, five calendar days.<sup>66</sup> Argentina has not published any time periods for SENASA, INV or INTI. If the time periods (some of which are not published) expire without any observation, the application enters the “exit” status and the importer may proceed with the import transaction.<sup>67</sup>

23. Where one or more participating agencies makes observations on a DJAI application, “note shall be made of this in the respective agency,”<sup>68</sup> and AFIP is to “inform importers of any news, and where applicable, the circumstances on which any negative decision may be based, as well as the institution the importer should contact in order to rectify the situation.”<sup>69</sup> Thus, when an observation is made that prevents the application from being assigned the “exit” status and from obtaining the approval to complete the transaction, the importer must separately contact the agency making the observation in order to resolve the agency’s concern. These contacts are not processed through the MARIA electronic system or facilitated by any other formal process. Rather, the importer bears the burden of determining how to make the appropriate contact to the agency to begin the process of resolving the concern. Multiple agencies may lodge

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<sup>60</sup> Press Release, Presidencia de la Nación [President of Argentina], Sedronar e INV adhirieron a la ventanilla única electrónica y DDJJ anticipada para importaciones [SEDRONAR and INV Join the Electronic One-Stop Window and Advance Sworn Import Declaration System] (February 27, 2012), *available at* <http://www.prensa.argentina.ar/2012/02/27/28459-sedronar-e-inv-adhirieron-a-la-ventanilla-unica-electronica-y-ddjj-anticipada-para-importaciones.php#> (Arg.) (JE-43).

<sup>61</sup> See Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “Casi el 100% de los electrodomésticos de línea blanca que se venden en el país son de producción nacional” [Giorgi: “Almost all major electrical appliances sold in Argentina are domestically produced”] (June 19, 2012), *available at* <http://www.prensa.argentina.ar/2012/06/19/31680-giorgi-casi-el-100-de-los-electrodomesticos-de-linea-blanca-que-se-venden-en-el-pais-son-de-produccion-nacional.php> (Arg.) (stating that applications for DJAI approvals are reviewed by INTI) (JE-44).

<sup>62</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>63</sup> *AFIP Resolution 3255*, Updated Annex, Section F(5) (JE-16).

<sup>64</sup> *DJAI User Manual* at 7 (JE-13).

<sup>65</sup> *DJAI User Manual* at 9 (JE-13).

<sup>66</sup> *AFIP DJAI WebSite* (JE-42).

<sup>67</sup> *AFIP Resolution 3255*, Updated Annex, Section F(13) (JE-16).

<sup>68</sup> *AFIP Resolution 3255*, art. 2 (JE-16).

<sup>69</sup> *AFIP Resolution 3252*, art. 4 (JE-15). See also *AFIP Resolution 3255*, Updated Annex, Section F(6) (JE-16) (“The importer/declarant will be informed of the comments from the competent agencies through the software application call My Customs Operations, with a specific consultation.”).

“observations” on any one DJAI application, and each agency may make multiple “observations” on a single application,<sup>70</sup> or make an observation on only a portion of the application.<sup>71</sup>

24. Under *Resolution 3255*, the DJAI application remains effective for 180 days from the date of its “registration,” a period which can be extended.<sup>72</sup> As noted above, the change of the application’s status to “registered” occurs sometime after the importer submits the DJAI and the electronic system determines that it is complete, and before the participating agencies review the application and have the opportunity to lodge observations. The exact amount of time it takes for an application to be “registered” is unclear. Furthermore, either the relevant legal instruments nor any available guidance provide any timelines for importers to submit additional information or otherwise respond to an observation, or any timelines for an agency to review and respond to any further submissions by the importer. If any observations have not been resolved within 180 days of registration, the DJAI application is automatically voided unless it is extended.<sup>73</sup> There is no guidance regarding the circumstances under which the application period may be extended, or how long any extension would last.

25. The practical result of this system is that any participating agency may deny an application by lodging an observation and declining to lift that observation. There are no official guidelines or procedures describing the specific bases upon which an agency may lodge an observation, nor are there any such materials describing the specific procedures to be followed, including information submission requirements, to resolve an observation. Furthermore, there are no guidelines or procedures preventing the agency from lodging an observation for any reason, and there is no requirement to lift the observation as a result of a mitigating action taken by the importer.

26. If no agencies make an observation on an application, or if all agencies are satisfied with responses to any observations they have made, the application may enter the “exit” status. Specifically, the Updated Annex to *Resolution 3255* provides that this status applies when, “[t]he DJAI has been thoroughly processed by all participating agencies and a satisfactory decision has been made on an item/sub-item . . . by each agency, enabling the assessment to be applied.”<sup>74</sup> Once an approved DJAI import has taken place, the DJAI enters the “cancelled” status. The remaining status, “voided,” applies automatically upon the expiration of the DJAI application for which the import has not yet taken place, in part or completely (whether or not the DJAI application was ever approved).<sup>75</sup> This status will also apply if a DJAI application is cancelled by the applicant.<sup>76</sup>

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<sup>70</sup> See *AFIP Resolution 3255*, Updated Annex, Section F(9), (16) (JE-16); *AFIP DJAI WebSite* (JE-42) (explaining how the governmental agencies accessing the DJAI system lodge observations).

<sup>71</sup> *DJAI User Manual* at 4 (JE-13).

<sup>72</sup> *AFIP Resolution 3255*, Updated Annex, Section D(d) (JE-16).

<sup>73</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (explaining that a DJAI application is canceled automatically at its expiration) (JE-16).

<sup>74</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>75</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>76</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

27. In practice, approvals are often only granted after lengthy delays. In March 2013, the U.S. Chamber of Commerce conducted a survey on the experience of U.S. companies in using the DJAI system. Nearly one in three respondents reported that it took over 60 days to receive a denial or approval of 75 percent or more of their DJAI applications.<sup>77</sup> Another 20 percent of respondents waited 60 days or more for action on between 50-75 percent of their DJAI applications.<sup>78</sup> One participating company states “[o]f all the countries we ship to, Argentina is the most complicated and time consuming[;] [i]t takes the longest to get the import license (sometimes 3 to 4 weeks” and another stated “[i]t seems the Government simply wants to wait us out, hoping that we will stop trying to import product until we increase exports.”<sup>79</sup>

28. In several instances, importers have challenged SCI or AFIP’s failure to lift “observations”, resulting in their inability to complete import transactions, in domestic courts. To date, Argentina’s Federal Court of Appeals (“*Cámara Nacional de Apelaciones*”) has rendered at least four judgments in cases brought by different importers relating to stalled DJAI applications and seeking relief in the form of an approval of the importation in the DJAI system to enable the completion of the transaction.<sup>80</sup> The courts have found that the DJAI applications at issue in all four cases (six DJAI applications in total) had been delayed for up to six months or more and that the applicants are unable to complete the processing of the application because the reasons for the “observations” made by SCI were not provided to applicants.

29. For example, in the *Yudigar S.A.* case the DJAI application had been pending for six months after SCI placed an observation on the application, and the applicant had received no response from SCI to its attempts to contact SCI for approval.<sup>81</sup> The court summarized AFIP’s arguments defending the DJAI Requirement as follows: “The [DJAI Requirement] allows the provision of legal instruments for those entities in charge of the implementation of fiscal policies to carry out their purpose” and is “useful to stop and validate any shipping that implicates a trade risk, and that exercising the customs control protects the society from real and potential risks related to health and public security, in order to avoid tax and trademark related offenses, etc.”<sup>82</sup> Nothing in AFIP’s explanation indicates why SCI placed a hold on the application subject to that case, which AFIP explained only as due to “. . . a need to do a more in-depth study on the

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<sup>77</sup> U.S. CHAMBER OF COMMERCE, REPORT ON THE U.S. CHAMBER OF COMMERCE’S SURVEY ON ARGENTINA’S DJAI SYSTEM at 3 (Mar. 4, 2013) (“*US Chamber of Commerce Report*”) (JE-56).

<sup>78</sup> *US Chamber of Commerce Report* at 3 (JE-56).

<sup>79</sup> *US Chamber of Commerce Report* at 4 (JE-56).

<sup>80</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal [CNFed.], Sala II, 23/08/2012, *Zatel, Adrián Ramón v. Estado Nacional-Ministerio de Economía / cuestiones impositivas*, (Arg.) (“*Zatel*”) (JE-57); Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal [CNFed.], Sala IV, 2/10/2012, *Wabro S.A. v. Estado Nacional Ministerio de Economía / Proceso de Conocimiento*, (Arg.) (“*Wabro S.A.*”) (JE-58); Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal [CNFed.], Sala V, 16/08/2012, *Yudigar Argentina S.A. c/ EN-M° de Economía - Resolución N° 61/09 (Exp. S01: 48391/12) s/ Amparo-Ley N° 16.986*, (Arg.) (“*Yudigar S.A.*”) (JE-59); Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal [CNFed.], Sala III, 22/11/2012, *Fity SA –Inc Med- v. Ministerio de Economía*, (“*Fity SA*”) (JE-302).

<sup>81</sup> *Yudigar S.A.* (JE-59).

<sup>82</sup> *Yudigar S.A.* (JE-59). As the administrator of the DJAI system, AFIP was a party to the litigation.

cases.”<sup>83</sup> SCI did not respond to inquiries from the importer, resulting in what the court described as “a ban – albeit temporary – to imports without any legal basis.”<sup>84</sup>

### 3. Procedural Features of the DJAI Application Process, Including Bases for Grant or Denial of DJAI Applications

30. As noted above, the relevant instruments contain few – if any – details on, among other things: (a) the bases upon which a DJAI application may be granted or denied; (b) what types of “observations” may be made; (c) what additional information or actions may be required of importers to obtain approvals; and (d) the timeframe for resolution of observations.<sup>85</sup>

31. With respect to AFIP, a DJAI User Manual provides a list of thirteen codes representing reasons that AFIP may “observe” a DJAI application.<sup>86</sup> These codes would appear on a webpage in the electronic system, showing the importer the results of actions by agencies participating in the DJAI system.<sup>87</sup> The reasons AFIP may observe an application are generally related to the status of the importer’s tax identification number (the CUIT), and various tax-related filings, including that the “the CUIT is being audited or verified.”<sup>88</sup> AFIP’s published guidance contains no information on the types of data that AFIP or any other agency, such as SCI, may require to resolve a situation in which an agency places an “observation” and thereby refuses to grant a DJAI application.

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<sup>83</sup> *Yudigar S.A.* (JE-59).

<sup>84</sup> *Yudigar S.A.* (JE-59).

<sup>85</sup> More specifically, issues that are not addressed in any detail in the DJAI instruments include: (a) how the authorities convey the decision to withhold such grant of approvals, including whether the authorities are 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; (b) the types of requirements the Argentine authorities may legally impose on DJAI applicants as a condition of releasing an “observation” that withholds the grant of a DJAI import licensing application, (c) what information the authorities may demand that applicants submit in connection with the “observation” procedures, (d) what deadlines or other time periods apply to agency demands and applicant responses made in connection with the “observation” procedures, (e) what sanctions or other penalties Argentine officials may impose on applicants if they subsequently fail to meet any conditions (e.g., RTRR commitments) imposed for purposes of releasing an “observation”; or (f) what types of auditing or monitoring Argentine official may undertake relative to applicants’ RTRR commitments.

<sup>86</sup> *DJAI User Manual* at 25 (JE-13).

<sup>87</sup> *DJAI User Manual* at 25 (JE-13).

<sup>88</sup> AFIP has explained that a DJAI applications’ approval may be based on the following tax-related factors: : (i) the CUIT is passive or inactive; (ii) the CUIT corresponds to non-reliable taxpayers (non-regular invoice) (*factura apócrifa*); (iii) the CUIT is under a bankruptcy procedure; (iv) the address has inconsistencies; (v) the CUIT is not registered for the Value Added Tax (“VAT”); (vi) the CUIT is not registered for the Income Tax; (vii) the CUIT of the partners/shareholders of a company is not registered for the Income Tax; (viii) lack of submission of the last and outstanding Income Tax return; (ix) lack of submission of the VAT return within the previous 12 month fiscal period; (x) lack of submission of the last Personal Property tax return; (xi) lack of submission of the Social Security return within the previous 12 month fiscal period; (xii) inconsistencies were detected in the VAT return within the previous 6 month periods; and (xiii) the CUIT has an ongoing verification or auditing procedure. *See DJAI User Manual* at 25 (JE-13).

32. With respect to SCI, the preamble to *SCI Resolution 1* by which SCI joined the DJAI system, explains that SCI will look to protecting the domestic market as part of SCI's participation:

From the point of view of strategic uniqueness, it is necessary that this Secretariat of Domestic Trade, under the authority of the Ministry of Economy and Finance, have the information referred to in [*AFIP Resolution 3252*], for the purpose of performing analyses aimed at 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.

At the same time, access to the information will contribute to a better and broader evaluation of the degree of competitiveness of economic activity, making it possible to define the cost structures of the goods that comprise the market.

The information in question will also affect issues related to the enforcement of Act No. 22.802 on Fair Trade Practices, Act No. 19.227 on Markets of National Interest, Act No. 19.5112 on Legal Metrology, and Act No. 24.240 on Consumer Protection, as well as the monitoring of compliance with the regulations on Fair Trade Practices in the Southern Cone Common Market (MERCOSUR) and the national regulations that must be made as a consequence thereof.<sup>89</sup>

Apart from this general reference to “preventing negative effects on the domestic market,” the need otherwise to collect information, and to “issues related to the enforcement of” certain broad laws, there is no explanation of the criteria SCI uses to evaluate applications, make observations, or request additional information from importers to resolve observations, as described by *AFIP Resolution 3252*.

33. Similarly, legal instruments and other guidance relating to the DJAI system provides no information with respect to the participation of ANMAT, SEDRONAR, SENASA, INV, and INTI, including (a) the bases upon which these agencies may grant or deny a DJAI application; (b) the types of “observations” that these agencies may make; or (c) what additional information or actions that these agencies may require of importers to obtain approvals.

34. Further, while the published DJAI instruments provide little, if any, information regarding the bases or various procedural elements of the DJAI process, official Argentine press releases and statements of Argentine officials, as well as instructions issued by Secretary Moreno to customs brokers, provide evidence of otherwise unpublished information regarding the granting or denial of DJAI applications.

35. Around the time that the DJAI system was adopted, Secretary Moreno issued instructions to brokers setting out certain requirements for obtaining a DJAI. These instructions, as well as

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<sup>89</sup> *SCI Resolution 1*, preamble (JE-41).

contemporaneous statements made by Secretary Moreno in interviews, indicate both that Argentine officials have a practice of withholding the grant of DJAI applications if – for example – a company has not committed to comply with RTRRs, as well as a practice of demanding the submission of various types of information (pricing information, supply sources, etc.) as a condition for granting DJAI applications. During a meeting with customs brokers shortly after the DJAI system took effect, Secretary Moreno issued instructions to brokers setting out the documents necessary to obtain DJAI approval, making a direct link between imports and exports.<sup>90</sup> Secretary Moreno’s instructions required importers to provide price lists and an “export program/project” as follows:

“Those ‘Importers’ that have advance import declarations with ‘Observed’ status must submit the following to the Secretary of Domestic Trade:

1. Price Lists of 2010;
2. Price Lists of 2011;
3. Price Lists of 2012 and
4. An Export Program/Project.

This requirement is necessary for the Agency to change the status of declarations with ‘Observed’ status to ‘Exit’ status.”<sup>91</sup>

36. After Secretary Moreno issued these instructions, and shortly after the DJAI system took effect, various business associations and customs and trade agents issued notices to importers containing the instructions provided by SCI.<sup>92</sup> The SCI instructions, which various private

<sup>90</sup> JuguetesyNegocios.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), [http://juguetesynegocios.com/?Como\\_liberar\\_Declaraciones\\_de\\_Importacion\\_&page=ampliada&id=614&\\_s=%E2%80%A6](http://juguetesynegocios.com/?Como_liberar_Declaraciones_de_Importacion_&page=ampliada&id=614&_s=%E2%80%A6) (Arg.) (“*How to Release Declarations of Importation*”) (JE-2).

<sup>91</sup> *How to Release Declarations of Importation* (JE-2).

<sup>92</sup> Boletín Informativo [Information Bulletin], Unión Industrial del Oeste [Industrial Union of the West], Bienes de Capital [Capital Goods Report] (March 21, 2012), available at <http://www.uio.com.ar/modules.php?name=News&file=print&sid=262> (Arg.) (“Information Bulletin, Industrial Union of the West”) (JE-46); *DJAI – Defensa de Mercado, Consultores Industriales Asociados*, 2012, available at <http://consultoresind.com.ar/DJAI.html> (Arg.) (JE-47); *DJAI – Defensa de Mercado, Consultores Industriales Asociados*, 2012, available at <http://consultoresind.com.ar/DJAI.html> (Arg.) (JE-48); *DJAI observada* [DJAI Observed], UNITED LOGISTIC COMPANY NEWSLETTER 369, available at [http://www.ulc.com.ar/espanol/newsletter\\_visualizacion.php?newsID=390](http://www.ulc.com.ar/espanol/newsletter_visualizacion.php?newsID=390) (Arg.) (JE-49); Declaración Jurada Anticipada de Importación [DJAI] Cámara Argentina de Comercio at 9, available at [http://www.cac.com.ar/documentos/1\\_CAC%20-%20Presentaci%C3%B3n%20DJAI%20del%2015-03-12%20final.pdf](http://www.cac.com.ar/documentos/1_CAC%20-%20Presentaci%C3%B3n%20DJAI%20del%2015-03-12%20final.pdf) (Arg.) (JE-50); Instrucciones sobre D.J.A.I., Declaración Jurada Anticipada de Importación”, SIQAT, available at <http://www.siqat.com.ar/novedades/post/271/instrucciones-sobre-dji-declaracion-jurada-anticipada-de-importacion/> (Arg.) (JE-51); Secretaria de Comercio Interior: Procedimiento por DJAI “OBSERVADAS”, PLASTINOTICIAS NEWSLETTER (“*Plastinoticias Newsletter*”), February 2012 (JE-52). See also Press Release, Estudio Bonano S.R.L. Comercio Exterior, DJAI Observadas: Gestión ante la Secretaria de Comercio Interior, (March 28, 2012), available at [http://www.bonanno.com.ar/page/index.php?option=com\\_content&view=article&id=80:djai-observadas-gestion-ante-la-secretaria-de-comercio-interior&catid=38:para-tener-en-cuenta&Itemid=58](http://www.bonanno.com.ar/page/index.php?option=com_content&view=article&id=80:djai-observadas-gestion-ante-la-secretaria-de-comercio-interior&catid=38:para-tener-en-cuenta&Itemid=58) (Arg.) (JE-53); Press Release,



entities reported and made public, make clear that DJAIs will not be approved unless the importers agree to submit certain information and undertake export commitments. The instructions – as provided, for example in this excerpt from an information bulletin produced by the *Unión Industrial del Oeste*:

#### ADVANCE IMPORT AFFIDAVIT (DJAI)

Entities whose Advance Import Affidavits are marked “under examination” [“*observadas*”] by the SCIN must:

- Submit a formal note on official letterhead to Domestic Trade Secretary Guillermo Mario Moreno with the following information:
  - Expected import and export totals, in dollars, for 2012 (without detailing specific products), in order to determine how much the company has agreed to import and, more importantly, export (calculate its trade balance). The note must be signed by the highest official within the company or, if that is not possible, a legal representative.
  - For non-exporting companies, said note should contain any explanation that would allow the Domestic Trade Secretary to understand why the entity does not export products.
  - Excel spreadsheet with a list of each and every product and article the company sells on the Argentine market (imported or not), with the local sale price in pesos for 2010, 2011, and 2012 and, between each column, the percent change, if any. This document should be provided in hard copy on company letterhead, signed by the same company authority mentioned in Point 1, as well as in CD format (no DVDs, diskettes, or pen drives).
- . . .
- A business card of the contact person should be included, so that the Foreign Trade Secretary can reach him or her with any questions or for clarification.
- All of this documentation should be submitted to Av. Julio A Roca 651, 4th floor, Sector 26, between 9 a.m. and 6 p.m. and should include a business card for contact (President or highest authority of the company). Remember to obtain a copy stamped “RECEIVED.”

Advance Import Affidavits of companies failing to comply with these requirements will not be authorized.<sup>93</sup>

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Clement Comercio Exterior, Procedimiento DJAI bloqueadas (2012), *available at* <http://clement.com.ar/noticias/procedimiento-djai-bloqueadas> (Arg.) (JE-54).

<sup>93</sup> Information Bulletin, Industrial Union of the West (JE-46).

37. A notice published by the Argentine Chamber of Plastics Industry (*Camara Argentina de la Industria Plastica* or “CAIP”) in its February 2012 Newsletter confirmed that the instructions were received from SCI, prefacing the instructions as follows:

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”.<sup>94</sup>

38. An official Argentine government press statement shortly after the institution of the DJAI Requirement (March 27, 2012) stated that the DJAI regime will “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.”<sup>95</sup>

39. With respect to a particular industry, Minister Giorgi cited the examination of DJAIs by the MOI as a factor leading to the result that 100 percent of white goods<sup>96</sup> sold in Argentina are domestically produced, indicating that the applications are reviewed to determine whether the imported products or parts may be substituted with locally produced items:

[E]ach *declaración jurada anticipada de importación* (DJAI) that is approved, for disassembled parts sent by a manufacturer of stoves, refrigerators or any white goods, is reviewed by the National Industrial Technology Institute (INTI), under the Ministry of Industry. Then, an import substitution timeline is established, based on the products’ technological sophistication and convenience. Thus, some parts are substituted immediately (because there are local supplies), others within a period of three months, while other parts are allocated a time of between three and six months.<sup>97</sup>

<sup>94</sup> *PlastiNoticias, Newsletter* (JE-52) (emphasis added).

<sup>95</sup> Press Release, Ministerio de Economía, AFIP fijó controles más intensivos en importaciones para lograr un comercio “seguro y transparente” (March 27, 2012), available at <http://www.prensa.argentina.ar/2012/03/27/29322-afip-fijo-controles-mas-intensivos-en-importaciones-para-lograr-un-comercio-seguro-y-transparente.php#> (Arg.) (“*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).

<sup>96</sup> “White goods” refers to large home appliances, such as refrigerators and washing machines.

<sup>97</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “Casi el 100% de los electrodomésticos de línea blanca que se venden en el país son de producción nacional” [Giorgi: “Almost all major electrical appliances sold in Argentina are domestically produced”] (June 19, 2012), available at <http://www.prensa.argentina.ar/2012/06/19/31680-giorgi-casi-el-100-de-los-electrodomesticos-de-linea-blanca-que-se-venden-en-el-pais-son-de-produccion-nacional.php> (Arg.) (JE-44).

40. In another official Argentine government press statement, the head of AFIP, Ricardo Echegaray indicated that not all imports applications made through the DJAI system would be approved, indicating that large volumes of imports that harm the Argentine economy would be particularly targeted. Echegaray stated that the DJAI system would assist in determining “which operations are going to be physically inspected and which are not; which products can be imported and which cannot.”<sup>98</sup> Echegaray went on to explain that DJAI applicants will sometimes receive information on whether the shipment will be inspected within 72 hours, but went on to state:

There are exceptional cases for certain products that require more time, but not more than ten calendar days. We’re talking about large volumes, big corporations, and industry leaders, and that’s where we have to make a big compromise, because we import more products from abroad. We’re talking about sectors that could end up throwing off the economic stability of the whole country.<sup>99</sup>

41. In an interview conducted days before the DJAI system went into effect, Secretary Moreno made a statement explaining the process and purpose for SCI’s examination of DJAI applications, stating “[w]hen we analyze the [DJAI], we will take into account the balance of foreign exchange, as well as the evolution of the company’s prices. We will do this on a company-by-company basis.”<sup>100</sup> Secretary Moreno was reported to have affirmed “that most of the businessmen have understood what road to follow.”<sup>101</sup>

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<sup>98</sup> Press Release, Presidencia de la Nacion [President of Argentina], Echegaray: “La Ventanilla Unica era algo que pedían los propios importadores” [Echegaray: “The One-Stop Window Was Something the Importers Themselves Asked for”] (Jan. 23, 2012), available at <http://www.prensa.argentina.ar/2012/01/23/27529-echegaray-la-ventanilla-nica-era-algo-que-pedian-los-propios-importadores.php> (Arg.) (“*President of Argentina Press Release January 23, 2012*”) (JE-45).

<sup>99</sup> *President of Argentina Press Release January 23, 2012* (JE-45).

<sup>100</sup> Roberto Navarro, *El Plan 2012* (JE-8) (English translation incomplete).

<sup>101</sup> Roberto Navarro, *El Plan 2012* (JE-8). Secretary Moreno’s comments may be best understood in light of the instructions he sent to trade organizations and other entities described above, as well as public statements made by Argentine authorities that the Argentine government would use any and all means to achieve Argentina’s policy goals of protecting domestic industry, promoting import substitution, and increasing exports. For example:

A February 6, 2012 MOI press release warned automotive industry representatives that the Argentine authorities would no longer permit the importation of automotive sector inputs that could be produced in Argentina. The Minister reportedly stated, “**We are not going to import any upstream input for the automotive industry that can be produced in Argentina,**” and that “plants, auto parts specialists, and systems suppliers, as well as the producers of upstream inputs, **have to work on import substitution.**” Press Release, Ministerio de Industria [Ministry of Industry], Este año se sustituirán us\$120 millones en aceros especiales [Substitution of US\$120 Million in Specialty Steel] (February 6, 2012), available at <http://www.prensa.argentina.ar/2012/02/06/27919-este-ano-se-sustituiran-us120-millones-en-aceros-especiales.php> (Arg.) (JE-228) (“*Ministry of Industry Press Release February 6, 2012*”) (emphasis added).

In a March 22, 2012 statement by Minister Giorgi at a government-arranged meeting of multinational farm machinery companies (including John Deere, Case New Holland, and Agco) and 200 “national suppliers” of parts manufactured in Argentina, the Minister reportedly warned multinational farm machinery companies that they had

42. The instructions circulated by SCI, as well as the statements made by Minister Giorgi, Secretary Moreno and Administrator Echegaray indicate that the bases upon which SCI or AFIP may place an “observation” upon a DJAI include compliance with RTRRs, as well as considerations such as national “economic stability”, and policies of “protect[ing] Argentine industry”<sup>102</sup> and promoting “import substitution.”<sup>103</sup> Additionally, these statements make clear that Argentine authorities demand that DJAI applicants submit a range of information, such as information on prices and parts and components, that may be relevant to governmental decisions regarding the RTRR commitments to demand of applicants.

43. In addition to these instructions and statements provided by governmental officials, the experience of DJAI applicants also reflect that Argentine authorities: (a) fail to provide transparent guidance regarding the bases and procedures underlying the DJAI system; (b) appear – as a matter of practice – to base decisions to grant DJAI applications upon RTRR commitments undertaken by the DJAI applicant; and (c) demand various types of information from DJAI applicants in order to evaluate their applications.

44. U.S. companies surveyed by the U.S. Chamber of Commerce explained that they learned of requirements being imposed by Argentina in one-on-one meetings with Argentine officials, group meetings, over telephone calls, or through only through non-governmental sources.<sup>104</sup> More than 75 percent of U.S. companies surveyed by the U.S. Chamber of Commerce indicated that Argentine authorities had conditioned approval of the company’s applications for import authorizations under the DJAI system on, among other things: (1) increasing exports of Argentina products relative to imports of foreign products; (2) reducing the value/price of imports; (3) making or increasing investments in production in Argentina; (4) refraining from repatriating profits from Argentina; and (5) increasing local content.<sup>105</sup>

45. Exhibits JE-303 through 306, provided by an affiliate of a U.S. company (“Company X”), illustrate the experience of importers in Argentina with the DJAI system. As is described in the affidavit of the Vice President of Supply Chain and Research Development for the parent company, demands were made orally to Company X’s Argentina officials to “(i) cut pricing for products sold in Argentina by an average of nine percent and (ii) to reduce the gap between imports from the United States and exports from Argentina during fiscal year 2012 by either manufacturing locally or by committing to export third-party Argentina goods.”<sup>106</sup> The affidavit

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“no other option” than to source Argentine parts, in lieu of imported parts, because they had little chance of being able to import such parts in the future. The Minister warned that, “whoever doesn’t develop local suppliers is going to wind up with a half-finished tractor.” Patricia Valli, *Giorgi instó a fabricantes de maquinaria agrícola para que aceleren la sustitución de partes* [*Giorgi urges farm machinery manufacturers to speed up pace of parts substitution*], Buenos Aires Económico at 4 (Arg.) (March 22, 2012) (JE-288) (emphasis added).

<sup>102</sup> Ministry of Economía Press Release March 27, 2012 (JE-284).

<sup>103</sup> Ministry of Industry Press Release February 6, 2012 (JE-228).

<sup>104</sup> U.S. Chamber of Commerce Report at 8 (JE-56).

<sup>105</sup> U.S. Chamber of Commerce Report at 4-5 (JE-56).

<sup>106</sup> Vice President of Company X Signed Affidavit, July 12, 2012 (“VP of Company X Affidavit”) (JE--306).

describes in detail telephone discussions between Company X employees and individuals who stated that they were acting on behalf of Secretary Moreno and SCI.

46. Company X submitted a number of DJAI applications in February and March of 2012, but observations were placed on the applications, and they were not approved.<sup>107</sup> On March 12, a Company X official returned a call received on March 9 from an individual calling on behalf of Secretary Moreno. The recipient of the return call explained that it was necessary for Company X to submit reduced prices for the imported products by nine percent.<sup>108</sup> The revised list was submitted, but the observations were not lifted.<sup>109</sup> On March 28, another telephone call was received from Secretary Moreno's office, and the caller explained that Company X was also required to increase exports to a value equivalent to the company's imports.<sup>110</sup> On April 3, 2012, Company X submitted a commitment to increase exports by US\$ 1,000,000 in addition to the price reductions,<sup>111</sup> and resubmitted the commitment on or about April 12.<sup>112</sup> The printout of Company X's electronic DJAI record shows that many of Company X's pending DJAI applications were approved around the time of the submission of its export plan.<sup>113</sup>

47. Another company ("Company Y") has described its experience with the DJAI system as follows:

Two or three months after the Resolution went into effect, our Argentine Company was verbally contacted via telephone by the Secretary of Commerce's department and asked to provide import forecasts for 2012, price lists for the years 2010, 2011 and 2012 and an import and *export* plan for the 2012 year.

...

Shortly after these communications took place, the percentage of our Argentine Company's DJAIs that were "observed" skyrocketed – to the point that they had an almost 100% "observation" rate.

After experiencing this for [ ] months, and facing a quickly depleting inventory, our Argentine Company decided that it had to take further action.

After consulting with local trade organizations, customers and local attorneys, our Argentine Company learned that the Secretary of Commerce was allowing companies to essentially purchase "import credits" from local exporting

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<sup>107</sup> See *VP of Company X Affidavit* (JE-306); AFIP Declaración – Carátula filed by Company X (May 9, 2012) ("Company X DJAI") (JE-303).

<sup>108</sup> *VP of Company X Affidavit* (JE-306).

<sup>109</sup> *VP of Company X Affidavit* (JE-306).

<sup>110</sup> *VP of Company X Affidavit* (JE-306).

<sup>111</sup> *VP of Company X Affidavit* (JE-306); Letter from Company X to the Secretary of Commerce – Mr. Guillermo Moreno (April 3, 2012) ("Company X Letter") (JE-304); E-mail from Company X to Guillermo Moreno, Secretary of Commerce, Government of Argentina ("Company X Email") (JE-305).

<sup>112</sup> *VP of Company X Affidavit* (JE-306).

<sup>113</sup> *Company X DJAI* (JE-303); see also *VP of Company X Affidavit* (JE-306).

companies, particularly those based out of certain low income regions of the country.

...

[O]ur Argentine Company notified the government of its plans to support the Argentine economy in a number of ways, including balancing its imports with exports by entering into an agreement(s) with local exporters to purchase “export credits” (the “Proposal”).

Almost immediately after providing the government with the Proposal, many of the DJAIs that had previously been “observed” were suddenly approved with no explanation.

Suspecting that this had to do with our submission of the Proposal, a representative from our Argentine Company inquired with the Secretary of Commerce, who verbally confirmed that such proposal had been “approved”.

...

[O]ur Argentine workforce must operate under the assumption that “the rules” could change at any time, requiring our Argentine Company to incur additional expenses to bring products into Argentina or face an all-out ban on importation.<sup>114</sup>

From these statements by Argentine government officials and from company officials, it is clear that Argentina uses the wide discretion available in implementation of the DJAI Requirement to impose trade-restricting conditions on the grant of import approval under the DJAI system. The following Section B will provide further details on the RTRR’s that are used to condition import approvals, thereby resulting in a restriction on trade.

#### **4. The DJAI Requirement Operates Independent from Argentina’s Customs Procedures**

48. The DJAI process operates separately from Argentina’s customs clearance procedure. Argentina’s customs regime predates, and is separate from, the DJAI system. The Argentine customs regime is administered by the Directorate-General of Customs (*Dirección General de Aduanas* or “DGA”), a component of AFIP.<sup>115</sup> As a prerequisite to importing, importers must be listed on Argentina’s Registry of Importers and Exporters (*Registro de Importadores y Exportadoras*).<sup>116</sup> For each import transaction, the importer must fill out a *Despacho de Importación*,<sup>117</sup> through the MARIA electronic system,<sup>118</sup> which includes the tariff classification,

<sup>114</sup> Vice President of Company Y Signed Affidavit, April 10, 2013 (“VP of Company Y Affidavit”) (JE-307).

<sup>115</sup> AFIP, *Aduana*, <http://www.afip.gob.ar/aduanaDefault.asp> (last visited February 1, 2013) (Arg.) (JE-60).

<sup>116</sup> AFIP, *Consultas y Respuestas Frecuentes sobre Normativa, Aplicativos y Sistemas*, ID 5504344, [http://www.afip.gov.ar/genericos/guiavirtual/consultas\\_detalle.aspx?id=5504344](http://www.afip.gov.ar/genericos/guiavirtual/consultas_detalle.aspx?id=5504344) (last visited February 1, 2013) (Arg.) (JE-61).

<sup>117</sup> AFIP, *Glosario Fiscal y Aduanero*, <http://www.afip.gob.ar/glosario/index.aspx?letra=D> (last visited February 1, 2013) (Arg.) (“AFIP Glosario Fiscal y Aduanero”) (JE-62).

price and description of the good necessary to confirm the appropriate classification and value.<sup>119</sup> The *Despacho de Importación* is printed for verification of the shipment.<sup>120</sup> In addition, the importer must provide the commercial invoice, transport document (bill of lading or airway bill), certification by third party agencies or certifications of origin, if applicable, and other documentation for the goods in question.<sup>121</sup> Finally, Argentina’s customs code gives the customs authorities the ability to request technical information regarding the imported good,<sup>122</sup> and manifests of shipments must be presented for each arrival of goods by sea, air, or land.<sup>123</sup>

## **B. RESTRICTIVE TRADE-RELATED REQUIREMENTS**

49. As noted above, the Argentine government has adopted a series of restrictive trade-related requirements (RTRRs) on the importation of goods. The RTRRs are often communicated orally to individual importers, or groups of importers, by Argentine authorities. The RTRRs are imposed in conjunction with the DJAIs, and previously the CI Requirement, and approvals are withheld until the importer complies with the RTRRs.

50. The RTRRs take the form of commitments to: (1) compensate imports with an equivalent amount of exports—the “one-to-one” policy; (2) limit the volume or value of imports; (3) incorporate local content into domestically produced goods; (4) make or increase investments in Argentina; and (5) refrain from repatriating funds from Argentina to another country. Each type of RTRR is described in detail below.

### **1. Compensate Imports with Equivalent Value of Exports – “One-to-One” Policy**

51. One type of RTRR involves Argentina requiring importers to offset the value of their imports with an equivalent value of exports – often referred to as the “one-to-one” policy. This requirement is commonly, but not always, imposed by Argentina in conjunction with the DJAI Requirement, and previously with the CI Requirement. Under this requirement, Argentine officials do not grant permission necessary to import (whether CI or DJAI approvals or any other necessary approvals) unless the importer agrees to the undertaking. Although typically the importer compensates the entire value of imports with exports, in some cases an importer may only partially offset the value of its imports and undertake another type of RTRR to compensate for the remainder.

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<sup>118</sup> *AFIP Glosario Fiscal y Aduanero* (JE-62); *AFIP Consultas y Respuestas Frecuentes*, ID 5518396, [http://www.afip.gov.ar/genericos/guiavirtual/consultas\\_detalle.aspx?id=5518396](http://www.afip.gov.ar/genericos/guiavirtual/consultas_detalle.aspx?id=5518396) (“*AFIP Consultas y Respuestas Frecuentes ID 5518396*”) (JE-240).

<sup>119</sup> *AFIP Consultas y Respuestas Frecuentes ID 5518396* (JE-240).

<sup>120</sup> *AFIP Consultas y Respuestas Frecuentes ID 5518396* (JE-240).

<sup>121</sup> *AFIP Consultas y Respuestas Frecuentes ID 5518396* (JE-240).

<sup>122</sup> *Código Aduanero* [COD. ADU.], Law No. 22.415 § 243, March 2, 1981, available at [http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16536/Ley22415\\_Titulo\\_preliminar.htm](http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16536/Ley22415_Titulo_preliminar.htm) (“Customs Code”) (Arg.) (JE-246).

<sup>123</sup> Customs Code §§ 135, 148, 153, & 160; see also §§130-32 (JE-246).

52. Argentine government agencies and officials have made numerous statements describing the one-to-one policy. For example, Secretary Moreno reportedly described the policy as follows in March 2009: “For each dollar used to acquire goods abroad, you will have to generate another in this country. If that’s not convenient for you, bring me the keys to your company and I take charge of the people.”<sup>124</sup>

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

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

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

Automakers must commit to their export plans by means of an affidavit.<sup>125</sup>

54. Secretary Moreno reportedly provided a similar explanation in early 2012, noting that, “for every dollar’s worth [that companies] import, they must export one.”<sup>126</sup> Similarly, the Ministry of Industry’s actions to advance such a policy are also reflected in reporting from mid-2011:

The Ministry of Industry, headed by Débora Giorgi, has begun urging the importers of finished products with licenses that are not automatically renewed to ‘guarantee the new dollar-for-dollar’: in other words, that for each dollar paid for imports, another should be generated by exports, or to report their capital investments or reserves.<sup>127</sup>

55. As noted in Section III.A, Secretary Moreno made a link between this policy and the DJAI requirement when he stated: “When we study the affidavit of import, we are going to consider the balance of foreign exchange, as well as the pace of the company’s prices. We will do this on a company-by-company basis.”<sup>128</sup> In a meeting with customs brokers, Secretary Moreno instructed brokers regarding the documents necessary to obtain DJAI approval, again making a direct link between imports and exports.<sup>129</sup> Those instructions, which were circulated by various industry associations described *supra* at paragraphs 35-37, confirm that importers are

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<sup>124</sup> Carlos Mazoni, *Trabas a las importaciones [Obstacles to Imports]*, LA NACION (Arg.), August 23, 2009, available at <http://www.lanacion.com.ar/1165656%ADtrabas%ADa%ADlas%ADimportacionesH> (JE-249).

<sup>125</sup> *Ministry of Industry Press Release, March 25, 2011* (JE-1).

<sup>126</sup> *Buenos Aires Económico January 31, 2012* (JE-3).

<sup>127</sup> *Perfil July 17, 2011* (JE-6).

<sup>128</sup> *Roberto Navarro El Plan 2012* (JE-8).

<sup>129</sup> *How to Release Declarations of Importation* (JE-2).



required to submit an “export program/project”<sup>130</sup> in the form of a formal note addressed to Secretary Moreno with price lists and import and export plans demonstrating a trade balance to obtain DJAI approvals.<sup>131</sup>

56. The “one-to-one” policy has resulted in a market where exporters sell “credits” for their exports to importers, who can use them to demonstrate that their imports are balanced with exports.<sup>132</sup> This activity is described by Company Y, *supra* at paragraph 47. The business is referred to as “*exportacion blue*”, and companies have advertised the service in publications in Argentina.<sup>133</sup> In addition, various organizations have held seminars regarding the use of “*exportacion blue*” credits.<sup>134</sup>

57. The following subsections outline examples of the imposition of the one-to-one policy across various sectors of the economy.

#### a. Automobile Manufacturers

58. Argentine agencies and officials have been particularly vocal with respect to the agreements they have concluded with auto companies. In March of 2011, the Ministry of Industry issued a press release entitled “Automobile Importers May Compensate by Exporting” explaining the policy and describing agreements made with Porsche and Volkswagen:

*The Minister of Industry and the Secretary of Domestic Trade have approved a plan presented by a company in the automotive industry and they could finalize a*

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<sup>130</sup> *How to Release Declarations of Importation* (JE-2).

<sup>131</sup> See *supra* para. 36.

<sup>132</sup> See Veronica Dalto, *En Busca de Crédito: Exportadores ya Recurren a Importadores Como Alternativa a los Bancos* [Searching for Credit: Exporters Now Resort to Importers as an Alternative to Banks], EL CRONISTA (Arg.), July 27, 2012, available at <http://www.cronista.com/finanzasmercados/En-busca-de-credito-Exportadores-ya-recurren-a-importadores-como-alternativa-a-los-bancos-20120727-0064.html> (JE-63); *Los Importadores Financian y Subsidiar Exportaciones Para Compensar sus Balanzas* [Importers Finance and Subsidize Exports to Offset Their Balances], BUENOS AIRES ECONÓMICO (Arg.), August 7 2012, available at <http://www.diarioba.com/diario/2012/08/07/15796-los-importadores-financian-y-subsidiar-exportaciones-para-compensar-sus-balanzas.html> (JE-64).

<sup>133</sup> *Importadores Necesitan Compensar con Exportaciones?*, *Ámbito Financiero*, Oct. 1, 2012, p. 31 (JE-65). See also *Ámbito Financiero*, 2 October 2012, p. 27 (JE-66); *Ámbito Financiero*, 3 October 2012, p. 27 (JE-67); *Ámbito Financiero*, 4 October 2012, p. 23 (JE-68); *Ámbito Financiero*, 5 October 2012, p. 23 (JE-69); *Ámbito Financiero*, 8 October 2012, p. 23 (JE-70); *Ámbito Financiero*, 9 October 2012, p. 27 (JE-71); *Ámbito Financiero*, 10 October 2012, p. 23 (JE-72); *Ámbito Financiero*, 11 October 2012, p. 27 (JE-73); *Ámbito Financiero*, 12 October 2012, p. 23 (JE-74); *Ámbito Financiero*, 15 October 2012, p. 23 (JE-75); *Ámbito Financiero*, 16 October 2012, p. 27 (JE-76); and *Ámbito Financiero*, 17 October 2012, p. 27 (JE-77).

<sup>134</sup> Press Release, *Asociacion e Importadores y Exportadores, Seminario: La exportación por cuenta y orden de terceros como herramienta para poder compensar las importaciones* [Seminar: Exports on behalf of and to the order of third parties as a tool to offset imports] (August 30, 2012), available at <http://www.enfoque21.com/agenda/eventos/la-exportacion-por-cuenta-y-orden-de-terceros-como-herramienta-para-poder-compensar-las-importaciones-67.html> (Arg.) (JE-78); Press Release, *Chamber of Importers of Argentina, Seminario - Compensación de Importaciones con Exportaciones* [Seminar Offset of Imports with Exports] (November 14, 2012), available at <http://www.uapered.org.ar/temp/cira.pdf> (Arg.) (JE-79).

*commitment in the next week that would allow businesses to compensate for imports with exports, according to the Manufacturing Office [of the Ministry of Industry].*

Importers or manufacturers of vehicles based in Argentina may import the same dollar amount that they export, but they have to achieve the one-to-one relationship within a year.

According to a statement from the Ministry of Industry circulated by Télam, the [Ministry of Industry] and the Secretariat of Domestic Trade approved Porsche's commitment to exports that "include nonautomotive products linked to other activities in which the group engages in Argentina."

"Volkswagen was the first company to finalize the import-export program," stated the communication from [the Ministry] of Industry.

The proposal has already been approved by the government, and the company pledged itself to its program by signing a deed of commitment.

As expected, VW's deficit will be reduced by 70% this year, returning to a surplus by September.

The commitment is based on strong export growth of 77% [year-on-year] in 2011, due to an increase in the production and exportation of the Amarok pick-up truck that the manufacturer produces in Argentina.

In 2012, the impact of the transmissions plant expansion will be felt, representing a net improvement in the trade balance of 160 million dollars per year.

To this effect, according to the statement, the company is implementing an investment plan of 155 million dollars for its plant in the Industrial Center of Cordoba that will produce 350,000 additional transmissions per year.

According to [the Industrial Office], "Mercedes Benz is still in negotiations [regarding] a proposal [presented to the Ministry of Industry]," while BMW has a project to assemble motorcycles in the country, but it has not yet formalized its proposal."

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

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

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

The import and export plans can already be presented and the Ministry of Industry will approve them within a period of four weekdays.

Over the past year, the Ministry of Industry had already informed automakers and importers that they must tend to restore their trade balance.

More than a year has been in the making with the sector on this premise, and in this sense, investments have been made such as the transmissions plant expansion by VW, greater domestic content integrated into new domestically produced models (Peugeot 408, Fiat and Ford to be launched in 2012, to name a few), the localization of auto parts and components (assembly of engines by Mercedes Benz Argentina beginning in 2012), among others.<sup>135</sup>

The Government of Argentina made similar announcements over the course of 2011 and into 2012 describing at least 17 similar agreements with numerous auto manufacturers, including General Motors;<sup>136</sup> Porsche;<sup>137</sup> Chery;<sup>138</sup> Mercedes Benz;<sup>139</sup> PSA Peugeot Citroën and Alfa Romeo;<sup>140</sup> Hyundai;<sup>141</sup> Kia;<sup>142</sup> Fiat;<sup>143</sup> Nissan;<sup>144</sup> Renault;<sup>145</sup> Mitsubishi;<sup>146</sup> Volvo;<sup>147</sup> Subaru;<sup>148</sup>

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<sup>135</sup> *Ministry of Industry Press Release March 25, 2011* (JE-1) (emphasis added). See also Press Release, Ministerio de Economía y Finanzas Públicas, Boudou habló del éxito de la política de sustitución de importaciones (March 18, 2011), available at <http://www.prensa.argentina.ar/2011/03/18/17635-boudou-hablo-del-exito-de-la-politica-de-sustitucion-de-importaciones.php> (Arg.) (JE-80).

<sup>136</sup> *Ministry of Industry Press Release, May 2, 2011* (JE-4).

<sup>137</sup> *Ministry of Industry Press Release, May 2, 2011* (JE-4). See also Press Release, Ministerio de Industria, La comercializadora de Porsche acordó compensar importaciones con exportaciones de vinos y aceites (March 30, 2012), available at <http://www.prensa.argentina.ar/2011/03/30/17964-la-comercializadora-de-porsche-acordo-compensar-importaciones-con-exportaciones-de-vinos-y-aceites.php> (Arg.) (JE-81).

<sup>138</sup> Press Release, Ministerio de Industria, La automotriz Chery acordó con el Gobierno revertir su balanza comercial en 2012 (May 19, 2011), available at <http://www.prensa.argentina.ar/2011/05/19/19735-la-automotriz-chery-acordo-con-el-gobierno-revertir-su-balanza-comercial-en-2012.php> (Arg.) (JE-82).

<sup>139</sup> *Ministry of Industry Press Release, May 2, 2011* (JE-4). See also Press Release, Ministerio de Industria, Compromiso de automotriz para equiparar su balanza (April 6, 2011), available at <http://www.prensa.argentina.ar/2011/04/06/18215-compromiso-de-automotriz-para-equiparar-su-balanza.php> (Arg.) (JE-83); Press Release, Ministerio de Industria, Economía, Industria y Comercio firmaron el acuerdo de Mercedes Benz para equilibrar su balanza comercial (April 7, 2011), available at <http://www.prensa.argentina.ar/2011/04/07/18295-economia-industria-y-comercio-firmaron-el-acuerdo-de-mercedes-benz-para-equilibrar-su-balanza-comercial.php> (Arg.) (“*Ministry of Industry Press Release April 7, 2011*”) (JE-84).

<sup>140</sup> Press Release, Ministerio de Industria [Ministry of Industry], Ya son 5 las automotrices que acordaron con el Gobierno aportar u\$s 2.000 millones a la balanza comercial [Five car manufacturers have now signed an agreement with the Government to contribute USD 2 200 million to the balance of trade] (April 20, 2011), available at <http://www.prensa.argentina.ar/2011/04/20/18742-ya-son-5-las-automotrices-que-acordaron-con-el-gobierno->

BMW;<sup>149</sup> Honda;<sup>150</sup> and Ford.<sup>151</sup> Argentina’s press releases regarding these agreements generally describe the commitments that the auto manufacturers agree to undertake. For example, the press release relating to General Motors stated that the company signed an agreement with Minister Giorgi and Secretary Moreno which “is a pledge to level the balance of trade in

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aportar-us-2200-millones-a-la-balanza-comercial.php (Arg.) (“*Ministry of Industry Press Release April 20, 2011*”) (JE-85); *Ministry of Industry Press Release, May 2, 2011* (JE-4).

<sup>141</sup> Press Release, Ministerio de Industria [Ministry of Industry], La automotriz Hyundai acordó con el Gobierno compensar su balanza comercial [Car Manufacturer Hyundai Reaches Agreement with Government on Offsetting Its Trade Balance] (June 13, 2011), available at <http://www.prensa.argentina.ar/2011/06/13/20605-la-automotriz-hyundai-acordo-con-el-gobierno-compensar-su-balanza-comercial.php> (Arg.) (“*Ministry of Industry Press Release June 13, 2011*”) (JE-86).

<sup>142</sup> Press Release, Ministerio de Industria [Ministry of Industry], También la automotriz Kia se comprometió a equilibrar su balanza comercial [The car manufacturer Kia has also agreed to adjust its trade balance] (June 15, 2011), available at <http://www.prensa.argentina.ar/2011/06/15/20707-tambien-la-automotriz-kia-se-comprometio-a-equilibrar-su-balanza-comercial.php> (Arg.) (JE-87).

<sup>143</sup> Press Release, Ministerio de Industria [Ministry of Industry], Fiat, otra automotriz que firmó ante el Gobierno su compromiso de equiparar la balanza comercial [Fiat: Another Automaker Signs an Agreement with the Government to Ensure Trade Balance] (May 5, 2011), available at <http://www.prensa.argentina.ar/2011/05/05/19224-fiat-otra-automotriz-que-firmo-ante-el-gobierno-su-compromiso-de-equiparar-la-balanza-comercial.php> (Arg.) (“*Ministry of Industry Press Release May 5, 2011*”) (JE-88).

<sup>144</sup> Press Release, Ministerio de Industria [Ministry of Industry], Nissan acordó un nuevo plan de equilibrio de balanza comercial [Nissan Agreed to a New Trade Balancing Plan] (October 19, 2011), available at <http://www.prensa.argentina.ar/2011/10/19/24847-nissan-acordo-un-nuevo-plan-de-equilibrio-de-balanza-comercial.php> (Arg.) (“*Ministry of Industry Press Release, October 19, 2011*”) (JE-89).

<sup>145</sup> Press Release, Ministerio de Industria [Ministry of Industry], Renault, Mitsubishi, Nissan y Volvo también firmaron un plan para alcanzar el superávit comercial en 2012 [Renault, Mitsubishi, Nissan and Volvo Also Signed a Plan to Achieve a Trade Surplus in 2012] (August 5, 2011), available at <http://www.prensa.argentina.ar/2011/08/05/22395-renault-mitsubishi-nissan-y-volvo-tambien-firmaron-un-plan-para-alcanzar-el-superavit-comercial-en-2012.php#> (Arg.) (“*Ministry of Industry Press Release August 5, 2011*”) (JE-90).

<sup>146</sup> *Ministry of Industry Press Release August 5, 2011* (JE-90).

<sup>147</sup> *Ministry of Industry Press Release August 5, 2011* (JE-90).

<sup>148</sup> Press Release, Ministerio de Industria [Ministry of Industry], La empresa Subaru acordó con Industria equilibrar su balanza comercial [Subaru Agreed with the Ministry of Industry to Restore Its Trade Balance] (August 29, 2011), available at <http://www.prensa.argentina.ar/2011/08/29/23128-la-empresa-subaru-acordo-con-industria-equilibrar-su-balanza-comercial.php> (Arg.) (“*Ministry of Industry Press Release August 29, 2011*”) (JE-91).

<sup>149</sup> Press Release, Ministerio de Industria [Ministry of Industry], Industria anticipó que BMW equilibrará su balanza comercial en 2012 [Ministry of Industry Expects BMW to Balance Imports and Exports in 2012] (October 13 2011), available at <http://www.prensa.argentina.ar/2011/10/13/24700-industria-antipo-que-bmw-equilibrara-su-balanza-comercial-en-2012.php> (Arg.) (“*Ministry of Industry Press Release October 13, 2011*”) (JE-92).

<sup>150</sup> Press Release, Ministerio de Industria [Ministry of Industry], Desde esta semana, Honda exporta autos producidos en la Argentina (July 12, 2012), available at <http://www.industria.gob.ar/desde-esta-semana-honda-exporta-autos-desde-la-argentina/> (Arg.) (JE-93).

<sup>151</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi recibió a directivos de Ford quienes se comprometieron a exportar más y a integrar más piezas nacionales [Ford Executives, Meeting with Giorgi, Pledge More Exports and Greater Use of Domestic Parts] (April 27, 2012), available at <http://www.industria.gob.ar/?p=12331> (Arg.) (“*Ministry of Industry Press Release April 27, 2012*”) (JE-94). See also Press Release, Ministerio de Industria [Ministry of Industry], Ford exportará más e importará menos”, Ministerio de Industria, (May 23, 2011), available at <http://www.prensa.argentina.ar/2011/05/23/19838-ford-exportara-mas-e-importara-menos.php> (Arg.) (JE-95).

2012.”<sup>152</sup> That press release also described agreements with PSA Peugeot Citroën, Mercedes Benz, Volkswagen, Porsche, noting that Porsche will “offset” its imports of 100 cars valued at \$8 million “by exporting non-automotive products, such as wine and olive products.”<sup>153</sup>

59. As demonstrated by the development of a market for *exportacion blue* credits, in many circumstances importers comply with the one-to-one policy by exporting unrelated products. In a press account of the trade balancing requirements, an Argentine importer of Porsche automobiles explained that his company, Pulenta Nordenwagen SA, would compensate for auto imports by exporting Pulenta Estate wines and wines purchased from other wine producers.<sup>154</sup> He described how his company would address the Argentine government’s requirement for trade balancing arrangements as follows: “When the government decided that we would have to offset imports with exports, we were ready and prepared because that’s what we do . . . .”<sup>155</sup>

60. Similarly, the trade balancing agreements announced by official Argentine government sources require the auto manufacturers to export a variety of non-auto related items. For example, Nissan agreed to comply with its commitments in part by exporting wine;<sup>156</sup> BMW, auto parts, leather for seats in several of its models, and processed rice;<sup>157</sup> Porsche, wine and olive oil;<sup>158</sup> Hyundai, biodiesel, peanuts, wine and soya flour;<sup>159</sup> Alfa Romeo, \$11.5 million in biofuels;<sup>160</sup> and Kia Motors, auto parts, white goods, nylon, and polypropylene products.<sup>161</sup>

61. These agreements were described in Argentina’s *Strategic Industrial Plan 2020* released in early 2012, which stated that “[i]n 2011, agreements were made with automakers to increase the inclusion of local auto parts, thereby helping to develop suppliers.”<sup>162</sup>

62. Secretary Moreno described the consequences of failure to comply with the RTRRs in a January 2012 interview in the magazine *Debate*:

Last year [Minister] Giorgi and I met with the presidents of Audi, Mercedes-Benz and BMW. We told them they needed to compensate for the dollars spent on importing with exports. Audi really understood this. BMW did not change its

<sup>152</sup> Ministry of Industry Press Release May 2, 2011 (JE-4).

<sup>153</sup> Ministry of Industry Press Release May 2, 2011 (JE-4).

<sup>154</sup> Eliana Raszewski, *Porsche Sells Malbec to Keep Autos Coming into Argentina: Cars*, BLOOMBERG, November 2, 2011, <http://www.bloomberg.com/news/2011-11-02/porsche-sells-malbec-to-keep-autos-coming-into-argentina-cars.html> (“Bloomberg November 2, 2011”) (JE-96).

<sup>155</sup> Bloomberg November 2, 2011 (JE-96).

<sup>156</sup> Ministry of Industry Press Release October 19, 2011 (JE-89).

<sup>157</sup> Ministry of Industry Press Release October 13, 2011 (JE-92).

<sup>158</sup> Ministry of Industry Press Release May 2, 2011 (JE-4).

<sup>159</sup> Ministry of Industry Press Release June 13, 2011 (JE-86).

<sup>160</sup> Ministry of Industry Press Release April 20, 2011 (JE-85); Ministry of Industry Press Release May 2, 2011 (JE-4).

<sup>161</sup> Ministry of Industry Press Release June 15, 2011 (JE-87).

<sup>162</sup> MINISTERIO DE INSUTRIA, PLAN ESTRATEGICO INDUSTRIAL 20 20 [STRATEGIC INDUSTRIAL PLAN 20 20] 119 (October 4, 2011), available at <http://www.sic.gob.ar/webindustria/secplanestrategico/plan-estrategico.html> (Arg.) (JE-97).

policy. Seven months went by without [BMW] importing a vehicle. The result: Audi filled the market. We did not have a shortage of vehicles. Finally they came to their senses: the vice president of BMW headquarters, in Germany, met me and began exporting wine, and rice. They started to import vehicles.<sup>163</sup>

63. Secretary Moreno’s account of the blocking of BMW’s imports is consistent with an April 2011 email to Mercosur Press from Christian Menges, a communications manager for BMW Group Argentina:

“Due to the current situation of import restrictions, we temporarily do not deliver vehicles to Argentina as they would remain blocked at customs . . . . New quotas will be reallocated to Argentina as soon as the situation is solved.” Menges said BMW is in talks with the government “various options are being evaluated with the goal to restart importing vehicles as quickly as possible,” he said.<sup>164</sup>

Another BMW spokesman for BMW in Argentina, Jan Gunnar Larsson, reportedly stated that, “some car importers were even considering exporting other industrial products, oils or even wine, to get their cars released from customs.”<sup>165</sup>

#### **b. Trucks and Motorcycles**

64. The Government of Argentina also announced agreements with truck manufactures. In particular, agreements were concluded with Scania;<sup>166</sup> Thermodyne Vial, the manufacturer of Mack trucks;<sup>167</sup> and Renault Trucks.<sup>168</sup> With respect to Scania, an Argentine government press

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<sup>163</sup> Roberto Navarro, *El Plan 2012* (JE-8).

<sup>164</sup> *BMW Suspends Car Exports to Argentina because of Import Restrictions*, MERCOPRESS, April 19, 2011, available at <http://en.mercopress.com/2011/04/19/bmw-suspends-car-exports-to-argentina-because-of-import-restrictions> (JE-98); Ian Fletcher, *BMW Suspends Imports to Argentina on Local Restrictions*, GLOBAL INSIGHT, April 19, 2011 (JE-99).

<sup>165</sup> Argentinien mit Importsperrre: Luxusautos stecken im Zoll Fest [Argentina Import Lock: Luxury cars are stuck in customs], AUTOMOTOR UND SPORT (F.R.G.), March 21, 2011, available at <http://www.auto-motor-und-sport.de/news/argentinien-mit-importsperrre-luxusautos-stecken-im-zoll-fest-3555128.html> (JE-100).

<sup>166</sup> Press Release, Ministerio de Industria [Ministry of Industry], Scania le informó a la Presidenta que invertirá u\$s 40 millones en la Argentina [Scania Has Informed the President that It Will Invest USD 40 million in Argentina] (November 21, 2011), available at <http://www.prensa.argentina.ar/2011/11/21/25857-scania-le-informo-a-la-presidenta-que-invertira-us-40-millones-en-la-argentina.php> (Arg.) (“*Ministry of Industry Press Release November 21, 2011*”) (JE-101).

<sup>167</sup> Press Release, Ministerio de Industria [Ministry of Industry], El Gobierno firmó un convenio con la automotriz Thermodyne Vial para aumentar exportaciones, (February 1, 2012), available at <http://www.prensa.argentina.ar/2012/02/01/27804-el-gobierno-firmo-un-convenio-con-la-automotriz-thermodyne-vial-para-aumentar-exportaciones.php> (Arg.) (JE-102).

<sup>168</sup> Press Release, Ministerio de Industria [Ministry of Industry], Renault Trucks anunció al Gobierno que aumentará sus exportaciones [Renault Trucks Tells Government it Intends to Increase Exports] (February 7, 2012), available at <http://www.prensa.argentina.ar/2012/02/07/27966-renault-trucks-anuncio-al-gobierno-que-aumentara-sus-exportaciones.php> (Arg.) (“*Ministry of Industry Press Release February 7, 2012*”) (JE-103).

release reported that “[t]he Agreement includes . . . the increase in exports by local suppliers to other Scania plants, which will reach USD 45 million.”<sup>169</sup>

65. In an April 2012 interview, an importer of Harley Davidson motorcycles, Juan Gabba, described having to submit an export plan which included a commitment to export wine to the United States.<sup>170</sup> The requirement to balance imports with exports was communicated in a meeting of importers with the then Minister of Industry, Eduardo Bianchi, and Secretary Moreno.<sup>171</sup> Importers of other motorcycle brands, including Kawasaki, Mondial, Suzuki, Motomel and Zanella similarly reported committing to export plans in order to import their motorcycles.<sup>172</sup>

<sup>169</sup> *Ministry of Industry Press Release November 21, 2011* (JE-101).

<sup>170</sup> *Autoblog.com.ar, Exclusivo: pesificada y exportando vinos, Harley-Davidson vuelve a la carga* [Exclusive: Valued in Pesos and Exporting Wines, Harley-Davidson Makes a Come Back] (June 29, 2012), <http://autoblog.com.ar/2012/06/exclusivo-pesificada-y-exportando-vinos-harley-davidson-vuelve-a-la-carga/> (Arg.) (“*Autoblog June 29, 2012*”) (JE-104).

<sup>171</sup> *Autoblog June 29, 2012* (JE-104).

<sup>172</sup> *See* *Qué Despachó Juki Argentina Rumbo a Ucrania y Estados Unidos*, (April 27, 2012), <http://autoblog.com.ar/2012/04/que-despacho-juki-argentina-rumbo-a-ucrania-y-estados-unidos/> (Arg.) (last visited May 3, 2013) (JE-105); *En Dos Ruedas*, LA NACIÓN (Arg.), May 26, 2012, available at <http://www.lanacion.com.ar/1476220-en-dos-ruedas> (JE-107); *Juki Exporta Vinos*, ÁMBITO FINANCIERO (Arg.) (April 23, 2012), available at [http://www.ambito.com/suplementos/automotor/noticia\\_suplemento.asp?ID=635759&Seccion=Secciones%20Especiales](http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=635759&Seccion=Secciones%20Especiales) (JE-106); *Lamotodigital.com.ar, Ante la crisis, Juki exporta vinos* (May 2, 2012), <http://www.lamotodigital.com.ar/nota-6322--ante-la-tesis-juki-exporta-vinos> (Arg.) (last visited May 3, 2013) (JE-108); *Editorial, REVISITA MOTOMUNDO* (Monterrey, Mex.), Year XXI, Number 241, Month 18, 3 (May, 2012) (JE-109); *Suzuki Motos Argentina Exporta*, ÁMBITO FINANCIERO (Arg.) (May 31, 2012), available at [http://www.ambito.com/suplementos/automotor/noticia\\_suplemento.asp?ID=639757&Seccion=Secciones%20Especiales](http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=639757&Seccion=Secciones%20Especiales) (JE-110); *Lamotodigital.com.ar, Suzuki Cerró la Primera Fase de Exportación* (May 31, 2012), <http://www.lamotodigital.com.ar/nota-6426--suzuki-cerro-la-primera-fase-de-exportacion> (Arg.) (last visited May 3, 2013) (JE-111); *Motomax.com.ar, Suzuki Motos Exporta Desde Argentina* (June 1, 2012), <http://www.motomax.com.ar/?p=23686> (Arg.) (last visited May 3, 2013) (JE-112); *Tiempomotor.com, Suzuki motos concretó su primera fase de exportación de mosto* (June 1, 2012), <http://www.tiempomotor.com/noticias/val/5961/suzuki-motos-concreto-primera-fase-de-exportacion-de-mosto.html> (last visited May 3, 2013) (JE-113); *Iprofesional.com, Vino por motos: Motomel construirá una bodega y una planta de mosto para compensar su balanza commercial* (June 8, 2012), <http://www.iprofesional.com/notas/138297-Vinos-por-motos-Motomel-construir-una-bodega-y-una-planta-de-mosto-para-compensar-su-balanza-comercial> (Arg.) (last visited May 3, 2013) (JE-114); *Una fábrica de motos deberá exportar vino y mosto para poder importar insumos*, LA NACIÓN (Arg.), June 11, 2012, available at <http://www.lanacion.com.ar/1481176-una-fabrica-de-motos-debera-exportar-vino-y-mosto-para-poder-importar-insumos> (JE-115); *Motomax.com.ar, Motomel exporta vino y mosto concentrado* (June 8, 2012), <http://www.motomax.com.ar/?p=23850> (Arg.) (last visited May 3, 2013) (JE-116); *Lavoz.com.ar, Más fábricas de motos exportan vino* (June 9, 2012), <http://www.lavoz.com.ar/noticias/negocios/mas-fabricas-motos-exportan-vino> (Arg.) (last visited May 3, 2013) (JE-117); *Razonesdeser.com, Vino a granel y mosto concentrado* (June 18, 2012), <http://www.razonesdeser.com/vernota.asp?notaid=89847> (Arg.) (last visited May 3, 2013) (JE-118); *Tiempomotor.com, Motomel exporta vino y mosto para importar piezas* (June 10, 2012), <http://www.tiempomotor.com/noticias/val/5992/motomel-exporta-vino-y-mosto-para-importar-piezas.html> (Arg.) (last visited May 3, 2013) (JE-119); *Contexto.com.ar, Motomel exportará vinos* (June 8, 2012), [http://www.contexto.com.ar/nota/77380/Motomel\\_exportar%C3%A1\\_vinos.html](http://www.contexto.com.ar/nota/77380/Motomel_exportar%C3%A1_vinos.html) (Arg.) (last visited May 3, 2013) (JE-120); *Lamoto.com.ar, Motomel sigue exportando* (June 11, 2012), <http://www.lamotodigital.com.ar/nota-6458--motomel-sigue-exportando> (Arg.) (last visited May 3, 2013) (JE-121); *Enretail.com, Zanella ha cumplido y se ha alineado a todas las exigencias del Gobierno Nacional* (October 2, 2012),

66. In September of 2012, Minister Giorgi touted the success of Argentina’s policies with respect to motorcycles, stating “[t]hanks to the national import substitution policy of Argentina, non-automatic licenses and the law on incentives for the local production of motorcycles and motorcycle parts, in 2012 the market participation of domestic motorcycles was over 70%.”<sup>173</sup>

### c. Agricultural Machinery

67. In general, Argentina requires manufacturers of agricultural machinery to substitute domestically-produced content for imports in order to obtain permission to import goods, as discussed *infra* at paragraphs 87-91. However, agricultural machinery manufactures may also be required to undertake export commitments. For example, in April of 2011, the Ministry of Industry announced that Minister Giorgi had approved the import-export plan proposed by the producer of agricultural machinery Claas.<sup>174</sup> The agreement provides that Claas would eliminate its trade deficit by selling parts and other products abroad. This agreement was, according to the Ministry of Industry, temporary because Claas was expected to present an investment plan during the second half of 2011 that would provide for import substitution.<sup>175</sup>

### d. Books and Other Publishers

68. In October 2011, the Ministry of Industry announced an umbrella trade balancing agreement between publishing companies and the Ministry of Industry and the Ministry of Economy and Finance, stating that “publishing companies committed to restoring their trade balance by the end of 2012, through an agreement that was signed by representatives of the Association of Argentinian Publishers with [Minister Giorgi], along with the secretaries of Commerce and of Culture.”<sup>176</sup> Minister Giorgi stated “this agreement will allow us to drive the

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<http://www.enretail.com/interior/nota.php?ID=4059> (JE-122); [Autoblog.com.ar](http://autoblog.com.ar), Zanella: “No sabes por qué se hacen estas diferencias” (March 5, 2012) <http://autoblog.com.ar/2012/03/zanella-no-sabemos-por-que-se-hacen-estas-diferencias/> (Arg.) (last visited May 3, 2013) (JE-123); [Urgente24.com](http://urgente24.com), La líder Zanella anunció (los primeros) 40 despidos (July 18, 2012) <http://www.urgente24.com/202074-la-lider-zanella-anuncio-los-primeros-40-despidos> (Arg.) (last visited May 3, 2013) (JE-124); [Comercioyjusticia.com](http://comercioyjusticia.com), Zanella no descarta cerrar su planta cordobesa (July 19, 2012), <http://www.comercioyjusticia.com.ar/2012/07/19/zanella-no-descarta-cerrar-su-planta-cordobesa> (Arg.) (last visited May 7, 2013) (JE-125); *Sin repuesto*, DIARIO POPULAR (Arg.), March 21, 2012, available at <http://www.diariopopular.com.ar/notas/112694-sin-repuesto> (JE-126).

<sup>173</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “El crecimiento de la producción automotriz se sostiene y consolida en un mundo en crisis” [Giorgi: “A Sustained and Consolidated Growth in Auto Production in a World in Crisis”] (September 20, 2012), available at <http://www.prensa.argentina.ar/2012/09/20/34306-giorgi-el-crecimiento-de-la-produccion-automotriz-se-sostiene-y-consolida-en-un-mundo-en-crisis.php> (Arg.) (JE-127).

<sup>174</sup> Press Release, Ministerio de Industria [Ministry of Industry], La empresa de maquinaria agrícola Claas acordó con el Gobierno un plan con equilibrio de balanza comercial [Claas, the Agricultural Machinery Company agreed with the government on a plan to balance the commercial scale] (April 1, 2011), available at <http://www.industria.gob.ar/la-empresa-de-maquinaria-agricola-claas-acordo-con-el-gobierno-un-plan-con-equilibrio-de-balanza-comercial/> (Arg.) (“*Ministry of Industry Press Release April 1, 2011*”) (JE-128).

<sup>175</sup> *Ministry of Industry Press Release April 1, 2011* (JE-128).

<sup>176</sup> Press Release, Ministerio de Industria [Ministry of Industry], Editoriales acuerdan equilibrar la balanza comercial [Publishing Companies Agree to Restore Trade Balance] (October 31, 2011), available at



production of books in Argentina,” and Secretary Moreno stated that “we will monitor the agreement to achieve the targets committed to in it.”<sup>177</sup>

69. The agreement reportedly included 46 members of the Argentine Association of Publishers (*Cámara Argentina de Publicaciones* or “CAP”).<sup>178</sup> Approximately one million books which had reportedly been held at Argentine Customs were released upon the signing of the agreement.<sup>179</sup> The agreement reportedly contains a clause requiring companies to make irrevocable capital contributions if they are unable to meet their trade balancing commitments.<sup>180</sup> Companies that were reported to have signed the agreement include: AZ Editora, Aguilar, Cengage Learning Argentina, Cuspide, Planeta Agostini, Ediciones Granica, Ediciones Urano, Estrada, Fundacion MacMillan, Santillana and Alfadil.<sup>181</sup>

70. In addition, in November 2011, the Ministry of Industry announced that members of the Argentine Association of Books (*Cámara Argentina del Libro* or “CAL”) had signed the same trade balancing agreement that CAP had concluded.<sup>182</sup> The Ministry of Industry announced that CAL “joined the commitment that was already signed by the [CAP]. Part of the booksellers’ and distributors’ imports will be offset with book exports, and local printing will be stimulated.”<sup>183</sup> Upon the signing, Minister Giorgi stated “we are stimulating greater book production in Argentina to strengthen our publishing industry . . . we have formed a task force . . . to monitor the agreement.”<sup>184</sup> The agreement reportedly included 85 companies.<sup>185</sup>

#### e. Audiovisual Products

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<http://www.prensa.argentina.ar/2011/10/31/25161-editoriales-acuerdan-equilibrar-la-balanza-comercial.php#> (Arg.) (“*Ministry of Industry Press Release October 31, 2011*”) (JE-129).

<sup>177</sup> *Ministry of Industry Press Release October 31, 2011* (JE-129).

<sup>178</sup> *Book Publishing Industry to Balance Imports/Exports*, INFOBAE (Arg.), (South American Business Information trans.), October 31, 2011 (JE-130).

<sup>179</sup> *Liberarían los libros en las próximas 48 horas [Books to Be Released in the Next 48 Hours]*, EL CLARIN (Arg.), November 1, 2011, available at [http://www.revistaenie.clarin.com/literatura/Liberarian-libros-proximas-horas\\_0\\_583141850.html](http://www.revistaenie.clarin.com/literatura/Liberarian-libros-proximas-horas_0_583141850.html) (“*El Clarin November 1, 2011*”) (JE-131).

<sup>180</sup> *El Clarin November 1, 2011* (JE-131).

<sup>181</sup> *Publishers Promise to Balance Trade by September 2012*, EL TRIBUNO (Arg.), (Esmerk trans.), November 1, 2011 (JE-132).

<sup>182</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi y Moreno firmaron acuerdo con libreros para compensar importaciones [Giorgi and Moreno Signed an Agreement with Booksellers to Offset Their Imports] (November 11, 2011), available at <http://www.prensa.argentina.ar/2011/11/11/25556-giorgi-y-moreno-firmaron-acuerdo-con-libreros-para-compensar-importaciones.php#> (Arg.) (“*Ministry of Industry Press Release November 11, 2011*”) (JE-133); *Book Business Joins Car Trade in Promising to Match Imports and Exports*, INFOBAE (Arg.), (South American Business Information trans.), November 24, 2011 (JE-134)

<sup>183</sup> *Ministry of Industry Press Release November 11, 2011* (JE-133).

<sup>184</sup> *Ministry of Industry Press Release November 11, 2011* (JE-133).

<sup>185</sup> *Ministry of Industry Press Release November 11, 2011* (JE-133); *Books Industry Bends to Imports Control Policy*, EL CLARIN (Arg.), (South American Business Information trans.), November 11, 2011 (JE-135).

71. In November of 2011, it was reported that Secretary Moreno invited the filmmaking industry to meet and demanded that the companies balance their imports with exports.<sup>186</sup> According to a report of the meeting:

Movies and local and international and local television shows that premiere and are distributed in the country thus join the automobile, metallurgical, food and beverage, book and drug industries. Local producers who receive subsidies and multinational distributors attended the meeting, and they all received the same order: from now on they have to devise a system which guarantees that every outgoing dollar is replaced by an incoming one.

. . . Moreno made it clear that they had to comply with the order in no more than 20 days. “If the automobile and dog food industries can do it, then so can this sector,” a man close to Moreno’s office stated emphatically yesterday. “Let them export peanuts and wine like importers of luxury cars do,” he said.<sup>187</sup>

72. Subsequently, on December 6, 2011, President Cristina Fernández announced the imposition of the one-to-one requirement on film makers. She stated:

[W]e proposed holding this business rally, where we tell importers that they are going to have to export Argentine [audiovisual] contents because this is what the political objective which we advancing as a country and that, for us, it is important to export grains, it is important to export agricultural machinery, value added, industrial goods, software, but it is also very important to export our identity, our culture, our knowledge, as expressed in movies and television. . . . thus, we will foster the balance between those who import and those who export.<sup>188</sup>

#### **f. Tires**

73. In a public speech in 2012, President Fernández announced the commitment by tire manufacturer Pirelli to export honey in exchange for being allowed to import tires. Notably, President Fernández observed the following:

[The expansion of tire production] is very important because previously [radial tires] had to be imported, [because] even with the domestic production we are

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<sup>186</sup> *Avanza Ley Moreno: También en el Cine Dólar por Dólar* [*The Moreno Law Advances: At the Movies, Too, Dollar for Dollar*], *ÁMBITO FINANCIERO* (Arg.), November 24, 2011 (“*Ámbito Financiero November 24, 2011*”) (JE-136).

<sup>187</sup> *Ámbito Financiero November 24, 2011* (JE-136).

<sup>188</sup> Press Release, Presidencia de la Nación Argentina, Palabras de la Presidenta de la Nación Cristina Fernández en el acto de cierre de ronda de negocios “Argentina Exporta Audiovisual” (December 6, 2011), *available at* <http://www.presidencia.gov.ar/discursos/25592-acto-de-cierre-de-qargentina-exporta-audiovisualq-palabras-de-la-presidenta-de-la-nacion> (Arg.) (JE-137).

cannot cover the demand, either domestic or the demand from motor vehicles for export. That is why we have permanent agreements and permanent discussions with all of the companies – with Pirelli too – to achieve this balance in the trade balance and [Pirelli] is helping us like with honey to achieve this balance. If, as you hear, I want to rescue the conduct or the behavior of a company like Pirelli, which helps us at a very difficult time in the world, when our bee-culture production export is down, which involves many thousands of families, many thousands of workers, and 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.<sup>189</sup>

74. In December 2012, it was reported that Michelin had also undertaken to export products from Argentina to compensate for its imports.<sup>190</sup>

### **g. Agricultural Products**

75. In mid-2012, Secretary Moreno reportedly approached Monsanto, a US-based biotechnology company regarding Monsanto's need to export more and compensate for its imports.<sup>191</sup> Monsanto's vice-president in Argentina, Pablo Vaquero, pointed out that they joined the *Cámara de Productores y Exportadores de Cereales y Olaginosos* ("CAPECO") and stated that "[w]hat we are doing is that we have a quota to export corn and we chose CAPECO because it is smaller, and there are exporters we know and work with."<sup>192</sup> The daily *La Nación* reported:

[A]ccording to Vaquero, due to the drought in the United States, this off-season commercial activity is on the rise, and increased by 50% compared to last year. Nevertheless, the company needs to export more. Monsanto met with Moreno and a few months ago was authorized to export the grain received from producers

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<sup>189</sup> 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).

<sup>190</sup> See *Pymes en plan de conquista*, PÁGINA12 (Arg.), December 5, 2012, available at <http://www.pagina12.com.ar/diario/economia/2-209238-2012-12-05.html> (JE-138); *Compensación de importaciones: pymes locales le venden a fabricante mundial de neumáticos*, BUENOS AIRES ECONÓMICO (Arg.), December 6, 2012, available at <http://www.diariobae.com/diario/2012/12/06/21169-compensacion-de-importaciones-pymes-locales-le-venden-a-fabricante-mundial-de-neumaticos.html> (JE-139); *Moreno se reunió con pymes por neumáticos para Michelin*, EL DIA (Arg.), July 24, 2012, available at <http://www.eldia.com.ar/edis/20120724/moreno-reunio-pymes-por-neumaticos-para-michelin-20120724160853.htm> (JE-140).

<sup>191</sup> Fernando Bertello, *Moreno logró sumar a Monsanto a una cámara kirchnerista* [Moreno Manages to Add Monsanto to a Kirchnerist Chamber], LA NACIÓN (Arg.), November 20, 2012, available at <http://www.lanacion.com.ar/1528420-moreno-logro-sumar-a-monsanto-a-una-camara-kirchnerista> ("La Nación November 20, 2012") (JE-141).

<sup>192</sup> *La Nación* November 20, 2012 (JE-141).

through input exchanges. Before, the grain received from producers was delivered through another company.<sup>193</sup>

Vaquero stated, “[t]he idea of exporting has to do with compensating for imports and offering clients a better business [for grain exchanges].”<sup>194</sup>

76. In addition, Secretary Moreno was reported to have met with a larger number of agrochemical and fertilizer manufacturers in 2011 and 2012 which were required to present export plans to Argentina.<sup>195</sup>

#### **h. White Goods**

77. In August 2011, an official Argentine government press release reported that President Fernández and Minister Giorgi met with Electrolux, a manufacturer of “white goods” such as refrigerators and washing machines, to discuss and approve the company’s plan to even out its trade balance.<sup>196</sup> According to the press release, a manager of the company, Jonas Samuelson, stated 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.”<sup>197</sup>

#### **i. Electronic Products**

78. Several manufacturers of electronics have committed to compensate their imports with exports. In February 2012, it was reported that Samsung considered exporting minerals from Argentina to an affiliate, as well as increasing local manufacturing for export.<sup>198</sup> A company official from an Argentine branch of Samsung, Alfredo Franzese, indicated that this proposal

<sup>193</sup> *La Nación* November 20, 2012 (JE-141).

<sup>194</sup> *La Nación* November 20, 2012 (JE-141).

<sup>195</sup> See Fernando Bertello, *Prohíben importar agroquímicos*, LA NACIÓN (Arg.), November 14, 2011, available at <http://www.lanacion.com.ar/1423049-prohiben-importar-agroquimicos> (JE-142); Julieta Camandone, *Agroquímicas presentan sus números a Moreno para poder importar*, EL CRONISTA (Arg.), February 23, 2012, available at <http://www.cronista.com/negocios/Agroquimicas-presentan-sus-numeros-a-Moreno-para-poder-importar-20120223-0060.html> (JE-143); Julieta Carmandone, *Agroquímicas aumentarán sus exportaciones para poder ingresar insumos al país*, EL CRONISTA (Arg.), May 30, 2012, available at <http://www.cronista.com/negocios/Agroquimicas-aumentaran-sus-exportaciones-para-poder-ingresar-insumos-al-pais-20120530-0056.html> (JE-144).

<sup>196</sup> Press Release, Presidencia de la República Argentina [President of the Republic of Argentina], *Directivos de Electrolux anunciaron a Cristina que comenzarán a exportar electrodomésticos a Brasil* [Electrolux Executives Announced to Cristina that They Would Begin Exporting Small Appliances to Brazil] (August 25, 2011), available at <http://www.prensa.argentina.ar/2011/08/25/23026-directivos-de-electrolux-anunciaron-a-cristina-que-comenzaran-a-exportar-electrodomesticos-a-brasil.php> (Arg.) (“*President of the Republic of Argentina Press Release August 25, 2011*”) (JE-145).

<sup>197</sup> *President of the Republic of Argentina Press Release August 25, 2011* (JE-145).

<sup>198</sup> Nuria Rebón, *Samsung busca exportar minerales a Corea para compensar importaciones*, EL CRONISTA (Arg.), February 27, 2012, available at <http://www.cronista.com/negocios/Samsung-busca-exportar-minerales-a-Corea-para-compensar-importaciones-20120227-0028.html> (“*El Cronista February 27, 2012*”) (JE-146); Iprofesional.com, *Samsung evalúa exporter minerales a Corea para compensar importaciones* (February 27, 2012), <http://www.iprofesional.com/notas/131554-Samsung-evala-exportar-minerales-a-Corea-para-compensar-importaciones> (Arg.) (JE-301).

came about after a review of the possible alternatives to compensate imports of components that Samsung requires to import for the production of final goods in Argentina.<sup>199</sup>

79. In a 2013 interview, a Motorola official described the company’s past and continuing experience with complying with Argentina’s RTRRs.<sup>200</sup> He explained that “[i]n the past, we had to balance our imports and exports as required by the government. We exported through the software center we had in Argentina and that opened the door to be able to import instruments. But we no longer have the software center.”<sup>201</sup> The official went on to state that Motorola was considering starting manufacturing operations in Argentina, but noted “[e]verything depends on how our equation on imports turns out.”<sup>202</sup>

80. In addition, it was reported that Newsan, an Argentine producer of electronic products, entered into agreements with six fish processing companies to export fish products in order to compensate for imports of inputs for electronic products.<sup>203</sup> It was also reported that Black & Decker, a producer of hand machine tools and household electronics, was asked by SCI officials to submit a plan to offset its imports with exports.<sup>204</sup>

## j. Clothing

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<sup>199</sup> *El Cronista* February 27, 2012 (JE-146).

<sup>200</sup> Pablo Orsei: “Motorola estudia fabricar computadoras móviles en la Argentina” [Orsei Paul: “Motorola studying manufacturing mobile computers in Argentina”], *EL CRONISTA* (Arg.), March 11, 2013, available at <http://www.cronista.com/negocios/Pablo-Orsei-Motorola-estudia-fabricar-computadoras-moviles-en-la-Argentina-20130311-0049.html> (“*El Cronista* March 11, 2013”) (JE-147).

<sup>201</sup> *El Cronista* March 11, 2013 (JE-147).

<sup>202</sup> *El Cronista* March 11, 2013 (JE-147).

<sup>203</sup> *Newsan comienza a exportar pescado para compensar importaciones*, *EL CRONISTA* (Arg.), March 7, 2012, available at <http://www.cronista.com/negocios/Newsan-comienza-a-exportar-pescado-para-compensar-importaciones-20120307-0047.html> (JE-148); *Moreno une el agua con el aceite*, *LA NACIÓN* (Arg.), May 6, 2012, available at <http://www.lanacion.com.ar/1470630-moreno-une-el-agua-con-el-aceite> (JE-149); *Newsan destina \$300 M para sustituir importaciones*, *BUENOS AIRES ECONÓMICO* (Arg.), December 13, 2012, available at [http://www.diariobae.com/diario/2012/12/13/21443-newsan-destina-\\$300-m-para-sustituir-importaciones.html](http://www.diariobae.com/diario/2012/12/13/21443-newsan-destina-$300-m-para-sustituir-importaciones.html) (JE-150); *En Argentina, fabricantes de electrónicos exportan camarones*, *THE WALL STREET JOURNAL* (Latin America), December 25, 2012, available at <http://online.wsj.com/article/SB10001424127887324660404578202043169079264.html> (JE-151); *Newsan exporta pescado para compensar el déficit en importaciones*, *EL SUREÑO* (Arg.), March 8, 2012, available at <http://www.treslineas.com.ar/newsan-exporta-pescado-para-compensar-deficit-importaciones-n-588875.html> (JE-152); *Tierra del Fuego vive del “modelo”*, *LA NACIÓN* (Arg.), April 29, 2012, available at <http://www.lanacion.com.ar/1469132-tierra-del-fuego-vive-del-modelo> (JE-153); *Pescare.com.ar*, Importante firma de electrodomésticos exportará pescado para compensar importaciones (March 7, 2012), [http://www.pescare.com.ar/n2928\\_firma\\_de\\_electrodomesticos\\_exportara\\_pescado\\_para\\_compensar\\_importaciones.htm](http://www.pescare.com.ar/n2928_firma_de_electrodomesticos_exportara_pescado_para_compensar_importaciones.htm) (Arg.) (last visited May 6, 2013) (JE-154); Iprofesional.com, CEO de Newsan: “No creo que la Presidenta quiera que las cosas cuesten acá 10 veces más que en el mundo” (May 2, 2012), <http://www.iprofesional.com/notas/135798-CEO-de-Newsan-No-creo-que-la-Presidenta-quiera-que-las-cosas-cuesten-ac-10-veces-ms-que-en-el-mundo> (Arg.) (last visited May 6, 2013) (JE-155).

<sup>204</sup> *Lavoz.com.ar*, Walter Giannoni, Black & Decker, complicada para importar y también para exportar (May 2, 2012), <http://www.lavoz.com.ar/noticias/negocios/black-amp-decker-complicada-para-importar-tambien-para-exportar> (Arg.) (last visited May 6, 2013) (JE-157).

81. After a lack of merchandise in 2012 resulted in the closure of its flagship store, high-end Italian clothing company Ermenegildo Zegna reportedly obtained authorization to import, as a result of its submission of an export plan.<sup>205</sup> An Ermenegildo Zegna company representative stated:

Since we have links with suppliers of raw materials, we made an agreement with a producer of worsted wool in Trelew [Argentina] to facilitate that company's exports to companies in Switzerland and Italy. We have already completed two export shipments and we have two more scheduled for September and December. . . . That allowed us to comply with the Government's demand to offset imports with exports and obtain the license to resume imports. Today we have a variety of clothing and in a short time we expect to receive the new spring-summer season.<sup>206</sup>

82. In addition, an Argentine government press release quotes Minister Giorgi as describing a trade balancing commitment made by Nike in 2011 as follows: "Companies located in Argentina make the commitment to substitute imports . . . Nike is a model for our idea, a brand that promotes the development of local businesses. For example, now Argentina is going to export furniture through Nike throughout Latin America."<sup>207</sup> Adidas Argentina reported stated that, in order to implement the requirements imposed by the Government, the company would export furniture.<sup>208</sup> Adidas exports furniture used for the display of products to other Latin American countries, as well as purses and leather. This, coupled with other import substitution requirements, would balance the company's imports with exports.<sup>209</sup>

### **k. Other**

83. Various other types of importers have been required to balance the value of their imports with exports. For example:

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<sup>205</sup> *Zegna Ayuda a Exportar Lana y Reabre* [Zegna Reopens by Helping to Export Wool], EL CRONISTA (Arg.), August 2, 2012, available at <http://www.cronista.com/negocios/Zegna-ayuda-a-exportar-lana-y-reabre-20120802-0046.html> ("El Conista August 2, 2012") (JE-158).

<sup>206</sup> *El Conista August 2, 2012* (JE-158).

<sup>207</sup> Press Release, Ministerio de Industria [Ministry of Industry], Nike Anunció Una Inversión de Casi \$ 5 Millones para Incrementar la Producción en el País [Nike Announces a \$5 Million Investment to Increase Argentinian Production] (April 5, 2011), available at <http://www.prensa.argentina.ar/2011/04/05/18205-nike-anuncio-una-inversion-de-casi-us-5-millones-para-incrementar-la-produccion-en-el-pais.php> (Arg.) (JE-159).

<sup>208</sup> Matías Bonelli, *Adidas exporta muebles para seguir importando Zapatillas* [Adidas Sells Furniture to Other Countries' Subsidiary Companies to Comply with Moreno's Orders], EL CRONISTA (Arg.), July 22, 2011, available at <http://www.cronista.com/negocios/Adidas-exporta-muebles-para-seguir-importando-zapatillas-20110722-0033.html> (JE-160); InvestBA.com, In Argentina, Adidas trades shoes for shelves (July 22 2011), <http://investba.com/2011/07/argentina-adidas-trades-shoes-shelves/> (Arg.) (last visited May 6, 2013) (JE-161); *El 'trueque' se impone en el comercio exterior*, LA GACETA (Arg.), July 23, 2011, available at <http://www.lagaceta.com.ar/nota/446896/economia/trueque-se-impone-comercio-exterior.html> ("La Gaceta July 23, 2011") (JE-162).

<sup>209</sup> *La Gaceta July 23, 2011* (JE-162).

- **Retail:** The CEO of Chilean retailer Cencosud described the company’s experience with the requirement as follows:

*[It] is not something new in Argentina here you require a lot of flexibility in terms of maneuver, how you can compensate the imports that you are doing with the exports. Now I think the good news we have in Argentina is the fact that we have been able so far to compensate all the imports. Not that require -- to be very honest with you day in and day out negotiation with the authorities you need to go demonstrate that you have all the export in order to compensate the imports.*

...

*And when we see the whole of 2012 in terms of the balance between the exports that we do and the imports that we do we are optimistic that we should not face any major problems. Because we are -- for example, some of the products that we used to import directly from Argentina and vendors from the other operations both in Peru, Brazil or Chile, now the way that we do it which require an extra step is purchasing those products with our Cencosud brand in Argentina and then export those products as an Cencosud export, which you can think that it's very, very stupid but that's the way it works. So at least it helps us to compensate and allow us to get the products in Argentina, and so far it's working well. And we, as I said, over the next six months we don't see or at least we have not here any major concern about that particular element.*<sup>210</sup>

- **Toys:** In 2011, it was widely reported that Mattel, a U.S. toy company, had arranged with an Argentine toy producer to export toys to Colombia in order to secure Mattel’s permission to import its products to Argentina.<sup>211</sup>
- **Pharmaceuticals:** On April 19, 2011, the Pharmaceutical Industry Association (*Cámara de la Industria Farmacéutica* or “CIF”) met with Minister Giorgi and Secretary Moreno. According to an official Argentine government press release describing the event, Minister Giorgi stated that “we encourage production by multinational laboratories in

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<sup>210</sup> CENCOSUD S.A., 2012 Q2 Earnings Conference Call – Final, Fair Disclosure Wire, September 4, 2012 (JE-163) (emphasis added).

<sup>211</sup> See Infobae, com, Tras varios meses, Guillermo Moreno permite importar la muñeca Barbie (August 18, 2011), <http://www.infobae.com/notas/600371-Tras-varios-meses-Guillermo-Moreno-permite-importar-la-muneca-Barbie.html> (Arg.) (last visited May 6, 2013) (JE-164); *Moreno flexibiliza el ingreso de más productos importados*, LA NACIÓN (Arg.), August 18, 2011, available at <http://www.lanacion.com.ar/1398672-moreno-flexibiliza-el-ingreso-de-mas-productos-importados> (JE-165); *Las Barbies vuelven a las jugueterías gracias a Rasti*, 26 NOTICIAS (Arg.), August 18, 2011, available at <http://www.26noticias.com.ar/las-barbies-vuelven-a-las-jugueterias-gracias-a-rasti-137558.html> (JE-166); Iprofesional.com, *Entra muñecas, salen ladrillitos: las Barbies vuelven a cambio de Rastis* (August 18, 2011), <http://www.iprofesional.com/notas/121076-Entran-muecas-salen-ladrillitos-las-Barbies-vuelven-al-pas-a-cambio-de-Rastis> (Arg.) (last visited May 6, 2013) (JE-167).

Argentina as a condition of market access.”<sup>212</sup> Other reporting regarding the April 19 meeting described instructions from Secretary Moreno that pharmaceutical companies submit plans for achieving a balance of trade in their raw materials and medicines, including through increasing exports, reducing imports, making capita investments, or reinvesting profits.<sup>213</sup> Several weeks later, it was reported that the pharmaceutical companies had made commitments to the Argentine government in response to the Secretary’s demands.<sup>214</sup>

- **Auto Software and Services:** Lojack Corp. provides software and services that track and recover stolen goods in the automotive industry. In November 2012, Lojack company officials stated the following about the impact of the import licensing regime on its business in Argentina, in a company earnings conference call:

*BILL DEZELLEM: . . . Next question, relative to Argentina, you I think mentioned, if not in the press release in the opening remarks, that the Argentine licensee is making progress, relative to the import restrictions. Would you describe what it is that you're referring to there? . . .*

*DONALD PECK: Again, the issue is focused on Argentina because of the government restrictions on imports into that country. 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. 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. That is where they have made significant progress to date. They have not yet completed those efforts and will be, in the short term, reporting their progress to the government with the hope that they will get a positive indication from the government that they'll be allowed to start the importation process again.*<sup>215</sup>

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<sup>212</sup> Press Release, Ministerio de Industria [Ministry of Industry], En 2020 se podrán producir en el país 1.350 millones de unidades de medicamentos y generar 40 mil nuevos empleos en el sector se podrán producir en el país 1.350 millones de unidades de medicamentos y generar 40 mil nuevos empleos en el sector [In 2020, this country will be able to produce 1.35 million medication units and generate 40 thousand new jobs in the sector] (May 10, 2011), available at <http://www.industria.gob.ar/en-2020-se-podran-producir-en-el-pais-1-350-millones-de-unidades-de-medicamentos-y-generar-40-mil-nuevos-empleos-en-el-sector/> (Arg.) (“*Ministry of Industry Press Release May 10, 2011*”) (JE-168).

<sup>213</sup> See PharmaBiz Sudamérica.net, Moreno: ajuste sobre la balanza comercial (April 19, 2011), <http://www.pharmabiz.net/moreno-ajuste-sobre-la-balanza-comercial/> (Arg.) (last visited May 6, 2013) (JE-169); Alfredo Sainz, *Laboratorios, en la mira de Moreno*, LA NACIÓN (Arg.), April 20, 2011, available at <http://www.lanacion.com.ar/1366977-laboratorios-en-la-mira-de-moreno> (JE-170).

<sup>214</sup> Alfredo Sainz, *Limitan el ingreso de medicamentos*, LA NACIÓN (Arg.), May 3, 2011, available at <http://www.lanacion.com.ar/1370169-limitan-el-ingreso-de-medicamentos> (“*La Nación May 3, 2011*”) (JE-171).

<sup>215</sup> LOJACK CO., 2012 Q3 Earnings Conference Call – Final, Fair Disclosure Wire, November 7, 2012 (“*LOJACK 2012 Q3 Earnings Call*”) (JE-172) (emphasis added).



## 2. Reduce Volume or Price of Imports

84. Often together with requirements to balance the value of imports with exports, Argentina also requires importers to limit the volume of imports or – less frequently – to limit the unit price of imports.<sup>216</sup> Both of these requirements serve to reduce the overall value of the import transaction. For example, as is described above at paragraphs 45-46, Company X was required to submit revised price lists reducing the value of its imports by around nine percent.

85. In December 2010, Minister Giorgi reportedly 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.<sup>217</sup> By early February 2011, the auto manufacturers had reportedly not produced such plans, and in response to this inaction, a government official reportedly 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” said officials who added that to reach a trade balance in the short term “the 20% cut in imports informed to companies in December could be elevated further.”<sup>218</sup> Other examples include:

- A Harley Davidson importer reported limitations on the volume of motorcycles he was allowed to import, in addition to a requirement to balance his imports with exports.<sup>219</sup>
- Nike, Adidas, Lacoste, Zara, Falabella and Levis reportedly all agreed to halt price rises with the government in order to continue importing their product.<sup>220</sup>
- It was widely reported that over the course of 2010-2011, Secretary Moreno imposed restrictions on the volume of goods that supermarket chains could import.<sup>221</sup>

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<sup>216</sup> The restriction on unit prices appears to occur where the imports are not in direct competition with domestic products.

<sup>217</sup> *Argentina Conditions Luxury Car Imports to Deals with Mercosur Auto-parts Industry*, MERCOPRESS, February 7, 2010, available at <http://en.mercopress.com/2011/02/07/argentina-conditions-luxury-car-imports-to-deals-with-mercosur-auto-parts-industry> (“*MercoPress February 7, 2010*”) (JE-173).

<sup>218</sup> *MercoPress February 7, 2010* (JE-173).

<sup>219</sup> *Autoblog June 29, 2012* (JE-104).

<sup>220</sup> *Argentina: Premium Clothing Brands Are Hit by Import Restrictions*, CLARIN (Esmerk trans.), April 2, 2012 (JE-174).

<sup>221</sup> See, e.g., *Importados, sólo hasta agotar stock*, PÁGINA12 (Arg.), May 12, 2010, available at <http://www.pagina12.com.ar/diario/economia/2-145525-2010-05-12.html> (JE-175); Fortunaweb.com.ar, Reunión clave de los supermercados con Moreno por la restricción a importaciones (May 10, 2010), <http://fortunaweb.com.ar/2010-05-10-27450-reunion-clave-de-supermercadistas-con-moreno-por-las-restricciones-a-las-importaciones/> (Arg.) (last visited May 6, 2013) (JE-176); *Incertidumbre en las góndolas por el freno de Moreno a la importación*, PERFIL (Arg.), May 6, 2010, available at [http://www.perfil.com/contenidos/2010/05/06/noticia\\_0019.html](http://www.perfil.com/contenidos/2010/05/06/noticia_0019.html) (JE-177); Futuro-digital.com.ar, Moreno no comunicó a supermercados la restricción de la importación de alimentos (May 19, 2010), <http://www.futuro-digital.com.ar/mundo-mainmenu-55/41-nacional/8976-moreno-no-comunico-a-supermercados-la-restriccion-de-la-importacion-de-alimentos.html> (Arg.) (last visited May 6, 2013) (JE-178); Fortunaweb.com.ar, El frente externo a

- On May 7, 2012, four pork producer associations presented their commitments to restrict imports of certain pork products. The commitment begins by noting that the proposal is made “further to the meetings held with Mr. Secretary” and indicated that “[t]he maximum importable by a company will be up to 80% per year, as compared to the level of imports in 2011.”<sup>222</sup> This document was widely reported by outside sources.<sup>223</sup>

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los alimentos importados afectaría más a Argentina (May 12, 2010), <http://fortunaweb.com.ar/2010-05-12-27689-el-frente-externo-a-los-alimentos-importados-afectaria-mas-al-mercado-argentinoel-frente-externo-a-los-alimentos-importados-afectaria-mas-al-mercado-argentino/> (Arg.) (last visited May 6, 2013) (JE-179); *Medida Cuestionada, Critican el freno a las importaciones*, LA NACIÓN (Arg.), May 7, 2010, available at <http://www.lanacion.com.ar/1262059-critican-el-freno-a-las-importaciones> (JE-180); *Podrían imponer restricciones a las exportaciones*, EL LITORAL (Arg.), May 11, 2010, available at <http://www.ellitoral.com/index.php/diarios/2010/05/11/economia1/ECON-01.html> (JE-181); Infobae.com, *Moreno volvió a frenar el ingreso de importaciones* (January 17, 2011), <http://www.infobae.com/notas/557164-Moreno-volvio-a-frenar-el-ingreso-de-importaciones.html> (Arg.) (last visited May 6, 2013) (JE-182); Iprofesdional.com, *Guillermo Moreno vuelve a poner la mira sobre los alimentos importados* (January 28, 2011), <http://economia.iprofesional.com/notas/110821-Guillermo-Moreno-vuelve-a-poner-la-mira-sobre-los-alimentos-importados> (Arg.) (last visited May 6, 2013) (JE-183); Pablo Fernandez Blanco, *Desde el mes próximo volverán a aplicar trabas a las importaciones*, EL CRONISTA (Arg.), December 9, 2010, available at [http://www.cronista.com/contenidos/2010/12/09/noticia\\_0078.html](http://www.cronista.com/contenidos/2010/12/09/noticia_0078.html) (JE-184); Alfredo Sainz, *El superávit comercial de 2010 fue el más en tres años*, LA NACIÓN (Arg.), January 25, 2011, available at <http://www.lanacion.com.ar/1344326-el-superavit-comercial-de-2010-fue-el-mas-bajo-en-tres-anos> (JE-185); Esteban Rafele, *Por la lluvia de dólares, Moreno quita trabas a la importación de alimentos*, EL CRONISTA (Arg.), November 8, 2010, available at [http://www.cronista.com/contenidos/2010/11/08/noticia\\_0040.html](http://www.cronista.com/contenidos/2010/11/08/noticia_0040.html) (JE-186); *Moreno: 'Los productos que podrían entrar al país no deben ser producidos a nivel local*, BUENOS AIRES ECONÓMICO (Arg.), January 3, 2012, available at <http://www.diariobae.com/diario/2012/01/03/6368-moreno-los-productos-que-podrian-entrar-al-pais-no-deben-ser-producidos-a-nivel-local%E2%80%9D.html> (JE-187).

<sup>222</sup> Letter from Unión de la Industria Cárnica Argentina (“UNICA”), Cámara Argentina de la Industria de Chanicados y Alfiles (“AICHA”), Asociación Argentina de Productores de Porcinos (“AAPP”), Consejo Argentino de Productores (“CAP”), and Cámara Argentina de Elaboradores de Tripas Naturales (“CADELTRIP”) to Lic. Guillermo Moreno, Secretary of Commerce (May 7, 2012) (JE-238).

<sup>223</sup> See Fernando Bertello, *Ya no se podrán importar jamones de España y de Italia*, LA NACIÓN (Arg.), May 9, 2012, available at <http://www.lanacion.com.ar/1471673-ya-no-se-podran-importar-jamones-de-espana-y-de-italia> (JE-189); Expansion.com, *Argentina se quedan sin jamón ibérico por la política de Kirchner de restricciones comerciales* (May 9, 2012), <http://www.expansion.com/2012/05/09/empresas/distribucion/1336579054.html> (Spain) (last visited May 6, 2013) (JE-190); M. Arrizabalaga, *Llora sin jamón ibérico*, Argentina, ABC (Spain), May 28, 2012, available at <http://www.abc.es/20120528/espana/abci-pierde-argentina-jamon-iberico-201205240938.html> (JE-191); *El jamón ibérico, nuevo eje de conflicto entre Argentina y España*, LA RAZON (Arg.), May 10, 2012, available at [http://www.larazon.com.ar/economia/iberico-nuevo-conflicto-Argentina-Espana\\_0\\_348900164.html](http://www.larazon.com.ar/economia/iberico-nuevo-conflicto-Argentina-Espana_0_348900164.html) (JE-192); Contexto.com.ar, *El jamón ibérico entre los productos vedados por Moreno* (May 9, 2012), [http://www.contexto.com.ar/nota/74596/El\\_jam%C3%B3n\\_espa%C3%B1ol\\_entre\\_los\\_productos\\_vedados\\_por\\_Moreno.html](http://www.contexto.com.ar/nota/74596/El_jam%C3%B3n_espa%C3%B1ol_entre_los_productos_vedados_por_Moreno.html) (Arg.) (last visited May 6, 2013) (JE-193); Sitiosargentina.com.ar, *Cristina prohíbe importar jamón español* (May, 2012), <http://www.sitiosargentina.com.ar/notas/2012/mayo/importar-jamon.htm> (Arg.) (last visited May 17, 2013) (JE-194); *Argentina prohibirá la importación de jamón español para estimular la producción nacional*, DIARIO UNO (Arg.), May 9, 2012, available at <http://www.diariouno.com.ar/economia/Argentina-prohibira-la-importacion-de-jamon-espaol-para-estimular-la-produccion-nacional-20120509-0074.html> (JE-195); Infocampo.com.ar, *Cristina comparó las restricciones al jamón español con las impuestas al biodiesel argentino en España* (May 11, 2012), <http://infocampo.com.ar/nota/campo/32102/cristina-comparo-las-restricciones-al-jamon-espanol-con-las-impuestas-al-biodiesel-argentino-en-espana> (Arg.) (last visited May 6, 2013) (JE-196).

### 3. Increase Incorporation of Local Content

86. Argentina has also required importers in certain industries to increase their incorporation of local content in the goods they purchase or produce in order to receive permission to import.

#### a. Agricultural Machinery

87. On February 10, 2011, Minister Giorgi convened the Argentine Association of Agricultural Machinery Manufacturers (CAFMA) and instructed agricultural machinery producers to submit import substitution plans.<sup>224</sup> The Ministry of Industry’s press release describes that meeting as follows:

[Minister Giorgi] called on agricultural machinery importers and Argentine manufacturers to balance the US\$450 million trade deficit in the tractor, seeder, and sprayer sector this year. Giorgi told them that they will have to increase exports and replace imports with domestically manufactured machinery. “The government has made a strategic decision to promote a strong domestic agricultural machinery industry . . . ,” Giorgi said. During the meeting with agricultural machinery importers, the Minister explained the need to close the trade deficit. Giorgi ordered the John Deere, Agco, and Claas representatives to submit a plan for replacing imports with domestic production and using more Argentine parts. . . . “Import substitution is a key tool for increasing production. Replacing US\$450 million in imports with domestic production will create thousands of jobs. In addition to the high demand on the local market due to excellent current harvest levels and the expected increase in yield, there is a large international market available for exports,” Giorgi said. . . . The Ministry is also requiring non-automatic licenses for imported tractors, harvesters, and fumigators in order to protect Argentine products from unfair competition.<sup>225</sup>

88. Companies in attendance at that meeting included John Deere, Case New Holland, Agco Allis and Claas.<sup>226</sup> By December 2011, these four agricultural machinery manufacturers reportedly had submitted the plans demanded by Minister Giorgi, committing them to invest \$60 million (Claas), \$100 million (Case New Holland), \$130 million (John Deere) and \$140 million (Agco Allis) in local production facilities that reportedly would incorporate locally manufactured parts.<sup>227</sup>

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<sup>224</sup> Press Release, Ministerio de Industria [Ministry of Industry], Exigen al sector de maquinaria agrícola sustituir importaciones por US\$ 450 millones [Agricultural Machinery Sector Told to Substitute US\$450 Million in Imports] (February 11, 2011), available at <http://www.industria.gob.ar/?p=6032> (Arg.) (“*Ministry of Industry Press Release February 11, 2011*”) (JE-197).

<sup>225</sup> *Ministry of Industry Press Release February 11, 2011* (JE-197).

<sup>226</sup> *Ministry of Industry Press Release February 11, 2011* (JE-197).

<sup>227</sup> Julieta Camandone, *Fiat comienza a producir cosechadores en el país* [Fiat Begins to Produce Locally], EL CROSTINA (Arg.), December 20, 2011, available at <http://www.cronista.com/negocios/Fiat-comienza-a-producir-cosechadores-en-el-pais-20111220-0078.html> (JE-188); *Argentina: Investment in Agricultural Machinery to Reach USD 530 Million in 2012*, CROSTINA (Esmerl trans.), January 13, 2012 (JE-198);

89. Officials of the U.S. agricultural machinery producer Agco highlighted in the company's fourth quarter 2011 earnings statement the negative impact the import licensing regime and RTRRs were having on the company's business in Argentina:

JERRY REVICH [Goldman Sachs]: *Can you update us on your {sic} the timing of your Argentina local assembly? When that's expected to come online? And, have you received any approval for imports into the market in the interim?*

ANDY BECK [President, CEO, Chairman, Agco]: *Jerry, yes, we're importing product in and we've had numerous discussions with and sharing of plans with the Argentina government. And so, we are selling product in Argentina. It's still, probably, not at the pace that we would like. . . . We're still developing the plans for the facility that we'll be putting in Argentina. We expect to get started with that this year. But, that's not a 2012 event when we'll be doing any more assembly activity in Argentina. It'll likely be 2013.*

MARTIN RICHENHAGEN [IR Director Agco]: *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. And let's say maybe that has a positive impact on our business.*

JERRY REVICH: *Sure. And, that's I guess what I'm trying to get at. What's the extent of ramp-up that we'll see in your import licenses once you do share the plan. If you could give us a rough ballpark number maybe that you've seen from other industries or how to think about the increase in number of licenses, that would be great.*

MARTIN RICHENHAGEN: *I think we can talk about that next quarter. I think right now I have no idea.*<sup>228</sup>

90. Over the course of course of 2012, Minister Giorgi held a number of meetings with the agricultural machinery industry to monitor its progress in import substitution efforts and made various statements regarding the policy of import substitution in the agricultural machinery sector.<sup>229</sup> For example, in November 2012, Minister Giorgi and other high-level Argentine

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<sup>228</sup> AGCO CORP., 2011 Q4 Event Brief Earnings Conference Call – Final, Fair Disclosure Wire, February 7, 2012 (“AGCO Corp 2011 Q4 Earnings Call”) (JE-199).

<sup>229</sup> See Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: 'Más de la mitad del mercado interno de maquinaria agrícola ya se cubre con producción nacional y buscamos más integración de piezas locales (February 24, 2012), available at <http://www.industria.gob.ar/giorgi-mas-de-la-mitad-del-mercado-interno-de-maquinaria-agricola-ya-se-cubre-con-produccion-nacional-y-buscamos-mas-integracion-de-piezas-locales/> (Arg.) (JE-200); Press Release, Ministerio de Industria, Giorgi acordó con el Grupo Fiat desarrollar proveedores locales para la fabricación de maquinaria agrícola y motores (February 26, 2012), available at <http://www.industria.gob.ar/giorgi-acordo-con-el-grupo-fiat-desarrollar-proveedores-locales-para-la-fabricacion-de-maquinaria-agricola-y-motores/>

government officials met again with agricultural machinery manufacturers to assess their progress in substituting imports and sourcing local parts.<sup>230</sup> According to a press release of the Argentine government:

[T]he Minister met . . . with representatives of producers of agricultural machinery (Agco, John Deere, Apache, CNH and Claas) and foundries, with whom she analyzed the negotiations to achieve a better integration of domestic components in the production process. “Replacing imports in the production of agricultural machinery is State policy,” Giorgi warned the representatives of the companies. During this meeting, Giorgi reiterated the goals established during the second round of negotiations for the Strategic Industrial Plan 2020, which establishes national integration of between 55 and 60 percent by 2013. The Department reported that the businessmen assumed the commitment of presenting, in a future meeting to take place before the end of the year, the concrete progress made in terms of replacing imports of agro-components for their respective facilities.<sup>231</sup>

91. Examples of agricultural machinery producers that committed to incorporate local content include Apache, which committed to incorporate over 50 percent of domestic inputs

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(Arg.) (JE-201); 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); 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); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi reunió a fabricantes de maquinaria agrícola y agripartistas para aumentar la integración de piezas nacionales (April 24, 2012), *available at* <http://www.industria.gob.ar/giorgi-se-reunio-con-fabricantes-de-maquinaria-agricola-y-agripartistas-para-impulsar-una-mayor-integracion-local-en-el-sector/> (Arg.) (JE-204); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi exhortó a los agripartistas a sustituir importaciones (June 12, 2012), *available at* <http://www.industria.gob.ar/giorgi-exhorto-a-los-agripartistas-a-sustituir-importaciones/> (Arg.) (JE-205); Press Release, Ministerio de Industria [Ministry of Industry], El Ministerio de Industria impulsa la producción nacional de neumáticos para el sector de motos y maquinaria agrícola (August 20, 2012), *available at* <http://www.industria.gob.ar/el-ministerio-de-industria-impulsa-la-produccion-nacional-de-neumaticos-para-el-sector-de-motos-y-maquinaria-agricola/> (Arg.) (JE-206).

<sup>230</sup> Press Release, Ministerio de Industria [Ministry of Industry], Giorgi ratificó que se prorrogarán beneficios para producir maquinaria agrícola en el país [Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country] (November 19, 2012), *available at* <http://www.prensa.argentina.ar/2012/11/19/36129-giorgi-ratifico-que-se-prorrogaran-beneficios-para-producir-maquinaria-agricola-en-el-pais.php> (Arg.) (“*Ministry of Industry Press Release November 19, 2012*”) (JE-207).

<sup>231</sup> *Ministry of Industry Press Release November 19, 2012* (JE-207) (emphasis added).

sourced from 20 local producers into a tractor<sup>232</sup> and Claas, which committed to produce harvesters with 45 percent local content, increasing to 55 percent by 2013.<sup>233</sup>

## b. Mining Sector

92. Over the course of 2011 and 2012, Argentine government officials met periodically with representatives of the mining industry regarding the substitution of imported inputs and supplies with domestically-produced products.<sup>234</sup> For example, on August 27, 2012, an official

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<sup>232</sup> 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).

<sup>233</sup> Press Release, Ministerio de Industria [Ministry of Industry], Tres metalmecánicas comprometieron inversiones y no girarán utilidades [Three Metallurgical Companies Committed Investments and Will Not Transfer Profits] (December 23, 2011), *available at* <http://www.prensa.argentina.ar/2011/12/23/26807-tres-metalmecanicas-comprometieron-inversiones-y-que-no-giraran-utilidades.php> (Arg.) (“*Ministry of Industry Press Release December 23, 2011*”) (JE-209).

<sup>234</sup> See Press Release, Ministerio de Industria [Ministry of Industry], La ministra Giorgi se reunió con empresarios mineros (August 11, 2011), *available at* <http://www.industria.gob.ar/la-ministra-giorgi-se-reunio-con-empresarios-mineros/> (Arg.) (JE-210); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi sostuvo que la minería debe generar más empleo y crecimiento local desarrollando proveedores nacionales (March 28, 2012), *available at* <http://www.industria.gob.ar/giorgi-sostuvo-que-la-mineria-debe-generar-mas-empleo-y-crecimiento-local-desarrollando-proveedores-nacionales/> (Arg.) (JE-211); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi convoca a la mesa nacional minera para sustituir importaciones en el corto plazo por 200 millones de dólares (April 9, 2012), *available at* <http://www.industria.gob.ar/giorgi-convoca-a-la-mesa-nacional-minera-para-sustituir-importaciones-en-el-corto-plazo-por-200-millones-de-dolares/> (Arg.) (JE-212); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi con mineras: impulso a la fabricación local de bienes de capital para el sector (April 22, 2012), *available at* <http://www.industria.gob.ar/giorgi-con-mineras-impulso-a-la-fabricacion-local-de-bienes-de-capital-para-el-sector/> (Arg.) (JE-213); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con directivos de minera La Alumbrera para que desarrollen más proveedores locales (April 27, 2012), *available at* <http://www.industria.gob.ar/giorgi-se-reunio-con-directivos-de-minera-la-alumbrera-para-que-desarrollen-mas-proveedores-locales/> (Arg.) (JE-214); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con mineras, ADIMRA y CAMIMA (March 11, 2012), *available at* <http://www.industria.gob.ar/giorgi-comprometio-a-mineras-a-presentar-en-15-dias-planes-de-sustitucion-con-proveedores-locales/> (Arg.) (JE-215); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi reunió a mineras y proveedores para avanzar e un plan de sustitución de importaciones por más de u\$200 millones [Giorgi met with mining companies and providers to move forward on a plan to substitute over US\$200 million in imports] (August 27, 2012), *available at* <http://www.prensa.argentina.ar/2012/08/27/33561-giorgi-reunio-a-mineras-y-proveedores-para-avanzar-en-un-plan-de-sustitucion-de-importaciones-por-mas-de-us-200-millones.php> (Arg.) (“*Ministry of Industry Press Release August 27, 2012*”) (JE-216); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “Consolidar la industrialización de un insumo es caminar hacia la real soberanía minera” (September 25, 2012), *available at* <http://www.industria.gob.ar/giorgi-consolidar-la-industrializacion-de-un-insumo-es-caminar-hacia-la-real-soberania-minera/> (Arg.) (JE-217); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi presentó proyecyos de sustitución de importaciones de seis empresas mineras mediante planes de compra a pymes argentinas (October 23, 2012), *available at* <http://www.industria.gob.ar/giorgi-presento-proyectos-de-sustitucion-de-importaciones-de-seis-empresas-mineras-mediante-planes-de-compra-a-pymes-argentinas/> (Arg.) (JE-218); Press Release, Ministerio de Industria [Ministry of Industry], Con la meta de sustituir U\$200 millones, Industria continúa con las reuniones sectoriales de minería: la próxima será en noviembre (October 28, 2012), *available at* <http://www.industria.gob.ar/con-la-meta-de-sustituir-us-200-millones-industria-continua-con-las->

government press release stated that Minister Giorgi met with the leading companies in the mining sector and that she explained to the mining companies “that they can now begin to substitute imports and develop new providers at an initial value of US \$200 million in the mining sector.”<sup>235</sup> Several mining companies operating in Argentina, and their officials, have described the Argentine government’s dual strategy of restricting imports and requiring import substitution in their quarterly earnings statements. Examples from two companies, Pan American Silver and Goldcorp, are set out below:

- Pan American Silver:

*GEOFF BURNS, PRESIDENT AND CEO: . . . As we discussed, have discussed in the past, import restrictions have had a devastating impact on our ability to keep our mining equipment operational at anywhere near normal availabilities. As a consequence, we had fallen some two million tonnes behind our plan over the last 12 months in removing waste material to access and release new higher grade ore.*<sup>236</sup>

*STEVE BUSBY, COO, PAN AMERICAN SILVER CORP: . . . 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.*<sup>237</sup>

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reuniones-sectoriales-de-mineria-la-proxima-sera-en-noviembre/ (Arg.) (JE-219); Press Release, Ministerio de Industria [Ministry of Industry], Minería: la ministra de Industria aseguró que la demanda de insumos será abastecida desde el año próximo con productos argentinos (November 7, 2012), available at <http://www.industria.gob.ar/mineria-la-ministra-de-industria-aseguro-que-la-demanda-de-insumos-sera-abastecida-desde-el-ano-proximo-con-productos-argentinos/> (Arg.) (JE-220); Press Release, Ministerio de Industria [Ministry of Industry], La ministra recibió a los ejecutivos de Acindar (January 15, 2013), available at <http://www.industria.gob.ar/la-ministra-recibio-a-los-ejecutivos-de-acindar/> (Arg.) (JE-221).

<sup>235</sup> Ministry of Industry Press Release August 27, 2012 (JE-216).

<sup>236</sup> PAN AMERICAN SILVER, 2012 Q3 Earnings Conference Call – Final, Fair Disclosure Wire, November 8, 2012 (JE-222).

<sup>237</sup> PAN AMERICAN SILVER, 2011 Q4 Earnings Conference Call – Final, Fair Disclosure Wire, February 23, 2012 (“Pan American Silver 2011 Q4 Earnings Conference Call”) (JE-223) (emphasis added).

- Goldcorp:

*Cash costs were impacted by the temporary suspension of shipments at Alumbreira in May and June of 2012 due to the new export repatriation requirement imposed by the government of Argentina.*

...

*The Company is subject to import restrictions enacted in Argentina during the first quarter with respect to equipment and materials required for the construction of the Cerro Negro project. Approximately 80% of all equipment and materials required for full production have now been imported or secured within Argentina.*<sup>238</sup>

*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.*<sup>239</sup>

CHUCK JEANNES [President & CEO Goldcorp Inc.]: *Basically, what is 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.*<sup>240</sup>

### **c. Autos, Auto Parts, Truck and Motorcycles**

93. On February 6, 2012, according to an official government press release, Minister Giorgi “informed auto companies that Argentina would no longer import automotive sector inputs, such as plastics and laminated and special steel that can be produced in Argentina.”<sup>241</sup> Minister Giorgi stated: “We are not going to import any upstream input for the automotive industry that

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<sup>238</sup> GOLDCORP INC., 2012 Second Quarter Results, ENP Newswire, July 31, 2012 (“*Goldcorp 2012 Second Quarter Report*”) (JE-225).

<sup>239</sup> GOLDCORP INC., 2012 Second Quarter Report, July 25, 2012 (JE-226) (emphasis added).

<sup>240</sup> GOLDCORP INC., Q1 2012 Goldcorp Earnings Conference Call – Final, FD (Fair Disclosure) Wire, April 26, 2012 (JE-227) (emphasis added).

<sup>241</sup> *Ministry of Industry Press Release February 6, 2012* (JE-228).



can be produced in Argentina . . . plants, auto parts specialists, and systems suppliers, as well as the producers of upstream inputs, have to work on import substitution.”<sup>242</sup>

94. In addition, certain of the company-specific agreements described above included commitments to move production to Argentina, in addition to reducing imports and/or compensating imports with exports. For example, the official government press release describing Fiat’s RTRR commitments announced that the company’s “new automobile (which will debut in 2012) will contain 50% national parts. Fiat will substitute imports through the production of harvesters, tractors, and engines by the Case New Holland Group.”<sup>243</sup> Mercedes Benz<sup>244</sup> also agreed to increase incorporation of local content.

95. With respect to motorcycles, in June of 2011, the Ministry of Industry “took measures to deepen the domestic production of the sector.”<sup>245</sup> This involved requiring importers to assemble motorcycles in Argentina. An official government press release stated that “there has been progress towards the implementation of measures for motorcycle importers designed to balance the sector’s trade balance: for each motorcycle imported, two must be assembled domestically or a unit must be manufactured with at least half of the components manufactured in

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<sup>242</sup> *Ministry of Industry Press Release February 6, 2012* (JE-228). See also Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con automotrices y planteó acciones para integrar piezas locales y diversificar exportaciones (April 24, 2012), available at <http://www.industria.gob.ar/giorgi-se-reunion-con-automotrices-y-les-propuso-diversificar-el-destino-de-sus-exportaciones/> (Arg.) (JE-229); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi reunió a automotrices y autopartistas con productores y forjadores de aceros especiales para avanzar en una mayor integración en esa cadena de valor (May 2, 2012), available at <http://www.industria.gob.ar/giorgi-reunio-a-automotrices-y-autopartistas-con-productores-y-forjadores-de-aceros-especiales-para-avanzar-en-una-mayor-integracion-en-esa-cadena-de-valor/> (Arg.) (JE-230); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi y Moreno acordaron con terminales autopartistas y forjadores sustituir importaciones de aceros especiales (June 19, 2012), available at <http://www.industria.gob.ar/giorgi-y-moreno-acordaron-con-terminales-autopartistas-y-forjadores-sustituir-importaciones-de-aceros-especiales/> (Arg.) (JE-231); Press Release, Ministerio de Industria [Ministry of Industry], El desafío es agregar valor a las exportaciones de cueros (June 19, 2012), available at <http://www.industria.gob.ar/el-desafio-es-agregar-valor-a-las-exportaciones-de-cueros-aseguro-giorgi-2/> (Arg.) (JE-232); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con autopartistas y terminales para incrementar la sustitución de importaciones (August 8, 2012), available at <http://www.industria.gob.ar/giorgi-se-reunio-con-autopartistas-y-terminales-para-incrementar-la-sustitucion-de-importaciones/> (Arg.) (JE-233); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi impulsa la sustitución de importaciones y el aumento de las exportaciones de software en la industria automotriz (October 9, 2012), available at <http://www.industria.gob.ar/giorgi-impulsa-la-sustitucion-de-importaciones-y-el-aumento-de-las-exportaciones-de-software-en-la-industria-automotriz/> (Arg.) (JE-234); Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con fabricantes de matrices y moldes y automotrices para avanzar en la integración de componentes nacionales en los autos (November 7, 2012), available at <http://www.industria.gob.ar/giorgi-se-reunio-con-fabricantes-de-matrices-y-moldes-y-automotrices-para-avanzar-en-la-integracion-de-componentes-nacionales-en-los-autos/> (Arg.) (JE-235).

<sup>243</sup> *Ministry of Industry Press Release May 5, 2011* (JE-88).

<sup>244</sup> *Ministry of Industry Press Release April 7, 2011* (JE-84).

<sup>245</sup> Press Release, Ministerio de Industria [Ministry of Industry], La mitad de las motos que se venden en el país tienen mano de obra argentina [Half of the motorcycles sold in the country have Argentine labor] (June 4, 2011), available at <http://www.industria.gob.ar/la-mitad-de-las-motos-que-se-venden-en-el-pais-tienen-mano-de-obra-argentina/> (Arg.) (“*Ministry of Industry Press Release June 4, 2011*”) (JE-237).

Argentina.”<sup>246</sup> Minister Giorgi explained the rationale for this measure asserting that the heightened demand “must be met by increasing production and local labor that translates into benefits for all Argentines . . . whoever sells in Argentina must invest and manufacture here.”<sup>247</sup> The Argentine Government further explained the manner in which this mandate was to be enforced: “during the next two months all the assembly plants in the country will be audited in order to verify if the plan supports the import of [kit for assembly of]motorcycles], so as to avoid importing finished bikes declared [as kits]”.<sup>248</sup>

#### d. White Goods

96. In an Argentine government press release describing increased local production of white goods, Minister Giorgi made clear that imports of parts were restricted if they could be produced in Argentina. Minister Giorgi “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 INTI, a subcomponent of the Ministry of Industry,<sup>249</sup> and that “[t]hen 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.”<sup>250</sup>

#### e. Other

97. Companies in various other sectors also have been required to increase local content:

- **Liquor:** Alcoholic drink brands Jack Daniels, Jim Beam, Johnnie Walker Black Label, Amarula, Havana Club, Absolut and Jose Cuervo reportedly increased or started local production due to pressure imposed by government through import restrictions.<sup>251</sup>
- **Pharmaceuticals:** As noted at paragraph 83, when representatives of the pharmaceutical industry met with Minister Giorgi and Secretary Moreno, Minister Giorgi stated that “we encourage the production by multinational laboratories in Argentina as a condition of market access.”<sup>252</sup>
- **Consumer Goods:** In September 2012, an official government press release website of the stated that Procter & Gamble had entered into an agreement with the government that

<sup>246</sup>Ministry of Industry Press Release June 4, 2011 (JE-237).

<sup>247</sup>Ministry of Industry Press Release June 4, 2011 (JE-237).

<sup>248</sup>Ministry of Industry Press Release June 4, 2011 (JE-237).

<sup>249</sup>Ministry of Industry Press Release June 19, 2012 (JE-44).

<sup>250</sup>Ministry of Industry Press Release June 19, 2012 (JE-44).

<sup>251</sup> Andrés Sanguinetti, *Para evitar el cerrojo importador, el Campari también se fabricará en el país*, EL CRONISTA (Arg.), October 12, 2012, available at <http://www.cronista.com/negocios/Para-evitar-el-cerrojo-importador-el-Campari-tambien-se-fabricara-en-el-pais-20121012-0049.html> (JE-239).

<sup>252</sup>Ministry of Industry Press Release May 10, 2011 (JE-168).

would involve investment of “\$557 million and an import substitution plan.”<sup>253</sup> The agreement would improve “the trade balance by \$150 million” through increased P&G exports from Argentina of the company’s home-care products, pet food and diapers. Furthermore, it would “substitute \$100 million in imports of raw materials and finished goods.”<sup>254</sup>

#### 4. Make or Increase Investments in Argentina

98. Some companies are given the option of compensating for part or all of their imports through making or increasing their investments in Argentina, in addition to or instead of, undertaking export or import substitution commitments:

- In a meeting with filmmakers and other entertainment industry representatives, Secretary Moreno indicated that the companies could “equalize the negative trade balances from . . . films” with investments such as the building of theme parks.<sup>255</sup>
- Auto and truck manufacturers, such as Alfa Romeo,<sup>256</sup> Renault<sup>257</sup>, Subaru<sup>258</sup>, Fiat<sup>259</sup> Mercedes Benz,<sup>260</sup> General Motors<sup>261</sup> Scania<sup>262</sup> and Renault trucks<sup>263</sup> agreed to make or increase capital contributions, in addition to other commitments.
- In May of 2011, the pharmaceutical company Biotoscana announced an investment plan of US\$ 10 million to produce medicines “in response to the measures implemented by the Secretary of Domestic Trade.”<sup>264</sup>
- As described *supra* at paragraphs 87-91, producers of agricultural machinery agreed to make investments in Argentina as part of their commitments to increase local production and incorporate local content.

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<sup>253</sup> Press Release, Presidencia [President of Argentina], Procter & Gamble anunció inversiones por \$557 millones y un plan de sustitución de importaciones [Procter & Gamble Announces to President 557 Million Pesos in Investments and Import Substitution Plan] (September 5, 2012), *available at* <http://www.prensa.argentina.ar/2012/09/05/33852-procter--gamble-anuncio-a-la-presidenta-inversiones-por-557-millones-y-un-plan-de-sustitucion-de-importaciones.php> (Arg.) (“*President of Argentina Press Release September 5, 2012*”) (JE-241).

<sup>254</sup> *President of Argentina Press Release September 5, 2012* (JE-241).

<sup>255</sup> *Ámbito Financiero November 24, 2011* (JE-136).

<sup>256</sup> *Ministry of Industry Press Release April 20, 2011* (JE-85) (see Spanish original).

<sup>257</sup> *Ministry of Industry Press Release August 5, 2011* (JE-90).

<sup>258</sup> *Ministry of Industry Press Release August 29, 2011* (JE-91).

<sup>259</sup> *Ministry of Industry May 5, 2011* (JE-88).

<sup>260</sup> *Ministry of Industry Press Release April 7, 2011* (JE-84).

<sup>261</sup> *Ministry of Industry Press Release June 15, 2011* (JE-236).

<sup>262</sup> *Ministry of Industry Press Release November 21, 2011* (JE-101).

<sup>263</sup> *Ministry of Industry Press Release February 7, 2012* (JE-103).

<sup>264</sup> *La Nación May 3, 2011* (JE-171).

## 5. Refrain from Repatriating of Profits

99. The final example of an RTRR placed on importers is the requirement that they refrain from repatriating profits made in Argentina. This requirement appears aimed primarily at controlling the outflow of foreign reserves. On November 14, 2012, the President of Argentina’s Central Bank, Mercedes Marcó del Pont, explained in unequivocal terms the policy undertaken by the Government, noting that “in 2012 there was a process of negotiation with the firms where the Government required them, in view of the international uncertainty and with the need to have dollars to finance growth, to reinvest profits domestically.”<sup>265</sup> A similar explanation was offered by Minister Giorgi, who stated that “we are proposing a fine tune with import substitution, greater investments, reinvestment of earnings, competitive prices, greater investment in development, which was the mandate of the President.”<sup>266</sup> Minister Giorgi characterized firms that transfer benefits abroad as having “a mean attitude towards reinvesting profits, not transferring them abroad and minimizing transfers of royalties.”<sup>267</sup> She gave examples of “committed” companies such as Monsanto, Kraft, Procter & Gamble, and Dow.<sup>268</sup>

100. A press release describing a meeting between Ford executives and Minister Giorgi noted the company’s pledge to increase the use of domestic parts and its exports to other South American countries and noted that Ford also “pledged not to send profits to the parent company.”<sup>269</sup> Similar pledges were made by General Motors,<sup>270</sup> Peugeot,<sup>271</sup> Scania<sup>272</sup> and Renault Trucks.<sup>273</sup> On December 23, 2011, the Ministry of Industry announced “trade balancing agreements” undertaken by three metal processing companies, Volvo, TATSA and Claas, in which the companies agreed not to transfer benefits worth around \$67 million.<sup>274</sup> Finally, mining companies have noted restrictions on the repatriation profits.<sup>275</sup>

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<sup>265</sup> Press Release, Ministerio de Economía y Finanzas Pública, Marcó del Pont destacó el crecimiento de la inversión en la Argentina (November 14, 2012), *available at* <http://www.prensa.argentina.ar/2012/11/14/35954-marco-del-pont-destaco-el-crecimiento-de-la-inversion-en-la-argentina.php> (Arg.) (JE-242).

<sup>266</sup> Press Release, Ministerio de Industria, Rocca quiere salarios bajos y renta extraordinaria (September 9, 2012), *available at* <http://www.prensa.argentina.ar/2012/09/09/33952-rocca-quiere-salarios-bajos-y-renta-extraordinaria.php> (Arg.) (“*Ministry of Industry Press Release September 9, 2012*”) (JE-243) (emphasis added).

<sup>267</sup> *Ministry of Industry Press Release September 9, 2012* (JE-243).

<sup>268</sup> *Ministry of Industry Press Release September 9, 2012* (JE-243).

<sup>269</sup> *Ministry of Industry Press Release April 27, 2012* (JE-94).

<sup>270</sup> Press Release, Presidencia [President of Argentina], Anuncio de nuevas inversiones en GM: discurso de la Presidenta [Announcement of New Investments in GM: Address by the President] (November 15, 2011), *available at* <http://www.presidencia.gov.ar/discursos/25520> (Arg.) (JE-244).

<sup>271</sup> Press Release, Ministerio de Industria [Ministry of Industry], Peugeot acordó con el Gobierno equilibrar su balanza comercial [Peugeot agrees with Government to balance its imports and exports] (November 17, 2011), *available at* <http://www.prensa.argentina.ar/2011/11/17/25750-peugeot-acordo-con-el-gobierno-equilibrar-su-balanza-comercial.php> (Arg.) (JE-245).

<sup>272</sup> *Ministry of Industry Press Release November 21, 2011* (JE-101).

<sup>273</sup> *Ministry of Industry Press Release February 7, 2012* (JE-103).

<sup>274</sup> *Ministry of Industry Press Release December 23, 2011* (JE-209).

<sup>275</sup> *Pan American Silver 2011 Q4 Earnings Conference Call* (JE-223); *Goldcorp 2012 Second Quarter Report* (JE-225).

#### IV. LEGAL DISCUSSION

##### A. THE DJAI REQUIREMENT IS INCONSISTENT WITH ARGENTINA’S OBLIGATIONS UNDER ARTICLE XI:1 OF THE GATT 1994

101. The United States recalls the text of Article XI:1 of the GATT 1994, which states:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member or on the exportation or sale for export of any product destined for the territory of any other Member.

102. This Section will demonstrate first that Argentina’s DJAI Requirement is a “restriction” on the importation of products from other Members because DJAI applications are not granted in each instance, the discretionary nature of the DJAI Requirement enables Argentine authorities to impose RTRRs, and because approvals are only granted after delay. Second, the restriction is the type of measure covered by Article XI:1, that is, the DJAI Requirement is not a duty, tax or charge and is made effective that is “made effective through quotas, import . . . licenses or other measures.”

##### 1. The DJAI Requirement is a “Restriction” Prohibited by Article XI:1

103. The DJAI Requirement is a “restriction” within the meaning of Article XI:1. The term “restriction” is defined as “[a] thing which restricts someone or something, a limitation on action, a limiting condition or regulation.”<sup>276</sup> Further, Article XI:1 applies to *any* “restriction”, “whether made effective through quotas, import or export licenses or other measures,” excluding only “duties, taxes or other charges.” Past panels have noted that the scope of the term “restriction,” is broad. The *India – Quantitative Restrictions* panel explained that:

[T]he text of Article XI:1 is very broad in scope, providing for a general ban on import or export restrictions or prohibitions “other than duties, taxes or other charges”. As was noted by the panel in *Japan – Trade in Semi-conductors*, the wording of Article XI:1 is comprehensive: it applies ‘to all measures instituted or maintained by a [Member] prohibiting or restricting the importation, exportation, or sale for export of products other than measures that take the form of duties, taxes or other charges.’ The scope of the term ‘restriction’ is also broad, as seen in its ordinary meaning, which is ‘a limitation on action, a limiting condition or regulation’.<sup>277</sup>

<sup>276</sup> *New Shorter Oxford English Dictionary* at 2569 (1993) (JE-83).

<sup>277</sup> *India – Quantitative Restrictions (Panel)*, para. 5.128 (quoting *Japan – Trade in Semi-conductors (GATT Panel Report)* and *The New Shorter Oxford English Dictionary* at 2569 (1993)).

104. The DJAI Requirement constitutes a “restriction” – it imposes “limiting conditions” on importation because (a) approvals are not granted in all cases; (b) approvals are made contingent upon the RTRRs; and (c) approvals are granted after delay.

**a. The DJAI Requirement Restricts Imports Because Approvals Are Not Granted in All Cases**

105. A measure is a restriction under Article XI:1 if approval for importation is not granted in all cases. This fact is confirmed by the ordinary meaning of “restriction”: if not all imports are allowed to enter a country as a result of measure, that measure is “a limiting condition” on imports. The DJAI Requirement restricts imports because the relevant measures provide that agencies may lodge “observations” for any number of reasons, effectively denying the import application unless and until the observation is lifted. If an agency does not lift the “observation”, the application enters the “voided” status after 180 days – effectively denying the application.

106. Examples of the failure to grant the license in the operation of the DJAI Requirement are described in domestic Argentine court cases.<sup>278</sup> In one case, *Yudigar*, the DJAI application had been pending for almost six months after SCI placed a comment on the submission.<sup>279</sup> The applicant attempted to contact SCI regarding the comment but was unable to obtain a response.<sup>280</sup> The court summarized AFIP’s arguments as stating that the DJAI Requirement allows “the mutual cooperation between different State agencies in order to optimize the efficiency and effectiveness of governmental operations” and is “useful to stop and validate any ship[ment] that implicates a trade risk, and that exercising the customs control protects the society from real and potential risks related to health and public security, in order to avoid tax and trademark related offenses, etc.”<sup>281</sup> In that case, AFIP explained that the observation was justified by “. . . the need to carry out a more in-depth study of the cases.”<sup>282</sup> As the court found, SCI did not respond to inquiries from the importer, resulting in “a ban – albeit temporary – to imports without any legal basis.”<sup>283</sup>

107. Statements by Argentine government officials confirm that the purpose of the DJAI Requirement is to restrict imports and protect domestic industry. As noted in Section III.A, Secretary Moreno has stated, “[w]hen we analyze the [DJAI], we will take into account the balance of foreign exchange, as well as the evolution of the company’s prices. We will do this on a company-by-company basis.”<sup>284</sup> A Ministry of Industry press release summarized a statement of Minister Giorgi’s as follows:

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<sup>278</sup> See *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Yudigar S.A.* (JE-59); *Fity SA* (JE-302).

<sup>279</sup> *Yudigar S.A.* (JE-59).

<sup>280</sup> *Yudigar S.A.* (JE-59).

<sup>281</sup> *Yudigar S.A.* (JE-59).

<sup>282</sup> *Yudigar S.A.* (JE-59).

<sup>283</sup> *Yudigar S.A.* (JE-59).

<sup>284</sup> *Roberto Navarro, El Plan 2012* (JE-8) (English translation incomplete).

[E]ach *declaración jurada anticipada de importación* (DJAI) that is approved, for disassembled parts sent by a manufacturer of stoves, refrigerators or any white goods, is reviewed by the National Industrial Technology Institute (INTI), under the Ministry of Industry. Then, an import substitution timeline is established, based on the products' technological sophistication and convenience. Thus, some parts are substituted immediately (because there are local supplies), others within a period of three months, while other parts are allocated a time of between three and six months.<sup>285</sup>

108. In another official Argentine government press statement, the head of AFIP, Ricardo Echegaray stated that the DJAI system would assist in determining “which products can be imported and which cannot.”<sup>286</sup> The statements of Secretary Moreno, Minister Giorgi, and Administrator Echegaray describing a company-by-company examination of the DJAI submissions is corroborated by companies' experiences with the DJAI submission, and in particular with the Secretariat of Domestic Trade.

109. In addition, the DJAI Requirement is a “restriction” because it is highly discretionary in nature. If an import licensing system is “discretionary” in its application, then the authority has the latitude to exercise its judgment in granting or denying licenses.<sup>287</sup> Thus, in a discretionary licensing system, licenses may be denied, resulting in a restriction, or limitation, on imports. The DJAI requirement is highly discretionary, because (1) the implementing measures contain no criteria for approval or denial and no basis for denials; (2) importers must provide unspecified additional information in order to satisfy an “observation”; and (3) there is no stated timeframe for processing applications. The situation that was the subject of the *Yudigar* case described above exemplifies the discretionary nature of the DJAI system, as SCI was able to place an “observation” while refusing even to explain the reasons to the importer.

110. The panel in *India – Quantitative Restrictions* based its conclusion that India's licensing requirement constituted a non-automatic licensing system and a restriction within the meaning of Article XI:1 on the fact that, for goods on a “Negative List of Imports” maintained by India, the system was discretionary because licenses were “not granted in all cases, but rather on unspecified ‘merits’.”<sup>288</sup> In *China – Raw Materials*, the Panel observed that “if a licensing

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<sup>285</sup> *Ministry of Industry Press Release June 19, 2012* (JE-44).

<sup>286</sup> *President of Argentina Press Release January 23, 2012* (JE-45).

<sup>287</sup> See *Turkey – Rice*, paras. 7.128, 7.134 (noting that, in the context of Article 4.2 of the Agreement on Agriculture, “discretionary” import licensing is characterized by the freedom for authorities to decide whether or not to grant permission to import a particular good); *China – Publications and Audiovisual Products (Panel)*, para. 7.324 (observing that “‘discretionary’ is defined as ‘involving an exercise of judgment and choice, not an implementation of a hard-and-fast rule’”).

<sup>288</sup> *India – Quantitative Restrictions (Panel)*, para. 5.130. The panel in *India – Quantitative Restrictions*, relying on the findings of GATT panels and the ordinary meaning of the term “restriction,” concluded that “discretionary or non-automatic licensing systems by their very nature operate as limitations on actions *since certain imports may not be permitted*,” and therefore are prohibited by Article XI:1. *Id.* para. 5.129 (emphasis added) (discussing *EEC – Quantitative Restrictions Against Imports from Hong Kong (GATT Panel Report)*; *EEC – Minimum Import Prices (GATT Panel Report)*; *Japan – Semi-Conductors (GATT Panel Report)*).

system is designed such that a licensing agency has discretion to grant or deny a license based on unspecified criteria” it would be discretionary and would not be consistent with GATT 1994 Article XI:1.<sup>289</sup> The DJAI Requirement suffers from the defects described by both the *India – Quantitative Restrictions* and *China Raw Materials* panels, Argentina maintains the discretion to deny a DJAI application.

111. The absence of any procedures or criteria for evaluating licenses, or of demanding additional action or information from importers, leaves the various participating agencies with wide discretion to grant or deny the licenses. Because the DJAI Requirement is discretionary (and non-automatic), it is a restriction within the meaning GATT Article XI:1.

**b. The DJAI Requirement Restricts Imports Because Approvals Are Contingent on Compliance with RTRRs**

112. The DJAI requirement also restricts imports because Argentine authorities use the discretion afforded in their approval of the applications to impose RTRRs as conditions for import. As is discussed below at Section IV.B.2, the RTRRs “restrict” imported within the meaning of that term under Article XI:1 because importers may only import goods to the extent that they satisfy the RTRRs imposed by Argentina. In particular, Argentina limits the value of imports based on the importer’s ability to export goods, make investments in Argentina, produce or source locally, or refrain from repatriating profits. Because the DJAI Requirement affords Argentine authorities the discretion to place such conditions on importation, it is a restriction on importation within the meaning of Article XI:1.

113. Evidence of the application of RTRRs as conditions for approval of DJAI applications include the experiences of Companies X and Y and companies surveyed by the U.S. Chamber of Commerce, the links made between the RTRRs and the DJAI Requirement by government officials,<sup>290</sup> such as Secretary Moreno, and statements by importers. This evidence is fully set out above in Part III of this submission. Highlights of this evidence include:

- “At a high level what [Argentina is] 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. 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.”<sup>291</sup>
- “In February [2012], all of the motorcycle brands were asked to meet with Bianchi and Trade Secretary, Guillermo Moreno. There, they informed us of the new change in regulations: In order to import motorcycles, we all should offset with exports.”<sup>292</sup>

<sup>289</sup> *China – Raw Materials (Panel)*, para. 7.921. These findings were vacated by the Appellate Body on procedural grounds.

<sup>290</sup> See *supra*, Section III.A.3

<sup>291</sup> *LOJACK 2012 Q3 Earnings Call* (JE-172).

<sup>292</sup> *Autoblog June 29, 2012* (JE-104).



- “We also had to balance the scale just as the government requires, though the software center that we had in Argentina. In that way, we exported, which opened the doors for us to import instruments.”<sup>293</sup>
- “Since we have links with suppliers of raw materials, we made an agreement with a producer of worsted wool in Trelew [Argentina] to facilitate that company’s exports to companies in Switzerland and Italy. We have already completed two export shipments and we have two more scheduled for September and December. . . . That allowed us to comply with the Government’s demand to offset imports with exports and obtain the license to resume imports. Today we have a variety of clothing and in a short time we expect to receive the new spring-summer season.”<sup>294</sup>
- “[I]n Argentina here you require a lot of flexibility in terms of maneuver, how you can compensate the imports that you are doing with the exports. . . . [W]e have been able so far to compensate all the imports. . . . [T]o be very honest with you day in and day out negotiation with the authorities you need to go demonstrate that you have all the export in order to compensate the imports.”<sup>295</sup>

Thus, the DJAI Requirement restricts imports due to the discretion afforded Argentine officials to condition approval on the compliance with RTRRs.

**c. The DJAI Requirement Restrict Imports Because Approvals Are Granted Only after Delay**

114. The DJAI Requirement also restricts imports within the meaning of Article XI:1 because licenses are only granted after delay. Importers must wait an unspecified period of time, which can extend to months, to receive approvals for their import licenses.

115. The Import Licensing Agreement provides context for understanding how delays serve as “restrictions” under Article XI:1. “Automatic import licensing” is defined in Article 2.1 of the Import Licensing Agreement “as import licensing where approval of the application is granted in all cases, and which is in accordance with the requirements of paragraph 2(a)”. Article 2.2(a) contains additional requirements for licensing procedures to qualify as “automatic,” in addition to being granted in all cases:

- (a) automatic licensing procedures shall not be administered in such a manner as to have *restricting* effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade *restricting*

<sup>293</sup> *El Cronista March 11, 2013* (JE-147).

<sup>294</sup> *El Conista August 2, 2012* (JE-158).

<sup>295</sup> *Cencosud 2012 Q2 Earnings Call* (JE-163).

effects unless, *inter alia*:

- (i) any person, firm or institution which fulfills the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licenses;
- (ii) applications for licenses may be submitted on any working day prior to the customs clearance of the goods;
- (iii) applications for licenses when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days; . . . (emphasis added)

116. According to the introductory clause of Article 2.2(a), certain characteristics of a licensing procedure are presumed to have “restricting” effects, even if the licenses are granted in all cases. One of the trade restricting features set out in Article 2.2(a) is a delay in processing of over a maximum of ten working days. It is not enough for a license to be granted in all cases on a non-discretionary basis in order for it to be automatic, and therefore “not administered in such a manner as to have restricting effects on imports,” the license must also be granted in a timely manner. In contrast, a “non-automatic” import licensing regime “restricts” imports, *inter alia*, because there are delays in the granting of approvals for license applications.<sup>296</sup>

117. As an initial matter, the time period for the SCI to even *consider* whether to place an observation on a DJAI application is 15 days,<sup>297</sup> exceeding the maximum of ten days set out in Article 2.2(a)(iii). An approval is not possible until after that time elapses. Further, after an observation is made by any one of the six participating agencies, there is no timeline for a decision to be made on whether to grant the application. For those DJAI submissions that do receive observations, the process does not end there. The importer must then approach the agency or agencies to resolve the concern(s).<sup>298</sup> Because the importer must reach out to the agency, provide further information, and the agency must then consider whether to remove the observation (without any time limit on that consideration), the total time elapsed would far exceed the “immediate” approval (or in some instances maximum of ten working days) described in the definition of “automatic” import licensing. After a comment is lodged, no time limits apply to the agencies’ final determination, although after 180 days from when the application is “registered” (which starts the clock running for the comment period), the application is voided and effectively denied.<sup>299</sup>

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<sup>296</sup> Import Licensing Agreement, art. 3.1 (defining non-automatic import licensing procedures as “import licensing not falling within the definition contained in paragraph 1 of Article 2”).

<sup>297</sup> DJAI User Manuel at 7 (JE-13).

<sup>298</sup> AFIP Resolution 3252, art. 4 (JE-15).

<sup>299</sup> AFIP Resolution 3255, Updated Annex, Section D(h) (JE-16) (explaining that a DJAI application is voided automatically at its expiration, if there has been no extension).

118. In several disputes under the GATT 1947, panels made a connection between the timing of application approvals and whether or not a license requirement constitutes a prohibited restriction under Article XI:1, using the terms “non-automatic” and “automatic” to describe prohibited restrictions and permitted licensing measures, respectively. The *Japan – Semi-Conductors* panel determined that, where approval of applications took three months, the licensing system was “non-automatic” (even if all licenses were ultimately approved), and therefore constituted a restriction on the exportation of products inconsistent with Article XI:1.<sup>300</sup> In contrast, the *EEC – Minimum Import Prices* panel found that approvals granted within five working days were *automatic*, and therefore did not restrict imports under Article XI:1.<sup>301</sup> Finally, in a case concerning quantitative import restrictions maintained by France (called the *régime sans limitation de quantité* or “SLQ regime”) the panel observed that “the SLQ regime was an import licensing procedure which would amount to a quantitative restriction unless it provided for the *automatic issuance* of licenses.”<sup>302</sup>

119. As is evidenced *supra* at Section III.A, importers experience significant delays in the processing of their DJAI applications. For example, the U.S. Chamber of Commerce survey reported that for nearly one in three respondents it took over 60 days to receive a denial or approval of 75 percent or more of respondents’ DJAI applications.<sup>303</sup> Company X and the Company Y also experienced delays, as detailed at Exhibits JE-303 through 307. Litigants in domestic court cases also faced delays of up to six months.<sup>304</sup>

120. The evidence regarding the implementation of the DJAI Requirement confirms what is also apparent on the face of the legal instruments – that the applications are not approved in all cases, and that the DJAI Requirement is a highly discretionary and non-transparent restriction enabling Argentine officials to condition approval on compliance with RTRRs, and that importers experience lengthy delays in receiving approvals. All of these factors independently support a finding that the DJAI Requirement is inconsistent with Article XI:1 of the GATT 1994.

## **2. The DJAI Requirement Is an Import License or Other Measure Within the Meaning of Article XI:1 of the GATT 1994**

121. The DJAI Requirement is a restriction made effective through an import license or other measure within the meaning of Article XI:1.

122. Article XI:1 of the GATT 1994 applies to a restrictions made effective through “quotas, import . . . licenses or other measures”, “excluding from its coverage only ‘duties, taxes, or other charges.’”<sup>305</sup> More specifically, the DJAI Requirement is a restriction made effective through

<sup>300</sup> *Japan – Trade in Semi-Conductors (GATT 1947 Panel)*, para.118.

<sup>301</sup> *EEC – Minimum Import Prices (GATT Panel Report)*, para. 4.1.

<sup>302</sup> *EEC – Quantitative Restrictions Against Imports from Hong Kong (GATT Panel Report)*, para. 31 (emphasis added).

<sup>303</sup> *US Chamber of Commerce Report* at 3 (JE-56).

<sup>304</sup> See *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Yudigar S.A.* (JE-59); *Fity SA* (JE-302).

<sup>305</sup> *India – Quantitative Restrictions (Panel)*, para. 5.142.

“import . . . licenses”. The ordinary meaning of “license” is “[f]ormal, usu[ally] printed or written, permission from an authority to do something . . . or to own something . . . ; a document giving such permission; a permit’.”<sup>306</sup> Thus, an “import license” is permission granted by a competent authority to bring merchandise into a Member from another Member.

123. Neither GATT 1994 Article XI, nor any of the covered agreements, contains a definition of an “import license.” However, Article 1.1 of the *Agreement on Import Licensing Procedures* (“Import Licensing Agreement”) does define “import licensing” for purposes of that agreement and provides relevant context for the interpretation of “import license” in GATT 1994 Article XI:

For purposes of this Agreement, import licensing is defined as administrative procedures<sup>1</sup> used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

Footnote 1 to Article 1.1 explains that “administrative procedures” include “[t]hose procedures referred to as ‘licensing’ as well as other similar administrative procedures.” A procedure that (a) requires “the submission of an application” (b) as “a prior condition for importation” satisfies the definition.<sup>307</sup> Based on these criteria, the *EC – Bananas III* panel found that the EC’s procedures for the administration of in-quota imports of bananas amounted to “import licensing” because those procedures required the submission of an application, as well as other documentation as a “prior condition for importation” under the tariff quota.<sup>308</sup>

124. The DJAI Requirement falls within both the ordinary meaning of the phrase “restriction . . . made effective through . . . import . . . licenses”, as well as the definition of import licensing set forth in the Import Licensing Agreement. In particular, an importer must submit an electronic application for an import in the DJAI system, and obtain an approval, demonstrated by the “exit” (“*salida*”) status in that system, as a prior condition for import.<sup>309</sup> More specifically, the various agencies determine, based on the application information, whether to allow the application to pass to the “exit”, or to lodge an observation, moving the application into the “observed” (“*observada*”) status.<sup>310</sup> Once that happens, an importer must contact the agency making the comment in order to determine what further action, whether it is the submission of additional information or something else, may be required.<sup>311</sup> The importer may not import the

<sup>306</sup> *Turkey – Rice*, para. 7.123 (quoting *The New Shorter Oxford English Dictionary* at 1578 (1993)). The *Turkey – Rice* panel referred to Article 1.1 of the Import Licensing Agreement and the ordinary meaning of “import licenses” to understand the meaning of that term.

<sup>307</sup> *EC – Bananas III (AB)*, para. 193.

<sup>308</sup> *EC – Bananas III (Ecuador) (Panel)*, paras. 7.148-49; *EC – Bananas III (Guatemala and Honduras) (Panel)*, paras. 7.148-49; *EC – Bananas III (Mexico) (Panel)*, paras. 7.148-49; *EC – Bananas III (US) (Panel)*, paras. 7.148-49.

<sup>309</sup> See *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>310</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16).

<sup>311</sup> *AFIP Resolution 3252*, art. 4 (JE-15).

goods unless and until the agency is satisfied and removes the observation. The importer may only proceed if and when the approval is obtained and the status moves to “exit.”<sup>312</sup> This procedure meets all of the requirements of an import licensing procedure, and therefore the DJAI approval is an “import . . . license” within the meaning of Article XI:1.

125. Furthermore, the application and other documentation required to fulfill the DJAI Requirement is not “required for customs purposes” and therefore is not of the type excluded from the definition of “import licensing” in the Import Licensing Agreement.<sup>313</sup> Argentina has separate customs procedures, whereby customs information is collected and duties and other fees are assessed.<sup>314</sup> All importers provide customs documentation through that system. In addition, although AFIP (the agency under which customs administration falls in Argentina) participates in the DJAI system, it does so for tax reasons, not reasons related to customs administration.<sup>315</sup> The sub-agency responsible for customs administration, Dirección General de Aduanas (“DGA”), does not participate in the DJAI system at all. Six other agencies—SCI, ANMAT, SEDRONAR, SENASA, INV and INTI—also participate in the DJAI system, none of whom have customs administration responsibilities. Where the implementing measures set out the purposes of an agency’s participation, it is clear that the scope of the evaluation—and therefore the documentation and other information the agency might request in order to satisfy an “observation”—is other than for “customs purposes.”<sup>316</sup> In the instrument through which it acceded to the DJAI system, SCI cited the purpose of “performing analyses aimed at preventing negative effects on the domestic market”; “evaluation of the degree of competitiveness of economic activity”; and the general enforcement of certain laws.<sup>317</sup> Thus, the DJAI Requirement constitutes a restriction made effective through an “import license” within the meaning of GATT 1994 Article XI:1, and “import licensing” within the meaning of the Import Licensing Agreement.

**B. ARGENTINA’S IMPOSITION OF RTRRs IS INCONSISTENT WITH ARGENTINA’S OBLIGATIONS UNDER ARTICLE XI:1 OF THE GATT 1994**

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<sup>312</sup> *AFIP Resolution 3255*, Updated Annex, Section D(h) (JE-16)/

<sup>313</sup> *Turkey – Rice*, para. 7.127 (noting that “not all documents giving the permission to import may be necessarily considered to be ‘import licenses’”).

<sup>314</sup> *See supra* Section III.A.4.

<sup>315</sup> AFIP has explained that DJAI applications may be approved or rejected when: (i) the CUIT is passive or inactive; (ii) the CUIT corresponds to non-reliable taxpayers (non-regular invoice) (*factura apócrifa*); (iii) the CUIT is under a bankruptcy procedure; (iv) the address has inconsistencies; (v) the CUIT is not registered for the Value Added Tax (“VAT”); (vi) the CUIT is not registered for the Income Tax; (vii) the CUIT of the partners/shareholders of a company is not registered for the Income Tax; (viii) lack of submission of the last and outstanding Income Tax return; (ix) lack of submission of the VAT return within the previous 12 month fiscal period; (x) lack of submission of the last Personal Property tax return; (xi) lack of submission of the Social Security return within the previous 12 month fiscal period; (xii) inconsistencies were detected in the VAT return within the previous 6 month periods; and (xiii) the CUIT has an ongoing verification or auditing procedure. *See DJAI User Manual* at 25 (JE-13).

<sup>316</sup> *DJAI User Manual* at 25 (providing, for example, that one reason a DJAI observation may be placed is that the tax identification code use “is being audited or verified”) (JE-13).

<sup>317</sup> *SCI Resolution 1*, preamble (JE-41).

126. As noted, Argentina’s use of RTRRs to condition import approvals under the DJAI system demonstrates that the DJAI Requirement is an import restriction, resulting in a breach of Argentina’s obligations under Article XI:1 of the GATT 1994. In addition to considering Argentina’s RTRRs in conjunction with the DJAI system, the RTRRs can be viewed as distinct measures that cause trade restrictions, and thus result in a separate breach of Argentina’s obligation under Article XI:1. This section will demonstrate that the RTRRs are unpublished measures adopted by Argentina, that they are “restrictions” within the meaning of GATT 1994 Article XI:1, and that they are made effective through “other measures”.

### **1. The RTRRs are Unpublished Measures Adopted by Argentina**

127. Argentina has not published its RTRRs. This failure, however, does not shield these measures from challenge under the WTO Agreement. To the contrary, where – as here – the record establishes that a Member has adopted an unpublished measure, the measure may be examined for its consistency with the substantive provisions of the WTO Agreement, as well as with procedural transparency obligations (see Section IV.C for U.S. claims under Article X of the GATT 1994.) In this dispute, there is ample evidence from various sources, much of it directly from Argentine government officials, demonstrating that Argentina has adopted and applied RTRRs. As explained in Section III.B, the RTRRs take the form of commitments to: (1) compensate imports with an equivalent amount of exports (the “one-to-one” policy); (2) limit the volume or value of imports; (3) incorporate local content into domestically produced goods; (4) make or increase investments in Argentina; and (5) refrain from repatriating funds from Argentina to another country.

128. Argentine authorities enforce RTRRs by withholding approvals of imports through mechanisms such as the DJAI Requirement, and previously the CI Requirement. As is described above in Section III.A, the legal instruments implementing the DJAI Requirement do not contain guidance or criteria for approving or denying applications for the permission to import. As a result, Argentine authorities have the ability to implement the licensing requirement in a highly discretionary manner, including by withholding approvals until an importer complies with RTRRs.

129. Argentina has imposed RTRRs in conjunction with a licensing requirement in sectors including the auto, agricultural machinery, clothing, and white goods sectors. A few examples illustrate the practice of imposing RTRRs. In the auto sector, trade balancing agreements were adopted in 2011, after the creation of the autos CI in February 2011. Argentina’s use of the CI Requirement to compel the signing of agreements is demonstrated by statements of Secretary Moreno and a BMW communications manager, who both described SCI withholding permission from BMW to import autos until it agreed to compensate for its imports with exports.<sup>318</sup> In the agricultural machinery sector, an Argentine government press release describes a meeting with producers in which Minister Giorgi “told them that they will have to increase exports and replace

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<sup>318</sup> See *supra* paras. 62-63.

imports with domestically manufactured machinery.”<sup>319</sup> An Agco Corporation official confirmed that, after disclosing plans for investment in local manufacturing in Argentina, permission was received to import.<sup>320</sup> A representative from Italian clothing manufacturer Ermenegilda Zegna reported having to “comply with the Government’s demand to offset imports with exports” to “obtain the license to resume imports.”<sup>321</sup>

130. A further example of how Argentina’s imposition of RTRRs operates in conjunction with the DJAI Requirement is demonstrated by the experience of Company X. As is explained in the sworn affidavit of a Vice President of Company X, starting in March 2012, Company X officials received phone calls from individuals indicating they were speaking on behalf of Secretary Moreno, and explaining that if Company X wished to obtain approvals for pending DJAI submissions, first Company X must reduce its product prices, and second, Company X must increase exports to a dollar value equal to the company’s imports. Shortly after Company X submitted to the office of Secretary Moreno an email committing Company X to increasing its exports, certain of Company X’s pending DJAI submissions were approved. In particular, the email and letter at were sent to the office of Secretary Moreno in April 2012.<sup>322</sup> Company X stated its commitment to export \$1,000,000 in goods and \$1,000,000 in marketing products and services,<sup>323</sup> and requested that a set of 14 pending DJAI submissions which had been “registered” in February and March of 2012<sup>324</sup> be released in light of a price list previously submitted by Company X. Seven of the 14 DJAI submissions entered the “exit (“*salida*”)” status in April 2012; four entered the “exit” status in May.<sup>325</sup>

131. Section III.B contains many examples of the imposition of RTRRs across product groups and sections. Coupled with the statements by Argentine officials describing their imposition, these examples demonstrate that Argentina imposes RTRRs on importers, whether in conjunction with DJAI Requirements, the predecessor CI Requirements, or separately.

## **2. Argentina’s Imposition of RTRRs Constitutes a “Restriction” Within the Meaning of GATT 1994 Article XI:1**

132. Argentina’s imposition of RTRRs constitutes a “restriction” within the meaning of that term under Article XI:1 of the GATT 1994 because it serves as a “limitation” on imports. Importers are restricted in the amount of goods that they may import based on their ability to satisfy the RTRRs imposed by Argentina. In particular, Argentina limits the value and volume of imports based on the importer’s ability to export goods, make investments in Argentina, or produce or source locally, or repatriate profits. The *India – Autos* panel considered one of the types of restrictions that Argentina imposes on importers: trade balancing. In that dispute, the

<sup>319</sup> Ministry of Industry Press Release February 11, 2011 (JE-197).

<sup>320</sup> See *supra* para. 89; AGCO Corp 2011 Q4 Earnings Call (JE-199).

<sup>321</sup> El Conista August 2, 2012 (JE-158).

<sup>322</sup> Company X E-mail (JE-305); Company X Letter (JE-304); VP of Company X Affidavit (JE-306).

<sup>324</sup> Company X DJAI (JE-303).

<sup>325</sup> Company X DJAI (JE-303).

panel determined that India required importers to balance the value of imported auto kits and components with the value of exports from India, and that this requirement was a restriction under Article XI:1.

133. The panel stated as follows:

With regard to the trade balancing condition, the Panel finds that . . . there would necessarily have been a practical threshold to the amount of exports that each manufacturer could expect to make, which in turn would determine the amount of imports that could be made. This amounts to an import restriction. The degree of effective restriction which would result from this condition may vary from signatory to signatory depending on its own projections, its output, or specific market conditions, but a manufacturer is in no instance free to import, without commercial constraint, as many kits and components as it wishes without regard to its export opportunities and obligations.

The Panel therefore finds that the trade balancing condition . . . acts as a restriction on importation, contrary to the terms of Article XI:1.<sup>326</sup>

The panel concluded that, even though an importer could theoretically import an unlimited amount of goods, so long as the value of the imported goods was balanced by the value of exported goods, the trade balancing requirement imposed a practical limitation on that volume. Similarly, in this case, the RTRRs impose a practical limit on the volume of imports due to the conditions Argentina places on the importation, whether those conditions include compensating imports with an equivalent amount of exports, limiting the volume or value of imports, incorporating local content into domestically produced goods, making or increasing investments in Argentina, and/or refraining from repatriating funds from Argentina to another country.

134. The measure at issue acts as a disincentive to importation by imposing additional costs on importers and, where the importer is unable to fulfill the condition, preventing imports. Other panels have found that a restriction within the meaning of Article XI:1 may operate through the measure's impact on transaction costs or market access.<sup>327</sup> For example, in *Brazil – Retreaded Tyres*, the panel observed that certain fines on the importation of tires “do not *per se* impose a border restriction on importation, but rather act as a disincentive to importation, by penalizing it and making it prohibitively costly,” thereby imposing a restriction under Article XI:1.<sup>328</sup> Similarly, in *Colombia – Ports of Entry*, the panel examined a measure restricting the entry of imports of certain textile, apparel and footwear products from Panama to Colombia's ports at Bogota and Barranquilla and concluded that “uncertainties, including access to one seaport for extended periods of time and the likely increased costs that would arise for importers operating

<sup>326</sup> *India – Autos (Panel)*, paras. 7.277-78.

<sup>327</sup> See *Colombia – Ports of Entry*, paras. 7.236-38 (discussing panel findings in *Argentina – Hides and Leather*, *Japan – Leather*, and *Brazil – Retreaded Tyres* and GATT panel findings in *Canada – Provincial Liquor Boards (EEC)* and *EEC – Minimum Import Prices*).

<sup>328</sup> *Brail – Retreaded Tyres (Panel)*, paras. 7.730, 7.737.



under the constraints of the port restrictions, limit competitive opportunities for imports arriving from Panama.”<sup>329</sup> On this basis, the panel found that the measure had a “limiting effect” on imports from Panama and that it constituted a “restriction on importation” under Article XI:1.<sup>330</sup>

135. The various RTRRs that Argentina imposes on importers impose burdens on the importation of foreign goods, creating disincentives to importation and, in some cases, limiting the volume of imports. For these reasons, Argentina’s imposition of RTRRs constitutes a “restriction” prohibited by GATT 1994 Article XI:1.

### **3. The RTRRs Are an “Other Measure” Within the Meaning of Article XI:1**

136. Argentina’s RTRRs make effective a restriction on importation though “quotas, import . . . licenses or other measures” within the meaning of GATT 1994 Article XI:1. As already discussed, various panels have found that the scope of “other measures” subject to Article XI:1 includes any measure that serves to restrict imports, “excluding from its coverage only ‘duties, taxes, or other charges.’”<sup>331</sup> The scope of the term “measures” in Article XI:1 can be confirmed by the context of other GATT provisions. In particular, other obligations in the GATT 1994, such as Articles IX:2 and IX:4, X:1, relate more narrowly to “laws and regulations” or “laws, regulations, judicial decisions and administrative rulings.” In contrast to the narrower scopes of those provision, Article XI:1 is meant to apply to the broader scope of “measures”.<sup>332</sup>

137. For these reasons, the RTRRs are “restriction” within the meaning of Article XI:1 and are inconsistent with that provision.

### **C. ARGENTINA’S DJAI AND RTRR REQUIREMENTS ARE INCONSISTENT WITH ARGENTINA’S TRANSPARENCY OBLIGATIONS UNDER THE IMPORT LICENSING AGREEMENT AND THE GATT 1994**

138. As discussed above, Argentina’s DJAI and RTRR requirements are inconsistent with Argentina’s WTO obligations. In addition, Argentina has also failed to publish – as required by Articles 3.3 and 1.4(a) of the Import Licensing Agreement and Article X:1 of the GATT 1994 – sufficient information to allow other Members and traders to know or become acquainted with: (a) the basis upon which DJAI licenses are granted;<sup>333</sup> (b) the rules and all information concerning procedures for submitting DJAI applications (and any exceptions or derogations);<sup>334</sup>

<sup>329</sup> *Colombia – Ports of Entry*, para. 7.274.

<sup>330</sup> *Colombia – Ports of Entry*, para. 7.275.

<sup>331</sup> *India – Quantitative Restrictions (Panel)*, para. 5.142.

<sup>332</sup> See *Japan – Semi-Conductors (GATT Panel Report)*, para. 106. (“Article XI:1, unlike other provisions of the General Agreement, did not refer to laws or regulations but more broadly to measures. The wording indicated clearly that any measure instituted or maintained by a contracting party which restricted the exportation or sale for export of products was covered by this provision, irrespective of the legal status of the measure.”).

<sup>333</sup> Import Licensing Agreement, art. 3.3.

<sup>334</sup> Import Licensing Agreement, art. 1.4(a).

and (c) laws, regulations or administrative rulings of general application that pertain to, among other things, “requirements, restrictions or prohibitions on imports or on the transfer of payments therefor, or affecting their sale [or] distribution.”<sup>335</sup>

139. The discussion below describes: (1) Argentina’s failure to meet the requirements of Import Licensing Agreement Article 3.3 with respect to the DJAI Requirement; (2) Argentina’s failure to meet the requirements of Import Licensing Agreement Article 1.4(a) with respect to the DJAI Requirement; and (3) Argentina’s failure to meet the requirements of Article X:1 of the GATT 1994 with respect to the RTRRs.

**1. Argentina Has Failed to Publish Sufficient Information Regarding the Basis for Granting or Allocating Licenses, as required by Article 3.3 of the Import Licensing Agreement**

140. Argentina has breached its obligations under Import Licensing Agreement Article 3.3 by failing to publish sufficient information regarding the bases for granting or allocating DJAI import licenses. Article 3.3 provides:

In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licenses.

As discussed in subsection (a) below, Argentina’s DJAI Requirement is subject to – and fails to fulfill – the requirements of this provision.

**a. The DJAI Requirement Constitutes a Non-Automatic Import Licensing Procedure Under Article 3.3 of the Import Licensing Agreement**

141. Article 3.3 of the Import Licensing Agreement applies to the DJAI Requirement, because the DJAI Requirement is (a) an import licensing procedure, (b) is non-automatic, and (c) is a licensing requirement for purposes other than the implementation of quantitative restrictions. First, for the reasons described at Section IV.A.2, the DJAI Requirement is import licensing within the meaning of Article 1.1 of the Import Licensing Agreement.

142. In addition, the DJAI Requirement is “non-automatic import licensing” within the meaning of Article 3.1 of the Import Licensing Agreement. That provision states that “non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2”. Article 1.2 contains the definition of “automatic import licensing”, which is “import licensing where approval of the application is *granted in all cases*, and which is in accordance with the requirements of paragraph 2(a)”. Thus, a “non-automatic” import license includes licensing procedures where the approval is

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<sup>335</sup> GATT 1994, Art. X:1.

discretionary, as well as licensing procedures that are administered in such a way to have “restricting effects on imports” under Article 2.2(a). Import licensing procedures are deemed to have trade restricting effects unless (1) all applicants fulfilling the legal requirements are equally eligible to apply for an obtain import licenses; (2) applications may be submitted on any working day prior to customs clearance; and (3) applications when submitted in appropriate and complete form are approved immediately to the extent administratively feasible, and in any event within a maximum of 10 working days.<sup>336</sup> For the reasons discussed at Section IV.A.1, the approvals granted under the DJAI Requirement are discretionary, not granted in all cases, conditioned on the RTRRs, and only granted after delay. For these reasons, the DJAI Requirement fails to qualify as “automatic import licensing” and meets the definition of “non-automatic import licensing” within the meaning of the Import Licensing Agreement.<sup>337</sup>

**b. Argentina Breached its Obligations Under the Import Licensing Agreement Article 3.3 by Failing to Publish Sufficient Information**

**i. The Meaning of the Article 3.3 Obligation**

143. First, with respect to the obligation to “publish,” the ordinary meaning of the term is: “[a]nnounce (an edict etc.) in a formal or official manner; Make (a work, information, etc.) generally accessible or available.”<sup>338</sup> Although no prior panel has interpreted the meaning of “publish” as it is used in Article 3.3, prior panels have examined the meaning of this term in the context of the similar publication provisions of Article X:1 of the GATT 1994. For example, in *EC – IT Products*, the panel noted that “the rationale behind the [Article X:1] publication requirement . . . is to ensure due process and transparency about measures that affect governments and traders, [so that they can] . . . know what conditions would apply to their goods” upon importation, and concluded that the Article X:1 requirement that certain measures be “published” mandated that “measures be generally available through an appropriate medium rather than simply making them publicly available.”<sup>339</sup>

144. Import Licensing Agreement Article 3.3 requires that Members publish “sufficient information for Members and traders to know” the basis for granting or allocating licenses. The definition of the term “to know” is: “[c]ome to apprehend, learn. Be aware of or apprised of (something), esp. through observation, inquiry, or information. Formerly also, become cognizant of, learn.”<sup>340</sup> Past panels have not considered the term “to know” in the context of Article 3.3, but the panel in *EC – IT Products* interpreted similar terminology (“to become acquainted with”)

<sup>336</sup> Import Licensing Agreement, art. 2.2(a).

<sup>337</sup> The DJAI Requirement also does not fall within the first clause of Article 3.3, which has a narrow scope and excludes from the requirements of Article 3.3 only those measures that are limited to “purposes . . . [of] the implementation of quantitative restrictions,” within the meaning of the Import Licensing Agreement, such as quotas.

<sup>338</sup> *The New Shorter Oxford English Dictionary* at 2405 (JE-83).

<sup>339</sup> *EC – IT Products*, paras. 7.1084-5.

<sup>340</sup> *The New Shorter Oxford English Dictionary* at 1503 (JE-83).

in the context of the publication requirement of Article X:1 of the GATT 1994, concluding that this language requires:

[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.<sup>341</sup>

145. Finally, with respect to whether a Member publishes sufficient information to know the “basis” for granting and/or allocating licenses, the ordinary meaning of “basis” is, “the main constituent . . . [a] thing on which anything is constructed and by which its constitution or operation is determined; a determining principle; a set of underlying or agreed principles.”<sup>342</sup>

146. The importance of the publication requirements set out in Import Licensing Agreement Article 3.3 is underscored by the preamble of that Agreement, which places particular emphasis on the transparency and predictability of import licensing procedures, reflecting the conviction of Members that “import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner”<sup>343</sup>

147. Based on the ordinary meaning of Import Licensing Agreement Article 3.3, when read in context and light of the object and purpose of the Import Licensing Agreement, the obligation to “publish sufficient information for other Members and traders to know the basis for granting and/or allocating licenses” requires that Members disclose the “set of underlying principles” or the “determining principle” upon which import licenses are granted and/or allocated, and do so in an appropriate medium for other Members and traders to become familiar with them.

**ii. Argentina Has Failed to Fulfill the Obligations of  
Import Licensing Agreement Article 3.3**

148. Argentina has not published sufficient information for Members or traders to know the basis for granting DJAI approvals.

149. The DJAI resolutions and related measures do not provide sufficient information for Members or traders to know the basis for granting DJAI approvals. Decisions whether or not to grant DJAI approvals are effectuated via the mechanisms described *supra* in paragraph 20. In instances where SCI, or any other agency, lodges an “observation” (*observada*), approval of the application is withheld, yet the bases for such decisions are not published in a manner consistent with Import Licensing Agreement Article 3.3.

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<sup>341</sup> *EC – IT Products*, para. 7.1086

<sup>342</sup> See *The New Shorter Oxford English Dictionary* at 188 (JE-83).

<sup>343</sup> Import Licensing Agreement, preamble.

150. With respect to “observations” that may be placed on a DJAI, the relevant legal instruments contain little, if any, information regarding the permissible bases upon which SCI or other agencies may lodge an observation other than a broad reference to a general requirement that agencies must act within their jurisdiction.<sup>344</sup> Neither the DJAI resolutions, nor any other measures, such as the legal instruments relating to SCI and other agencies’ participation in the DJAI system, describe what aspects of an agency’s jurisdiction may be implicated, let alone the specific basis or “set of underlying principles” for observations. Instead, Members and traders are left to guess at what circumstances might result in such an “observation” by SCI or another agency, and what bases or underlying principles might determine when and how such an “observation” will be lodged or removed.

151. With the exception of the fiscal-related considerations that are referenced in the DJAI manual<sup>345</sup>, the only information that Argentine officials have provided regarding the factors that are considered in decisions to grant DJAI applications consist of general statements appearing in official press announcements such as: (a) “protect[ing] Argentine industry;”<sup>346</sup> (b) whether a DJAI applicant has agreed to comply with RTRR commitments, including those relating to “import substitution;”<sup>347</sup> (c) national “economic stability;”<sup>348</sup> and (d) the DJAI applicant’s “balance of foreign exchange” and “the pace of the company’s prices.”<sup>349</sup> These statements do not contain sufficient information to allow governments and traders to know the basis for the decisions, and are not published in a manner that would allow them to do so.

152. In sum, the Argentine authorities have failed to publish the relevant bases in the DJAI resolutions or any other measures. As a result, it is impossible for traders and Members to know the “set of underlying principles” or the “determining principle” upon which DJAI approvals are granted.

**2. Argentina Has Failed to Publish All Relevant Rules and Information Regarding Application Procedures and Other Features of the DJAI Requirement as Required by Import Licensing Agreement Article 1.4(a)**

153. Argentina has also failed to publish all relevant rules and information regarding application procedures for its DJAI Requirement, contrary to Import Licensing Agreement Article 1.4(a).

154. Import Licensing Agreement Article 1.4(a) provides as follows:

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<sup>344</sup> See discussion *supra* at paras. 30-34

<sup>345</sup> *Supra* para. 31.

<sup>346</sup> See discussion, *supra* at para. 38.

<sup>347</sup> See discussion, *supra* at para. 39 (citing *Ministry of Industry Press Release June 19, 2012* (JE-44)).

<sup>348</sup> See discussion, *supra* at para. 40.

<sup>349</sup> See discussion, *supra* at para. 41 (citing *Roberto Navarro, El Plan 2012* (JE-8)).

The 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 shall be published, in the sources notified to the Committee on Import Licensing provided for in Article 4 (referred to in this Agreement as “the Committee”), in such a manner as to enable governments and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the Secretariat. (Footnote omitted, emphasis added).

**a. The DJAI Requirement Is an Import Licensing Procedure Under the Terms of the Import Licensing Agreement, and Falls Within the Scope of Import Licensing Agreement Article 1.4(a)**

155. Import Licensing Agreement Article 1.4(a) applies to the DJAI Requirement, because the DJAI Requirement is an import licensing procedure for the reasons described above.

**b. Argentina Breached its Obligations Under Import Licensing Agreement Article 1.4(a) by Failing to Publish Sufficient Information**

**i. The Meaning of the Article 1.4(a) Obligation**

156. As noted above, the ordinary meaning of “publish” is to “[a]nnounce (an edict etc.) in a formal or official manner; make (a work, information, etc.) generally accessible or available.”<sup>350</sup> At least one prior panel concluded that a publication requirement mandates that “measures be generally available through an appropriate medium rather than simply making them publicly available.”<sup>351</sup> Finally, the same panel concluded that the phrase, “in such a manner as to enable governments and traders to become acquainted with them” requires:

[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.<sup>352</sup>

<sup>350</sup> *The New Shorter Oxford English Dictionary* at 2405 (1993) (JE-83).

<sup>351</sup> *EC – IT Products*, paras. 7.1082, 7.1084-85.

<sup>352</sup> *EC – IT Products*, para. 7.1086.

157. Import Licensing Agreement Article 1.4(a) requires that publication be made in the “sources notified to the Committee on Import Licensing”, that is, the publication sources that must be notified to this Committee, as set forth in Import Licensing Agreement Article 5.

158. The Article 1.4(a) publication requirement applies to “rules and all information concerning procedures for the submission of applications.” The ordinary meaning of “concerning” is “regarding, touching, in reference or in relation to; about”<sup>353</sup>, and “procedure” is defined in relevant part as “the fact or manner of proceeding; a system of proceeding; conduct, behavior.”<sup>354</sup> The ordinary meaning of “application” is “a request, esp. of a formal nature,”<sup>355</sup> and the ordinary meaning of “submission” is “the action or an act of submitting a matter to a higher authority for decision or consideration.”<sup>356</sup> Accordingly, “rules and all information concerning procedures for the submission of applications” include any rules that an applicant must satisfy to secure consideration of, and decision on, a DJAI application. Furthermore, such “information” includes any information that an applicant must submit to secure the consideration and decision on a DJAI application.

159. In sum, Import Licensing Agreement Article 1.4(a) imposes the following obligations:

- (a) to publish - i.e. make generally available in an appropriate medium - the following, in a manner that allows traders and Governments to become familiar with them and to know them in a more or less complete way;
  - i. the rules and all information that relate to the process for securing consideration of, and a decision on, of an import licensing application;
  - ii. any exception, derogations or changes in or from such rules;
- (b) to publish in the publications that must be notified to the Committee on Import Licensing the foregoing rules and information;
- (c) to publish the foregoing rules and information 21 days prior to the effective date, whenever practicable, and not later the effective date; and
- (d) to make available copies of such publications to the Secretariat.

**ii. Argentina Has Failed to Fulfill the Obligations of  
Import Licensing Agreement Article 1.4(a)**

<sup>353</sup> *The Shorter Oxford English Dictionary* at 467 (1993) (JE-83).

<sup>354</sup> *The Shorter Oxford English Dictionary* at 2363 (1993) (JE-83).

<sup>355</sup> *The Shorter Oxford English Dictionary* at 100 (1993) (JE-83).

<sup>356</sup> *The Shorter Oxford English Dictionary* at 3120 (1993) (JE-83).

160. Argentina has failed to publish – in a manner that would enable governments and traders to become acquainted with them – the rules and all information that relate to the process for securing consideration of, and a decision on, a DJAI application, or any exceptions, derogations or changes to such rules. For this reason Argentina has acted inconsistently with the Article 1.4(a) publication requirement, as well as the Article 1.4(a) requirement to effectuate such publication no later than the effective date of the requirement.

161. For example, Argentina has failed to publish sufficient information for governments and traders to become familiar with the procedures that a DJAI applicant must follow (e.g., information submission requirements, deadlines, etc.) to resolve Argentine agency “observations” and thereby secure final decision on a DJAI application. In this respect, Argentina has also 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.
- 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.
- 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.

162. As demonstrated above, Argentina has failed to publish sufficient information for governments and traders to become familiar with the procedures for submitting DJAI applications. Accordingly, Argentina has failed to comply with the requirements of Import Licensing Agreement Article 1.4(a).



### **3. Argentina Has Failed to Promptly with GATT 1994 Article X:1 Publication Requirements with Respect to the RTRR Requirement**

163. Argentina has failed to meet its GATT 1994 Article X:1 obligations because it has not published the RTRRs pursuant to which it conditions approvals of DJAI applications upon compliance with requirements to meet import substitution demands or one-to-one export performance demands, or to undertake other requirements set forth in Section III.B. Accordingly, Argentina fails to fulfill the GATT 1994 Article X:1 obligation to publish “laws, regulations, judicial decisions and administrative rulings of general application” “pertaining to . . . requirements, restrictions, or prohibitions on imports . . .” in such a manner as to enable governments and traders to become acquainted with them.

164. After summarizing the GATT X:1 obligations, we demonstrate that the RTRRs at issue meet each of the elements of GATT Article X:1, because: (a) those measures are “regulations . . . [or] administrative rulings of general application”; (b) they pertain to “requirements, restrictions, or prohibitions on imports”; and because (c) Argentina has failed to “publish” promptly those measures in such a manner as to enable governments and traders to become acquainted with them.

#### **a. The RTRRs that Argentine Applies in Conjunction with the DJAI Requirements are Regulations and Administrative rulings of General Application**

165. Article X:1 applies to “laws, regulations, . . . and administrative rulings.” The ordinary meaning of “law” is “a rule of conduct imposed by secular authority,” or a rule which “a particular State . . . may enforce by imposing penalties.”<sup>357</sup> A “regulation” is “a rule prescribed for controlling some matter, or for the regulating of conduct; an authoritative direction.”<sup>358</sup> A “ruling” is “the action of governing or exercising authority, the exercise of government, authority, control, influence” or “an authoritative pronouncement.”<sup>359</sup> The adjective “administrative” indicates that it is a ruling from an administrative body.<sup>360</sup>

166. Prior panels have made clear that “the instruments covered by Article X:1 range from imperative rules of conduct to the exercise of influence or an authoritative pronouncement by certain authoritative bodies. Accordingly, . . . the coverage of Article X:1 extends to instruments with a degree of authoritativeness issued by certain legislative, administrative or judicial bodies.”<sup>361</sup>

<sup>357</sup> *The New Oxford English Dictionary* at 1544 (1993) (JE-83).

<sup>358</sup> *The New Oxford English Dictionary* at 2530 (1993) (JE-83).

<sup>359</sup> *The New Oxford English Dictionary* at 2646 (1993) (JE-83).

<sup>360</sup> *EC – IT Products*, para. 7.1025 (internal citations omitted)

<sup>361</sup> *EC – IT Products*, paras. 7.1027-30. Likewise, the *China – Raw Materials* panel “note[d] the broad scope of this phrase and considers that it includes a wide range of measures that have the potential to affect trade and traders.” *China – Raw Materials (Panel)*, para. 7.803.

167. Article X:1 applies to measures of “general application”, which prior panels or the Appellate Body have variously determined may include measures which: (a) “affect an unidentified number of economic operators, including domestic and foreign producers;”<sup>362</sup> (b) “apply to a range of situations or cases, rather than being limited in their scope of application;”<sup>363</sup> (c) are “not limited to a single import or a single importer;”<sup>364</sup> (d) have “the potential to affect trade and traders, including a wide array of domestic and foreign economic operators,” including through the failure to set a quota for a particular product category;<sup>365</sup> or (e) involve “a set of procedures that lay down a defined or systematic way of doing things” that applied “prospectively and generally to” imports of a particular type.<sup>366</sup>

168. The RTRRs that Argentina imposes in conjunction with its DJAI Requirement constitute “regulations” or “administrative rulings of general application” because they are rules prescribed for controlling importation and regulating the conduct of importers broadly, and because they are imposed and enforced by Argentine officials with authority, control and influence over such import transactions and importers. The extensive evidence that Argentine officials have used their authority, control and influence to condition DJAI approvals upon compliance with RTRRs demonstrates that the RTRRs pursuant to which Argentine authorities exercise this control and influence do indeed possess the requisite “degree of authoritativeness” to qualify as “regulations or administrative rulings” under GATT Article X:1. The evidence demonstrating that Argentine officials widely apply the aforementioned RTRRs vis-à-vis DJAI applicants and their prospective importations also makes clear that that these unpublished rules are “of general application.”

169. The RTRRs that Argentina applies in conjunction with the DJAI Requirement bear similarities to the unpublished methodology for determining the Maximum Retail Selling Prices (MRSP) at issue in the *Thailand – Cigarettes* case. As is in the present case, where Argentina has published no more than a high-level outline of its “observation” procedure and general press statements that identify in vague terms certain conditions (protecting Argentine industry, securing importer compliance with RTRRs) that it imposes on imports, Thailand published no more than the general parameters of the aforementioned methodology for determining MRSPs.

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<sup>362</sup> *US – Underwear (Panel)*, para. 7.65 (“[T]o the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers, we find it to be a measure of general application.”). The WTO Appellate Body upheld the panel finding that the U.S. application of a textiles safeguard to imports from Costa Rica and other countries qualified as a “measure of general application” under GATT 1994 Article X:2. The Appellate Body noted that, “[w]hile the restraint measure was addressed to particular, i.e., named, exporting Members, . . . we noted that the measure did not try to become specific as to the individual persons or entities engaged in exporting the specified textile or clothing items to the importing Member and hence affected by the proposed restraint.” *US – Underwear (AB)*, p. 21.

<sup>363</sup> *China Raw Materials (Panel)*, para. 7.733, 7.1095 (citing *EC – Selected Customs Matters*, para. 7.116).

<sup>364</sup> *EC – IT Products*, paras. 7.1033-4.

<sup>365</sup> *China – Raw Materials (Panel)*, paras. 7.1096-98.

<sup>366</sup> *Thailand – Cigarettes (Panel)*, paras. 7.776-779. Relying on its definition of methodology as “a set of procedures that lay down a defined or systematic way of doing things,” the panel went on to conclude that the methodology comprised not only its constituent factors, but also its underlying rules of operation, and that disclosure of these rules is particularly important where there are significant deviations in practice from those rules.

The panel found that the detailed criteria and rules underlying the methodology constituted rules of general application subject to the Article X:1 publication requirements.<sup>367</sup> The panel noted that these unpublished criteria and rules constituted “a set of procedures that lay down a defined or systematic way of doing things” that was generally applicable to all future importations of cigarettes.<sup>368</sup> On that basis, the panel found that these unpublished rules and criteria were laws, regulations or administrative rulings of general applicability subject to the requirements of GATT Article X:1.

170. The unpublished RTRRs that Argentina applies in conjunction with the DJAI regime also bear similarities to the unpublished CCCMC Charter in *China – Raw Materials*, which set forth the mission, functions, authority and rules and regulations of the CCCMC, the “instrumentality through which MOFCOM oversees and regulates the business of importing and exporting [] products in China.”<sup>369</sup> Just as Argentina uses its unpublished RTRRs to set and effectuate conditions upon importation activities, China used the CCCMC Charter to set such conditions upon import and export activities (including to “coordinate and direct import and export trade activities of Metals, Minerals & Chemicals Industries”). Accordingly, the panel found that the CCCMC Charter was a law, regulation, judicial decision or administrative ruling of general application, in light of “China’s statement of the authority vested in the CCCMC, and the cited provisions of the 2001 CCCMC Charter [,which] make clear that the 2001 CCCMC Charter is a measure that has the potential to affect trade and traders, including a wide array of domestic and foreign economic operators, in particular, the ‘trade activities’ of business within the broad metals, minerals and chemicals industries.”<sup>370</sup>

**b. The RTRRs that Argentina Applies in Conjunction with the DJAI Requirement Pertain to Requirements, Restrictions or Prohibitions on Imports**

171. The unpublished RTRRs upon which Argentina conditions the approval of DJAI applications pertain, on their face, to “requirement, restriction or prohibition on imports . . . or affecting their sale [or] distribution.”

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<sup>367</sup> *Thailand – Cigarettes (Panel)*, para. 7.779. The Philippines identified six methodology elements that Thailand admitted to exist, but which were not published – namely “(i) the primary source for the MRSP is the manufacturer’s recommended retail price; (ii) an alternative source for the MRSP is a guarantee determined by DG Excise; (iii) DG Excise exercises a review of the MRSP, and the criteria thereof; (iv) DG Excise “normally” revises the MRSP after tax changes impacting the MRSP; (v) when MRSPs are revised, Thailand calculates a new MRSP computing the c.i.f. price, the latest tax amounts and the marketing costs; and (vi) the marketing costs calculation is based on information given by the importer, unless this information is doubtful, in which case it is established by Thai Excise.” *Id.* at para. 7.768.

<sup>368</sup> *Thailand – Cigarettes (Panel)*, paras. 7.773, 7.776. As regards the prospective and generally applicable scope of the methodology, the panel found that, “the methodology for determining MRSPs applies prospectively and generally to all MRSP determinations and revisions, for all cigarettes sold in Thailand. As the methodology applies to all potential sales of cigarettes, we agree that the methodology used to calculate MRSPs falls within the scope of Article X:1.” *Id.*, para. 7.773.

<sup>369</sup> *China – Raw Materials (Panel)*, paras. 7.1088-90.

<sup>370</sup> *China – Raw Materials (Panel)*, para. 7.1098.

172. The ordinary meaning of “pertain” is “[h]ave reference or relation to; relate to”.<sup>371</sup> For the reasons described at Section IV.B, the RTRRs are themselves restrictions on importation, so the unpublished RTRRs (including what a company must do to comply with the RTRRs and all information as to the operation and procedures related to the RTRRs) thus “pertain to” or “relate to” restrictions on imports, inasmuch as they condition importation upon compliance with restrictive requirements, including restrictions on the level of imports depending upon levels of import substitution or the level of exports.

173. While Argentina restricts imports using the RTRRs, Argentine authorities have failed to publish information regarding the operation of the RTRRs in a manner that would enable governments and traders to become acquainted with them, as is required by GATT Article X:1.

174. Prior panels have analyzed the core functional obligation of Article X:1 to “publish” certain information “in such a manner as to enable governments and traders to become acquainted with them.”<sup>372</sup> As explained above, in *EC – IT Products*, the panel noted that the requirement that measures be “published” requires that “measures be generally available through an appropriate medium rather than simply [being made] . . . publicly available.”<sup>373</sup> The panel then interpreted the phrase, “in such a manner as to enable governments and traders to become acquainted with them,”<sup>374</sup> as follows:

[N]ot any manner of publication that would satisfy the requirement, but only those 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.<sup>375</sup>

175. In the *EC – IT Products* case, the panel concluded that the European Commission’s posting of the minutes of the Customs Code Committee on the Comitology website did not fulfill this requirement because, “there is nothing in the minutes, or the draft CNENs attached, that would supply traders and governments with adequate knowledge of measures that are or would

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<sup>371</sup> *The New Oxford English Dictionary* at 2173 (1993) (JE-83).

<sup>372</sup> GATT 1994, art. X:1. *See also EC – IT Products*, para. 7.1082.

<sup>373</sup> *EC – IT Products*, paras. 7.1084-5.

<sup>374</sup> *EC – IT Products*, para. 7.1086. The dictionary definitions upon which the panel relied were as follows:

The definition of the word "manner" is "senses relating to the way in which an action is performed" or "the way in which something occurs or is performed; a method of action; a mode of procedure." The term "to enable" can be understood as "to give power to (a person); to strengthen, make adequate or proficient", "to impart to (a person or agent) power necessary or adequate for a given object; to make competent or capable", "to supply with the requisite means or opportunities to an end or for an object" or "to make possible or easy; also to give effectiveness to (an action)." Finally, the term "acquainted" means "personally known; familiar, through being known", or "having personal or experimental knowledge; possessed of personal knowledge, more or less complete." *Id.*

<sup>375</sup> *EC – IT Products*, para. 7.1086.

be applied in trading with the EC member States.”<sup>376</sup> Similarly, in *China – Raw Materials*, China failed to publish the fact that it had set no export quota for zinc, with the “practical result [that] . . . interested exporters did not know that effectively, they were unable to export zinc” in violation of Article X:1.<sup>377</sup> Finally, in *Thailand – Cigarettes*, the panel found that, in merely listing the eight components that comprised its valuation methodology for cigarettes, Thailand had failed to meet its Article X:1 obligations, because “to become acquainted with the methodology . . . , it is important for them to become familiar with, for instance, how the information they provide is processed” along with any derogations from the methodology.<sup>378</sup>

176. Insomuch as Argentina has simply issued official press statements that reflect the existence of the RTRRs but not the actual RTRRs themselves, Argentina has not satisfied the GATT Article X:1 requirement to publish the RTRRs in a manner that would enable governments and traders to become familiar with them.

### c. The RTRRs Measures Have Been Made Effective by Argentina

177. The DJAI Requirement came into effect on February 1, 2012 through Resolution 3252. On January 13, 2012 SCI announced its accession to this system for the purpose of *inter alia* “performing analyses aimed at 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.”<sup>379</sup> As discussed *supra* at that time, Argentine authorities made clear in official press releases and by other means that in participating in the DJAI system, they would be applying measures to “protect Argentine industry”<sup>380</sup> and to require DJAI applicants to comply with RTRRs, including those relating to “import substitution”;<sup>381</sup> and the DJAI applicant’s “balance of foreign exchange” and “the pace of the company’s prices.”<sup>382</sup> These type of trade-restrictive measures continued a longstanding practice of Argentine officials using the predecessor CI system – dating back to CI requirements from at least 2010 – as a means of applying measures for the protection of domestic industry and to secure importer commitments to comply with RTRRs, including requiring importers to export an equivalent value to offset imports under the “one-to-one” program and requiring importers to meet import substitution requirements.

178. As explained by the *EC-IT Products* and *China – Raw Materials* panels, a measure may be considered to be “made effective” on the date that it is first rendered operative or applied in practice, or formally promulgated, whichever is earlier.<sup>383</sup> In this case, Argentine authorities

<sup>376</sup> *EC – IT Products*, para. 7.1087.

<sup>377</sup> *China – Raw Materials (Panel)*, para. 7.806-7.807.

<sup>378</sup> *Thailand – Cigarettes (Panel)*, para.7.789.

<sup>379</sup> *SCI Resolution 1 (JE-41)*.

<sup>380</sup> See discussion, *supra* at para. 38.

<sup>381</sup> See discussion, *supra* at para. 39 (citing *Ministry of Industry Press Release June 19, 2012 (JE-44)*).

<sup>382</sup> See discussion, *supra* at para. 41 (citing *Roberto Navarro, El Plan 2012 (JE-8)*).

<sup>383</sup> *EC – IT Products*, para. 7.1045-7.1048. The panel in *EC – IT Products* noted that dictionary definitions of “effective” included “actual, de facto, in effect; (of an order etc.) operative, in force” and “operative” [and] . . . “[b]eing in operation or force, exerting force or influence”. The *EC – IT Products* panel also noted the

began applying the RTRRs in conjunction with the DJAI Requirement no later than the effective date of the DJAI regulation, February 1, 2012, and began applying the RTRRs in conjunction with the CIs from at least 2010.

**d. Argentina Has Failed to Publish the RTRRs “Promptly”**

179. Argentina has failed to publish the RTRRs promptly, as required by Article X:1 of the GATT 1994. The ordinary meaning of “promptly” is “without delay.”<sup>384</sup> As discussed above, Argentine authorities made the RTRRs effective in conjunction with the DJAI Requirement no later than the effective date of the DJAI regulation, February 1, 2012, and made the RTRRs effective in conjunction with the CIs from at least 2010. To date, the RTRRs remain unpublished. An extended period of delay in publishing a measure for at least 18 months, and as much as three years, does not meet the requirement of “prompt” publication.

180. As demonstrate above, Argentina has failed to fulfill the obligation of Article X:1 of GATT 1994 to publish promptly “laws, regulations, judicial decisions and administrative rulings of general application” “pertaining to . . . requirements, restrictions, or prohibitions on imports . . .” in such a manner as to enable governments and traders to become acquainted with them. For the reasons stated above, Argentina has acted inconsistently with Article X:1 by failing to promptly publish the RTRRs.

**D. ARGENTINA HAS FAILED TO ADMINISTER ITS DJAI REQUIREMENT IN A UNIFORM AND REASONABLE MANNER, AS REQUIRED BY GATT ARTICLE X:3(A)**

181. The manner in which Argentina administers its DJAI Requirement is inconsistent with Argentina’s obligations pursuant GATT 1994 Article X:3(a). While Argentina has failed, as discussed in Section IV.C above, to meet the GATT and Import Licensing Agreement publication requirements, it has also failed to administer in a reasonable and non-uniform manner those limited aspects of the DJAI Requirement that are published.

**1. The Meaning of the GATT 1994 X:3(a) Uniformity and Reasonableness Obligation**

182. GATT 1994 Article X:3(a) provides that “[e]ach contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.”

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Appellate Body’s adoption of the same definition of “made effective” in the context of GATT Article XX(g). *See, e.g., United States - Gasoline (AB)*, p. 19 (“[T]he ordinary or natural meaning of “made effective” when used in connection with a measure - a governmental act or regulation - may be seen to refer to such measure being “operative”, as “in force”, or as having “come into effect.”) (citations omitted).

<sup>384</sup> *The New Shorter Oxford English Dictionary* at 2376 (1993).

183. Prior panels and the Appellate Body have adopted the following definitions of the terms “administer,” “uniform,” and “reasonable” as they appear in Article X:3(a), as summarized below by the *China – Raw Materials* panel:

The Appellate Body [has] concluded that . . . the term “administer” in Article X:3(a) refers to “putting into practical effect” or “applying” a legal instrument of the kind described in Article X:1.

...

In the context of defining the uniformity criterion, the panel in *Argentina – Hides and Leather* held that uniform treatment means that “every exporter should be able to expect treatment of the same kind, in the same manner, both over time and in different places and with respect to other persons . . . Uniform administration requires that Members ensure that their laws are applied consistently and predictably.”

...

[R]ead in the context of Article X:3(a), the word “uniform” means “[o]f one unchanging form, character, or kind; that is or stays the same in different places or circumstances, or at different times ... of the same form, character or kind as another or others; conforming to one standard, rule or pattern; alike similar.”

...

[R]ead in the context of Article X:3(a), the ordinary meaning of the word “reasonable”, can be defined as “not irrational or absurd”, “proportionate”, “sensible”, and “within the limits of reason, not greatly less or more than might be thought likely or appropriate”. Applying this definition to the facts, reasonable administration could be considered to be administration that is equitable, appropriate for the circumstances and based on rationality.<sup>385</sup>

184. Prior panels have articulated similar standards for evaluating potential violations of Article X:3(a), finding variously that such violations arise where the administration of the measure in question poses an “inherent danger” or a “very real risk” of, “necessarily leads to,” non-uniform, unreasonable, or partial administration of a legal measure of the type covered by Article X:1.<sup>386</sup>

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<sup>385</sup> See *China – Raw Materials (Panel)*, paras. 7.689, 7.692-94, 7.696 (citing *Argentina – Hides and Leather*, paras. 11.83, 11.99-101); see also, *The New Shorter Oxford English Dictionary* at 28 (defining “administer” as “carry out or execute”); 3488 (same definitions of “uniform” as cited above); 2496 (same definitions of “reasonable” as above) (1993) (JE-83).

<sup>386</sup> See *Argentina – Hides and Leather*, para. 11.77 (stating that, “Article X:3(a) requires an examination of the real effect that a measure might have on traders operating in the commercial world. This, of course, does not require a showing of trade damage, as that is generally not a requirement with respect to violations of the GATT 1994. But it can involve an examination of whether there is a possible impact on the competitive situation due to alleged partiality, unreasonableness or lack of uniformity in the application of customs rules, regulations, decisions, etc.”); *China – Raw Materials (Panel)*, para. 7.708 (“[I]f the complaining party shows that the features of an administrative process pose a very real risk to the interest of the relevant parties, then it will be have met its burden . . . . The Panel considers that an interpretation of Article X:3(a) that requires a complainant to show that the features of the

185. The Appellate Body has stated that Article X:3(a) establishes certain minimum standards for transparency and procedural fairness in the administration of the laws, regulations and other measures of the kind in Article X:1.<sup>387</sup> The obligations of GATT Article X:3(a) do not apply to the substantive content of covered measures, which are “more properly dealt with under other provisions of the GATT 1994,”<sup>388</sup> but rather to the administration of such measures,<sup>389</sup> which – as the Appellate Body clarified in *EC – Selected Customs Matters* – includes not only acts of administering such measures, but also legal instruments that regulate the application or implementation of such measures.<sup>390</sup>

**2. Argentina Has Administered its DJAI Requirement in an Unreasonable and Non-Uniform Manner in Contravention of GATT Article X:3(a)**

186. Argentina has failed to meet the GATT Article X:3(a) requirement of reasonable administration because it has, among other things, failed to comply with the limited rules and procedures that it has published with respect to the operation of the DJAI Requirement.

187. For example, Resolution 3252 provides requires that, “AFIP, through the “My Customs Operations” service, shall inform importers of any news, and where applicable, the circumstances on which any negative decision may be based, as well as the institution the importer should contact in order to rectify the situation.”<sup>391</sup> Yet, in a sworn affidavit, the Vice President of Company Y explained that Argentine officials (including AFIP) failed to inform importers of the circumstances upon which negative decisions were based. The affidavit states in relevant part as follows:

Almost immediately after our Argentine Company began to submit DJAIs, we received notification – via the electronic database – that a number of such submissions had been “observed” with no explanation.

During the first few months after passage of the Resolution, the percentage of our Argentine Company’s numerous DJAIs (amounting to XXX million

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administrative process pose a very real risk of non-uniform, partial and unreasonable administrative best accords with the due process connotations of Article X.”).

<sup>387</sup> *China – Raw Materials (Panel)*, para. 7.685 (citing *EC – Bananas III (AB)*, para. 200).

<sup>388</sup> *Argentina – Hides and Leather*, para. 11.70 (emphasis added).

<sup>389</sup> *EC – Bananas III (AB)*, para. 200; *EC – Poultry (AB)*, para. 115.

<sup>390</sup> *EC – Selected Customs Matters (AB)*, para. 200. The Appellate Body states, “[u]nder Article X:3(a), a distinction must be made between *the legal instrument being administered* and *the legal instrument that regulates* the application or implementation of that instrument. While the substantive content of the legal instrument being administered is *not* challengeable under Article X:3(a), we see no reason why a legal instrument that regulates the application or implementation of that instrument cannot be examined under Article X:3(a) if it is alleged to lead to a lack of uniform, impartial, or reasonable administration of that legal instrument.”

<sup>391</sup> *AFIP Resolution 3252*, art. 4.



dollars in inventory) that were “observed” steadily increased, until nearly half of our shipments had been “observed” without explanation.

Nor was our Argentine Company able to find anyone within the government to provide guidance regarding how to obtain approvals of the “observed” applications...

Representatives from our Argentine Company tried visiting the Secretary of Commerce’s office on numerous occasions to obtain an explanation, but were never received and had no alternative means of contacting a government representative who could answer their questions.<sup>392</sup>

188. Applying the ordinary meaning of "reasonable" to the facts outlined above, governmental administrative action that is in contravention of directly applicable standards and rules cannot be said to be "proportionate", "sensible", and "within the limits of reason, not greatly less or more than might be thought likely or appropriate." When an administrative agency acts contrary to law and violates directly relevant legal authorities, it does not act in a "reasonable" manner. As illustrated by this and other examples, Argentina has failed to fulfill its obligation to administer the DJAI Requirement in a “reasonable” manner.

189. Similarly, with respect to the GATT X:3(a) requirements of reasonable and uniform administration, with respect to similarly situated – or even the same – importer, Argentine agencies have chosen to treat similar or identical import transactions in an arbitrary and varying manner without regard to considerations of uniformity or consistency, in contravention of Article X:3(a).

190. Testimony provided by DJAI applicants confirms that Argentina’s administration of the DJAI regime has not met the GATT Article X:3(a) requirement of “uniformity” – with similar or identical DJAI applications being granted and others rejected without rhyme or reason. This includes cases in which Argentine authorities first rejected an application and then granting – for no apparent reason – the very same application when it was resubmitted without modification. For example, the Vice President of Company Y explained in his affidavit that:

[T]here seemed to be no logic or distinguishable pattern explaining why some DJAIs were “approved” and others “observed”. This was further evidenced by the fact that our Argentine Company resubmitted a number of “observed” DJAIs, with no changes, and obtained subsequent approvals for such shipments.<sup>393</sup>

191. This example and others illustrate the type of inconsistent and unpredictable administration that has typified Argentina’s administration of the DJAI system.<sup>394</sup> This example

<sup>392</sup> *VP Company Y Affidavit*, paras. 5-8 (JE-307).

<sup>393</sup> *VP Company Y Affidavit*, at para. 9 (JE-307).

<sup>394</sup> *See, e.g., VP of Company X Affidavit* (JE-305); *see also Yudigar S.A.* (JE-59)

typifies unreasonable administration which is not “rational,” “proportionate” or “sensible.” This example also typified non-uniform administration in that administration that varies arbitrarily in seemingly identical or similar circumstances – by definition – does not “stay the same in different places or circumstances, or at different times,” and does not “conforming to one standard, rule or pattern.”

**E. THE DJAI REQUIREMENT IS INCONSISTENT WITH ARGENTINA’S OBLIGATIONS UNDER ARTICLE 3.2 OF THE IMPORT LICENSING AGREEMENT**

**1. The DJAI Requirement is a Non-Automatic Import Licensing Requirement**

192. Article 3.2 of the Import Licensing Agreement, related to non-automatic import licensing, states:

Non-Automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic import licensing procedures shall correspond in scope and duration to the measure that they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

193. For the reasons set forth in Section VI.C, the DJAI Requirement constitutes a non-automatic import licensing requirement. As a result, the DJAI Requirement is subject to Article 3.2 of the Import Licensing Agreement. The DJAI Requirement is inconsistent with both the first and second sentence of Article 3.2 because it has “trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction” and because DJAI licensing procedures are more “administratively burdensome than is absolutely necessary to administer the measure.”

**2. The DJAI Requirement Has Trade-Restrictive or Distortive Effects on Imports Additional to Those Caused by the Imposition of the Restriction**

194. An analysis of a licensing regime’s compliance with the first sentence of Article 3.2 starts with an identification of the “restriction” being implemented by the non-automatic licensing procedures. As described above, the ordinary meaning of “restriction” is “limiting condition.”<sup>395</sup> However, the legal instruments and guidance concerning the DJAI Requirement, as described at Section III.A, contain no description of any such restriction or limiting condition being implemented through the DJAI system. Rather, the only restriction imposed on imports is that caused by the DJAI procedures themselves.

195. Article 3.2 contemplates that an underlying, WTO-consistent, “restriction” imposed through a non-automatic licensing requirement may cause trade-restrictive or -distortive effects,

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<sup>395</sup> *Supra* Section IV.A.X.

but provides that the licensing procedures may not cause any trade-restrictive or -distortive effects *additional* to those imposed by the underlying restriction. This requirement in Article 3.2 echoes the preamble to the Import Licensing Agreement, which states that Members “[r]ecogniz[e] that the flow of international trade could be impeded by the inappropriate use of import licensing procedures”.<sup>396</sup> As the Appellate Body has observed, Article 3.2 “make[s] it clear the *Licensing Agreement* is . . . concerned, with, among other things, preventing trade distortions that may be caused by licensing procedures.”<sup>397</sup>

196. The DJAI Requirement does not identify any “restriction” separate from the licensing requirement itself (although, in fact, RTRRs are enforced through the DJAI Requirement). The resolutions creating the DJAI Requirement provide only vague statements as to its purpose, such as “promot[ing] multisector coordination among different government agencies”; “increase[ing] cooperation among these agencies” through the “availability of strategic information”;<sup>398</sup> “facilitate[ing] the creation of a process integrating the management of government agencies participating in foreign trade operations;”<sup>399</sup> and “facilitating the uninterrupted transfer of commercial information regarding import operations among all governmental agencies involved in foreign trade operations within their areas of jurisdiction.”<sup>400</sup>

197. Further, the only participating agency which has articulated a purpose for its involvement in the DJAI system is SCI, which provided an explanation in *SCI Resolution 1* that its purposes include primarily “performing analyses aimed at preventing negative effects on the domestic market”; and “monitoring of compliance with the regulations on Fair Trade Practices in the Southern Cone Common Market (MERCOSUR)” and related national regulations.<sup>401</sup> In addition, SCI observed that the information obtained through the DJAI “will contribute to a better and broader evaluation of the degree of competitiveness of economic activity” and “will also affect issues related to the enforcement” of various laws.<sup>402</sup> This description does not identify a “restriction” necessitating the imposition of a non-automatic licensing regime.

198. Because the DJAI Requirement does not impose an underlying “restriction,” it necessarily has “additional” “trade-restrictive” or “trade-distortive” effects. For that reason, the DJAI Requirement is inconsistent with the first sentence of Article 3.2 of the Import Licensing Agreement.

### **3. Argentina’s Licensing Requirements Are More Administratively Burdensome than Absolutely Necessary to Administer the Measure**

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<sup>396</sup> Import Licensing Agreement, preamble.

<sup>397</sup> *EC – Poultry (AB)*, para. 121.

<sup>398</sup> *AFIP Resolution 3252*, preamble (JE-15).

<sup>399</sup> *AFIP Resolution 3255*, preamble (JE-16).

<sup>400</sup> *AFIP Resolution 3255*, art. 1 (JE-16).

<sup>401</sup> *SCI Resolution 1*, preamble.

<sup>402</sup> *SCI Resolution 1*, preamble.

199. The second sentence of Article 3.2 states, in part, that “non-automatic import licensing procedures . . . shall be no more administratively burdensome than absolutely necessary to administer the measure.” In order to determine whether a licensing procedure is consistent with Article 3.2, it is necessary to identify the “measure” implemented by the licensing procedure. The “measure” in the second sentence of Article 3.2 refers to the measure imposing the “restriction” described in the first sentence.<sup>403</sup>

200. The DJAI Requirement imposes excessive administrative burdens on importers and, for the reasons discussed above, does not implement any identifiable measure. The DJAI system requires the importer to make an initial application, wait up to 15 days for information on whether the application has been approved or whether further action is needed, and then reach out to any number of the six or seven agencies participating in the DJAI system that may lodge an “observation”. The guidance and legal instruments place the burden on the importer to approach the agency or agencies which placed the observation on the DJAI application in order to determine what further information or action may be required for the importer to obtain approval for the DJAI application. They do not explain how contact with the agency or agencies should be made. In addition, there is no information on the additional information or action an importer may be required to undertake to resolve the observation, and so an importer is unable to prepare a response to whatever concerns may arise.

201. This system is highly burdensome for the importer and is not necessary, as there is no identified measure implemented by the DJAI system. For these reasons, the DJAI Requirement is inconsistent with the second sentence of Article 3.2 of the Import Licensing Agreement.

**F. THE DJAI REQUIREMENT IS INCONSISTENT WITH ARTICLE 1.6 OF THE IMPORT LICENSING AGREEMENT**

202. Article 1.6 of the Import Licensing Agreement states that:

Application procedures, and where applicable, renewal procedures shall be as simple as possible. . . . Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

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<sup>403</sup> The first part of the second sentence of Article 3.2 explains that non-automatic import licensing procedures are “used to implement” a “measure”. Article 3.3 states that licensing requirements may be used to implement “quantitative restrictions”. In that case, the “quantitative restriction” is imposed through the “measure” implemented by the by licensing requirement. Article 3.3 also provides that a licensing requirement may have “other purposes”. In other words, a licensing requirement may be used to implementing a measure imposing a restriction other than a “quantitative restriction.”

203. The DJAI Requirement is inconsistent with Article 1.6 because importers must separately approach up to seven agencies – AFIP, SCI, ANMAT, SEDRONAR, SENASA, INV, and INTI – in order to resolve observations and receive authorization to import.<sup>404</sup>

204. Article 1.6 places a high standard on determining whether a licensing system may require applicants to approach more than one administrative body. It provides that applicants may be required to approach more than one administrative body *only* if it is “strictly indispensable”. The ordinary mean of “indispensable” is “absolutely necessary or vital,”<sup>405</sup> and “strictly” means “with the use of words in their strict sense, precisely.”<sup>406</sup> Thus, a licensing system may only require that an applicant approach more than one body when absolutely indispensable. When an importer submits a DJAI application through the electronic system to AFIP, AFIP reviews each submission for reasons related to tax purposes, thus an importer approaches AFIP for its own review. Any time *any one* of the six participating agencies other than AFIP places an observation on an application an applicant is required to approach a second administrative body (and more, where additional agencies make observations).

205. From the purposes of the DJAI Requirement described above, there is no basis for requiring an applicant to approach more than one administrative body. Those purposes described at paragraphs 16 include “promot[ing] multisector coordination among different government agencies”; “increas[ing] cooperation among these agencies” through the “availability of strategic information;”<sup>407</sup> and “facilitate[ing] the creation of a process integrating the management of government agencies participating in foreign trade operations”.<sup>408</sup> None of these objectives render “absolutely necessary or vital” a system in which applicants must approach more than one agency in connection with an application.

206. Further, Article 1.6 provides that a licensing system may not require an applicant to approach more than three administrative bodies under any circumstances. Under the DJAI system, an importer may be required to approach up to seven administrative bodies. For these reasons, Argentina’s DJAI Requirement is inconsistent with Import Licensing Agreement Article 1.6.

**G. ARGENTINA ADMINISTERS THE DJAI REQUIREMENT IN A MANNER  
INCONSISTENT WITH ARTICLE 3.5(F) OF THE IMPORT LICENSING AGREEMENT**

207. Article 3.5(f) of the Import Licensing Agreement states that:

the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as

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<sup>404</sup> For the reasons set forth in Section VI.A.2, the DJAI Requirement is an import licensing requirement subject to the provisions of the Import Licensing Agreement.

<sup>405</sup> *The New Shorter Oxford English Dictionary* at 1351 (1993) (JE-83).

<sup>406</sup> *The New Shorter Oxford English Dictionary* at 3093 (1993) (JE-83).

<sup>407</sup> *AFIP Resolution 3252*, preamble (JE-15).

<sup>408</sup> *AFIP Resolution 3255*, preamble & art. 1 (JE-16).

and when received, i.e. on a first-come first-serve basis, and not longer than 60 days if all applications are considered simultaneously.

208. In the case of the DJAI Requirement, the 30-day time limit applies, because applications are not considered simultaneously, but rather on a first-come first serve basis, as they are received. As described in Section III.A, the individual agencies have up to 15 days to lodge observations, and once an observation has been made, there is no time limit for the resolution of the observation. In practice, as demonstrated by the evidence, Argentine officials frequently fail to abide by the 15 day time limit.

209. Nearly one in three respondents to a U.S. Chamber of Commerce survey reported that, for 75 percent or more of their DJAI applications, it took over 60 days to receive a denial or approval.<sup>409</sup> Another 20 percent of respondents waited 60 days or more for action on between 50-75 percent of their DJAI applications.<sup>410</sup> In addition, evidence from Argentine court cases, as well as the experience of Company X and Company Y provide examples of significant delays in the processing of DJAI applications, well beyond the 30 day limit set out in Import Licensing Agreement Article 3.5(f). Accordingly, Argentina administers the DJAI Requirement in a manner that is inconsistent with Article 3.5(f).

**H. ARGENTINA HAS ACTED INCONSISTENTLY WITH ARTICLES 5.1, 5.2, 5.3, AND 5.4 OF THE IMPORT LICENSING AGREEMENT BY FAILING TO NOTIFY THE DJAI LICENSING PROCEDURES AND CHANGES THERETO**

210. Article 5.1 of the Import Licensing Agreement provides that “Members which institute licensing procedures or changes in these procedures shall notify the Committee [on Import Licensing] of such within 60 days of publication.” Article 5.2 requires that a notification of the institution of import licensing procedures include a set of information. Article 5.3 requires that notifications of changes to import licensing procedures indicate whether any of the elements listed in Article 5.2 have changed, and Article 5.4 requires that Members “notify the Committee of the publication(s) in which the information required in paragraph 4 of Article 1 will be published.” Argentina has not notified the DJAI licensing procedure, or any changes thereto, including changes made by *Resolution 3255* and the Updated Annex to *Resolution 3255*.<sup>411</sup> As a result, Argentina has acted inconsistently with Articles 5.1, 5.2 and 5.3. In addition, Argentina has not notified the Committee of the publications in which the information required in Article 1.4 of the Import Licensing Agreement is published.<sup>412</sup> For these reasons, Argentina has acted inconsistently with Articles 5.1, 5.2, 5.3, and 5.4 of the Import Licensing Agreement.

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<sup>409</sup> *US Chamber of Commerce Report* at 3 (JE-56).

<sup>410</sup> *US Chamber of Commerce Report* at 3 (JE-56).

<sup>411</sup> A review of notifications available the “WTO Documents Online” online database shows that Argentina has not notified these measures.

<sup>412</sup> A review of notifications available the “WTO Documents Online” online database shows that Argentina has not notified the publications in which the information required by Article 1.4 of the Import Licensing Agreement is published.

**V. CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Panel find that the DJAI Requirement is inconsistent with Articles X:3(a) and XI:1 of the GATT 1994 and Articles 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3, and 5.4 of the Import Licensing Agreement, and that the RTRRs are inconsistent with Articles X:1 and XI:1 of the GATT 1994.

**Table of Exhibits**

<b>Exhibit No.</b>	<b>Description</b>	<b>Short Title</b>
JE-1	Press Release, Ministerio de Industria [Ministry of Industry], Una Importadora Automotriz Podrá Compensar Exportando [Automobile Importers May Compensate by Exporting] (March 25, 2011), available at <a href="http://www.prensa.argentina.ar/2011/03/25/17834-una-importadora-automotriz-podra-compensar-exportando.php">http://www.prensa.argentina.ar/2011/03/25/17834-una-importadora-automotriz-podra-compensar-exportando.php</a> (Arg.)	<i>Ministry of Industry Press Release March 25, 2011</i>
JE-2	JuguetesyNegocios.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), <a href="http://juguetesynegocios.com/?Como_liberar_Declaraciones_de_Importacion_&amp;page=ampliada&amp;id=614&amp;s=%E2%80%A6">http://juguetesynegocios.com/?Como_liberar_Declaraciones_de_Importacion_&amp;page=ampliada&amp;id=614&amp;s=%E2%80%A6</a> (Arg.)	<i>How to Release Declarations of Importation</i>
JE-3	<i>Moreno Aclaró que Sus Controles Sobre las Importaciones Se Aplicarán A Cien Empresas que Consumen 80% de las Divisas</i> [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, available at <a href="http://www.diariobae.com/diario/2012/01/31/7534-moreno-aclaro-que-sus-controles-sobre-las-importaciones-se-aplicaran-a-cien-empresas-que-consumen-80-de-las-divisas.html">http://www.diariobae.com/diario/2012/01/31/7534-moreno-aclaro-que-sus-controles-sobre-las-importaciones-se-aplicaran-a-cien-empresas-que-consumen-80-de-las-divisas.html</a>	<i>BAE January 31, 2012</i>
JE-4	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi, Boudou y Moreno subscribieron el plan de exportaciones e importaciones de General Motors [Giorgi, Boudou, and Moreno Sign General Motors Export-Import Plan] (May 2, 2011), available at <a href="http://www.industria.gob.ar/giorgi-boudou-y-moreno-suscribieron-el-plan-de-exportaciones-e-importaciones-de-general-motors/?upm_export=html">http://www.industria.gob.ar/giorgi-boudou-y-moreno-suscribieron-el-plan-de-exportaciones-e-importaciones-de-general-motors/?upm_export=html</a> (Arg.)	<i>Ministry of Industry Press Release May 2, 2011</i>
JE-5	Press Release, Ministerio de Industria [Ministry of Industry], Compromiso de automotriz para equiparar su balanza [English Title] (April 6, 2011), available at <a href="http://www.prensa.argentina.ar/2011/04/06/18215-compromiso-de-automotriz--para-equiparar-su-balanza.php#">http://www.prensa.argentina.ar/2011/04/06/18215-compromiso-de-automotriz--para-equiparar-su-balanza.php#</a> (Arg.)	
JE-6	Pedro Ylarri, <i>Faltarán más ropa, juguetes, y electrónicos importados</i> [Due to Restrictions on	<i>Perfil July 17, 2011</i>



Exhibit No.	Description	Short Title
	<i>Imports, Clothes, Toys, and Electronics Will Be in Short Supply</i> ], PERFIL (Arg.), July 17, 2011, at 22-23.	
JE-7	Press Release, Ministerio de Industria [Ministry of Industry], Amplian el universo de productos importados monitoreados por el sistema de licencias no automáticas [More Imports Subject to Non-Automatic Licensing] (February 15, 2011), available at <a href="http://www.industria.gob.ar/?p=6053&amp;upm_export=print">http://www.industria.gob.ar/?p=6053&amp;upm_export=print</a> (Arg.)	<i>Ministry of Industry Press Release February 15, 2011</i>
JE-8	Roberto Navarro, <i>El Plan 2012</i> , DEBATE, Jan. 27, 2012, <a href="http://www.revistadebate.com.ar/2012/01/27/4993.php">http://www.revistadebate.com.ar/2012/01/27/4993.php</a> (last visited Sept. 27, 2012)	<i>Robert Navarro, El Plan 2012</i>
JE-9	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi: “Este Gobierno cree y aplica administración del comercio” [Giorgi: “Administration Has Established and Is Implementing Trade Management”] (February 25, 2011), available at <a href="http://www.industria.gob.ar/?p=6234">http://www.industria.gob.ar/?p=6234</a>	<a href="#"><i>Ministry of Industry Press Release February 25, 2011</i></a>
JE-10	<i>Cristina Kirchner Defendió las trabas a las importaciones</i> [Cristina Kirchner Defends Import Restrictions], LA NACIÓN (Arg.), September 7, 2011	
JE-11	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con empresarios textiles y avanzó en la puesta en marcha de medidas para proteger la industria nacional de la competencia desleal [Giorgi Meets with Textile Entrepreneurs and Moves Forward in with Implementation of Measures to Protect Argentine Industry from Unfair Competition] (January 31, 2012), available at <a href="http://www.industria.gob.ar/?p=11042&amp;upm_export=print">http://www.industria.gob.ar/?p=11042&amp;upm_export=print</a>	<i>Ministry of Industry Press Release January 31, 2012</i>
JE-12	<i>Mexico said it would drop a complaint over import curbs against Argentina before the World Trade Organization after the two countries signed a more limited automobile trade pact</i> , REUTERS, December 14, 2012, <a href="http://www.reuters.com/article/2012/12/14/us-mexico-argentina-wto-idUSBRE8BD16B20121214">http://www.reuters.com/article/2012/12/14/us-mexico-argentina-wto-idUSBRE8BD16B20121214</a>	<i>Reuters December 14, 2012</i>
JE-13	<i>Administración Federal de Ingresos Públicos, Manual de uso para el Registro y Afectación de la “Declaración Jurada Anticipada de Importación</i> (DJAI), [DJAI User Manual], (Version 6.0, July 2012)	<i>DJAI User Manual</i>

<b>Exhibit No.</b>	<b>Description</b>	<b>Short Title</b>
JE-14	<i>Administración Federal de Ingresos Públicos, Ventanilla Unica Electronica del Comercio Exterior [Electronic Single Window for International Trade], Resolución 3256, January 26, 2012, [32.327] B.O. 21 (Arg.)</i>	<i>AFIP Resolution 3256</i>
JE-15	<i>Administración Federal de Ingresos Públicos, Declaración Jurada Anticipada de Importación [Advance Import Affidavit], Resolución 3252, January 5, 2012, [32.314] B.O. 7 (Arg.)</i>	<i>AFIP Resolution 3252</i>
JE-16	<i>Administración Federal de Ingresos Públicos, Ventanilla Unica Electronica [Electronic Single Window], Resolución 3255, January 20, 2012 [32.323] B.O. 14 (Arg.)</i>	<i>AFIP Resolution 3255</i>
JE-17	Tarif Lines Matrix	
JE-18	<i>Ministerio de Economía y Obras y Servicios Públicos, Defensa del Consumidor [Consumer Protection], Resolución 977, August 6, 1999 [29.206] B.O. 8 (Arg.)</i>	<i>MEOSP Resolution 977</i>
JE-19	<i>Secretaria de Industria, Comercio y Minería, Defensa del Consumidor [Consumer Protection], Resolución 736, October 1, 1999 [29.243] B.O. 12-13 (Arg.)</i>	<i>SICM Resolution 736</i>
JE-20	<i>Ministerio de Economía y Producción, Establécese un mecanismo de verificación previo al libramiento a plaza de productos del sector calzado, con el objeto de efectuar el seguimiento y control de las importaciones. Certificado de Importación de Calzado para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur [Ordering the Establishment of a Mechanism for Verification Prior to the Placing on the Market of Footwear Sector Products in order to Monitor and Control Imports. Certificate for the Import of Footwear for Specific Goods Falling within Tariff Positions of the Mercosur Common Nomenclature], Resolución 486, August 30, 2005[30.728] B.O. 9-11 (Arg.)</i>	<i>MEP Resolution 486</i>
JE-21	<i>Ministerio de Economía y Obras y Servicios Públicos, Defensa del Consumidor [Consumer Protection], Resolución 1117, September 15, 1999 [29.235] B.O. 3 (Arg.)</i>	<i>MEOSP Resolution 1117</i>
JE-22	<i>Secretaria de Industria, Comercio y Minería, Establécese el procedimiento para la tramitación del Certificado de Importación de papeles no</i>	<i>SICM Resolution 798</i>

Exhibit No.	Description	Short Title
	<p><i>encapados destinados a la impresión, escritura u otros fines gráficos, con exclusión del papel prensa</i> [Establishing a Procedure for the Processing of Import Certificates for Non-Coated Paper for Printing, Writing or Other Graphic Purposes, Excluding Newsprint], <i>Resolución 798</i>, October 26, 1999 [29.259] B.O. 10-11 (Arg.).</p>	
JE-23	<p><i>Ministerio de Economía y Producción, Unificación y armonización gradual del marco normativo del comercio exterior argentino. Establécese que la Secretaría de Industria, Comercio y de la Pequeña y Mediana Empresa coordinará las acciones necesarias a efectos de concretar dicha unificación. Sistematización de los trámites referidos a la obtención de licencias previas de importación de carácter automático y/o no automático. Inclúyense mercaderías comprendidas en posiciones arancelarias de la N.C.M. en el régimen de la Licencia No Automática Previa de Importación (LNAP)</i>[Gradual Unification and Harmonisation of the Regulatory Framework for Argentine Foreign Trade. It Is Hereby Established that the Secretariat of Industry, Trade and Small and Medium-sized Enterprises (SMEs) Shall Coordinate the Necessary Actions to Implement this Unification. Systematisation of the Procedures for Obtaining Automatic and/or Non-Automatic Prior Import Licences. Merchandise Covered by the Mercosur Common Nomenclature (N.C.M.) Tariff Headings Shall be Included in the System of Non-Automatic Prior Import Licensing (LNAP)], <i>Resolución 444</i>, July 5, 2004 [30.436] B.O. 3 (Arg.)</p>	MEP Resolution 444
JE-24	<p><i>Secretaría de Industria, Comercio y de la Pequeña y Mediana Empresa, Institúyese el Certificado de Importación de Artículos para el Hogar (CIAH), el que será exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo</i> [Establishing the Import Certificate for Household Goods (CIAH), Required only for Requests for Final Import for Consumption], <i>Resolución 177</i>, July 21, 2004 [30.447], B.O. 4-6 (Arg.)</p>	SICPME Resolution 177
JE-25	<p><i>Ministerio de Economía y Producción, Establécese un mecanismo de verificación previo al libramiento a plaza de productos del sector juguetes, con el objeto de efectuar el seguimiento y control de las importaciones.</i></p>	MEP Resolution 485

Exhibit No.	Description	Short Title
	<p><i>Certificado de Importación de Juguetes para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur.</i> [Establishing a Mechanism for Verifying Toy Sector Products Prior to Their Customs Clearance, with the Aim of Monitoring and Controlling Imports. Import Certificate for Toys, for Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature], <i>Resolución</i> 485, August 30, 2005 [30.728], B.O. 6-9 (Arg.)</p>	
JE-26	<p><i>Ministerio de Economía y Producción, Establécese para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur, el Certificado de Importación de Motocicletas, que será exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo</i> [Providing for Goods Included under Specific Tariff Positions in the Mercosur Market Common Nomenclature, the Certificate for the Import of Motorcycles, which Shall be Required Exclusively for Requests for Their Definitive Import and Use], <i>Resolución</i> 689, August 30, 2006 [30.980], B.O. 25-27 (Arg.)</p>	MEP Resolution 689
JE-27	<p><i>Ministerio de Economía y Producción, Establécese para las mercaderías en estado nuevo, comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur, el Certificado de Importación de Cubiertas y Cámaras Neumáticas de Bicicletas, que será exigible exclusivamente para las solicitudes de destinación de importación definitiva</i> [Establishing for New Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature, the Import Certificate for Bicycle Inner Tubes and Tyres (C.I.C.C.N.B.), Required only for Requests for Final Import for Consumption], <i>Resolución</i> 694, September 5, 2006 [30.985], B.O. 6-8 (Arg.)</p>	MEP Resolution 694
JE-28	<p><i>Ministerio de Economía y Producción. Establécese, para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Manufacturas</i></p>	MEP Resolution 47

Exhibit No.	Description	Short Title
	<p><i>Diversas, exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones.</i>, [Establishing, for merchandise covered by particular tariff headings of the Mercosur Common Nomenclature (N.C.M.), the Import Certificate for Different Manufactured Goods, required only for requests for final import for consumption. Exemptions.], <i>Resolución 47</i>, August 15, 2007 [31.2220], B.O. 6-7 (Arg.)</p>	
JE-29	<p><i>Ministerio de Economía y Producción, Establécese, para mercaderías comprendidas en determinadas posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Partes de Calzado (C.I.P.C.), exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones.</i>[Establishing, for Merchandise Covered by Particular Tariff Headings of the Mercosur Common Nomenclature (N.C.M.), he Import Certificate for Footwear Parts (C.I.P.C.), Required only for Requests for Final Import for Consumption. Exemptions.], <i>Resolución 61</i>, August 17, 2007 [31.223], B.O. 6-8 (Arg.)</p>	MEP Resolution 61
JE-30	<p><i>Ministerio de Economía y Producción, Establécese un procedimiento para la tramitación del Certificado de Importación de Pelotas, que será exigible para las solicitudes de destinación de importación definitiva para consumo</i> [Establishing a Procedure for Issuing the Import Certificate for Balls, Required Only for Requests for Final Import for Consumption.], <i>Resolución 217</i>, April 20, 2007 [31.139], B.O. 13 -14 (Arg.)</p>	MEP Resolution 217
JE-31	<p><i>Ministerio de Economía y Producción, Establécese, para mercaderías comprendidas en las posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Productos Textiles (C.I.P.T.), exigible exclusivamente para las solicitudes de destinación de importación definitiva para consumo. Excepciones.</i> [Established for Merchandise Covered by the Tariff Headings of the Mercosur Common Nomenclature (N.C.M.), the Import Certificate for Textile Products (C.I.P.T.), Required Only</p>	MEP Resolution 343

Exhibit No.	Description	Short Title
	for Requests for Final Import for Consumption. Exemptions.], <i>Resolución</i> 343, May 24, 2007 [31.162], B.O. 10-12 (Arg.)	
JE-32	<i>Ministerio de Economía y Producción, Establécese para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el Certificado de Importación de Productos Metalúrgicos (C.I.P.M.)</i> [Established for Certain Goods Included in the Tariff Classifications of Common Mercosur Nomenclature (N.C.M.), the Importation Certificate for Metallurgical Products (C.I.P.M.)], <i>Resolución</i> 588, November 4, 2008 [31.528], B.O. 9-10 (Arg.)	<i>MEP Resolution 588</i>
JE-33	<i>Ministerio de Economía y Producción, Establécese para determinadas mercaderías comprendidas en posiciones arancelarias de la Nomenclatura Común del Mercosur (N.C.M.), el certificado de Importación de Hilados y Tejidos (C.I.H.T.)</i> [Establishing the Yarns and Fabrics Import Certificate (CIHT) for Certain Goods Classified under MERCOSUR Common Nomenclature (NCM) Tariff Headings], <i>Resolución</i> 589, November 10, 2008 [31.528], B.O. 10-12 (Arg.)	<i>MEP Resolution 589</i>
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JE-101	Press Release, Ministerio de Industria [Ministry of Industry], Scania le informó a la Presidenta que invertirá u\$s 40 millones en la Argentina [Scania Has Informed the President that It Will Invest USD 40 million in Argentina] (November 21, 2011), available at <a href="http://www.prensa.argentina.ar/2011/11/21/25857-scania-le-informo-a-la-presidenta-que-invertira-us-40-millones-en-la-argentina.php">http://www.prensa.argentina.ar/2011/11/21/25857-scania-le-informo-a-la-presidenta-que-invertira-us-40-millones-en-la-argentina.php</a> (Arg.)	<i>Ministry of Industry Press Release November 21, 2011</i>
JE-102	Press Release, Ministerio de Industria [Ministry of Industry], El Gobierno firmó un convenio con la automotriz Thermodyne Vial para aumentar exportaciones, (February 1, 2012), available at <a href="http://www.prensa.argentina.ar/2012/02/01/27804-el-gobierno-firmo-un-convenio-con-la-automotriz-thermodyne-vial-para-aumentar-exportaciones.php">http://www.prensa.argentina.ar/2012/02/01/27804-el-gobierno-firmo-un-convenio-con-la-automotriz-thermodyne-vial-para-aumentar-exportaciones.php</a> (Arg.)	
JE-103	Press Release, Ministerio de Industria [Ministry of	<i>Ministry of Industry</i>

Exhibit No.	Description	Short Title
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JE-106	<i>Juki Exporta Vinos</i> , ÁMBITO FINANCIERO (Arg.) (April 23, 2012), available at <a href="http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=635759&amp;Seccion=Secciones%20Especiales">http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=635759&amp;Seccion=Secciones%20Especiales</a>	
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JE-109	<i>Editorial</i> , REVISITA MOTOMUNDO (Monterrey, Mex.), Year XXI, Number 241, Month 18, 3 (May, 2012)	
JE-110	<i>Suzuki Motos Argentina Exporta</i> , ÁMBITO FINANCIERO (Arg.) (May 31, 2012), available at <a href="http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=639757&amp;Seccion=Secciones%20Especiales">http://www.ambito.com/suplementos/automotor/noticia_suplemento.asp?ID=639757&amp;Seccion=Secciones%20Especiales</a>	
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JE-117	Lavoz.com.ar, Más fábricas de motos exportan vino (June 9, 2012), <a href="http://www.lavoz.com.ar/noticias/negocios/mas-fabricas-motos-exportan-vino">http://www.lavoz.com.ar/noticias/negocios/mas-fabricas-motos-exportan-vino</a> (Arg.) (last visited May 3, 2013)	
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JE-126	<i>Sin repuesto</i> , DIARIO POPULAR (Arg.), March 21, 2012, available at <a href="http://www.diariopopular.com.ar/notas/112694-sin-repuesto">http://www.diariopopular.com.ar/notas/112694-sin-repuesto</a>	
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JE-132	<i>Publishers Promise to Balance Trade by September 2012</i> , EL TRIBUNO (Arg.), (Esmerk trans.), November 1, 2011	
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JE-135	<i>Books Industry Bends to Imports Control Policy</i> , EL CLARIN (Arg.), (South American Business Information trans.), November 11, 2011	
JE-136	<i>Avanza Ley Moreno: También en el Cine Dólar por Dólar [The Moreno Law Advances: At the Movies, Too, Dollar for Dollar]</i> , ÁMBITO FINANCIERO (Arg.), November 24, 2011	<i>Ámbito Financiero November 24, 2011</i>
JE-137	Press Release, Presidencia de la Nación Argentina [President of Argentina], Palabras de la Presidenta de la Nación Cristina Fernández en el acto de cierre de	<i>President of Argentina Press Release December 6,</i>

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JE-139	<i>Compensación de importaciones: pymes locales le venden a fabricante mundial de neumáticos</i> , BUENOS AIRES ECONÓMICO (Arg.), December 6, 2012, available at <a href="http://www.diariobae.com/diario/2012/12/06/21169-compensacion-de-importaciones-pymes-locales-le-venden-a-fabricante-mundial-de-neumaticos.html">http://www.diariobae.com/diario/2012/12/06/21169-compensacion-de-importaciones-pymes-locales-le-venden-a-fabricante-mundial-de-neumaticos.html</a>	
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JE-143	Julieta Camandone, <i>Agroquímicas presentan sus números a Moreno para poder importar</i> , EL CRONISTA (Arg.), February 23, 2012, available at <a href="http://www.cronista.com/negocios/Agroquimicas-presentan-sus-numeros-a-Moreno-para-poder-importar-20120223-0060.html">http://www.cronista.com/negocios/Agroquimicas-presentan-sus-numeros-a-Moreno-para-poder-importar-20120223-0060.html</a>	
JE-144	Julieta Carmandone, <i>Agroquímicas aumentarán sus exportaciones para poder ingresar insumos al país</i> , EL CRONISTA (Arg.), May 30, 2012, available at <a href="http://www.cronista.com/negocios/Agroquimicas-aumentaran-sus-exportaciones-para-poder-ingresar-insumos-al-pais-20120530-0056.html">http://www.cronista.com/negocios/Agroquimicas-aumentaran-sus-exportaciones-para-poder-ingresar-insumos-al-pais-20120530-0056.html</a>	
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JE-146	<p>Nuria Rebón, <i>Samsung busca exportar minerales a Corea para compensar importaciones</i>, EL CRONISTA (Arg.), February 27, 2012, available at <a href="http://www.cronista.com/negocios/Samsung-busca-exportar-minerales-a-Corea-para-compensar-importaciones-20120227-0028.html">http://www.cronista.com/negocios/Samsung-busca-exportar-minerales-a-Corea-para-compensar-importaciones-20120227-0028.html</a></p>	
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JE-152	<p><i>Newsan exporta pescado para compensar el déficit en</i></p>	

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JE-210	Press Release, Ministerio de Industria [Ministry of Industry], La ministra Giorgi se reunió con empresarios mineros (August 11, 2011), available at <a href="http://www.industria.gob.ar/la-ministra-giorgi-se-reunio-con-empresarios-mineros/">http://www.industria.gob.ar/la-ministra-giorgi-se-reunio-con-empresarios-mineros/</a> (Arg.)	
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JE-212	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi convoca a la mesa nacional minera para sustituir importaciones en el corto plazo por 200 millones de dólares", Ministerio de Industria (April 9, 2012), available at <a href="http://www.industria.gob.ar/giorgi-convoca-a-la-mesa-nacional-minera-para-sustituir-importaciones-en-el-corto-plazo-por-200-millones-de-dolares/">http://www.industria.gob.ar/giorgi-convoca-a-la-mesa-nacional-minera-para-sustituir-importaciones-en-el-corto-plazo-por-200-millones-de-dolares/</a> (Arg.)	
JE-213	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi con mineras: impulso a la fabricación local de bienes de capital para el sector", Ministerio de Industria (April 22, 2012), available at <a href="http://www.industria.gob.ar/giorgi-con-mineras-">http://www.industria.gob.ar/giorgi-con-mineras-</a>	

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	<a href="#">impulso-a-la-fabricacion-local-de-bienes-de-capital-para-el-sector/</a> (Arg.)	
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JE-225	GOLDCORP INC., 2012 Second Quarter Results, ENP Newswire, July 31, 2012	<i>Goldcorp 2012 Second Quarter Report</i>
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JE-229	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con automotrices y planteó	

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JE-235	Press Release, Ministerio de Industria [Ministry of Industry], Giorgi se reunió con fabricantes de matrices y moldes y automotrices para avanzar en la integración de componentes nacionales en los autos (November 7,	

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JE-306	Vice President of Company X Signed Affidavit, July 12, 2012	<i>VP of Company X Affidavit</i>
JE-307	Vice President of Company Y Signed Affidavit, April 10, 2013	<i>VP of Company Y Affidavit</i>
JE-308	Speech by Minister Norberto Yahuar (audio), available at <a href="http://www.agrositio.com/vertext/vertext.asp?id=130834&amp;se=1">http://www.agrositio.com/vertext/vertext.asp?id=130834&amp;se=1</a> . [Audio file]	
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JE-313	Natalia Donato, <i>Comienza hoy a regir las trabas a las importaciones, pero preparan excepciones</i> , EL CRONISTA	

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<b>Exhibit No.</b>	<b>Corresp. EU-No.</b>	<b>Title</b>
JE-315	EU-1	"Palabras de la Presidenta de la Nación Cristina Fernández en el Acto de Inauguración de la Segunda Etapa de las Obras de Construcción del Estadio Polideportivo, en Villa Adelina, Partido de Vicente Lopez", Casa Rosada, 16 October 2008, available at <a href="http://www.casarosada.gov.ar/index.php?option=com_content&amp;task=view&amp;id=3250&amp;Itemid=66">http://www.casarosada.gov.ar/index.php?option=com_content&amp;task=view&amp;id=3250&amp;Itemid=66</a>
JE-316	EU-2	"Palabras de la Presidenta de la Nación Cristina Fernández en el Acto de Entrega de Aportes no Reintegrables a Parques Industriales, en el Salón de las Mujeres Argentinas del Bicentenario", Casa Rosada, 14 December 2011, available at <a href="http://www.casarosada.gov.ar/home/25616">http://www.casarosada.gov.ar/home/25616</a>
JE-317	EU-3	"Palabras de la Presidenta de la Nación, Dra. Cristina Fernández, en el acto de la primera declaración del proyecto Gas Plus, en el salón de los Cuadros, en el Ministerio de Economía de la Nación, Casa Rosada, available at <a href="http://www.presidencia.gob.ar/discursos/3243">http://www.presidencia.gob.ar/discursos/3243</a>
JE-318	EU-4	"Palabras de la Presidenta de la Nación Cristina Kirchner, en el Centro Municipal de Viedma, provincia de Rio Negro", Casa Rosada, available at <a href="http://www.presidencia.gob.ar/discursos/3248">http://www.presidencia.gob.ar/discursos/3248</a>
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JE-320	EU-6	Debora Giorgi inauguró dos plantas industriales y supervisó el desarrollo de una tercera que totalizan inversiones por \$ 44 M", Ministerio de Industria, 24 January 2012, available at <a href="http://www.industria.gob.ar/giorgi-inauguro-dos-plantas-industriales-y-superviso-el-desarrollo-de-una-tercera-que-totalizan-inversiones-por-44-m/">http://www.industria.gob.ar/giorgi-inauguro-dos-plantas-industriales-y-superviso-el-desarrollo-de-una-tercera-que-totalizan-inversiones-por-44-m/</a>

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JE-321	EU-7	"Rechazamos esta declaración contra Argentina. Tenemos una economía dos veces más abierta que en los '90", Ministerio de Industria, 30 March 2012, available at <a href="http://www.industria.gob.ar/giorgi-rechazamos-esta-declaracion-contra-argentina-tenemos-una-economia-dos-veces-mas-abierta-que-en-los-90/">http://www.industria.gob.ar/giorgi-rechazamos-esta-declaracion-contra-argentina-tenemos-una-economia-dos-veces-mas-abierta-que-en-los-90/</a>
JE-322	EU-8	"Amplían en universo de productos importados monitoreados por el sistema de licencias no automáticas", Ministerio de Industria, 15 February 2011, available at <a href="http://www.industria.gob.ar/amplian-el-universo-de-productos-importados-monitoreados-por-el-sistema-de-licencias-no-automaticas/">http://www.industria.gob.ar/amplian-el-universo-de-productos-importados-monitoreados-por-el-sistema-de-licencias-no-automaticas/</a>
JE-323	EU-9	"Giorgi: 'No dejaremos el mercado interno en manos de la competencia desleal", Ministerio de Industria, 16 February 2011, available at <a href="http://www.industria.gob.ar/giorgi-no-dejaremos-el-mercado-interno-en-manos-de-la-competencia-desleal/">http://www.industria.gob.ar/giorgi-no-dejaremos-el-mercado-interno-en-manos-de-la-competencia-desleal/</a>
JE-324	EU-10	"'Queremos que todo lo que se construya y lo que se plante en Argentina sea producto del trabajo argentino' afirmó la Presidenta", Casa Rosada, 29 November 2011, available at <a href="http://www.presidencia.gov.ar/discursos/25570">http://www.presidencia.gov.ar/discursos/25570</a>
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JE-328	EU-14	Document produced by Mr. Richard Rodríguez, Notary Public in Geneva, dated 13 June 2013
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JE-332	EU-18	"La denuncia contra Moreno a cargo de Oyarbide", La Nacion, 25 September 2012, available at <a href="http://www.lanacion.com.ar/1511564-la-denuncia-contra-moreno-a-cargo-de-oyarbide">http://www.lanacion.com.ar/1511564-la-denuncia-contra-moreno-a-cargo-de-oyarbide</a>
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