

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

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

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TABLE OF CONTENTS

Table of Reports.....	iii
Table of Abbreviations	vi
I. Introduction.....	1
II. The DJAI Requirement Is Inconsistent with Argentina’s Obligations under Article XI:1 of the GATT 1994.....	2
A. The DJAI Requirement Is a Restriction Under Article XI:1 of the GATT 1994 and Is Inconsistent with that Provision	2
1. The DJAI Requirement Is a Discretionary, Non-Automatic Import Licensing Procedure Inconsistent with Article XI:1	3
2. The Coverage of Article XI:1 Does Not Depend on Whether a Measures is Characterized as “Procedural” or “Substantive”.....	4
3. Argentina’s “Subsidiary” Argument Is Not Applicable to the Facts in this Dispute	8
B. Article XI:1 Does Not Require a Demonstration of “Trade Effects”.....	10
C. Article VIII of the GATT 1994 Does Not Limit the Application of Article XI:1.....	11
D. The Principle of <i>Lex Specialis</i> Does Not Bar the Evaluation of the DJAI Requirement Under Article XI of the GATT 1994	14
III. The DJAI Requirement Is An Import Licensing Procedure Subject to the Import Licensing Agreement.....	16
A. The DJAI Requirement Is an Import Licensing Procedure.....	16
B. The DJAI Requirement Is Not for “Customs Purposes”.....	18
C. The DJAI Requirement Is Not Implemented According to the SAFE Framework ..	21
IV. The United States Has Demonstrated that the DJAI Requirement Is Inconsistent with Article 3.2 of the Import Licensing Agreement.....	23
V. The DJAI Requirement is Inconsistent with Article X:3(a) of the GATT 1994	24

VI.	The United States Has Established a Prima Facie Case of the Existence of the RTRRs Measure.....	25
A.	There Is No Special Burden of Proof for Unwritten Measures.....	25
B.	The United States Has Established a Prima Facie Case of the Existence of the RTRRs.....	27
VII.	The RTRRs Measure Is Inconsistent with Articles X:1 and XI:1 of the GATT 1994.....	29
A.	The RTRRs Measure Is Inconsistent with Article XI:1 of the GATT 1994	29
B.	The RTRRs Measure Is Inconsistent with Article X:1 of the GATT 1994.....	30
VIII.	Conclusion.....	31

Annex 1: U.S. Comments on Argentina’s Answers to the First Set of Panel Questions

Annex 2: Table of Exhibits

TABLE OF REPORTS

Short Form	Full Citation
<i>Argentina – Footwear (EC) (AB)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000
<i>Argentina – Hides and Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather</i> , WT/DS155/R and Corr.1, adopted 16 February 2001
<i>Chile – Price Band System (Article 21.5 – Argentina) (AB)</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina</i> , WT/DS207/AB/RW, adopted 22 May 2007
<i>China – Raw Materials (AB)</i>	Appellate Body Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012
<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>Dominican Republic – Import and Sale of Cigarettes (Panel)</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R
<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 – Biotech</i>	Panel Report, <i>European Communities – Measures Affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006
<i>EC – Sardines (AB)</i>	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> , WT/DS231/AB/R, adopted 23 October 2002

Short Form	Full Citation
<i>EC – Large Civil Aircraft (Panel)</i>	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/R, adopted 1 June 2011, as modified by Appellate Body Report, WT/DS316/AB/R
<i>India – Autos (Panel)</i>	Panel Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002
<i>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>Indonesia – Autos</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1 and 2, adopted 23 July 1998
<i>Korea – Beef (Panel)</i>	Panel Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report WT/DS161/AB/R, WT/DS169/AB/R
<i>Thailand – Cigarettes (AB)</i>	Appellate Body Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , WT/DS371/AB/R, adopted 15 July 2011
<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>Turkey – Textiles (Panel)</i>	Panel Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/R, adopted 19 November 1999, as modified by Appellate Body Report WT/DS34/AB/R
<i>US – COOL (AB)</i>	Appellate Body Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/AB/R / WT/DS386/AB/R, adopted 23 July 2012
<i>US – Tuna II (Mexico) (AB)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/AB/R, adopted 13 June 2012

Short Form	Full Citation
<i>US – Wool Shirts and Blouses (AB)</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997, and Corr.1
<i>US – Zeroing (EC) (AB)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1

TABLE OF ABBREVIATIONS

Abbreviation	Full Name
<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>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>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. In this dispute, the United States has challenged two restrictions Argentina has established and maintains on the importation of goods – the advance import affidavit (“DJAI”) Requirement and the Restrictive Trade-Related Requirements (“RTRRs”) – which it uses to protect and promote domestic industries and manage trade. These restrictions apply broadly across sectors and products and impose a significant burden on trade.

2. The evidence and arguments advanced by the United States demonstrate that the DJAI Requirement is a discretionary, non-automatic import licensing procedure, and that Argentine government officials (and in particular the *Secretaría de Comercio Interior* or “SCI”) have the ability to withhold approvals of DJAI applications for virtually any reason whatsoever. Argentina has not denied and cannot deny this. Although it has identified broad legal authority for its agencies’ participation in the DJAI system, Argentina has failed to provide any boundaries on the ability of SCI, or other agencies, to lodge “observations,” and thereby place a hold on an importer’s DJAI submission.

3. Argentina instead obscures the legal issues and facts relevant to the Panel’s analysis of the DJAI Requirement under Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”) with implausible legal interpretations and irrelevant facts. For example, Argentina seeks to limit the scope of Article XI:1 by arguing that it excludes “procedural” requirements and by arguing that Article VIII and Article XI:1 are “mutually exclusive” in their scope. In essence, Argentina asserts that Article VIII contains an exception to Article XI:1. This argument is devoid of any basis in the text of the WTO Agreement.

4. Argentina also persists in asserting that the DJAI Requirement was established pursuant to the World Customs Organization’s SAFE Framework of Standards to Secure and Facilitate Global Trade (“SAFE Framework”). Yet, Argentina has asserted no basis in the WTO Agreements – such as GATT Article XX – under which a possible exception to Article XI could be analyzed, so the SAFE Framework does not have any direct relevance to the Panel’s evaluation of the U.S. claims in this dispute. Further, the DJAI Requirement is demonstrably inconsistent with the principles of the SAFE Framework.

5. With respect to the RTRRs measure, the United States has also demonstrated a *prima facie* case as to its existence and inconsistency with Articles XI:1 and X:1 of the GATT 1994, which Argentina has failed to rebut. This measure is the decision by high-level Argentine officials to require commitments of importers to export a certain dollar value of goods; reduce the volume or value of imports; incorporate local content into products; make or increase investments in Argentina; and/or refrain from repatriating profits, as a prior condition for permission to import goods.

6. Argentina argues that a special evidentiary standard applies to the RTRRs because it is an unwritten measure, but that is not the case. The complainants in this dispute have the same burden as any party asserting a fact in the course of dispute settlement proceedings. Argentina cannot avoid scrutiny by this Panel of the large volume of evidence that the United States and co-complainants have submitted in this dispute. That evidence demonstrates the existence of the

RTRRs measure, and the United States has demonstrated its inconsistency with Argentina’s obligations under the WTO Agreement.

7. In Section II of this submission, the United States explains that the DJAI Requirement is inconsistent with Argentina’s obligations under Article XI:1 of the GATT 1994 and why Argentina’s attempts to avoid the application of that provision must fail.

8. Section III explains that the DJAI Requirement is an import licensing procedure subject to the Import Licensing Agreement and not a “customs formality.”

9. Section IV elaborates upon the U.S. demonstration that the DJAI Requirement is inconsistent with Article 3.2 of the Import Licensing Agreement, and Section V explains that Argentina has acted inconsistently with Article X:3 in connection with DJAI Requirement.

10. Sections VI and VII explain, respectively, that the United States has established its *prima facie* case as to the existence of the RTRRs measure and that the RTRRs measure is inconsistent with both Articles XI:1 and X:1 of the GATT 1994.

11. In the Annex to this submission, the United States provides comments on Argentina’s responses to the first set of questions from the Panel and responds to the Panel’s communication of November 6, 2013.

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

12. The United States demonstrated in its first written submission that the DJAI Requirement is a restriction under Article XI:1 of the GATT 1994, and that it is inconsistent with Argentina’s obligations under that provision. In its written and oral submissions, Argentina has failed to rebut the *prima facie* demonstration that the DJAI requirement breaches Article XI:1. On the legal issues, Argentina relies on novel legal theories that lack any basis in the text of the WTO Agreement. And with regard to factual issues, Argentina does not even attempt to rebut the U.S. *prima facie* case.

13. This Section will explain why Argentina’s various legal theories must fail. In particular, the United States will explain: that the DJAI is a “restriction” under Article XI:1, and is subject to the disciplines in that provision; that Article XI:1 does not require a demonstration of “trade effects;” that Article VIII does not limit the scope of Article XI:1; and that the principle of *lex specialis* does not prevent the application of Article XI:1 to an import licensing requirement.

A. THE DJAI REQUIREMENT IS A RESTRICTION UNDER ARTICLE XI:1 OF THE GATT 1994 AND IS INCONSISTENT WITH THAT PROVISION

14. The DJAI Requirement is a discretionary, non-automatic import licensing requirement that qualifies as a restriction under Article XI:1 of the GATT 1994. Argentina argues that the

coverage of Article XI:1 is limited to “substantive rules.” However, nothing in the text of that provision supports Argentina’s argument. Further, with regard to Argentina’s “subsidiary” or “alternative” argument (namely, that Article XI:1 should apply only to import formalities or other import procedures to the extent that they restrict trade over and above an underlying “substantive” restriction), the situation contemplated by Argentina’s argument is not applicable to this dispute because there is no WTO-consistent underlying restriction that could justify the DJAI Requirement.

1. The DJAI Requirement Is a Discretionary, Non-Automatic Import Licensing Procedure Inconsistent with Article XI:1

15. The DJAI Requirement is a non-automatic licensing system that operates as an import restriction; it allows officials to deny a license for discretionary reasons. Furthermore, the United States has presented extensive evidence showing that, in fact, Argentine officials use this discretion to enforce the RTRRs, which is a trade policy measure.

16. Argentina appears to argue that the DJAI Requirement is not discretionary in nature because “the basis on which a reviewing agency would consider a DJAI [application] to be sufficient to move into exit status will depend upon the customs-related laws and regulations that it and other intervening agencies administer, not on the measure establishing the DJAI.”¹ But Argentina has no factual basis for this assertion; none of the laws and regulations cited by Argentina² (which are generally not “customs-related”) contain criteria applicable to DJAI applications, or to the reasons an observation may be placed, or to what further information or action may be needed to resolve an observation. Accordingly, Argentina’s submissions further confirm the discretionary nature of the DJAI Requirement.

17. With respect to SCI, for example, Argentina provides only summaries of what certain of the laws under its jurisdiction relate to,³ but not others.⁴ Where Argentina does provide summaries, those summaries are insufficient to provide insight into when SCI may or may not place observations and what the limits are on its discretion. SCI’s responsibilities as described by Argentina, are wide-ranging and include:

trade promotion policy and strategy; fair trade; consumer protection; metrology; supply; and defence of competition. The SCI also can assess, control, make proposals and take measures to improve market organization, transparency and the harmonious development of markets, in the light of the public interest.⁵

¹ Argentina’s First Opening Statement, para. 81.

² See, e.g., Argentina’s Responses to First Panel Questions at 11-12 (answer to Panel Question 25), Annex 4.

³ See Argentina’s Responses to First Panel Questions at 11-12 (providing brief summaries of Law No. 22.802, Law No. 24.240, Law No. 19.511).

⁴ See Argentina’s First Written Submission, para. 231 (explaining that SCI’s “legal authority stems from Decree No.2085”); Argentina’s Responses to First Panel Questions at 11 (omitting a description of Law No. 19.227 on Markets of National Interest).

⁵ Argentina’s First Written Submission, para. 231.

Thus, even if SCI’s ability to lodge observations is tied to reasons related to its legal authority, there are in fact no discernible limits to its discretion contained in that authority. Moreover, these reasons are not limited to “customs risk” as Argentina argues.⁶

18. Argentina also argues that Article XI:1 cannot apply generally to non-automatic discretionary import licensing because if this is so, any time an importer fails to provide customs documentation, a Member denying importation will have violated Article XI:1.⁷ This argument is a *non sequitor*. Under the DJAI system, the denial of an import license is *not* conditioned on a failure to provide customs documentation. As a result, *even if* an importer submits all required information, the application may be denied.

19. Putting aside the question of whether an information or documentation requirement would be a “restriction” on imports, the United States would note that Members certainly impose many different licensing and other restrictions on imports. However, in a large number of those cases, the restriction’s justification under one of the exceptions to the WTO Agreements is evident on its face. There is no such justification for the DJAI Requirement.

2. The Coverage of Article XI:1 Does Not Depend on Whether a Measure is Characterized as “Procedural” or “Substantive”

20. Article XI:1 of the GATT 1994 applies to all restrictions, whether or not they could be characterized as “procedural” or “substantive” in nature. Nothing in the text of Article XI:1 or any other provision requires an artificial distinction between “procedural” and “substantive” measures, nor provides for the exclusion of measures that might be characterized as “procedural.”⁸ On its face, Article XI:1 prohibits “prohibitions or restrictions [on importation or exportation] other than duties, taxes or other charges,” *however* made effective. There are no requirements in Article XI:1 that call for an artificial characterization of measures as falling in certain categories, nor are there limitations in its scope of the type advanced by Argentina.

21. The evaluation by prior panels, including *India – Quantitative Restrictions*, *China – Raw Materials*, and *Korea – Beef*, confirms that there is no distinction between “procedural” and “substantive” measures in Article XI:1. Argentina misplaces its reliance on certain of these panel reports. Argentina argues that the logic in the *India – Quantitative Restrictions* panel report is incorrect, and that the Import Licensing Agreement and the *China – Raw Materials* and *Korea – Beef* panel reports support its interpretation. For these reasons set out below, each of Argentina’s arguments is flawed.

22. As a threshold matter, Argentina’s interpretation distracts from the salient issues in this dispute. The DJAI Requirement is not merely “procedural;” it is a restriction because importers

⁶ See, e.g., Argentina’s First Written Submission, para. 340.

⁷ Argentina’s First Written Submission, paras. 314-15; Argentina’s First Opening Statement, para. 80.

⁸ See, e.g., Argentina’s First Written Submission, paras. 148-52, 173; Argentina’s First Opening Statement, paras. 50-51.

cannot import goods into Argentina unless and until they receive approval through the DJAI system, which can be withheld by participating Argentine agencies for any number of undisclosed reasons. This constitutes a discretionary, non-automatic import licensing regime. Whether the DJAI Requirement is considered “substantive” or “procedural,” it is a restriction under Article XI:1. The analysis may end there.

23. Argentina argues that past panels, such as *India – Quantitative Restrictions*, failed to take into account the distinction between “procedures” and substantive “rules,”⁹ and erroneously concluded that the Import Licensing Agreement is an exception to Article XI:1 and thereby misinterpreted that provision.¹⁰ In support of its position, Argentina points to footnote 332 of the *India – Quantitative Restrictions* panel report, which states:

We note that a finding that a discretionary licensing system is a restriction for purposes of Article XI does not imply that discretionary licensing systems cannot be used where an exception to Article XI is applicable. Indeed, their use is foreseen by the Import Licensing Agreement, which regulates their use.¹¹

24. Contrary to Argentina’s assertions,¹² the *India – Quantitative Restrictions* panel did not conclude that the Import Licensing Agreement provides an exception to Article XI and did not err in its interpretation of this provision. Rather, the panel correctly explained that discretionary import licensing may be used where one of the exceptions to Article XI (such as those in Article XX) applies. If an exception applies, a Member may apply discretionary import licensing procedures – an outcome that is foreseen by the Import Licensing Agreement, which regulates those procedures.

25. Argentina goes on to argue that the panel in *India – Quantitative Restrictions* should have considered the licensing measure in that dispute under Article 3.2 of the Import Licensing Agreement, instead of Article XI:1 of the GATT 1994,¹³ even though India raised no separate restriction that was implemented by the licensing measure, as is contemplated by Article 3.2,¹⁴ and the United States did not pursue a claim under Article 3.2.

26. As the United States will elaborate further in Section II.D, it is not appropriate for a panel to begin its analysis with Article 3.2 of the Import Licensing Agreement before, or to the exclusion of, analyzing Article XI:1 of the GATT 1994. The Import Licensing Agreement disciplines the procedural aspects of a licensing requirement and is not concerned with whether a restriction imposed by an import licensing regime is or is not consistent with the substantive requirements of the GATT 1994, or whether the licensing requirement implements any

⁹ Argentina’s First Written Submission, paras. 319-29.

¹⁰ Argentina’s First Written Submission, paras. 322-24.

¹¹ *India – Quantitative Restrictions (Panel)*, footnote 332.

¹² Argentina’s First Written Submission, paras. 322-24.

¹³ Argentina’s First Written Submission, para. 325.

¹⁴ Article 3.2 of the Import Licensing Agreement provides in part that “[n]on-automatic licensing shall not have trade-restrictive or –distortive effects on imports additional to those caused by the imposition of the restriction.”

underlying restriction at all.¹⁵ These questions are dealt with under Article XI:1 and other provisions of the GATT 1994. A discretionary, non-automatic import licensing requirement is a restriction under Article XI:1 and prohibited under that provision. If another provision of the WTO Agreements exempts the requirement, then the procedures used to implement the requirement must comply with the Import Licensing Agreement, as well as provisions of the GATT 1994, including Article XI:1. As a result, it is appropriate for a panel to begin its analysis of a non-automatic import licensing requirement with Article XI:1.

27. The Import Licensing Agreement does not support the proposition that “procedural” aspects of a licensing regime are outside the scope of Article XI:1, as argued by Argentina.¹⁶ The “procedural” aspects are subject to both the GATT 1994 and the Import Licensing Agreement. The preamble to the Import Licensing Agreement specifically acknowledges that provisions of the GATT 1994 also apply to licensing procedures. In particular, the sixth recital recognizes “the provisions of GATT 1994 as they apply to import licensing procedures,” and the seventh recital expresses a desire among Members “to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994.”

28. Further, both Article 2 of the Import Licensing Agreement, relating to automatic licensing, and Article 3, relating to non-automatic licensing, are in part aimed at ensuring that licensing procedures do not “restrict” imports.¹⁷ The logical conclusion is that these provisions assist in “ensur[ing] that import licensing procedures are not utilized in a manner contrary to the principles and obligations” of Article XI:1, as well as any other applicable provision of the GATT 1994. Procedural features of an import licensing regime may therefore be inconsistent with both Article XI:1 as well as the Import Licensing Agreement, which provides additional obligations for import licensing procedures that may be maintained by Members.¹⁸

29. The DJAI Requirement is inconsistent with Article XI:1 both because it is a non-automatic, discretionary import licensing procedure whereby approvals for the importation of goods may be withheld and because the procedures also render it restrictive, *i.e.*, because licenses may only be granted after lengthy delays.¹⁹

30. Finally, Argentina relies on the *Korea – Beef* and *China – Raw Materials* panel reports to support its theory regarding the distinction between “substantive” rules and “procedural” features

¹⁵ See *Turkey – Rice*, para. 7.38.

¹⁶ Argentina’s First Written Submission, paras. 150, 323-26; Argentina’s First Opening Statement, para. 50.

¹⁷ See Import Licensing Agreement, art. 2(a) (“[A]utomatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing.”); *id.* art. 3.2 (“Non-automatic import licensing shall not have trade-restrictive or –distortive effects on imports additional to those caused by the imposition of the restriction.”).

¹⁸ Thus, contrary to Argentina’s assertions, Argentina’s First Written Submission, para. 326, the subsequent adoption of the Import Licensing Agreement does not negate the analysis of GATT panels that considered import licensing measures under Article XI:1 of the GATT 1994. The Import Licensing Agreement did not narrow the scope of Article XI:1 to exclude procedural measures.

¹⁹ See U.S. First Written Submission, paras. 114-20.

of import licensing,²⁰ but those reports are consistent with a correct understanding of Article XI:1 and the findings of the panel in *India – Quantitative Restrictions*. In all three disputes, the panels recognized that discretionary import licensing systems that do not implement any other restrictions are, on their face, inconsistent with Article XI:1.

31. The *Korea – Beef* panel noted the distinction between the facts in that dispute and those at issue in *India – Quantitative Restrictions*: Korea’s licensing system implemented quotas and related restrictions which were maintained by Korea and authorized by its WTO commitments, while the licensing system in *India – Quantitative Restrictions* had no underlying WTO-consistent justification.²¹ The *Korea – Beef* panel pointed out that “the factual context [was] different” than that in *India – Quantitative Restrictions*, where “[t]here was no other quantitative restriction” and where “in the absence of the discretionary licensing system, there would be no restriction on imports.”²² That panel also observed that “where a quota is in place, the use of a discretionary licensing system need not necessarily result in any additional restriction.”²³ Conversely, the panel implicitly agreed with the *India – Quantitative Restrictions* panel that where there is no other restriction, such as a quota, a discretionary licensing system is a “restriction” under Article XI:1.

32. The *China – Raw Materials* panel report is also consistent with *India – Quantitative Restrictions*. The *China – Raw Materials* panel considered that, as a general matter, “import and export licenses, including those granted only upon meeting a certain prerequisite, may be, but are not necessarily, permissible under Article XI:1” depending on “whether the licensing system is designed and operates such that by its nature it does not have a restrictive or limiting effect on importation or exportation.”²⁴ Building on this principle, the panel observed that discretionary import licensing procedures “would not meet the test . . . to be permissible under Article XI:1 . . . if a licensing system is designed such that a licensing agency has discretion to grant or deny a licence based on unspecified criteria.”²⁵ This is consistent with the conclusion of the *India – Quantitative Restrictions* panel, which found that the licensing requirement was a restriction on imports under Article XI:1 based on its conclusion that “India’s licensing system . . . is a discretionary import licensing system, in that licenses are not granted in all cases, but rather on unspecified ‘merits’.”²⁶

33. In the present dispute, as in *India – Quantitative Restrictions*, there is no underlying measure being implemented through the DJAI Requirement. As a result, there is no separate restriction justified by an exception to the WTO Agreements that should be considered in

²⁰ Argentina’s First Written Submission, para. 327.

²¹ *Korea – Beef (Panel)*, paras. 9-11, 610.

²² *Korea – Beef (Panel)*, para. 782.

²³ *Korea – Beef (Panel)*, para. 782 (emphasis added). The panel went on to observe that “[w]here a discretionary licensing system is implementation in conjunction with other restrictions, such as in the present dispute, the manner in which the discretionary licensing system is operated may create additional restriction independent of those imposed by the principal restriction.” *Id.*

²⁴ *China – Raw Materials (Panel)*, para. 7.918.

²⁵ *China – Raw Materials (Panel)*, para. 7.921.

²⁶ *India – Quantitative Restrictions (Panel)*, para. 5.130.

evaluating the restrictive nature of the DJAI Requirement. Further, decisions to grant or deny approvals are based on unspecified criteria or merits. For these reasons, the DJAI system is a discretionary, non-automatic import licensing system and is a restriction under Article XI:1 of the GATT 1994.

3. Argentina’s “Subsidiary” Argument Is Not Applicable to the Facts in this Dispute

34. Argentina advances a “subsidiary” or “alternative” argument that Article XI:1 should apply to import formalities or other import procedures only to the extent that (1) “they limit the quantity or amount of imports to a material degree that is separate and independent of the trade-restrictive effect of any substantive rule of importation that the formality or requirement implements, and (2) this separate and independent trade-restricting effect is greater than the effect that would ordinarily be associated with a formality or requirement of this nature.”²⁷

35. Argentina’s formulation, however, is aimed at different factual situation than one present in this dispute because the DJAI Requirement does not implement a separate requirement. Accordingly, this argument or suggested mode of analysis can play no useful role in this dispute. Rather, it distracts from the straightforward questions before the Panel: First, does the DJAI requirement serve as a restriction on importation within the meaning of Article XI:1? As the United States demonstrated in its first written submission, the answer to this question is yes. If so, of course, an import restriction may that is otherwise inconsistent with Article XI:1 may be justified by an exception, such as under Article XX. But, this second question is not before the Panel in this dispute because Argentina has not raised any defense for the DJAI Requirement. Indeed, Argentina has indicated that there is no WTO-consistent restriction being implemented through the DJAI Requirement.²⁸

36. Argentina points to the panel reports in *Korea – Beef* and *China – Raw Materials* for support of its subsidiary theory.²⁹ For the reasons already discussed,³⁰ those panel reports are consistent with the conclusion of the panel report in *India – Quantitative Restrictions* that in cases where there is no underlying restriction, such as in this dispute, a non-automatic, discretionary license is a restriction within the meaning of Article XI:1.

37. To the extent that a licensing procedure implements another identifiable restriction, that procedure should be examined according to the same justification as the underlying WTO-consistent restriction that it implements. In that sense, as the United States has observed,³¹ it is the case that a panel would evaluate whether the licensing measures implementing the underlying measure further restricts imports over and above the justified restriction. But, these

²⁷ Argentina’s First Written Submission, para. 183.

²⁸ Argentina’s Responses to First Panel Questions at 10 (Response to Panel Question 21).

²⁹ Argentina’s First Written Submission, paras. 185-89; Argentina’s First Opening Statement, para. 79.

³⁰ See U.S. Second Written Submission, *supra*, Section II.A.2.

³¹ U.S. First Opening Statement, para. 11.

issues are not directly relevant to the facts confronting the Panel, again, because there is no WTO-consistent underlying restriction implemented by the DJAI Requirement.

38. Argentina argues that co-complainants are required to demonstrate that the DJAI Requirement has a “limiting effect that is separate and distinguished” from the RTRRs,³² and that the U.S. arguments are flawed because some of the same evidence presented by the complainants relates to both the DJAI Requirement and RTRRs.³³ Neither of these arguments have merit.

39. First, the United States has established that the DJAI requirement is an import restriction within the scope of Article XI:1. The fact that the United States also presents claims regarding the separate RTRRs in no way increases the burden on the United States with respect to its claims on the DJAI Requirement, nor can Argentina’s adoption of the WTO-inconsistent RTRRs in some way provide Argentina with a defense to the U.S. claims with respect to the DJAI Requirement. In other words, the fact that the DJAI Requirement is used to implement a separate WTO-inconsistent restriction cannot save the DJAI requirement from being inconsistent itself with Article XI:1.

40. Further, as the United States has explained,³⁴ the two measures are separate, although related. The DJAI Requirement is a non-automatic, discretionary licensing measure. Argentine authorities may deny permission to import until an importer complies with RTRRs (as the evidence demonstrates)³⁵ or for no reason at all (as the evidence also demonstrates).³⁶ Similarly, RTRRs may be enforced by the withholding of permission to import, whether through the predecessor *Certificado de Importacion* (“CI”) Requirement, the DJAI Requirement, or another measure.

41. Second, because the two measures are distinct, the body of evidence with respect to the two is also distinct and only overlaps as it relates to both. There is no reason that the same pieces of evidence cannot be used to demonstrate two different measures. Evidence related to the DJAI Requirements includes, first and foremost, the relevant legal instruments and guidance released by Argentina, as well as evidence as to how the DJAI Requirement operates, which includes evidence that Argentine officials use the discretion afforded them in the DJAI Requirement to extract RTRR commitments from importers.

42. The evidence related to the RTRRs includes a large volume of statements of Argentine authorities describing the RTRRs generally or with respect to specific products, as well as a large number of other sources evidencing the existence and operation of the RTRRs. It is manifestly false for Argentina to state that the evidence related to the two measures is “indistinguishable”³⁷

³² Argentina’s First Written Submission, para. 337.

³³ Argentina’s First Written Submission, para. 341-42; Argentina’s First Opening Statement, paras. 49, 51.

³⁴ See, e.g., U.S. Responses to First Panel Questions, paras 18-19.

³⁵ See, e.g., U.S. First Written Submission, paras. 34-47 and exhibits cited therein.

³⁶ See, e.g., *Zatel* (JE-57); *Wabro S.A.* (JE-58); *Yudigar S.A.* (JE-59); *Fity SA* (JE-302) (in which approvals of DJAI application were withheld without any explanation).

³⁷ Argentina’s First Opening Statement, para. 51.

or the “same,”³⁸ and Argentina has not explained what the relevance would be if that were the case.

43. Further, contrary to Argentina’s assertions,³⁹ the claims under Article XI:1 with respect to the two measures are distinguished in the U.S. first written submission. The written instruments creating the DJAI Requirement and other evidence demonstrate that it is a restriction within the meaning of Article XI:1. Argentine authorities are not bound by any criteria or restrictions on the reasons that they can place an observation on an application, or what further information or action they may demand from the importer. The importer cannot import goods until it resolves any observations, and the application enters the “salida” status.

44. The evidence submitted by the United States demonstrates that Argentine exercises its discretion to impose RTRRs and delay or block imports of goods into Argentina. The RTRRs, which are enforced through the withholding of permission to import, restrict imports because importers may only import goods to the extent that they are able to comply with the requisite RTRR, for example by compensating imports with an equivalent value of exports.

45. Both of these measures are inconsistent with Argentina’s obligations under Article XI:1 of the GATT 1994.

B. ARTICLE XI:1 DOES NOT REQUIRE A DEMONSTRATION OF “TRADE EFFECTS”

46. Argentina relies on the Appellate Body report in *China – Raw Materials* to support its argument that a party asserting a violation of Article XI:1 must demonstrate that the measure has “quantitative” or “trade” effects on imports.⁴⁰ This reliance is misplaced. The Appellate Body did not address the question of whether Article XI:1 requires a demonstration of “trade effects” in *China – Raw Materials*. Further, Argentina ignores the Appellate Body’s elaboration on the concept of “restriction” in subsequent reports which, consistent with the ordinary meaning of Article XI:1, confirms that there is no requirement to show trade effects under that provision.

47. As an initial matter, although the title of Article XI contains the term “quantitative restrictions,” that term does not appear in the text of Article XI:1. The carve-out of “duties, taxes, or other charges” from “prohibitions or restrictions” demonstrates that Article XI is not limited to “quantitative restrictions” in the strict sense of the term (*i.e.*, quotas), as duties, taxes or other charges would not qualify as quantitative restrictions. Similarly, there is no basis in the text to conclude that the restrictions must have “quantitative effects.” The word “effects” does not appear anywhere in the text of Article XI:1.

48. As the United States explained in detail in its responses to the Panel’s questions,⁴¹ the Appellate Body and past panels have consistently found that the trade effects of a measure are

³⁸ Argentina’s First Written Submission, para. 158.

³⁹ Argentina’s First Opening Statement, para. 49.

⁴⁰ See Argentina’s First Written Submission, paras. 330-34; Argentina’s First Opening Statement, paras 76-80.

⁴¹ See U.S. Responses to First Panel Questions, paras. 2-6.

not a necessary or sufficient factor in determining whether a measure is inconsistent with various WTO obligations, including those under Article XI of the GATT 1994.⁴² Argentina points to the statement by the Appellate Body in *China – Raw Materials* that the word “quantitative” in the title to Article XI:1 “suggests that Article XI of the GATT 1994 covers those prohibitions and restrictions that have a limiting effect on the quantity or amount of a product being imported or exported.”⁴³ However, Argentina’s reliance on this sentence is misplaced. The Appellate Body did not state – as Argentina would have it – that such an “effect” must be demonstrated through trade data, or “trade effects.” Further, no panel which has endorsed the use of the term “limiting effect” to describe the meaning of “restriction” concluded that trade effects are part of an Article XI:1 analysis.⁴⁴

49. The Appellate Body subsequently considered “trade-restrictiveness” in the context of the *US – COOL* and *US – Tuna II (Mexico)*, and in both disputes, concluded that trade effects were not part of the analysis of trade-restrictiveness.⁴⁵ This is despite the fact that, in *US – Tuna II (Mexico)*, the Appellate Body relied on its prior consideration of the term “restriction” under Article XI:1 in *China – Raw Materials*,⁴⁶ and in turn, the Appellate Body in *US – COOL* referred to the *US – Tuna II (Mexico)* discussion.⁴⁷

50. Furthermore, as the Appellate Body and prior panels have found, the enforceability of commitments in the WTO agreements does not turn on whether a Member’s current trade is directly impacted.⁴⁸ Quantitative trade data may or may not demonstrate trade effects, but that does not excuse a Member’s maintenance of a measure that it is inconsistent with the provisions of the WTO Agreement. The United States has shown that the DJAI Requirement is a restriction within the meaning of Article XI:1 of the GATT 1994; nothing further is required.

C. ARTICLE VIII OF THE GATT 1994 DOES NOT LIMIT THE APPLICATION OF ARTICLE XI:1

51. Argentina puts forth a new and deeply flawed interpretation of Article XI:1 in arguing that Article VIII and Article XI:1 of the GATT 1994 are “mutually exclusive” in their application.⁴⁹ That is not the case. Article XI:1 is broad in its scope, and nothing in Article VIII limits, or creates an exception to, Article XI:1.

⁴² See, e.g., *Argentina – Hides and Leather*, para. 11.20 (“[I]t should be recalled that Article XI:1, like Articles I, II and III of the GATT 1994, protects competitive opportunities of imported products, not trade flows.”); *Turkey – Textiles (Panel)*, paras. 9.202-06; *Colombia – Ports of Entry*, paras. 7.252-54.

⁴³ *China – Raw Materials (AB)*, para. 320.

⁴⁴ See *India – Autos (Panel)*, para. 7.270; *China – Raw Materials (Panel)*, para. 7.206; *Colombia – Ports of Entry*, paras. 7.234 & 7.256; *Dominican Republic – Import and Sale of Cigarettes (Panel)*, para. 7.252.

⁴⁵ *US – Tuna II (Mexico) (AB)*, para. 319; *US – COOL (AB)*, para. 375.

⁴⁶ *US – Tuna II (Mexico) (AB)*, para. 319 (citing *China – Raw Materials (AB)*, paras. 319-21 and its discussion of “restriction” under Article XI:1 and XI:2).

⁴⁷ *US – COOL (AB)*, para. 375 (relying on the analysis in *US – Tuna II (Mexico) (AB)*).

⁴⁸ See, e.g., *EC – Bananas III (AB)*, para. 136 (explaining that the U.S. “potential export interest” was sufficient basis for U.S. to bring claims in the dispute).

⁴⁹ See, e.g., Argentina’s First Written Submission, paras. 176-80; Argentina’s First Oral Statement, paras. 53-56.

52. Before turning to the textual problems with Argentina’s argument, the United States notes that its claim under Article XI:1 does not relate to the “formalities” connected to the DJAI requirement, but rather with the fact that import transactions cannot be completed until an importer receives approval through the DJAI system, which may be withheld for nontransparent, discretionary reasons.⁵⁰ It is not the “formalities,” such as the fact that the DJAI must be submitted electronically or that information must be provided in specified fields in particular forms, that are at the heart of the Article XI:1 claim. As a result, the question of whether or not “formalities” are included or excluded from the scope of Article XI:1 is not directly relevant to the U.S. claims in this dispute. In addition, for the reasons discussed below at Section III, the DJAI Requirement does not constitute a “customs” formality.

53. Setting aside the questions of whether or not the “formalities” of the DJAI Requirement are the subject of this dispute and whether or not the DJAI Requirement is a “customs” formality, Argentina’s argument that the scope of Article XI and Article VIII are mutually exclusive lacks any basis in the text of the agreement. Article XI:1 relates to any prohibitions or restrictions on imports or exports and carves out from its application only “duties, taxes or other charges.” Article XI:1 is also definitive; it states that “*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 maintained.*”⁵¹ There is nothing in the text of either provision that exempts from the application of Article XI:1 any overlapping coverage of Article VIII.

54. Further, it is not the case that “formalities” are “permitted” by Article VIII but prohibited by Article XI as “restrictions,” as Argentina argues.⁵² Argentina argues that language in Article VIII:1(1) describing “the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements” supports the proposition that Article VIII “contemplates that customs formalities can have at least some restrictive effect on trade.”⁵³

55. Aspirational-type language, such as the Article VIII language quoted by Argentina, does not permit or prohibit anything. The preamble to the Import Licensing Agreement states, in part that Members “recogniz[e] that the flow of international trade could be impeded by the inappropriate use of import licensing procedures.” However, that does not mean that the “inappropriate use” of licensing procedures must be permitted under the GATT 1994. Rather, the text leaves open whether inappropriate uses may or may not be consistent with the GATT 1994. The same analysis applies to the Article VIII language relied upon by Argentina.

56. In addition, Argentina’s reading of Articles VIII and XI:1 is inconsistent with principles of treaty interpretation. As the Appellate Body has observed, “a treaty interpreter must read all

⁵⁰ Article VIII states that it applies to the “fees, charges, formalities and requirements . . . relating to . . . (c) licensing”, not licensing *per se*. GATT 1994, art. VIII:4.

⁵¹ Emphasis added.

⁵² Argentina’s First Written Submission, paras. 176-77; Argentina’s First Opening Statement, para. 54.

⁵³ Argentina’s First Written Submission, para. 177; Argentina’s First Opening Statement, para. 55.

applicable provisions of a treaty in a way that gives meaning to *all* of them, harmoniously.”⁵⁴ Argentina’s interpretation fails to give effect to Article VIII and Article XI:1 harmoniously. In particular, Argentina’s argument fails to give effect to the definitive language in Article XI:1 which provides that “*no prohibitions or restrictions other than duties, taxes or other charges,*” may be maintained by Members however they are made effective.

57. Formalities may or may not serve to restrict trade; to the extent that they do, Article XI:1 disciplines their use. In Article VIII, Members recognize the need to minimize the use and complexity of formalities, regardless of whether they prohibited by Article XI:1 or any other provision in the WTO agreements. There is nothing inconsistent or contradictory with the simultaneous application of the mandatory requirements in Article XI:1 and the aspirational language in Article VIII. And, there is no textual support for Argentina’s position that the difference between the “disciplines imposed by Articles VIII and XI requires that there not be any overlap between these provisions.”⁵⁵

58. Argentina states that “if customs formalities have some effect on the quantity or amount of imports, that effect must be evaluated under Article VIII or . . . under the ILP Agreement.”⁵⁶ However, Article VIII contains no mandatory disciplines on formalities. So, Argentina essentially argues that Article VIII creates an exception to Article XI for formalities, even though the text of neither Article VIII nor Article XI actually describes such an exception. Exceptions to the obligations in Article XI:1 GATT 1994 are explicitly set out in the WTO Agreement,⁵⁷ and none are contained in Article VIII.

59. Further, Argentina’s logic does not make sense when applied to other provisions of Article VIII. Article VIII:1(b) contains similar language with respect to “fees and charges” as Article VIII:1(b) does with respect to formalities. Article VIII:1(b) states that Members “recognize the need for reducing the number and diversity of fees and charges.” Under Argentina’s theory, this language would create an exception to Article XI:1 for “fees and charges.” If that were the case, the carve-out for “charges” would be surplusage because they are already excluded in Article XI:1 itself.

60. Contrary to Argentina’s assertions,⁵⁸ nothing in the Import Licensing Agreement supports its arguments with respect to Articles VIII and XI. The Import Licensing Agreement is not “in essence, an elaboration upon Article VIII in the specific context of import licensing procedures.”⁵⁹ This is clear from the preamble to the Import Licensing Agreement itself, which recognizes “provisions,” plural, “of GATT 1994 as they apply to import licensing procedures” and states that Members desire “to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994.” Thus by its terms, the Import

⁵⁴ See *Argentina – Footwear (EC) (AB)*, para. 81 (emphasis in original).

⁵⁵ Argentina’s First Opening Statement, para. 54.

⁵⁶ Argentina’s First Opening Statement, para. 56.

⁵⁷ See, e.g., GATT 1994, art. XX.

⁵⁸ Argentina’s First Written Submission, para. 179.

⁵⁹ Argentina’s First Written Submission, para. 179.

Licensing Agreement acknowledges that various provisions of the GATT 1994 relate to import licensing procedures, and not just Article VIII. Further, as is already noted at Section II.A.2 above, and further explained at Section II.D below, the Import Licensing Agreement and Article XI can and do apply to the same measures.

61. Finally, Argentina cites for support the panel in *China – Raw Materials*.⁶⁰ However, that panel considered the application of Article VIII:1(a), with respect to “fees and charges” and did not consider “formalities” at all.⁶¹ As an initial matter, the two categories of measures are treated differently under Article VIII. In contrast to the aspirational language related to “formalities,” Article VIII imposes a binding commitment with respect to certain “fees and charges . . . in connection with importation or exportation” which must “be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.” So, it is unclear that discussion in *China – Raw Materials* is applicable to the panel’s consideration of the issues in this dispute.

62. The *China – Raw Materials* panel stated, as Argentina observes, that “it seems appropriate to construe Article VIII as regulating something different from that addressed by GATT Article XI:1.”⁶² However, the panel did not state that the provisions were mutually exclusive, rather that they had different scopes. In particular, the panel determined that not all types of fees and charges fall under Article VIII:1(a), but only those that are imposed “in connection with importation or exportation.”⁶³ It concluded that “some, but not all, fees, charges, formalities or requirements that relate to quantitative restrictions or licensing could fall within the scope of Article VIII,” and that in contrast to Article XI, Article VIII addresses “more narrowly those fees, charges, formalities and requirements – such as those relating to quantitative or licensing requirements – *that are imposed on or in connection with importation or exportation.*”⁶⁴ Thus, the panel concluded that the scope of Article VIII:1(a) was narrower than Article XI:1, not that the two were exclusive.

63. For these reasons, the Panel should reject Argentina’s arguments that Article VIII and Article XI:1 are mutually exclusive in their application.

D. THE PRINCIPLE OF *LEX SPECIALIS* DOES NOT BAR THE EVALUATION OF THE DJAI REQUIREMENT UNDER ARTICLE XI OF THE GATT 1994

64. Argentina misapplies the principle of *lex specialis* in arguing that it bars the evaluation of the DJAI Requirement under Article XI. Argentina argues that the Import Licensing Agreement is *lex specialis* in relation to Article XI; that any trade-restrictive effects of a licensing procedure

⁶⁰ Argentina’s First Written Submission, para. 180.

⁶¹ *China – Raw Materials (Panel)*, paras. 7.821-32.

⁶² Argentina’s First Written Submission, para. 180 (citing *China – Raw Materials (Panel)*, para. 7.831).

⁶³ *China – Raw Materials (Panel)*, para. 7.830.

⁶⁴ *China – Raw Materials (Panel)*, para. 7.831 (emphasis added).

must be considered under the Import Licensing Agreement; and that complainants therefore have “no claim” under Article XI.⁶⁵

65. Argentina ignores that the principle of *lex specialis* concerns situations where there is a *conflict* between two different provisions such that they cannot both be applied simultaneously. The mere fact that one provision is more specific than the other does not mean that the more general provision is of no effect. As the panel in *Indonesia – Autos* dispute observed:

The *lex specialis derogat legi generali* principle “which [is] inseparably linked with the question of conflict” . . . between two treaties or between two provisions (one arguably being more specific than the other), does not apply if the two treaties “ . . . deal with the same subject from different point of view or [is] applicable in different circumstances, or one provision is more far-reaching than but not inconsistent with, those of the other” *For in such a case it is possible for a state which is a signatory of both treaties to comply with both treaties at the same time.*⁶⁶

66. There is no conflict between Article XI:1 of the GATT 1994 and Article 3.2 of the Import Licensing Agreement, nor has Argentina alleged that any exists. In particular, Article XI:1 provides that Members cannot make effective a restriction on the importation of goods through import licensing, or any other measure. Article 3.2 of the Import Licensing Agreement anticipates that there is a separate WTO-consistent “restriction” “impos[ed]” through non-automatic licensing procedures.⁶⁷ As explained *supra* in Section II.A.2, if a Member imposes non-automatic import licensing and another provision of WTO Agreement provides an exemption to Article XI:1, the Import Licensing Agreement, including Article 3.2, applies to ensure that the exempted procedure is not overly restrictive and burdensome in relation to the underlying WTO-consistent reason for its imposition.

67. In certain cases, for example if two provisions are identical in coverage, it may be appropriate for a panel to consider the more specific provision *before* proceeding to one that is more general in nature,⁶⁸ but again that does not mean that the more general provision no longer

⁶⁵ Argentina’s First Written Submission, para. 306. *See also* Argentina’s First Opening Statement, para. 75.

⁶⁶ *Indonesia – Autos*, footnote 649 (quoting 7 Encyclopedia of Public International Law at 469 (North-Holland 1984); Wilfred Jenks, “The Conflict of Law-Making Treaties”, The British Yearbook of International Law (BYIL) 1953 at 425 *et seq*) (emphasis added). *See also Thailand – Cigarettes (Panel)*, para. 7.1047 (“The *lex specialis* principle has been defined by the International Law Commission (“ILC”) as ‘a generally accepted technique of interpretation and conflict resolution in international law.’”) (quoting Report of the International Law Commission, Fifty-eighth session (1 May-9 June and 3 July-11 August 2006) General Assembly Official Records Sixty-first session Supplement No. 10 (A/61/10), p 408).

⁶⁷ Import Licensing Agreement, Art. 3.2. *See also* Import Licensing Agreement, preamble (“Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provision of GATT 1994”).

⁶⁸ *See, e.g., EC – Bananas III (AB)*, para. 203 (“Although Article X:3(a) and Article 1.3 of the *Licensing Agreement* both apply, the Panel, in our view, should have applied the *Licensing Agreement* first, since this agreement deals specifically, and in detail, with the administration of import licensing procedures.”).

applies. Further, it is not the case that Article XI:1 and Article 3.2 have identical coverage; as Article XI:1 prohibits restrictions and Article 3.2 is concerned with the trade-restrictiveness of a licensing procedure in relation to an underlying restriction.

68. In this dispute, considering the logical relationship between Article XI:1 of the GATT and Article 3.2 of the Import Licensing Agreement outlined above,⁶⁹ the United States submits that it would be most appropriate for the Panel to first consider complainants' claims under Article XI:1 before turning to Article 3.2. The United States is challenging the DJAI Requirement as a restriction on imports imposed through import licensing. As a result, it is the GATT 1994, and Article XI in particular, that more specifically and in detail deals with the nature of the matter raised in this dispute.

III. THE DJAI REQUIREMENT IS AN IMPORT LICENSING PROCEDURE SUBJECT TO THE IMPORT LICENSING AGREEMENT

69. Argentina does not dispute the essential characteristics of the DJAI Requirement – such as the fact that importers must submit an application to a number of Argentine agencies which have up to 15 days to decide whether to grant or block the application – which demonstrate clearly that the requirement it is an import licensing procedure subject to the Import Licensing Agreement. Rather than do so, Argentina presents a number of untenable legal arguments. In Section III.A, the United States will demonstrate that Argentina's interpretations are not grounded in the text of the Import Licensing Agreement. Section III.B explains why the DJAI Requirement is not for "customs purposes."

70. Furthermore, Argentina attempts to shield the DJAI Requirement from scrutiny under the Import Licensing Agreement by arguing that it is implemented according to the SAFE Framework. In Section III.C the United States will demonstrate that Argentina's reliance on the SAFE Framework is misplaced because that instrument does not create any exceptions to the disciplines in the WTO agreements, and in any event, the DJAI Requirement does not share the essential features of a procedure implemented according to the SAFE Framework. Accordingly, the DJAI Requirement is an import license requirement subject to the provisions of the Import Licensing Agreement.

71. The United States will address the application of Article 3.2 of the Import Licensing Agreement in this submission. For the reasons the United States explained in its first written submission,⁷⁰ Argentina has also acted inconsistently with Articles 1.4(a), 1.6, 3.3, 3.5(f), 5.1, 5.2, 5.3 and 5.4 of the Import Licensing Agreement in connection with the imposition of the DJAI Requirement. Argentina has failed to rebut the evidence relating to these violations of the Import Licensing Agreement.

A. THE DJAI REQUIREMENT IS AN IMPORT LICENSING PROCEDURE

⁶⁹ See also U.S. First Opening Statement, paras. 47-53.

⁷⁰ U.S. First Written Submission, paras. 202-10.

72. Argentina mischaracterizes the U.S. position as arguing that any “documentation that is required for importation purposes constitutes a ‘license’ that comes under the scope of Article 1.1” of the Import Licensing Agreement.⁷¹ Rather, the DJAI is an import licensing procedure because it (a) requires the “submission of an application or other documentation” (b) as a “prior condition for importation” satisfying the definition of import licensing.⁷²

73. The DJAI Requirement meets this definition on the face of the written instruments implementing the requirement. An importer must submit an application for each import of goods into Argentina through the DJAI system and wait 15 days to determine whether an approval is granted, as demonstrated by the “exit” status, or if instead approval is withheld, as demonstrated by the “observed” status. If approval is withheld, the importer must approach the relevant agency and submit further, unspecified, information or documentation in the hope of obtaining the “exit” status.⁷³

74. Complainants are not required, as Argentina argues, to “demonstrate that the DJAI procedure is ‘used for the operation of import licensing regimes.’”⁷⁴ Argentina appears to believe that “import licensing” as a procedure must operate a completely separate “import licensing regime.” But the Article 1.1 definition makes clear that “import licensing” is a procedure, and an “import licensing regime” is one “requiring the submission of an application or other documentation . . . as a prior condition for importation.” Thus, the DJAI procedures established through the relevant legal instruments and guidance related to how applications are submitted and reviewed are “used for the operation” of the DJAI regime, or system, as a whole, whereby Argentine agencies can review and either grant or block DJAI applications required as a prior condition of importation.

75. With respect to the scope of the Import Licensing Agreement, it is correct, as Argentina points out,⁷⁵ that not all applications or documentation submitted as a prior condition for importation are for import licensing. In particular, the Import Licensing Agreement explicitly carves out those required for “customs purposes.” However, the DJAI is not for customs purposes, as is explained in further detail in the next section.

76. Argentina is not correct that additional (unspecified) application and documentation requirements are excluded from the scope of the Import Licensing Agreement. Such an interpretation of Article 1.1 is contrary to the text of that provision which includes one very clear carve-out for applications and documentation required for customs purposes.⁷⁶ As a result,

⁷¹ Argentina’s First Written Submission, para. 278.

⁷² See U.S. First Written Submission, paras. 122-23.

⁷³ See also U.S. First Written Submission, paras. 124-25.

⁷⁴ Argentina’s First Opening Statement, para. 68.

⁷⁵ Argentina’s First Written Submission, para. 279; Argentina’s First Opening Statement, para. 67.

⁷⁶ Argentina cites for support of its argument paragraph 7.127 of the panel report in *Turkey – Rice*. To the extent that the panel in *Turkey – Rice* considered that a broader set of applications and documents (other than those required for customs purposes), which otherwise meet the definition of “import licensing,” do not fall under the Import

Argentina’s arguments are dubious in light of the text of Article 1.1 of the Import Licensing Agreement.

77. The examples of documents that Argentina alleges would be covered by complainants’ “overly expansive” interpretation of import licensing are not at issue in this dispute.⁷⁷ The issue before the Panel is whether the Import Licensing Agreement applies to the DJAI Requirement; the situations imagined by Argentina’s hypotheticals are not presented on the record in this dispute.

78. For these reasons, and those set out in the U.S. prior submissions, the DJAI Requirement is an import licensing requirement within the meaning of Article 1.1 of the Import Licensing Agreement.

B. THE DJAI REQUIREMENT IS NOT FOR “CUSTOMS PURPOSES”

79. As the United States explained in its opening statement at the first substantive meeting of the Panel,⁷⁸ Argentina advocates for an overly broad interpretation of those applications and documentation which are for “customs purposes” and thereby excluded from the definition of import licensing procedures at Article 1.1 of the Import Licensing Agreement.⁷⁹ The DJAI Requirement is not maintained for “customs purposes,” as that term is properly understood, and so it is an import licensing procedure subject to the provisions of the Import Licensing Agreement.

80. Argentina argues that any application or document required for the administration of customs laws, or “*any other laws and regulations related to importation, exportation, or the movement or storage of goods*” is for “customs purposes” under Article 1.1 of the Import Licensing Agreement.⁸⁰ This interpretation contradicts the plain meaning of Article 1.1, which exempts only those applications and documents required for customs purposes, *i.e.*, those related

Licensing Agreement, its reasoning is not consistent with the text of Article 1.1 of the Import Licensing Agreement. The United States would observe that it is a factual matter as to whether a requirement constitutes an import licensing procedure, and a panel must examine the facts and circumstances of each such alleged requirement in order to make its determination.

⁷⁷ Argentina’s First Written Submission, paras. 281-82.

⁷⁸ U.S. First Opening Statement, paras. 41-42.

⁷⁹ See Argentina’s First Written Submission, paras. 284-86.

⁸⁰ Argentina’s First Written Submission, para. 286 (emphasis added). Argentina relies on the definition of “customs” in the Revised Kyoto Convention, meaning the government service which may be responsible for the collection of duties and taxes as well as the administration of other laws and regulations. The Appellate Body, in consideration the meaning of the phrase “administrative action relating to customs matters” in Article X:3(b) of the GATT 1994 noted this definition in the *Thailand - Cigarettes* dispute. *Thailand – Cigarettes (AB)*, para. 193. The Appellate Body also observed that “customs” is defined as “duties levied upon imports as a branch of the public revenue; the department of the Civil Service employed in levying these duties.” *Id.* In its analysis of Article X:3(b), the Appellate Body did not endorse an expansive interpretation of the word “customs” that would encompass non-compass matters; that panel was considering whether “decisions by Thai Customs on the guarantees required in order to have goods released pending a final duty assessment constitute ‘administrative action relating to customs matters.’” *Id.* para. 206.

to the administration of customs laws and regulation, and not for the administration of any other laws and regulations. Argentina’s definition would prevent the application of the Import Licensing Agreement to any procedures whatsoever, as by definition, import licensing laws and regulations are “related to importation.”

81. “Customs purposes” relates to the implementation of a *customs* law or regulation. The ordinary meaning of the word “customs” in this context is “duty levied by a government on imports.”⁸¹ Thus, “customs purposes” relates to the accurate identification, classification, valuation, determination of origin and ultimately levying of duties by governments. Article 1.1 excludes documentation related to those functions from the Import Licensing Agreement.

82. The DJAI Requirement is not maintained for customs purposes as Argentina contends. This is evidenced by the following factors, which the United States will discuss further in this section: agencies with no customs functions whatsoever participate in the DJAI system; the information supplied by applicants is insufficient to fulfill customs-related functions; Argentina maintains separate procedures for customs purposes; and the Administration of Public Revenue (*Administración Federal de Ingresos Públicos*, or “AFIP”) the only participating agency with customs-related functions participates in the DJAI system for internal tax purposes. Further, as is explained in the next section, Argentina cannot justify the DJAI Requirement as “an advance electronic information system aimed at bringing Argentina into line with the standards of the SAFE Framework and best customs practices.”⁸²

83. First, Argentine agencies with no customs purpose whatsoever participate in the DJAI system and may place observations, withholding permission to import. These include, at least, SCI, ANMAT, and SEDRONAR.⁸³ Argentina has cited entire non-customs related laws for the source of reasons that an observation may be placed.⁸⁴ As noted, Argentina has described SCI’s areas of authority as including “trade promotion policy and strategy; fair trade; consumer protection; metrology; supply; and defence of competition.”⁸⁵ And, the instrument through which SCI acceded to the DJAI system states that SCI has the purpose of “performing analyses aimed at preventing negative effects on the domestic market”; “evaluation of the degree of

⁸¹ *New Shorter Oxford English Dictionary* at 577 (1993) (JE-756).

⁸² Argentina’s First Written Submission, para. 287.

⁸³ The United States notes that Argentina asserts that no other agency has an agreement of accession currently in force. However, Argentina has provided no support for its assertions, nor does it explain the official statements describing the participation of other agencies. See 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); 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).

⁸⁴ Argentina’s Responses to First Panel Questions, Annex 4.

⁸⁵ Argentina’s First Written Submission, para. 231.

competitiveness of economic activity”; and the general enforcement of certain laws.⁸⁶ These reasons for review of DJAI applications are far afield of what could be considered for “customs purposes.”

84. Second, at the stage at which the DJAI submission must be made – prior to the issuance of a purchase order, information that is needed for “customs purposes” to determine classification, origin and valuation of an item is not even available.⁸⁷ By design, a DJAI approval in “exit” status must be secured before a purchase order is issued – *i.e.*, before the setting of foreign exchange terms, or terms of trade (including insurance and freight), and well before issuance of the commercial invoice, certification of origin, packing list, or bill of lading. At this early stage, which usually precedes physical identification (or even manufacture) of the goods to be imported – let alone the packing, containerization and loading of those goods – it is impossible to ascertain with any precision the data elements necessary for an accurate legal determination of the goods’ tariff classification, valuation, origin, weight, and quantity.

85. Third, Argentina maintains separate customs procedures which require the submission of more detailed data much later in the importation process. It is these customs procedures that are used to confirm, for customs purposes, what the applicable duties and taxes are. The content and operation of these customs procedures further underscores that the DJAI submission is not necessary for, or related to, customs purposes. As the United States explained in its responses to the first questions from the Panel, importers must complete a *Despacho de Importación* and submit documentation for customs clearance.⁸⁸

86. Further, Argentina stated in its most recent WTO Trade Policy Review, “the other documents required by customs for imports are: the original transport documents (bill of lading...); original commercial invoice; packing list; and customs value declaration (where appropriate). A certificate of origin is also required for imports . . . subject to the application of trade remedies [or for imports on preferential terms].”⁸⁹ Furthermore, in accordance with Argentina’s Customs Code (Law No. 22.415 of 1981, as amended) and regulations, these documents must be presented “immediately after arrival of the goods in Argentine territory,” and the “intended use of the imports must be identified.”⁹⁰ Only after these steps have been completed is the declarant informed of the channel through which the goods must pass for

⁸⁶ *SCI Resolution 1*, preamble (JE-41).

⁸⁷ See *AFIP Resolution 3252*, Art. 6 (JE-15). See also *Comunicación A 5274 del Banco Central de la República Argentina* [Communication A 5274 from the Central Bank of Argentina] January 30, 2012, 1.a, and Section 4.1 (JE-40) (stating, “To Financial Institutions, To foreign exchange companies, agencies, offices and brokers: We write to inform you of the following provisions relating to foreign payments for imports of goods - . . . The institution handling the operation must verify that the following requirements are satisfied before processing it. The “Advance Import Affidavit (DJAI)” established by AFIP in General Resolution 3252/12 and supplementary provisions, has “Approved” status . . .”).

⁸⁸ U.S. Responses to First Panel Questions, paras. 40-42. See *AFIP Consultas y Respuestas Frecuentes ID 5518396* (JE-240) (explaining that, “you must provide a commercial invoice, transport documentation (bill of lading or airway bill or consignment note . . .), certification of third party agencies or certificate of origin . . .”).

⁸⁹ See Trade Policy Review: Argentina p. 52, para. 20, WT/TPR/S/277, February 13, 2012 (JE-299).

⁹⁰ Trade Policy Review: Argentina p. 53, paras. 22-25, WT/TPR/S/277, February 13, 2012 (JE-299).

control purposes – *i.e.*, “red (physical and documentary inspection . . .), amber (documentary control), and green (without inspection).”⁹¹ Argentina’s actual customs procedures belie the necessity or relevance “for customs purposes” of the DJAI procedure and all of its trade restrictive features.⁹²

87. Fourth, as the United States explained in its first written submission, the only guidance published by AFIP states that it intervenes for internal tax administration purposes,⁹³ and does not list any “customs risks” of the type it purports to monitor under the SAFE Framework. Although in Annex 4 to Argentina’s responses to questions from the Panel, AFIP again asserts that it participate in the DJAI system for “customs control” reasons there are no sources to verify this assertion or elaborate on what “customs control” means. Moreover, even if AFIP does make “customs control” observations, it does not change the fact that the vast majority of reasons that AFIP, let alone any other agency, places an observation in the system is for non-customs reasons.⁹⁴

88. Finally as will be explained in the next section, the DJAI Requirement is not a formality implemented in accordance with the SAFE Framework.

C. THE DJAI REQUIREMENT IS NOT IMPLEMENTED ACCORDING TO THE SAFE FRAMEWORK

89. Argentina argues that the DJAI Requirement is not a license requirement, but is instead “an advance electronic information customs formality specifically designed in accordance with the SAFE Framework.”⁹⁵

90. Argentina’s arguments are legally irrelevant and factually incorrect. First, Argentina’s arguments regarding the SAFE Framework cannot justify a WTO-inconsistent measure, and so they do not have any direct legal relevance to the Panel’s evaluation of the U.S. claims in this dispute. Indeed, Argentina has asserted no basis in the WTO Agreements – such as GATT Article XX – under which a possible exception to Article XI could be analyzed. Second, Argentina’s arguments are factually incorrect, because the DJAI is not “specifically designed in

⁹¹ Trade Policy Review: Argentina p. 53, para. 24, WT/TPR/S/277, February 13, 2012 (JE-299).

⁹² See, *e.g.*, U.S. Second Written Submission, *supra* para. 92.

⁹³ See *DJAI User Manuel* at 25 (JE-13). The manual cites the following reasons a 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.

⁹⁴ Argentina’s Responses to First Panel Questions, Annex 4.

⁹⁵ Argentina’s First Written Submission, para. 192.

accordance with the SAFE Framework.”⁹⁶ The SAFE Framework was endorsed by WCO Members “to secure the movement of trade in a way that does not impede, but on the contrary, facilitates the movement of trade.”⁹⁷ The SAFE Framework is a “regime that will enhance the security and facilitation of international trade,” and will help secure the global trading system against “vulnerab[ilities] to terrorist exploitation that would severely damage the entire global economy.”⁹⁸ In contrast, the DJAI system has nothing to do with a system of border security. Rather, it is a discretionary licensing system, untied to border-security measures, that acts as a trade barrier.

91. As designed, the DJAI Requirement demonstrably does not – as Argentina claims – “allow AFIP to determine, in advance of the arrival of the goods, whether a particular consignment should be targeted for physical inspection, non-intrusive inspection methods, or not be screened at all.”⁹⁹ The DJAI system is designed and operates in a manner that is disconnected from, and possibly even detrimental to, the management of supply chain security risk in the global trading system or other import cargo risks.

92. First, the DJAI system lacks any substantive basis upon which to manage supply chain security risk or to identify high-risk consignments. The DJAI system contains no criteria relating to supply chain security risk; it does not reflect the standards set forth under the four “core components” the SAFE Framework; and it does not specify other criteria for identifying other “risks” associated with imported cargo shipments. Argentina has failed to identify the particular risks that the DJAI Requirement is supposed to combat, making only generalized statements about national economic policies relating to “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,”¹⁰⁰ and “protect[ing] Argentine industry and facilitat[ing] the participation of monitoring officials from Argentine chambers of industry – who have been working with sensitive products,” to better ensure “productive growth with social inclusion and sustained development.”¹⁰¹

93. Second, nothing in Argentina’s response explains why or how the DJAI Requirement (and all of its trade restrictive and non-transparent features) is necessary or relevant to

⁹⁶ Argentina’s First Written Submission, para. 192.

⁹⁷ SAFE Framework, Introduction, p. 1 (JE-735).

⁹⁸ SAFE Framework, Introduction, p. 1 (JE-735).

⁹⁹ Argentina’s First Written Submission, para. 258.

¹⁰⁰ *SCI Resolution* 1, preamble (JE-41).

¹⁰¹ 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).

ascertaining risk on imports from other countries. Those features include the unlimited discretion afforded to participating agencies to “observe” imports; the lack of transparency regarding the “observation” procedure as well as the bases for observations generally and the reasons for observations in particular cases; the imposition of RTRRs as a condition of lifting “observations;” the extended period of delays (up to 6 months or longer) in approving duly completed DJAI applications; the unreasonable and non-uniform administration of the DJAI Requirement generally; and so forth. Argentina has not explained any connection, nor is there one, between these and other features of Argentina’s DJAI import licensing regime and its interest in ascertaining risk. Indeed, as noted in paras. 85-86 above, Argentina already maintains separate customs procedures for determining whether and how to inspect imports.

94. Third, the DJAI system requires the submission and governmental approval of an application before an importer can even place an order for, or secure foreign exchange financing for, the goods that he wishes to import – a point in time at which insufficient information would exist to allow a customs authority to “identify high-risk consignments” or to select “particular consignment[s for]... physical inspection, [or] non-intrusive inspection methods.”¹⁰² Without a purchase order or foreign exchange financing, suppliers would not normally have identified, much less packaged the goods. In some cases, the supplier may not even have begun manufacturing the goods at issue, since the importer has not yet issued a purchase order for them. At that very early stage, customs authorities will not have available to them information necessary to make judgments about supply chain security or other risks, such as a bill of lading, packing list, commercial invoice, or information about routing, vaning center, vaning plan, seal numbers, container number, vessel reference number, and so forth.

95. Finally, Argentina’s claim that the DJAI Requirement is “designed in accordance with” the SAFE Framework is demonstrably at odds with the language of the SAFE Framework itself given that the DJAI Requirement appears to disregard the supply chain security risks or countermeasures and time periods of the SAFE Framework agreed upon by WCO members.¹⁰³

IV. THE UNITED STATES HAS DEMONSTRATED THAT THE DJAI REQUIREMENT IS INCONSISTENT WITH ARTICLE 3.2 OF THE IMPORT LICENSING AGREEMENT

96. Argentina argues that complainants “cannot have it both ways” in that both Article XI:1 of the GATT 1994 and Article 3.2 of the Import Licensing Agreement cannot apply to the DJAI Requirement.¹⁰⁴ Further, Argentina argues that the United States must show that the DJAI Requirement is more trade-restrictive than the RTRRs in order to prevail on its claim under Article 3.2. For the reasons that the United States has already discussed,¹⁰⁵ both of these provisions do apply to non-automatic import licenses such as the DJAI requirement, and the principle of *lex specialis* does not prevent the consideration by the Panel of either claim.

¹⁰² Argentina, First Written Submission, at para. 258.

¹⁰³ See generally, U.S. First Opening Statement, paras. 23-34; U.S. Second Written Submission, Annex 1, *infra* paras. 49-55.

¹⁰⁴ Argentina’s First Written Submission, paras. 307-11.

¹⁰⁵ See U.S. Second Written Submission, *supra*, Section II.D.

97. Further, and contrary to Argentina’s arguments,¹⁰⁶ the DJAI Requirement and the RTRRs are separate measures, each of which restricts the importation of goods. As the United States has explained,¹⁰⁷ the DJAI Requirement is a discretionary, non-automatic import licensing requirement that serves as a restriction on importation because Argentine officials may withhold permission to import for virtually any reason whatsoever, including on condition of compliance with the RTRRs. The RTRRs impose requirements on importers that restrict their ability to import goods, and are enforced through the withholding of permission to import until commitments are made to comply. The withholding of permission is accomplished through the DJAI system, and previously the CIs.

98. Because the RTRRs and DJAI Requirement are separate, and because, in any event, a WTO-inconsistent measure cannot serve to justify the restrictions imposed by an import licensing measure, the United States is not required to show, under either Article XI:1 of the GATT 1994 or Article 3.2 of the Import Licensing Agreement, that the DJAI Requirement imposes trade-restrictive effects additional to those caused by the RTRRs, as Argentina argues.¹⁰⁸

99. Argentina has failed to identify any underlying “restriction” separate from the licensing requirement itself, and appears to contend that there is none.¹⁰⁹ Further, no such restriction can be discerned from the legal instruments and other guidance establishing the DJAI Requirement.¹¹⁰ 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.

V. THE DJAI REQUIREMENT IS INCONSISTENT WITH ARTICLE X:3(A) OF THE GATT 1994

100. Argentina has also failed to rebut the evidence demonstrating that it has not administered the DJAI Requirement in a reasonable, uniform manner, consistent with GATT 1994 Article X:3(a). Argentina focuses on a single affidavit to argue that the United States has provided insufficient evidence of an Article X:3(a) violation. Yet, Argentina has failed to address or respond to the extensive evidence showing, among other things, that Argentine authorities act without regard to directly relevant legal authorities, and treat similarly situated importers with great variance in terms of the delays, disposition, and other aspects of their administration of the DJAI system, as detailed in Exhibit US-1.

¹⁰⁶ Argentina’s First Written Submission, para. 310.

¹⁰⁷ See U.S. Second Written Submission, *supra*, Section II.A.

¹⁰⁸ Argentina’s First Written Submission, para. 311.

¹⁰⁹ Argentina’s Responses to First Panel Questions at 10 (Response to Panel Question 21).

¹¹⁰ U.S. First Written Submission, paras. 194-98.

VI. THE UNITED STATES HAS ESTABLISHED A PRIMA FACIE CASE OF THE EXISTENCE OF THE RTRRS MEASURE

101. Argentina has declined to rebut the evidence provided by the United States and co-complainants with respect to the RTRRs measure,¹¹¹ but rather argues that complainants have failed to make a *prima facie* case with respect to the RTRRs.¹¹² Argentina argues that there is a higher evidentiary burden with respect to unwritten measures, but this argument does not help Argentina for several reasons. First, it may be the case that it is often difficult as a practical matter to establish the existence of an unwritten measure, but there is no special rule under the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) that requires some sort of special, higher burden in the establishment of unwritten measures. The burden on the complaining party is to provide sufficient evidence for the Panel to find as a matter of fact that the measure exists. Relatedly, Argentina does not explain what that special, higher burden might be, nor how it would be evaluated. Second, and in any event, the United States in fact has established, based on a large volume of evidence, the existence of the RTRRs measure and its content. Argentina thus has failed to present any facts or arguments that contradict this *prima facie* case.

A. THERE IS NO SPECIAL BURDEN OF PROOF FOR UNWRITTEN MEASURES

102. There is no separate and higher burden placed on a party to a dispute settlement proceeding that alleges the existence of an unwritten measure. The burden is on complainants to provide sufficient evidence for the Panel to determine that the RTRRs measure exists; the United States and co-complainants have done so in this dispute.

103. A party claiming a breach of a provision of a WTO agreement by another Member bears the burden of asserting and proving its claim. With respect to the allocation of the burden of proof, the Appellate Body has explained:

. . . the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence. If that party adduces evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption.

In the context of the GATT 1994 and the *WTO Agreement*, precisely how much and precisely what kind of evidence will be required to establish such a presumption will necessarily vary from measure to measure, provision to provision, and case to case.¹¹³

¹¹¹ See, e.g., Argentina’s Responses to First Panel Questions at 8-13, 15-17, 23-27 (Responses to Panel Questions 8, 13, 14, 16, 17, 18, 26, 33, 42).

¹¹² See, e.g., Argentina’s First Opening Statement, paras. 40-41.

¹¹³ *US – Wool Shirts and Blouses (AB)*, p. 14; see also *EC – Sardines (AB)*, para. 270.

104. Further, Argentina’s reliance on the Appellate Body report in *US – Zeroing (EC)* and the panel report in *EC – Large Civil Aircraft* to support the existence of a higher standard of proof for unwritten measures is misplaced. As the Appellate Body observed, the evidence required to establish a *prima facie* case is that which is necessary to “raise a presumption that what is claimed is true” and will depend on the facts and circumstances of the claim or defense. Accordingly, the Appellate Body’s discussion of the evidence required in *US – Zeroing (EC)* must be considered in the context of that dispute, which differed in key respects from the claims at issue in this dispute. The Appellate Body in *US – Zeroing (EC)* considered whether the “zeroing methodology” could be challenged, as such, in dispute settlement.¹¹⁴ That case concerned the methodology as a “rule or norm” relating to how a particular law or regulation is applied by a Member.¹¹⁵ Similarly, the panel in *EC – Large Civil Aircraft* also examined the “existence of an alleged unwritten measure with ‘normative value’”¹¹⁶ . . . “in the sense that it ‘creates expectations among the public and among private actors.’”¹¹⁷ Thus, that panel looked to the Appellate Body’s guidance as to “how to undertake such an assessment for the purpose of demonstrating the existence of an unwritten measure that is claimed to have general and prospective application in the sense of a ‘rule or norm.’”¹¹⁸ It is in this context that the panel and Appellate Body stated that a “high threshold” applies to the examination of the alleged measure.

105. In this dispute, the measure being challenged is not a “norm or rule” as that term was used by the Appellate Body in *US – Zeroing (EC)* and the panel in *EC – Large Civil Aircraft*, but rather a measure in the form of a decision by Argentina to impose the RTRRs, as evidenced by statements by Argentine officials, various private sources that reported instructions related to the RTRRs, and the many other sources cited by complainants.¹¹⁹

106. The facts presented in this dispute are similar to those which confronted the panel in *EC – Biotech*. In that dispute, the complaining parties, including the United States and Argentina, alleged that the EC had imposed a moratorium on the approval of biotech products.¹²⁰ The European Communities contested the moratorium existed, and so the panel observed that “[i]t is therefore necessary to examine in detail whether the evidence supports the Complaining Parties’ assertion.”¹²¹ Thus, the question with respect to the existence of an unwritten measure is the same as that related to any fact asserted by a Member in the course of dispute settlement procedures: Does the evidence support the assertion?

¹¹⁴ *US – Zeroing (EC) (AB)*, para. 185.

¹¹⁵ See, e.g., *US – Zeroing (EC) (AB)*, paras. 199-200.

¹¹⁶ *EC – Large Civil Aircraft (Panel)*, para. 7.518.

¹¹⁷ *EC – Large Civil Aircraft (Panel)*, para. 7.519.

¹¹⁸ *EC – Large Civil Aircraft (Panel)*, para. 7.519. The panel in *EC – Large Civil Aircraft* considered whether the United States had demonstrate the existence of a measure constituting a “program” within the meaning of Article 2 of the SCM Agreement.

¹¹⁹ See generally U.S. First Written Submission, Section III.B.

¹²⁰ *EC – Biotech*, para. 7.456.

¹²¹ *EC – Biotech*, para. 7.459.

107. In *EC – Biotech*, the panel methodically considered the evidence of the moratorium submitted by the complaining parties to determine whether the moratorium existed.¹²² The evidence considered included press releases, fact sheets and other statements of the European Commission; speeches and news reports concerning statements of Commissioners; and statements by member State officials.¹²³ The panel concluded that this evidence supported the complaining parties’ assertion that the EC applied a moratorium during the relevant time period and that such evidence, together with other evidence submitted in the dispute, was sufficient to establish the existence of the moratorium.¹²⁴

108. A similar task is before the Panel in this dispute. In some cases, the only evidence necessary to establish the existence of a measure is a written instrument that promulgates it,¹²⁵ and in others, such as in the instant dispute, where the measure or aspects of the measure are not written, additional evidence may be required. Complainants have submitted a large volume of evidence supporting the existence of the RTRRs measure. However, the fact that a *larger volume of evidence* is often necessarily involved where a complainant challenges an unwritten measure does not mean that a *higher standard of proof* applies to the demonstration of that measure.

109. In this dispute, as in all others, the Panel must examine this evidence and evaluate whether it is sufficient to meet the complainants’ burden of demonstrating a *prima facie* case with respect to the RTRR measure. Considered in its totality, this evidence, which includes statements by Argentine officials in governmental press releases, speeches, interviews, and other news reports; statements by company officials in earnings calls and reports, news reports, press releases, and in anonymized affidavits; other news reporting; trade publications; and surveys of companies doing business in Argentina, meets this standard.

B. THE UNITED STATES HAS ESTABLISHED A PRIMA FACIE CASE OF THE EXISTENCE OF THE RTRRS

110. Argentina further argues that complainants have failed to establish a *prima facie* case because they have not demonstrated the “precise content of the alleged ‘overarching’ RTRR measure,”¹²⁶ however Argentina bases this argument on conclusory statements about the evidence submitted in this dispute and the creation of non-existent evidentiary hurdles.

111. The United States demonstrated the content of the RTRR measure in its first written submission. The RTRR measure is the decision by high-level Argentine officials, including Secretary Moreno and Minister Giorgi, to require commitments of importers to export a certain dollar value of goods, reduce the volume or value of imports, incorporate local content into

¹²² *EC – Biotech*, paras. 7.522-7.531.

¹²³ *EC – Biotech*, paras. 7.524-7.531.

¹²⁴ *EC – Biotech*, para. 7.1272.

¹²⁵ See *Chile – Price Band (Article 21.5 – Argentina) (AB)*, para. 175.

¹²⁶ Argentina’s First Opening Statement, para. 44.

products, make or increase investments in Argentina and/or refrain from repatriating profits, as a prior condition for permission to import goods.

112. The RTRR measure is demonstrated, as an initial matter, by statements of Argentine officials themselves describing the measure,¹²⁷ such as statements by Secretary Moreno that “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 . . .”¹²⁸ and “for every dollar’s worth [that companies] import, they must export one”¹²⁹ and a Ministry of Industry press release explaining that “[f]rom now on, imports must be compensated for by exports, which have on year to be fulfilled . . . or alternatively, an irrevocable capital contribution can be made . . . in the amount of the net total of imports.”¹³⁰ The RTRR measure is also evidenced by a large number of sources substantiating the application of the measure across sectors and product groups.¹³¹ The large volume of evidence regarding the operation of the RTRR measure amply demonstrates its content, as described by the United States.

113. Argentina provides only cursory explanations for why certain of the evidence from news reports should be discounted by the Panel. Even though Argentina appears to argue that all of the “evidence on which the complainants seek to base their claims . . . are lacking in validity,”¹³² Argentina does not discuss the individual pieces of evidence, claiming generally that sources published by *La Nación* and *Clarín* and related companies are less probative because of certain past actions and reporting associated with the publications.¹³³ This evidence makes up only a relatively small portion of the evidence submitted by co-complainants, and Argentina has not explained how those past events impact the probity of the information submitted. The United States submits that in examining this evidence, the Panel should consider that its content is consistent with that of other evidence on the record in this dispute.

114. Regardless of these issues, Argentina has not presented any grounds for the Panel to disregard any of the evidence in this dispute. As part of its analysis of the factual issues, the Panel will accord probative weight to the various pieces of evidence and determine whether complainants have established their *prima facie* case.

115. Argentina also obscures the factual questions before this Panel when it argues that co-complainants have failed to clear non-existent hurdles in the presentation of the evidence in this dispute. To make its *prima facie* case, the United States must demonstrate the existence of the RTRRs measure. Argentina argues that the U.S. case is deficient because it has not “demonstrated whether and to what extent the precise content of such overarching [RTRR]

¹²⁷ See generally U.S. First Written Submission, Section III.B.

¹²⁸ 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).

¹²⁹ *Buenos Aires Económico January 31, 2012* (JE-3).

¹³⁰ *Ministry of Industry Press Release, March 25, 2011* (JE-1).

¹³¹ See U.S. First Written Submission, Section III.B.

¹³² Argentina’s First Written Submission, para. 26.

¹³³ Argentina’s First Written Submission, paras. 28-34.

measure is any different than the content of the various unwritten alleged requirements that supposedly comprise it.”¹³⁴ Argentina places some significance on the term “overarching,” but the United States cannot discern what that significance may be, how it relates the U.S. evidentiary burden with respect to this measure, or why it is necessary for the United States to demonstrate a “difference” between the RTRR measure and the five types of requirements Argentine imposes pursuant to the measure.

116. Argentina further argues that complainants have failed to demonstrate that the RTRR measure “has general and prospective application.”¹³⁵ However, Argentina again misplaces its reliance on the evaluation of the Appellate Body in *US – Zeroing (EC)* and the Panel in *EC – Large Civil Aircraft* of an alleged “rule or norm” to argue that the United States must demonstrate this element.¹³⁶ As noted above, the United States is not alleging the existence of a “practice” or “methodology” but rather the extant decision of high-level Argentine officials to impose RTRRs on imports of goods into Argentina. Like any current measure, it applies until it is withdrawn. There is no basis for requiring an additional showing of “general and prospective application.”

117. Moreover, even if the United States did need to demonstrate “general and prospective application,” this element would be evidenced by statements of Argentine officials and the repeated imposition across sectors of the RTRRs up to, and after, the establishment of this Panel. As the Appellate Body explained in *US – Zeroing (EC)*, such “evidence may include proof of the systematic application of the challenged ‘rule or norm.’”¹³⁷ The United States has submitted substantial proof of the repeated and systematic application of the RTRRs measure, which would satisfy this element of proof, if it were required.

118. For these reasons, the United States has satisfied its burden of proof as to the existence of the RTRRs measure, and Argentina has offered no facts or legal arguments which rebut the U.S. *prima facie* case.

VII. THE RTRRS MEASURE IS INCONSISTENT WITH ARTICLES X:1 AND XI:1 OF THE GATT 1994

119. Aside from arguing that the United States did not meet its burden of showing the existence of the RTRR’s, Argentina has not even attempted to address the United States substantive claims with respect to the RTRR measure. Nonetheless, for the Panel’s convenience, the United States will summarize below the U.S. *prima facie* case on these claims, as presented in the prior written and oral submissions of the United States.

A. THE RTRRS MEASURE IS INCONSISTENT WITH ARTICLE XI:1 OF THE GATT 1994

¹³⁴ Argentina’s First Opening Statement, para. 46.

¹³⁵ Argentina’s First Opening Statement, para. 47.

¹³⁶ Argentina’s First Opening Statement, para. 43.

¹³⁷ *US – Zeroing (EC) (AB)*, para. 198.

120. Argentina’s use of RTRRs to condition import approvals under the DJAI system demonstrates that the DJAI Requirement is a non-automatic import licensing requirement and import restriction, resulting in a breach of Argentina’s obligations under Article XI:1 of the GATT 1994. In addition Argentina’s RTRRs are a distinct measure that causes trade restrictions, and results in a separate breach of Argentina’s obligation under Article XI:1.

121. 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. In particular, Argentina limits the importation of goods on the importer’s ability to export goods, make investments in Argentina, produce or source locally, limit the volume or value of imports, or repatriate profits.

122. The *India – Autos* panel considered one of the types of restrictions that Argentina imposes on importers: trade balancing. India required importers to balance the value of imported auto kits and components with the value of exports from India. 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 and served as a restriction under Article XI:1.¹³⁸

123. Similarly, the RTRRs impose a practical limit on the volume of imports an importer can bring into the Argentina due to the conditions Argentina places on 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. For this reason, and as more fully explained in the U.S. first written submission,¹³⁹ the RTRRs measure constitutes a “restriction” prohibited by GATT 1994 Article XI:1.

B. THE RTRRS MEASURE IS INCONSISTENT WITH ARTICLE XI:1 OF THE GATT 1994

124. Similarly, Argentina has failed to fulfill the GATT 1994 Article XI:1 obligation to publish “promptly” and “in such a manner as to enable governments and traders to become acquainted with them,” the “laws, regulations, judicial decisions and administrative rulings of general application” “pertaining to . . . requirements, restrictions, or prohibitions on imports . . .” that a Member has “made effective.”

¹³⁸ *India – Autos (Panel)*, paras. 7.277-78.

¹³⁹ U.S. First Written Submission, paras. 126-35.

125. As explained more fully in the U.S. first written submission,¹⁴⁰ the RTRRs, which pertain on their face to “requirement, restriction or prohibition on imports...,” 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 evidence demonstrates that Argentine officials widely apply the RTRRs to DJAI applicants and their prospective importations and also makes clear that that these unpublished rules are “of general application.”

126. The RTRRs have not been “published.” Inasmuch as Argentina has simply issued official press statements and similar materials 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.

127. Argentina has failed to publish the RTRRs promptly, as required by Article X:1 of the GATT 1994. 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.

VIII. CONCLUSION

128. 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.

¹⁴⁰ U.S. First Written Submission, paras. 163-80.

**ANNEX 1: U.S. COMMENTS ON ARGENTINA'S ANSWERS
TO THE FIRST SET OF PANEL QUESTIONS**

In this Annex, the United States provides comments on certain of Argentina's responses to the Panel's first set of questions. The absence of a U.S. comment on a particular response of Argentina's does not imply that the United States agrees with the statements of Argentina but rather reflects that the United States has addressed the relevant issues in this or in prior submissions. In addition, pursuant to the Panel's communication of November 6, 2013, the United States provides a further response related to the matters raised in Question 19.

4. (To Argentina) Recent panels have circulated to Members their preliminary rulings on issues related to a panel's terms of reference. There have been at least four such panel preliminary rulings circulated to Members this year alone. In the view of this precedent, can Argentina explain why, in its opinion, the Panel should not circulate to WTO Members the preliminary ruling adopted by this Panel on 16 September.

1. The United States notes that the DSU does not provide for preliminary rulings or for circulation of preliminary rulings. These procedural steps have been provided for by certain panels to assist their work, to promote an orderly development of the dispute, and to provide transparency at the request of the parties. At the same time, DSU Article 15 provides for a sequence of issuance of the draft descriptive part of the panel report and then the panel's interim findings, with the opportunity for the parties to provide comments. In each of the four panel proceedings to which the Panel refers, it is the understanding of the United States that the parties were in agreement that the preliminary findings could be circulated to Members. In light of Argentina's position that it requests the Panel to refrain from circulating its preliminary ruling, the United States considers that the Panel should refrain from circulating its findings on the preliminary ruling request.

2. **8. (To Argentina) The Panel notes that in a number of official press releases Argentine authorities seem to have referred to a policy of administered trade to achieve proclaimed objectives such as the attainment of a trade surplus, self-sufficiency, the increase of exports, the preservation of the internal market for domestic products, the substitution of imports, the limitation of imports, and the promotion of investments (see statements by officials such as the President and the Minister of Industry in official press releases; exhibits EU-1, EU-2, EU-3, EU-6, EU-8, EU-9, EU-10, EU-53, EU-54, EU-55). Can Argentina explain what are the specific measures through which the Argentine Government implements its policies of administered trade in order to achieve these proclaimed objectives.**

3. Argentina states in response to Question 8 that the complainants "attribute to the Argentine Government certain general policy objects that it does not have."¹ This assertion is unsupported and contradicts official statements by Argentine officials submitted as exhibits by the complainants. For example, one Ministry of Industry press release quotes Minister Giorgi as stating "[t]his Administration has established and is implementing trade management. That is just the way, as an industrial policy, that we are driving import substitution and, of course, increasing exports, thereby increasing production and creating jobs."² In another press release, Minister Giorgi stated "[t]he strategy of using managed trade to protect jobs has yielded positive results for our industry, which has substituted US\$9.2 billion in imports over the past year" and

¹ Argentina's Responses to First Panel Questions at 6 (Response to Panel Question 8).

² See, e.g., Ministry of Industry Press Release February 25, 2011 (JE-9).

added “the sectors subject to non-automatic licenses are those that contributed most to import substitution”³

4. Members may adopt measures in pursuit of various economic policies, but at the same time, Members must ensure that their measures comply with their WTO commitments. In this dispute, the United States is challenging two measures adopted by Argentina to achieve its trade policy goals – the DJAI Requirement and the RTRRs – which are inconsistent with Argentina’s WTO commitments.

5. Argentina has made an explicit link between these measures and the goals of protecting Argentine industry and promoting import substitution. For example, a government press release issued shortly after the DJAI Requirement came into effect states 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.”⁴ Secretary Moreno, the head of SCI, is reported to have stated that “[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.”⁵ The U.S. first written submission contains additional evidence as to the use of the DJAI Requirement for the management of trade to protect domestic industry and promote exports from Argentina.⁶

6. Similarly, Argentine government officials have linked the RTRR commitments to the pursuit of its economic policy goals. In one of the many Argentine press releases describing commitments extracted from the auto industry, Minister Giorgi is quoted as saying “[t]he automakers clearly understood the benefits of our demand that they balance their trade . . . they now agreed that we took the necessary steps to make a sustainable industry that creates more jobs in Argentina with benefits for all.”⁷ Another press release related to the agricultural machinery industry announced that Minister Giorgi “approved the plan presented by Claas, the German agricultural machinery manufacturer who committed to a balanced flow of imports and exports,” and Giorgi stated “[t]he national integration of agricultural parts and the manufacturing of machinery in the country will allow us to add sustainability and even more competitiveness in the national agricultural sector, in which Argentina is the world leader.”⁸

7. This is only a sample of the evidence that co-complainants have submitted which demonstrates that Argentina has adopted the DJAI Requirement and RTRRs to pursue its

³ Ministry of Industry Press Release February 15, 2011 (JE-7).

⁴ Ministry of Economia Press Release, March 27, 2012 (JE-284). See also Press Release, Ministerio de Economía, La AFIP creó nuevos procedimientos de control de los destinos de importaciones (March 29, 2012), available at <http://www.prensa.argentina.ar/2012/03/29/29376-la-afip-creo-nuevos-procedimientos-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).

⁵ Roberto Navarro, *El Plan 2012*, DEBATE, January 27, 2012 (JE-8).

⁶ See U.S. First Written Submission, paras. 34-47.

⁷ Ministry of Industry Press Release, May 2, 2011 (JE-4).

⁸ Ministry of Industry Press Release April 1, 2011 (JE-128).

economic policy goals through trade management. Argentina’s response to Panel Question 8 does not rebut the evidence submitted by the United States.

13. (To Argentina) Please comment on the document provided by the European Union as exhibit EU-14 (notarial certification from Mr. Richard Rodriguez, Notary Public in Geneva, dated 13 June 2013)

8. As with all documents, the Panel must assess Exhibit JE-328 (EU-14) in light of the evidence it contains and in the context of all the evidence submitted in this dispute. In this regard, Exhibit JE-328 provides the certification and attestation of a notary public as to the content of certain documents and their signature. The objections that Argentina has made do not impact the probative value of this evidence. In particular, it is unclear what the relevance is that the documents examined by the notary were copies, that there is no “declarant” (but rather the notary himself examined the documents), or that the date of issuance of the notarial certificate is not explained.

9. The United States also notes that Argentina itself should have additional evidence on these matters, given that the private parties made the agreements with the Government of Argentina, and that the private parties made the commitments to the Government of Argentina. Despite this, Argentina in its response does not deny the existence of the agreements or commitments described in Exhibit JE-328. Instead, Argentina urges that the exhibit be disregarded on technical grounds. For these reasons, Argentina’s response provides no basis for the Panel to disregard JE-328. To the contrary, the exhibit is probative as to the existence of agreements and commitments concluded pursuant to the RTRRs measure.

14. (To Argentina) Please comment on the information provided by the complainants in exhibits JE-306 and JE-307 (affidavits from officials of private companies)

10. As noted in the U.S. comments to Argentina’s response to Question 13, the Panel must assess each exhibit in light of its contents and all the evidence submitted in this dispute. Complainants have assembled a large volume of evidence from a variety of source. The two sworn affidavits of U.S. company officials, Exhibits JE-306 and JE-307, are consistent with and corroborate the circumstances demonstrated by these other exhibits. For example, the exhibit of Company Y (JE-307) describes the process of buying “export credits” to satisfy the demands for balancing exports and imports.⁹ The export credit process is also described in other evidence submitted by the United States, including in publications issued by trade associations, and in newspaper advertisements.¹⁰

11. Furthermore, Company X provided supporting documentation in the form of an email¹¹ and a letter¹² sent to the office of the Secretary for Domestic Trade that corroborates the

⁹ *VP of Company Y Affidavit*, paras. 19-22 (JE-307). As Company Y explained, its Argentine affiliates have been advised that their participation in a challenge to the DJAI Requirement and RTRRs could result in retaliation by the Argentine government, an outcome that is made possible by the discretionary nature of these measures. *See id.* paras. 31-32.

¹⁰ U.S. First Written Submission, para. 56, accompanying footnotes & cited exhibits.

¹¹ *Company X E-mail* (JE-305).

¹² *Company X Letter* (JE-304).

statements in the affidavit, as well as a print-out of its DJAI submission record¹³ which shows the delay in release of applications until after Company X made commitments to comply with the RTRRs. These exhibits support the statements made by the Vice President of Company X.

12. For these reasons, Exhibits JE-306 and JE-307 are highly probative of the operation of both the DJAI Requirement and the RTRRs.

16. (To Argentina) Please provide the Panel with copies of the agreements listed in Annex 1.

17. (To Argentina) Please provide information concerning the commitments announced by private economic operators in Argentina, listed in Annex 2.

18. (To Argentina) Please provide information on the exigencias (demands) made by the Argentine Government to private economic operators in Argentina, listed in Annex 3.

26. (To Argentina) The complainants have referred to "request notes" (notas de pedido) allegedly sent by the SCI to various economic operators in February 2012, listing the type of information that importers should submit in order to have observations on their DJAI applications lifted (see exhibits JE-52, JE-50, EU-414, JE-55, JE-54, JE-51, JE-47, EU-416, JE-53, JE-48, JE-49, EU-418). Can Argentina confirm the existence of these notes and provide copies.

13. The United States will comment on Argentina's responses to Panel Questions 16, 17, 18 and 26 together as Argentina provided similar responses to each. Notably, Argentina declined to provide the information requested by the Panel as to the agreements, commitments, demands, and request notes that are demonstrated by the evidence submitted by complainants.

14. Although Argentina declines to provide the information requested by the Panel, the United States would note that Argentina has not stated that it *does not possess* the requested information or is otherwise unable to disclose that information. In light of Argentina's non-responsive answer, the United States submits that the Panel can and should infer that the requested information would be consistent with complainants' evidence and with official government statements regarding these documents (for example in exhibits JE-4, JE-5, JE-81, JE-82, JE-84, JE-85, JE-86, JE-87, JE-90, JE-91, JE-92, JE-95, JE-102, JE-103, JE-128, JE-129, JE-133, JE-201, JE-209, JE-530, JE-236, JE-244, JE-245, JE-400, JE-424, JE-499, JE-501, JE-564, JE-577, JE-590, and JE-613).

15. In addition, for the reasons explained at Section VI.B of this submission, the United States has established its *prima facie* case as to the existence of the RTRRs measure, that is, the decision by high-level Argentine officials, including Secretary Moreno and Minister Giorgi, to require commitments of importers to export a certain dollar value of goods, reduce the volume or value of imports, incorporate local content into products, make or increase investments in Argentina and/or refrain from repatriating profits, as a prior condition for permission to import goods.

¹³ Company X DJAI (JE-303).

19. (To the European Union, the United States and Japan) As support of its argument on the existence of certain RTRRs, the complainants have referred to agreements signed between the Argentine Government and economic operators in Argentina and to letters addressed by economic operators in Argentina to officials in the Argentine Government. Please provide copies of agreements or letters of this kind. Alternatively, please indicate the type of procedural rules that you would request the Panel to adopt in order to protect information in a manner that would enable the submission of such information to the Panel.

16. To further elaborate on its response to Panel Question 19, and respond to the Panel's communication of November 6, 2013, the United States would like to clarify that it is not aware of any type of procedural rules that would facilitate the access of either the United States or the Panel to agreements or commitments entered into by importers in order to satisfy the RTRRs demanded by Argentina.

17. The difficulty of access to documents held by private actors results from the nature of Argentina's discretionary licensing system, and the specific problems that this system presents to private actors. BCI procedures are generally intended to prevent access of sensitive information to other private actors, such as competitors of the company submitting the information. That is not the primary issue here. Rather, given the discretionary nature of Argentina's system, private actors are concerned that their submission of information in this dispute may result in negative, retaliatory action with respect to pending or future import licenses. Thus, the concern of private actors is not with access of competitors to the sensitive information, but rather with the access to such information of persons who may in turn take adverse decisions with respect to import licenses.

18. As the European Union noted in its response to the Panel's questions, BCI procedures of the type that have been adopted in past disputes would not ensure that the identity of companies would be preserved from disclosure to Argentina. Even if submissions are redacted, each document may be unique enough for Argentina to discover which company had provided it for use in the dispute. Further, in the view of the United States, and pursuant to DSU Article 18.1, *ex parte* submissions, either to the Panel or an expert, raise systemic concerns.

19. The United States would also re-emphasize that regardless of what procedures the Panel may adopt, the United States is not in the possession of any agreements or commitments beyond what has been provided by Company X and submitted to the Panel. The United States cannot compel private companies to provide this documentation, and U.S. exporters have demonstrated significant concerns about retaliation should they share such documents with U.S. government officials, much less provide them for use in dispute settlement proceedings to which Argentina is a party. Special procedures, no matter how protective, will not enable the United States to share documentation with the Panel which it does not possess.

20. Finally, the United States would again note that direct documentation on the agreements and commitments entered into by individual importers is not required to establish the existence of such agreements and commitments. To the contrary, the evidence that has been submitted by complainants is more than sufficient to demonstrate the existence of the RTRRs measures. The imposition of the RTRRs occurs across sectors and importers and is evidenced by statements by

Argentine government officials, and in official government sources, by company officials and trade associations, and by news reports, as well as other sources.

21. Exhibit JE-755, a document published in October of 2013 by the Argentine Chamber of Commerce (*Cámara Argentina de Comercio* or “CAC”) entitled “Details of Procedures and Experiences for Current Businesses Engaging in Foreign Trade,” will help supplement further the information already provided. This document provides information based on the experiences of partners of the CAC and operators in foreign trade.¹⁴ It explains that, if a DJAI is under observed status the importer must present a “commitment of export” for 2012 and 2013 in the form of a “letter, signed by the highest authority or legal representative of the company (certified by a bank or notary) assuming the obligation to export the equivalent to the intended import during the year.”¹⁵ CAC also explains that there are several alternatives to complying with the commitment to export, which include import substitution and bringing capital from abroad, such as through making investments.¹⁶

22. This document confirms what is demonstrated by all the rest of the evidence submitted by the United States and co-complainants: namely, that Argentina has adopted the RTRRs measure and systematically applies it through the DJAI system. The evidence further demonstrates that many importers are aware, through experience and information sharing among economic actors, of the need to comply with the RTRRs and what is generally required.

23. As a result, despite Argentina’s refusal to respond to the Panel’s request to provide documentation that is within Argentina’s possession, there is ample basis for the Panel to find that Argentina maintains the RTRRs measure, as described by the United States.

21. (To Argentina) Does the DJAI serve to implement or administer an underlying measure? If so, can you indicate what is the underlying measure that is implemented through the DJAI and provide the relevant legal instruments.

24. Argentina does not identify any underlying WTO-consistent measure that is implemented through the DJAI Requirement, but rather argues that the DJAI Requirement is a “customs formality.” However, for the reasons discussed in this submission at Section III.B, the DJAI Requirement is not a “customs formality,” and the Argentine agencies participating in the DJAI system do not review DJAI submission for only “customs purposes” as Argentina indicates in its response to Question 21. For example, while Argentina asserts that the DJAI Requirement is for customs purposes, it simultaneously cites entire non-customs related laws as the source of

¹⁴ Cámara Argentina de Comercio Comisión Asesora Interna de Importaciones y Exportaciones y Colaboración del Dpto. De Comercio Exterior [Argentine Chamber of Commerce Advisory Committee for Imports and Exports with the Collaboration of the Department of Foreign Trade], DETALLE DE NORMATIVAS Y EXPERIENCIAS SOBRE LAS ACTUALES OPERATORIAS DE COMERCIO EXTERIOR [DETAILS OF PROCEDURES AND EXPERIENCES FOR CURRENT BUSINESSES ENGAGING IN FOREIGN TRADE] at 2 (October 2013), available at http://www.cac.com.ar/documentos/23_Normativas%20COMEX.pdf (hereinafter “CAC, *Details of Procedures and Experiences*”) (JE-755).

¹⁵ CAC, *Details of Procedures and Experiences*, p. 3 (JE-755).

¹⁶ CAC, *Details of Procedures and Experiences*, pp. 4-5 (JE-755).

reasons that an observation may be placed.¹⁷ For this reason and those discussed more fully in Section III.B, the DJAI Requirement is not a “customs formality.”

22. (To all parties) Concerning entities that can observe a DJAI, please explain:

- a. How do applicants become acquainted with the reasons that led to an observation?**
- b. How are applicants informed which agency made an observation?**
- c. How are applicants informed of any additional information or documents that are required to have a DJAI observed status changed to exit status?**

25. Argentina’s response to Question 22 does not refute in any way the extensive evidence that importers are not informed of the reasons for “observations” that may be lodged by Argentine governmental agencies participating in the DJAI system. Argentina’s response confirms that importers are left to “contact the agency that has made the observation in order to become acquainted with the reasons.”¹⁸ Argentina’s response also does not refute the evidence that importers are often left without meaningful contact information, such that they are unable to secure any explanation as to the steps they should take to resolve the pending “observation,” until the participating agency chooses to contact the importer, if the participating agency does so at all.¹⁹ Finally, Argentina’s response does not refute that importers face great difficulties in understanding the reasons for “observations” in light of the above-referenced administrative features of the DJAI Requirement and in light of the lack of uniformity or rationality in the treatment by Argentine officials of importers with pending “observed” DJAI applications.²⁰

23. (To Argentina) Annex 4 to this list of questions reflects the Panel's understanding of the agencies that participate in the DJAI system. Can Argentina review, complete or amend Annex 4 as necessary in order to provide the Panel with information concerning: (a) agencies that participate in the system and date of accession; (b) product coverage; (c) the period that each agency has to indicate observations; (d) the reasons that each agency may invoke to observe a DJAI; (e) the code that reflects the reasons that may be invoked by agencies; and, (f) the specific provision of the legal instrument justifying the reason for an observation.

26. Annex 4 to Argentina’s responses to the Panel’s questions, although providing somewhat more information than is publicly available to traders, still reveals little or no information as to the reasons an observation may be placed or what the importer must do to resolve the information. The codes for the reasons an observation is observed are not available in any

¹⁷ See Argentina’s Responses to First Panel Questions, Annex 4.

¹⁸ Argentina’s Responses to First Panel Questions, Response to Panel Question 22.

¹⁹ See U.S. Response to First Panel Questions, Response to Panel Question 22 (reflecting that plaintiffs in Argentine court proceedings received no explanation of the reasons underlying pending “observations” for nearly six months or longer; reflecting that respondents to Japanese survey did not receive explanations for extended delays in approvals; reflecting that Company Y was frustrated in its attempts to contact someone at SCI to provide an explanation for the “observations” on the company’s imports; reflecting that Company X was forced to wait until a representative from SCI contacted Company X with SCI’s demands for pricing changes (and ultimately export commitments) as a condition of lifting observations). See generally US-1.

²⁰ See generally US-1.

published document and provide no information as to the reasons an observation is placed. For example, SCI uses only one code, even though there are five different legal sources for an observation, according to Annex 4.

27. Apart from the reasons for AFIP observations that are provided in the DJAI User Manual,²¹ no other reasons are explained with any precision in Annex 4 or anywhere else. Argentina asserts that the Directorate-General of Customs (*Dirección General de Aduanas* or “DGA”) participates for “customs control” reasons, without specifying the meaning of that term, or the precise bases for “customs control” observations.

28. The scant information that Argentina is able to provide regarding the operation of the DJAI system and agencies’ participation in it further supports the fact that there *are no meaningful limits* on the system and the ability for government officials to block DJAI applications.

29. The United States notes that, in the Panel’s communication of November 6, 2013, it has identified additional questions and gaps in Argentina’s response with respect to this question. The United States would observe that, irrespective of Argentina’s response to the Panel’s further questions, the Argentine agencies are not in fact limited by any law, regulation, or other instrument in their discretion to place observations in the DJAI system. *Resolution 3255*, one of the instruments which establish the framework for the DJAI system merely provides that “[g]overnment agencies that use the [DJAI] shall make appropriate electronic comments, according to their jurisdiction.”²² Argentina has identified statutes and regulations which describe the jurisdiction of the agencies.²³ These instruments contain no criteria for evaluation of DJAI applications, nor do they indicate the bases for the lodging of observations in the DJAI system. As a result, they do not impose any discernible limit on an agency’s ability to block a DJAI application.

24. (To Argentina) With respect to the role of the SCI in the DJAI procedure, and referring to the relevant regulations, can Argentina explain:

- a. What is the role of the SCI in the DJAI procedure?**
- d. What are the criteria on the basis of which the SCI can make observations on a DJAI?**
- e. What are the conditions or criteria for the SCI to lift observations on DJAIs?**
- f. What is the information required by the SCI to lift observations on DJAIs?**

30. Argentina’s answer is non-responsive to most of the points that the Panel has asked it to clarify. With respect to Question 24(a), the role of SCI, according to Argentina, is to participate

²¹ DJAI User Manual, p. 25 (JE-13).

²² AFIP Resolution 3255 (JE-16).

²³ Argentina’s Responses to First Panel Questions, Annex 4.

in the DJAI system and place observations for any reason related to its jurisdiction as set out in four statutes²⁴ and Decree No. 2085/11 which, as stated by Argentina:

assigns several responsibilities to the SCI, including trade promotion policy and strategy; fair trade; consumer protection; metrology; supply; and defence of competition. The SCI also can assess, control, make proposals and take measures to improve market organization, transparency and the harmonious development of markets, in the light of the public interest.²⁵

The broad authority provided by Decree 2085/11, as well as the cited statutes, does not clarify the role of SCI in the DJAI process because it provides no insight into the reasons that SCI may lodge observations.

31. In its response to the Panel’s question, Argentina does not identify any criteria on the basis of which SCI can make an observation on a DJAI application or the conditions or criteria for SCI to lift an observation on DJAIs. Further, the information that may be required by the SCI to lift observations is nowhere specified. However, various associations and chambers have circulated information they understand SCI may require, which only confirms the lack of criteria and conditions.²⁶ Because there are no limits on SCI’s authority, SCI has the discretion to place an observation on a DJAI application for virtually any reason whatsoever, including to promote trade policy goals and/or to enforce RTRRs.

25. (To Argentina) What are the risks that the SCI seeks to prevent by making "observations" on DJAIs? Please identify the legal instruments and specific provisions.

32. Argentina has not identified with any specificity what the risks are that SCI purports to prevent. Nor do the instruments establishing the DJAI system, or the legal instruments which provide SCI with general authorities, specify the “risks” SCI seeks to prevent through its participation in the DJAI system. Argentina has identified five legal instruments which relate to SCI’s jurisdiction for purposes of the DJAI system, and has summarized in its response to Question 25 three of those legal instruments. This incomplete summary of Argentina’s legal authorities does not provide any information on why Argentina would place an observation on a DJAI application. Further, Argentina does not explain how the information submitted in a DJAI application²⁷ relates to any of the topics covered by the relevant laws (*e.g.*, fair trade, consumer protection, metrology, markets of public interest).²⁸

²⁴ In addition to Decree No. 2085/11, Argentina asserts that the following statutes relate to its authority for lodging observations: Law No. 22802 (concerning “fair trade”); Law No. 24240 (concerning “consumer protection”); Law No. 19511 (concerning “metrology”); and Law No. 19277 (concerning “markets of public interest”). Argentina’s Responses to First Panel Questions, Annex 4.

²⁵ Argentina’s First Written Submission, para. 231.

²⁶ See, *e.g.*, CAC, *Details of Procedures and Experiences*, pp. 3-4 (JE-755).

²⁷ That information 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. *DJAI User Manual*, pp. 12-20 (JE-13); *AFIP Resoluion 3255*, Updated Annex, Section E (JE-16).

²⁸ Argentina’s Responses to First Panel Questions, Annex 4.

28. (To Argentina) With respect to deadlines in the DJAI procedure, and making reference to the relevant regulations, please clarify whether: (a) the 10-day extensions that agencies are granted to make observations on a DJAI are counted as calendar days or as working days; and (b) the 180-day periods (and any extension thereof) during which a DJAI may remain in the observed status are counted as calendar days or as working days.

33. The United States would note that, although most agencies must decide whether to lodge an observation within ten days, SCI has 15 days to decide.²⁹ It is only once this 15-day time period has passed that a DJAI application may enter the “exist” status (if no observations are lodged).³⁰ As a result, DJAI applications are not in fact processed in ten days.

30. (To Argentina) With reference to Argentina's statement at the first substantive meeting that "the DJAI in 'exit' status can automatically be converted into a customs clearance procedure", please explain:

- b. Once a DJAI application has reached exit status, what additional information, if any, needs to be provided to import and clear goods into Argentine territory, and what additional steps need to be completed?**
- g. To which agency or agencies is the information under subparagraph (a) above to be provided?**
- h. Can the Central Bank of Argentina authorize a payment in foreign currency for an import transaction related to a DJAI that has not attained exit status?**

34. Argentina’s response provides only a partial picture of the steps necessary to complete the customs clearance procedure. The United States would refer the Panel to its response to Question 30 contained in the U.S. responses to the Panel’s questions.³¹

34. (To all parties) In paragraph 18 of its first written submission, Argentina states that "the DJAI procedure ... implements Argentina's commitments under the WCO SAFE Framework". Does the WCO SAFE Framework impose obligations on countries or instead provide a set of voluntary standards and best practices?

35. Argentina’s arguments regarding the SAFE Framework are legally irrelevant and factually incorrect. First, Argentina’s arguments regarding the SAFE Framework cannot justify a WTO-inconsistent measure, and so they do not have any direct legal relevance to the Panel’s evaluation of the U.S. claims in this dispute. Indeed, Argentina has asserted no basis in the WTO Agreements – such as GATT Article XX – under which a possible exception to Article XI could be analyzed. Second, Argentina’s arguments are factually incorrect, because the DJAI does not “implement Argentina’s commitments under the WCO SAFE Framework.”

²⁹ Argentina’s Responses to First Panel Questions, Annex 4; *DJAI User Manual*, p. 7 (JE-13); *SCI Resolution 1*, art. 2 (JE-41).

³⁰ See *AFIP Resolution 3255*, art. 2 (JE-16) (stating “if the established period expires without any comment having been made, processing shall continue on the import operation”).

³¹ U.S. Responses to First Panel Questions, paras. 38-45.

36. The United States disagrees with Argentina’s contention that, “the DJAI is an advance information system applied in risk assessment procedures in line with international best customs practices as recommended by the WCO [under the SAFE Framework].”³²

37. The SAFE Framework was endorsed by WCO Members “to secure the movement of trade in a way that does not impede, but on the contrary, facilitates the movement of trade.”³³ The SAFE Framework is a “regime that will enhance the security and facilitation of international trade,” and will help secure the global trading system against “vulnerab[ilities] to terrorist exploitation that would severely damage the entire global economy.”³⁴

38. According to its stated objectives, “[t]he SAFE Framework aims to: establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability”; aims to “strengthen cooperation between Customs administrations to improve their capability to detect high-risk consignments”; and aims to “promote the seamless movement of goods through secure international trade supply chains.”³⁵

39. Broadly speaking, in its design and operation, the DJAI Requirement is very far removed from these dual goals of facilitating trade and strengthening supply chain security. It has been amply demonstrated that the DJAI Requirement does not facilitate – but rather serves to impede – trade.

40. Indeed, Argentina has failed to identify the particular risks that undergird the DJAI Requirement, having only made generalized statements about national economic policies relating to “effects on the domestic market, since the qualitative and/or quantitative importance of imports to be made has the effect of impacting domestic trade,”³⁶ and “protect[ing] Argentine industry and facilitat[ing] the participation of monitoring officials from Argentine chambers of industry – who have been working with sensitive products,” to better ensure “productive growth with social inclusion and sustained development.”³⁷ Additionally, nothing in Argentina’s response explains why or how the DJAI Requirement (and all of its trade restrictive features) is necessary or relevant to ascertaining risk on imports from other countries.³⁸

³² See generally, U.S. First Opening Statement, paras. 23-34; U.S. Second Written Submission, *supra* paras. 89-95.

³³ SAFE Framework, Introduction, p. 1 (JE-735).

³⁴ SAFE Framework, Introduction, p. 1 (JE-735).

³⁵ SAFE Framework, Objectives and Principles of the SAFE Framework, p. 2 (JE-735).

³⁶ *SCI Resolution 1*, preamble (JE-41).

³⁷ 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).

³⁸ See U.S. Second Written Submission, *supra* para. 92.

41. As discussed in response to question 35, Argentina’s requirement that DJAI approval be secured before financial institutions are allowed to provide importers with access to foreign exchange is just one feature that is inconsistent with the express terms and conditions agreed upon by a consensus of WCO Member countries for purposes of the SAFE Framework. There are many other features of the DJAI Requirement that are demonstrably at odds with the principles and the terms detailed in the SAFE Framework, as discussed in the U.S. Opening Statement at the first meeting of the Panel.

35. (To Argentina) In paragraph 30 of its oral statement, the United States indicates that under SAFE "customs should not require the advance declarations to be submitted more than – for maritime containerized cargo – 24 hours before loading at the port of departure". The DJAI requires information before the merchandise is purchased or loaded for shipment. Can Argentina explain how the DJAI requirement reflects the WCO SAFE standards in this regard?

42. The United States disagrees with Argentina’s statement that it is “not problematic” in light of the SAFE Framework for Argentina to require prospective importers to secure DJAI approvals before financial institutions can provide financing to them and before the importers can issue purchase orders to their foreign suppliers. Argentina’s requirement for advance submission of data at this early stage – which may be weeks or months prior to shipment – is one of the features of the DJAI Requirement that undermines the dual supply chain security and trade facilitation goals of the SAFE Framework, and that directly contravenes the terms and conditions spelled out in the SAFE Framework regarding the timing of such advance import declarations.

43. Argentina focuses on the generalized statement in the SAFE Framework that Customs administrations are moving to “identify shipments that are high-risk as early as possible in the supply chain.” This statement, however, does not validate the timing elements of Argentina’s DJAI Requirement. Rather, the DJAI timeframes directly contravene the detailed timeframes agreed upon by WCO Members for advance goods cargo declarations.

44. In that regard, the SAFE Framework states as follows:

1.3.7. Time limit

The exact time at which the Goods and Cargo declarations have to be lodged with the Customs administration at either export or import should be defined by national law after careful analysis of the geographical situation and the business processes applicable for the different modes of transport, and after consultation with the business sector and other Customs administrations concerned. Customs should provide equal access to simplified arrangements to AEOs regardless of the mode of transport. **However, in order to ensure a minimum level of consistency and without prejudice to specific situations, Customs should not require the advance declarations to be submitted more than:**

Maritime

-Containerized cargo: 24 hours before loading at port of departure.

-Bulk/Break bulk: 24 hours before arrival at first port in the country of destination.

Air

-Short haul: At time of “Wheels Up” of aircraft.

-Long haul: 4 hours prior to arrival at the first port in the country of destination.

Rail

-2 hours prior to arrival at the first port in country of destination.

Road

-1 hour prior to arrival at the first port in country of destination.³⁹

45. These timeframes were developed by WCO member countries in consultation with private sector experts, and were adopted by a consensus of WCO member countries. In contrast to the agreed SAFE Framework timeframes, the DJAI Requirement demands that importers submit DJAI applications prior to issuance of a purchase order, and prior to foreign exchange financing – a date that is often weeks in advance of cargo loading and shipment. This feature of the DJAI system is not reflective of, or compatible with, the SAFE Framework.

37. (To all parties) Do exports of the European Union, the United States and Japan to Argentina follow the WCO SAFE Framework standards (i.e. by providing an advanced electronic importation/exportation declaration)? If so, are advanced exportation declarations provided for all shipments or only for some? If only for some shipments, in which cases?

48. Argentina alleges that, “there are no specific exchanges under SAFE Framework... to Argentina from the EU, USA or Japan.”⁴⁰ This assertion is misleading, as the customs authorities of Argentina and the United States have signed a Customs Mutual Assistance Agreement (CMAA) that enables Argentine and U.S. customs authorities to share information about shipments in a law enforcement investigation context.

129. In light of the pre-existing Argentine legal mechanisms for customs-to-customs information sharing and in light of pre-existing legal Argentine mechanisms for assessing customs risks,⁴¹ it is remarkable that Argentina would seek to justify the DJAI Requirement on the basis of the SAFE Framework – particularly when the DJAI Requirement is inconsistent with provisions of the SAFE Framework in its seeming disregard for the supply chain security risks or countermeasures and time periods of the SAFE Framework, and when the DJAI Requirement does not even identify any supply chain security risks that would purportedly necessitate the DJAI Requirement’s numerous trade restrictive features.⁴²

38. (To Argentina) If imports from the European Union, the United States and Japan to Argentina are covered by WCO SAFE Framework standards (which include advanced electronic exportation declarations from the customs administrations of the country of origin

³⁹ SAFE Framework, pp 12-13 (JE-735) (emphasis added).

⁴⁰ Argentine Responses to First Panel Questions, Response to Panel Question 37.

⁴¹ U.S. Second Written Submission, *supra* paras. 85-86.

⁴² See, e.g., U.S. Second Written Submission, *supra* paras. 91-92.

to Argentina customs authorities), what is the need for a DJAI? What further risk can be ascertained by requiring an importer to make a DJAI request?

49. The United States considers that Argentina has failed to respond to the Panel’s question. Argentina has failed to identify the particular risks that the DJAI Requirement is supposed to combat, as noted above.⁴³ As explained in connection with question 34 above, Argentina’s arguments are legally irrelevant and factually incorrect. First, Argentina’s arguments regarding the SAFE Framework cannot justify a WTO-inconsistent measure, and so they do not have any direct legal relevance to the Panel’s evaluation of the U.S. claims in this dispute. Further, the United States disagrees with Argentina’s suggestions that certain identified features of the DJAI system are consistent with the SAFE Framework.

50. First, Argentina asserts that the DJAI Requirement is consistent with SAFE because “importers submit their application only in one place (MARIA System).” In fact, the MARIA System predated the DJAI Requirement and Argentina’s purported justification of it upon the basis of the SAFE Framework. The MARIA System is part of Argentina’s separate regime for normal customs submissions and clearance.

51. Second, Argentina asserts that “importers know the period within which each agency may observed [sic] an import request and a maximum period is established.” In fact, as amply demonstrated in evidence provided by the complainants, importers do not know the applicable periods that relate to the “observation” process, and many DJAI applications have been delayed in that “observation” process for periods of up to six months or longer, without any explanation being provided by Argentine authorities.⁴⁴ Additionally, Argentine courts have found that the Argentine authorities do not abide by the “maximum periods” in implementing the DJAI Requirement.⁴⁵

52. Third, Argentina asserts that, “if an observation is made, the user identifies in the IT-system the agency that made it.” In fact, the evidence demonstrates that importers are often left without meaningful contact information for the agency that placed an “observation” on a DJAI application, such that they are unable to secure any explanation as to the steps they should take to resolve the pending “observation,” until the participating agency chooses to contact the importer, if the participating agency does so at all.⁴⁶

53. Fourth, Argentina asserts that, “Customs has advanced information that allows it, sufficiently in advance, to determine the inspection appropriate to the import.” In fact, the DJAI Requirement obligates importers to provide, in the first instance, summary information about a

⁴³ See generally U.S. Second Written Submission, *supra* paras. 89-95.

⁴⁴ See generally US-1.

⁴⁵ See generally US-1.

⁴⁶ See U.S. Responses to First Panel Questions, No. 22 (reflecting that plaintiffs in Argentine court proceedings received no explanation of the reasons underlying pending “observations” for nearly six months or longer; reflecting that respondents to Japanese survey did not receive explanations for extended delays in approvals; reflecting that Company Y was frustrated in its attempts to contact someone at SCI to provide an explanation for the “observations” on the company’s imports; reflecting that Company X was forced to wait until a representative from SCI contacted Company X with SCI’s demands for pricing changes (and ultimately export commitments) as a condition of lifting observations). See generally US-1.

small number of data elements, some of which – such as merchandise value – cannot be determined with any precision before issuance of the purchase order and before foreign exchange financing, when the DJAI submission must be made. Furthermore, the DJAI Requirement does not require submission of certain other data elements and documents that are necessary for customs clearance, including information on quantity, foreign exchange rates, etc., as well as the original transport documents (bill of lading, etc.), original commercial invoice, customs value declaration, and/or customs origin declaration. Indeed, Argentina maintains separate requirements in accordance with Argentina’s Customs Code (Law No. 22.415 of 1981, as amended) and regulations, for the submission of all of these documents “immediately after arrival of the goods,” and only after those documents have been reviewed, does Argentine customs determine whether the inspection appropriate to the import transaction – *i.e.*, “red,” “amber,” or “green” channel.⁴⁷ The content and operation of these separate customs procedures further underscores that the DJAI Requirement is neither necessary nor sufficient to achieving the import inspection objectives described by Argentina.

54. Fifth, Argentina recites language in its response about a “risk assessment process,” yet Argentina does not identify the risks that the DJAI process is support to combat, nor does it indicate how the onerous and trade restrictive features of the DJAI Requirement serve to help Argentina assess that (unidentified) risk. Furthermore, there appears to be no connection between Argentina’s purported “risk assessment process,” which Argentina claims to comport with SAFE Framework standards, and the risk assessment standards actually outlined in the SAFE Framework. SAFE Framework Standard 7, which describes risk assessment procedures validated under SAFE, indicates that “Customs administrations should provide for joint targeting and screening, the use of standardized set of targeting criteria [such as the WCO General High-Risk Indicator Document], and [internationally] compatible communication and/or information exchange mechanisms.”⁴⁸ Argentina’s purported “risk assessment process” does not appear to comport with the standards set forth in SAFE Framework Standard 7.

55. In sum, nothing in Argentina’s response explains why or how the DJAI Requirement (and all of its trade restrictive and non-transparent features) is necessary or relevant to ascertaining risk on imports from other countries. Those features the unlimited discretion afforded to participating agencies to “observe” imports; the lack of transparency regarding the “observation” procedure as well as the bases for observations generally and the reasons for observations in particular cases; the imposition of RTRRs as a condition of lifting “observations;” the extended period of delays (up to 6 months or longer) in approving duly completed DJAI applications; the unreasonable and the non-uniform administration of the DJAI Requirement generally. In short, Argentina has not established any nexus between these and other features of Argentina’s DJAI import licensing regime and its interest in ascertaining security risks.

39. (To Argentina) With reference to the description of the core elements of the SAFE Framework in paragraph 246 of Argentina's submission, can Argentina explain how risk is assessed on goods that have not yet been packed for shipment to Argentina?

⁴⁷ See Trade Policy Review: Argentina, pp. 52-53, paras. 20-25, WT/TPR/S/277, February 13, 2012 (JE-299).

⁴⁸ SAFE Framework, p. 18 (JE-735).

56. As noted above, Argentina’s arguments regarding the SAFE Framework cannot justify a WTO-inconsistent measure, and it has asserted no basis in the WTO Agreements – such as GATT Article XX – under which a possible exception to Article XI could be analyzed. The United States also disagrees with Argentina’s suggestion that DJAI Requirement is used primarily for “customs risk management.”⁴⁹ As explained in connection with questions 34, 37 and 38 above and in the U.S. second written submission,⁵⁰ the DJAI Requirement demonstrably does not – as Argentina claims – “allow AFIP to determine, in advance of the arrival of the goods, whether a particular consignment should be targeted for physical inspection, non-intrusive inspection methods, or not be screened at all.”⁵¹

57. The United States also notes that the evidence contradicts Argentina’s assertion that “the DJAI can be registered before or after the purchase or the goods, or even just before the customs clearance.” Resolution 3252 states that the DJAI submission must be made “prior to issuance of an order form, purchase order, or similar document used to purchase items from abroad.”⁵² Likewise, Communication A 5274 from the Central Bank of Argentina prohibits “financial institutions, foreign exchange companies, agencies, offices and brokers” from processing requests for foreign exchange before verifying that a DJAI covering the transaction has received “Approved” status...⁵³ Similarly, importers have confirmed that they are required to submit DJAI applications before issuing a purchase order or accessing foreign exchange.⁵⁴

42. (To Argentina) In its first written submission and in its oral statement at the first substantive meeting, Argentina has objected to press articles provided by the complainants from media outlets "connected directly or indirectly with" Grupo Clarín SA or the newspaper La Nación. Please clarify whether the objection expressed by Argentina extends to any of the following sources of exhibits also provided by the complainants: (a) AIM Digital; (b) *Ámbito financiero*; (c) *América Economía*; (d) *Análisis Digital*; (e) *BAE Argentina* (www.diariobae.com); (f) *Infobae* (infobae.com); (g) *Cadena3.com*; (h) *Centro Despachantes de Aduana de la República Argentina (CDA)*; (i) *CNA Agencia Noticias*; (j) *Semanario Colón Doce*; (k) *Contexto* (www.contextotucuman.com); (l) *Cronista.com*; (m) *DiarioUno.com.ar*; (n) *DiarioVeloz.com*; (o) *eldiario24.com*; (p) *iprofesional.com*; (q) *La Gaceta* (www.lagaceta.com.ar); (r) *LaRed21* (www.lr21.com.uy); (s) *La Tercera*; (t) *launiondigital.com.ar*; (u) *La Voz* (lavoz.com.ar); (v) *Los Andes* (LosAndes.com.ar); (w) *Página 12*; (x) *parlamentario.com*; (y) *TN* (tn.com.ar); (z) *Urgente24.com*; (aa) *Vinculocrítico* (www.vinculocritico.com); and (bb) *Urgente 24* (www.urgente24.com).

58. Argentina provides no factual or legal support for its assertions regarding Argentine news sources. Accordingly, there is no basis for the rejection of press articles published by *Clarín* and *La Nación*, or any other source. More generally, the United States submits that in this dispute, as

⁴⁹ Argentina’s Responses to First Panel Questions, Response to Panel Question 39.

⁵⁰ See also U.S. Second Written Submission, *supra* paras. 83-87 and 89-95.

⁵¹ Argentina’s First Written Submission, para. 258.

⁵² AFIP Resolución 3252, art. 2 (JE-15).

⁵³ *Comunicación A 5274 del Banco Central de la República Argentina* [Communication A 5274 from the Central Bank of Argentina] January 30, 2012, 1.a, and Section 4.1 (JE-40).

⁵⁴ See, e.g., *VP of Company Y Affidavit*, para. 5 (JE-307) (“After the Resolution went into effect on February 1, 2012, our Argentine Company was required to seek pre-approval from Argentina before being able to place orders with its suppliers.”).

in any other dispute, an objective assessment calls for the Panel to examine all of the evidence that has been presented by the disputing parties, without any *a priori* exclusion of certain classes of evidence.

59. Argentina alleges that “none” of the many and varied news sources complainants have presented to the Panel “is relevant” or “can be considered to have any probative value.”⁵⁵ Argentina’s position is unsupportable.

60. First, Argentina provides no support for the argument that these sources are not “relevant.” This evidence corroborates information from other sources, such as Argentine government statements, and provides information as to the application of both the RTRRs and the DJAI Requirement in general and in particular instances.

61. Second, there is no support for Argentina’s sweeping assertion that all of the evidence from news sources is “tainted.”⁵⁶ The information comes from a wide variety of public sources and is consistent with the rest of the evidence provided by complainants. And this evidence does have probative value. For example, many sources quote Argentine government officials or officials from companies who have experienced the application of the DJAI Requirement and RTRRs.⁵⁷ The United States submits that it is unlikely that these quotations and the many other news reports have all been fabricated by the publishers, and that the conclusion supported by the evidence is these sources report statements that were made and events that occurred. In fact, had Argentina considered these quotations and stories to be erroneous or even fabricated, one would have expected that Argentina would have requested corrections or retractions of the relevant articles.

62. Finally, with respect to *Clarín* and *La Nación* and related companies, Argentina does not explain how its allegations of past misdeeds by certain individuals⁵⁸ impact the probative value of the current reporting on the import measures at issue in this dispute. Moreover, Argentina does not explain how the 50 percent ownership of Papel Prensa enables the *Clarín* group to influence all reporting in Argentina, as Argentina argues in unsupported allegations.⁵⁹ Regardless, this evidence makes up only a portion of the sources in this dispute, which includes first and foremost, governmental statements (including a large number of press releases), legal

⁵⁵ Argentina’s Responses to First Panel Questions, p. 19 (Response to Question 42).

⁵⁶ Argentina’s Responses to First Panel Questions, p. 19 (Response to Question 42).

⁵⁷ See, e.g., *Buenos Aires Económico January 31, 2012* (JE-3); *Roberto Navarro, El Plan 2012* (JE-8); *Bloomberg November 2, 2011* (JE-96); *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); *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); *Autoblog June 29, 2012* (JE-104); *Ámbito Financiero November 24, 2011* (JE-136); *La Nación November 20, 2012* (JE-141); *El Cronista February 27, 2012* (JE-146); *El Cronista March 11, 2013* (JE-147); *El Conista August 2, 2012* (JE-158); 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).

⁵⁸ Argentina’s First Written Submission, paras. 28-33.

⁵⁹ Argentina’s Responses to First Panel Questions, pp. 19-21.

instruments and official guidance, as well as publications from trade association, industry sources and other organizations; domestic Argentine court cases, statements by company officials in earnings calls and filings; surveys by the U.S. Chamber of Commerce, the American Chamber of Commerce in Argentina, and the government of Japan; affidavits of company officials; a notarial certification of agreements; and international news sources.

63. In short, the United States has established its *prima facie* case as to the existence and operation of the DJAI Requirement and RTRRs. In making its defense, Argentina bears the burden of proving the facts it asserts. Argentina has failed to do so with respect to its assertions regarding Argentine news sources and therefore the Panel should not credit these arguments by Argentina.

TABLE OF EXHIBITS

Exhibit No.	Description	Short Title
JE-755	<p>Cámara Argentina de Comercio Comisión Asesora Interna de Importaciones y Exportaciones y Colaboración del Dpto. De Comercio Exterior [Argentine Chamber of Commerce Advisory Committee for Imports and Exports with the Collaboration of the Department of Foreign Trade], DETALLE DE NORMATIVAS Y EXPERIENCIAS SOBRE LAS ACTUALES OPERATORIAS DE COMERCIO EXTERIOR [DETAILS OF PROCEDURES AND EXPERIENCES FOR CURRENT BUSINESSES ENGAGING IN FOREIGN TRADE] (October 2013), <i>available at</i> http://www.cac.com.ar/documentos/23_Normativas%20COMEX.pdf</p>	<p><i>CAC, Details of Procedures and Experiences</i></p>
JE-756	<p><i>The New Shorter Oxford English Dictionary at 577 & 2527 (1993)</i></p>	
JE-757	<p>Fredrik Erixon & Lisa Brandt, <i>Argentina, the Expropriation of Repsol YPF, and the Case for Improved Investment Protection</i>, European Centre for International Political Economy Policy Brief No. 08/2013, <i>available at</i> http://www.ecipe.org/media/publication_pdfs/PB8.pdf</p>	
JE-758	<p>Nahuel Amore, “Arús: ‘Se están aprobando aproximadamente un 30% de las DJAI’” [Arús: approximately 30% of DJAIs are being approved], <i>Dos Florines</i>, 17 July 2013, <i>available at</i> http://www.dosflorines.com.ar/index.php?option=com_content&view=article&id=5359:arus-se-estan-aprobando-aproximadamente-un-30-de-las-djai&catid=60:finanzas&Itemid=460 (Arg.)</p>	
JE-759	<p>Press Release, “Moreno ratificó que seguirá la política de administración del comercio exterior por instrucciones presidenciales” [Moreno affirmed that he will continue the policy of administering foreign trade, per the instructions of the President], <i>Sala de Prensa</i> [Secretary of Public Communication, Presidency of the Nation of Argentina], 3 November 2013, <i>available at</i> http://www.prensa.argentina.ar/2013/11/03/45470-moreno-ratifico-que-seguira-la-politica-de-administracion-del-comercio-externo-por-instrucciones-presidenciales.php (Arg.)</p>	

Exhibit No.	Description	Short Title
JE-760	<p>Press Release, “Yamaha anunció a la Presidenta una inversión de \$ 120 millones para fabricar motos” [Yamaha announced to the President an investment of \$120 million to manufacture motorcycles], Casa Rosada [the Presidency of the Nation of Argentina], 31 July 2013, <i>available at</i> http://www.presidencia.gob.ar/informacion/actividad-oficial/26623-yamaha-anuncio-a-la-presidenta-una-inversion-de-120-millones-para-fabricar-motos (Arg.)</p>	
JE-761	<p>Martín Grosz, “Electrodomésticos: faltan repuestos aún para los nuevos” [Electrical home applicances: even new ones are missing spare parts], Clarín, 26 July 2013, <i>available at</i> http://www.clarin.com/sociedad/Electrodomesticos-faltan-repuestos-nuevos_0_962903769.html (Arg.)</p>	
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JE-763	<p>“Las importaciones se han convertido en la variable de ajuste” [“Imports have become the adjustment variable”], InfoBae, 14 October 2013, <i>available at</i> http://www.infobae.com/2013/10/14/1515972-las-importaciones-se-han-convertido-la-variable-ajuste (Arg.)</p>	
JE-764	<p>Natalia Donato, “Empresas retoman pelea judicial ante endurecimiento del cepo importador” [Companies resume judicial fight in the face of a clamp-down on importers], Cronista, <i>available at</i> http://www.cronista.com/economiapolitica/Empresas-retoman-pelea-judicial-ante-endurecimiento-del-cepo-importador-20130909-0059.html (Arg.)</p>	
JE-765	<p>“Guillermo Moreno traba la importación de agroquímicos” [Guillermo Moreno impedes imports of agrochemicals], El Liberal, 11 September 2013, <i>available at</i> http://www.elliberal.com.ar/ampliada.php?ID=105723 (Arg.)</p>	

Exhibit No.	Description	Short Title
JE-766	<p>Press Release, “Industria lanzó la segunda etapa del proceso de sustitución de importaciones para petróleo y gas” [Ministry of Industry launched the second stage of the import substitution process for oil and gas], Sala de Prensa [Secretary of Public Communication, Presidency of the Nation of Argentina], 27 August 2013, <i>available at</i> http://www.industria.gob.ar/industria-lanzo-la-segunda-etapa-del-proceso-de-sustitucion-de-importaciones-para-petroleo-y-gas/ (Arg.)</p>	
JE-767	<p>Press Release, “La industria automotriz avanza en la integración nacional de componentes del sistema eléctrico-electrónico” [The automotive industry advances in the domestic integration of electronic system components], Sala de Prensa [Secretary of Public Communication, Presidency of the Nation of Argentina], Ministry of Industry, 29 August 2013, <i>available at</i> http://www.prensa.argentina.ar/2013/08/29/43658-la-industria-automotriz-avanza-en-la-integracion-nacional-de-componentes-del-sistema-electronico.php# (Arg.)</p>	
JE-768	<p>Press Release, “Industria acorta los plazos de sustitución de importaciones de autopiezas” [Ministry of Industry shortens the time period for substituting imports], Ministerio de Industria [Ministry of Industry], 22 October 2013, <i>available at</i> http://www.industria.gob.ar/industria-acorta-los-plazos-de-sustitucion-de-importaciones-de-autopiezas/ (Arg.)</p>	
JE-769	<p>John Paul Rathbone & Benedict Mander, “Cristina Fernández health scare symbolises Argentina’s ills”, Financial Times, 10 October 2013</p>	
JE-770	<p>Press Release, “Giorgi destacó que la Argentina logró sustituir importaciones por USD 15.000 millones en los últimos cinco años” [Giorgi said that Argentina succeeded in replacing imports by USD 15,000 million in the last five years], Ministerio de Industria [Ministry of Industry], 22 August 2013, <i>available at</i> http://www.industria.gob.ar/giorgi-destaco-que-la-argentina-logro-sustituir-importaciones-por-usd-15-000-millones-en-los-ultimos-cinco-anos/ (Arg.)</p>	

Exhibit No.	Description	Short Title
JE-771	Press Release, “Giorgi: ‘Nuestros empresarios desarrollan nuevas tecnologías, sustituyen importaciones y promueven un mejor nivel de vida’” [Giorgi: “Our business leaders develop new technologies, substitute imports and promote a better standard of living”], Sala de Prensa [Secretary of Public Communication, Presidency of the Nation of Argentina], 23 October 2013, <i>available at</i> http://www.prensa.argentina.ar/2013/10/23/45265-giorgi-nuestros-empresarios-desarrollan-nuevas-tecnologias-sustituyen-importaciones-y-promueven-un-mejor-nivel-de-vida.php (Arg.)	
JE-772	United Nations Conference on Trade and Employment, “Reports of Committees and Principal Sub-Committees”, ICITO I/8, September 1948	Havana Reports

Exhibit No.	Corresp. EU-No.	Title
JE-773	EU-423	Meaning of the term "overarching", OED on-line, available at http://www.oed.com/view/Entry/134273?rskey=k7zK8q&result=2&isAdvanced=false#eid and http://www.oed.com/view/Entry/257894?rskey=k7zK8q&result=1&isAdvanced=false#eid
JE-774	EU-424	"Las petroleras Total Austral y Wintershall anunciaron a la Presidenta una inversión 2.100 millones de dólares", dated 22 February 2013, available at http://www.presidencia.gov.ar/informacion/actividad-oficial/26365-las-petroleras-total-austral-y-wintershall-anunciaron-a-la-presidenta-una-inversion-2100-millones-de-dolares
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JE-776	EU-426	"Acto de inauguración de la Planta de Lavarropas Samsung en Cañuelas: Palabras de la Presidenta de la Nación", dated 30 July 2013, available at http://www.presidencia.gov.ar/discursos/26622-acto-de-inauguracion-de-la-planta-de-lavarropas-samsung-en-cañuelas-palabras-de-la-presidenta-de-la-nacion
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JE-778	EU-428	"Visita a la fábrica de tractores AGCO: Palabras de la Presidenta de la Nación" dated 1 October 2013, available at http://www.presidencia.gov.ar/discursos/26760-visita-a-la-fabrica-de-tractores-agco-palabras-de-la-presidenta-de-la-nacion
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JE-780	EU-430	"Hola Guillermo, te estamos llamando, queremos importar...", <i>El Cronista</i> , dated 24 June 2013, available at http://www.cronista.com/columnistas/Hola-Guillermo-te-estamos-llamando-queremos...-importar-20130624-0024.html
JE-782	EU-432	"El Ministerio de Industria realizó el Plenario de Foros del Plan Estratégico Industrial 20 20 con empresarios", Ministerio de Industria, dated 23 septiembre 2013, available at http://www.industria.gob.ar/el-ministerio-de-industria-realizo-el-plenario-de-foros-del-plan-estrategico-industrial-20-20-con-empresarios/
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JE-786	EU-436	"ACUERDO PRODUCTIVO: 2do. Encuentro Empresario", ADMIRA, dated 9 October 2013, available at http://www.adimra.com.ar/index.do?sid=33&nid=1337
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JE-788	EU-438	"Refuerzan presión sobre automotrices para que compren partes locales", <i>El Cronista</i> , dated 23 October 2013, available at http://web4.cronista.com/economiapolitica/Refuerzan-presion-sobre-automotrices-para-que-compren-partes-locales-20131023-0083.html
JE-789	EU-439	Press Release from <i>Cámara de Comercio Exterior de Córdoba</i> , <i>Cámara de Industriales Metalúrgicos y de Componentes de Córdoba</i> , and <i>Unión Industrial de Córdoba</i> , dated 3 June 2013, available at http://www.uic.org.ar/pagina.asp?id=2499
JE-790	EU-440	"Se duplicó el cepo a las importaciones y ya tiene impacto en el empleo", <i>La Nación</i> , dated 14 October 2013, available at http://www.lanacion.com.ar/1628859-se-duplico-el-cepo-a-las-importaciones-y-ya-tiene-impacto-en-el-empleo

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JE-791	EU-441	"Desbordado por el cepo a la importación", La Nacion, dated 9 September 2013, available at http://www.lanacion.com.ar/1618064-desbordado-por-el-cepo-a-la-importacion
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JE-793	EU-443	<i>Palabras de la Presidenta de la Nación Cristina Fernández con motivo de la inauguración de la fábrica de bicicletas "LÓPEZ HNOS", en la provincia de Chaco</i> , dated 17 July 2013, available at http://www.presidencia.gob.ar/discursos/26588-inauguracion-de-la-fabrica-de-bicicletas-qlopez-hnosq-en-chaco-palabras-de-la-presidenta-de-la-nacion
JE-794	EU-444	<i>Inauguración de nueva planta de Fiat Argentina en Córdoba: Palabras de la Presidenta de la Nación</i> , dated 4 June 2013, available at http://www.presidencia.gob.ar/discursos/26464-inauguracion-de-nueva-planta-de-fiat-argentina-en-cordoba-palabras-de-la-presidenta-de-la-nacion
JE-796	EU-446	<i>Samples of the Export Declaration Forms</i>
JE-797	EU-447	Overview of the evidence provided compared to statements taken from <i>Clarín</i> and <i>La Nación</i>
JE-798	EU-448	Edelman Trust Barometer 2013, at slide 23 (available at http://edelman.com.ar/edelman-trust-barometer-2013/)