



## **ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS**

### REPORTS OF THE PANEL

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#### Note by the Secretariat:

These Panel Reports are in the form of a single document constituting three separate Panel Reports: WT/DS438/R, WT/DS444/R and WT/DS445/R. The cover page, preliminary pages, sections 1 through 6 are common to the three Reports. The page header throughout the document bears the three document symbols WT/DS438/R, WT/DS444/R and WT/DS445/R, with the following exceptions: section 7 on pages EU-165 and EU-166, which bears the document symbol for and contains the Panel's conclusions and recommendations in the Panel Report WT/DS438/R; section 7 on pages USA-167 and USA-168, which bears the document symbol for and contains the Panel's conclusions and recommendations in the Panel Report WT/DS444/R; and section 7 on pages JPN-168 and JPN-170, which bears the document symbol for and contains the Panel's conclusions and recommendations in the Panel Report WT/DS445/R. The annexes, which are a part of the Panel Reports, are circulated in a separate document (WT/DS438/R/Add.1, WT/DS444/R/Add.1 and WT/DS445/R/Add.1).

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<i>US – Zeroing (EC)</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, DSR 2006:II, p. 417
<i>US – Zeroing (EC)</i>	Panel Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/R, adopted 9 May 2006, as modified by Appellate Body Report WT/DS294/AB/R, DSR 2006:II, p. 521
<i>US – Zeroing (Japan)</i>	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/R, adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R, DSR 2007:I, p. 97

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Short title	Full case title and citation
<i>Canada – FIRA</i>	GATT Panel Report, <i>Canada – Administration of the Foreign Investment Review Act</i> , L/5504, adopted 7 February 1984, BISD 30S, p. 140
<i>Canada – Provincial Liquor Boards (EEC)</i>	GATT Panel Report, <i>Canada – Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies</i> , L/6304, adopted 22 March 1988, BISD 35S, p. 37
<i>Canada – Provincial Liquor Boards (US)</i>	GATT Panel Report, <i>Canada – Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies</i> , DS17/R, adopted 18 February 1992, BISD 39S, p. 27
<i>EEC – Minimum Import Prices</i>	GATT Panel Report, <i>EEC – Programme of Minimum Import Prices, Licences and Surety Deposits for Certain Processed Fruits and Vegetables</i> , L/4687, adopted 18 October 1978, BISD 25S, p. 68
<i>EEC – Oilseeds I</i>	GATT Panel Report, <i>European Economic Community – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins</i> , L/6627, adopted 25 January 1990, BISD 37S, p. 86
<i>EEC – Parts and Components</i>	GATT Panel Report, <i>European Economic Community – Regulation on Imports of Parts and Components</i> , L/6657, adopted 16 May 1990, BISD 37S, p. 132
<i>Japan – Semi-Conductors</i>	GATT Panel Report, <i>Japan – Trade in Semi-Conductors</i> , L/6309, adopted 4 May 1988, BISD 35S, p. 116
<i>US – Section 337 Tariff Act</i>	GATT Panel Report, <i>United States Section 337 of the Tariff Act of 1930</i> , L/6439, adopted 7 November 1989, BISD 36S, p. 345
<i>US – Superfund</i>	GATT Panel Report, <i>United States – Taxes on Petroleum and Certain Imported Substances</i> , L/6175, adopted 17 June 1987, BISD 34S, p. 136

**ABBREVIATIONS USED IN THESE REPORTS**

Abbreviation	Description
AFIP	Federal Public Revenue Administration
AmCham	American Chamber of Commerce in Argentina
ANMAT	National Drugs, Food and Medical Technology Administration
ARS	Argentine Peso
BCI	Business confidential information
CADELTRIP	Argentine Chamber of Producers of Natural Casing
CAFMA	Argentine Chamber of Producers of Agricultural Machinery
CUIT	Taxpayer identification code
DGA	Directorate-General of Customs of the Federal Public Revenue Administration
DGI	Directorate-General of Revenue of the Federal Public Revenue Administration
DGRSS	Directorate-General for Revenues from Social Security of the Federal Public Revenue Administration
DJAI	Advance Sworn Import Declaration
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
FOB	Free on board
GATT 1994	General Agreement on Tariffs and Trade 1994
ICJ	International Court of Justice
ILA	Agreement on Import Licensing Procedures
INTI	National Institute of Industrial Technology of the Ministry of Industry
INV	National Grape-Growing and Wine Production Institute
PEI 2020	Industrial Strategic Plan 2020
ROI	Import Operations Registry
RTRRs	Restrictive Trade-Related Requirements
SAFE Framework	World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade
SCI	Secretariat of Domestic Trade
SEDRONAR	Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking
SENASA	National Agriculture and Food Quality and Health Service
SIM	MARIA informatic system
TRIMs Agreement	Agreement on Trade-Related Investment Measures
TRRs	Trade-Related Requirements
UCESCI	Unit on Coordination and Evaluation of Subsidies on Internal Consumption
US	United States of America
USD	United States' Dollar
USTR	Office of the United States Trade Representative
WCO	World Customs Organization
WTO	World Trade Organization
WTO Agreement	Agreement Establishing the World Trade Organization

## EXHIBITS REFERRED TO IN THESE REPORTS

Panel Exhibit	Title	Short Title
ARG-3	<i>Ley 22.415 (Código Aduanero)</i> (Law 22,415 Argentina's Customs Code), 2 March 1981	Law 22,415, Customs Code
ARG-12	<i>Guías paso a paso. Sistema MARIA: ¿Cómo hacer la Declaración Jurada Anticipada de Importación (DJAI)?</i> (Step-by-Step Guides. MARIA SYSTEM: How to Submit the Advance Sworn Import Declaration (DJAI))	MARIA System, Step-by-Step Guides: How to Submit a DJAI
ARG-13	<i>Resolución General AFIP 333/99</i> (AFIP General Resolution 333/99), 15 January 1999	AFIP General Resolution 333/99
ARG-16	<i>Administración Pública Nacional, Decreto 2085/2011</i> (National Public Administration, Decree 2085/2011), 7 December 2011	Decree 2085/2011
ARG-26	<i>Decreto 1490/92, Créase la Administración Nacional de Medicamentos, Alimentos y Tecnología Médica, ANMAT</i> (Decree 1490/92, creation of ANMAT), 20 August 1992	Decree 1490/92, creation of ANMAT
ARG-27	<i>Ley N° 23.737 (Código Penal)</i> (Law 23,737 Criminal Code), 21 September 1989; <i>Decreto 623/96 (Plan Federal de Prevención Integral de la Drogadependencia y de Control del Tráfico Ilícito de Drogas)</i> , (Decree 623/96, Federal Plan of integral prevention of drug dependency and control of the illicit traffic of drugs), 7 June 1996; <i>Decreto 1.095/96 (Control de precursores y sustancias químicas esenciales para la elaboración de estupefacientes)</i> (Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs); <i>Decreto 1119/96 (Creación de un Comité de Trabajo Conjunto para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico)</i> (Decree 1119/96, Creation of a joint working group for the prevention of drug addiction and the fight against drug trafficking), 3 October 1996; <i>Decreto 1161/2000 (Actualización de lista de precursores y productos químicos)</i> (Decree 1161/2000, Update of the list of precursors and essential chemical products), 6 December 2000; <i>Resolución 216/2010 (Registro Nacional de Precursores Químicos)</i> (Resolution 216/2010, National Registry of Chemical Precursors), 17 March 2010	Law 23,737, Criminal Code; Decree 623/96, Federal Plan of integral prevention of drug dependency and control of the illicit traffic of drugs; Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs; Decree 1119/96, Creation of a joint working group for the prevention of drug addiction and the fight against drug trafficking; Decree 1161/2000, Update of the list of precursors and essential chemical products; Resolution 216/2010, National Registry of Chemical Precursors
ARG-30	<i>Presidencia de la Nación, Ministerio de Economía y Finanzas Públicas, Secretaría de Comercio Interior, "Papel Prensa: La Verdad"</i> (Office of the President of Argentina, Ministry of Economy and Public Finance, Secretariat of Domestic Trade: Report on Papel Prensa: The Truth), August 2010	Office of the President, Ministry of Economy and Public Finance, Secretariat of Domestic Trade, "Report on Papel Prensa", August 2010
ARG-32	<i>Ley N° 22.802 (Ley de Lealtad Comercial)</i> (Law 22,802 on Fair Trade), 5 May 1983; <i>Ley N° 19.227 (Ley de Mercados de Interés Nacional)</i> (Law 19,227 on Markets of National Interest), 9 September 1971; <i>Ley N° 19.511 (Ley de Metrología Legal)</i> (Law 19,511 on Legal Metrology), 2 March 1972; <i>Ley N° 24.240 (Ley de Defensa del Consumidor)</i> (Law 24,240 on Consumer Protection), 22 September 1993	Law 22,802 on Fair Trade; Law 19,227 on Markets of National Interest; Law 19,511 on Legal Metrology; Law 24,240 on Consumer Protection

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ARG-38	<i>Instituto Nacional de Estadística y Censos, Exportación, importación y saldo por zonas económicas y principales países, Años 2007-2011</i> (National Institute for Statistics and Census, Argentina's imports, exports and balance, by region and main countries 2007-2011)	National Institute for Statistics and Census, Argentina's imports, exports and balance, by region and main countries 2007-2011
ARG-40	<i>Instituto Nacional de Estadística y Censos, INDEC Informa, Año 18, No. 7, Julio de 2013</i> (National Institute for Statistics and Census, INDEC Informa, Year 18, No. 7, July 2013)	Journal: <i>INDEC Informa</i> , Year 18, No. 7, July 2013
ARG-41	<i>Instituto Nacional de Estadística y Censos, Balanza comercial argentina, total y variaciones porcentuales, datos mensuales desde 1990 en adelante</i> (National Institute for Statistics and Census, Argentina's trade balance, totals and percentage changes, monthly data since 1990)	National Institute for Statistics and Census, Argentina's monthly trade data
ARG-42	<i>Instituto Nacional de Estadística y Censos, Intercambio Comercial Argentino: Datos provisionarios del año 2012 y cifras estimadas del primer semestre de 2013</i> (National Institute for Statistics and Census, Argentina's trade exchanges, Provisional 2012 data and projections for 2013 – 1st semester)	National Institute for Statistics and Census, Argentina's trade exchanges, Provisional 2012 data and projections for 2013 – 1st semester
ARG-44	<i>Ley N° 26.045 (Ley del Registro Nacional de Precursores Químicos)</i> (Law 26,045 on the National Registry of Chemical Precursors), 8 June 2005	Law 26,045 on the National Registry of Chemical Precursors
ARG-45	<i>Decreto 1.095/96 (Control de precursores y sustancias químicas esenciales para la elaboración de estupefacientes)</i> (Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs), 26 September 1996	Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs
ARG-46	<i>Resolución SEDRONAR 216/2010 (Registro Nacional de Precursores Químicos)</i> (SEDRONAR Resolution 216/2010, National Registry of Chemical Precursors), 17 March 2010	SEDRONAR Resolution 216/2010, National Registry of Chemical Precursors
ARG-47	<i>Convenio de Adhesión al Régimen de Ventanilla Única Electrónica del Comercio Exterior SEDRONAR – RG No. 3252 y 3255 (AFIP): Convenio Específico de Adhesión al Régimen de Declaración Jurada Anticipada de Importación y Ventana Única R.G. No. 3.252 y 3.255 (AFIP)</i> (Accession Agreement to the Single Electronic Window for Foreign Trade Regime SEDRONAR – RG No. 3252 and 3255 (AFIP): Specific Accession Agreement to the Advance Sworn Import Declaration and Single Window Regime R.G. No. 3,252 and 3,255 (AFIP)), 22 February 2012	SEDRONAR's Accession Agreement
ARG-48	<i>Convenio de Adhesión al Régimen de Ventanilla Única Electrónica del Comercio Exterior – RG No. 3252 y 3255 (AFIP): Convenio de Adhesión entre Administración Nacional de Medicamentos, Alimentos y Tecnología Médica y la Administración Federal de Ingresos Públicos</i> (Accession Agreement to the Single Electronic Window for Foreign Trade Regime – RG No. 3252 and 3255 (AFIP): Accession Agreement between the National Drugs, Food and Medical Technology Administration and the Federal Public Revenue Administration), 8 February 2012	ANMAT's Accession Agreement



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ARG-49	<i>Convenio de Adhesión al Régimen de Ventanilla Única Electrónica SENASA – RG No. 3252 y 3255 (AFIP): Convenio Específico de Adhesión al Régimen de Declaración Jurada Anticipada de Importación y Ventanilla Única R.G. No. 3.252 y 3.255 (AFIP)</i> (Accession Agreement to the Single Electronic Window Regime SENASA – R.G. No. 3252 and 3255 (AFIP): Specific Accession Agreement to the Advance Sworn Import Declaration and Single Window Regime R.G. No. 3,252 and 3,255 (AFIP)), 14 February 2012	SENASA's Accession Agreement
ARG-50	<i>Convenio de Adhesión al Régimen de Ventanilla Única Electrónica INV – RG No. 3252 y 3255 (AFIP): Convenio Específico de Adhesión al Régimen de Declaración Jurada Anticipada de Importación y Ventanilla Única R.G. No. 3.252 y 3.255 (AFIP)</i> (Accession Agreement to the to the Single Electronic Window Regime INV – RG No. 3252 and 3255 (AFIP): Specific Accession Agreement to the Advance Sworn Import Declaration and Single Window Regime R.G. No. 3,252 and 3,255 (AFIP)), 16 February 2012	INV's Accession Agreement
ARG-51	<i>Ministerio de Industria, Plan Estratégico Industrial 2020</i> (Ministry of Industry, Strategic Industrial Plan 2020), 4 October 2011	Ministry of Industry, Strategic Industrial Plan 2020
ARG-52	List of products subject to review and observation by ANMAT	Products subject to review and observation by ANMAT
ARG-53	List of products subject to review and observation by SEDRONAR	Products subject to review and observation by SEDRONAR
ARG-54	<i>Radio Nacional, Entrevista Presidente de AGCO Argentina</i> ( <i>Radio Nacional</i> , Interview to AGCO Argentina President), 2 October 2013	<i>Radio Nacional</i> , Interview to AGCO Argentina President), 2 October 2013
ARG-55	<i>La Nación, Entrevista / Agustín Melano "Me llevó dos años convencer a Converse de fabricar en el país"</i> ( <i>La Nación</i> , Interview, "It took me two years to convince Converse to produce in Argentina"), 31 December 2011	<i>La Nación</i> , Interview, "Two years to convince Converse to produce in Argentina"), 31 December 2011
ARG-56	<i>Apertura.com, Sergio Marchionne, CEO de Fiat y Chrysler: "Europa no es el lugar más atractivo para invertir"</i> ( <i>Apertura.com</i> , Interview to Fiat & Chrysler CEO: "Europe is not the most attractive place to invest"), 5 August 2013	<i>Apertura.com</i> , Interview to Fiat & Chrysler CEO: "Europe is not the most attractive place to invest", 5 August 2013
ARG-58	<i>Movilsur, Entrevista a Mirko Aksentijevic, CEO de Nokia Argentina</i> , by Nicolás Falcioni ( <i>Movilsur</i> , Interview to Mirko Aksentijevic, Nokia Argentina CEO), 5 July 2011	<i>Movilsur</i> , Interview to Mirko Aksentijevic, Nokia Argentina CEO, 5 July 2011
ARG-60	<i>The Wall Street Journal, Peugeot Citroen CEO Reaffirms 2013 Cash Flow Guidance at Motor Show</i> , by David Pearson, 10 September 2013	<i>Wall Street Journal</i> , Peugeot Citroen CEO Reaffirms 2013 Cash Flow Guidance, 10 September 2013
ARG-62	<i>Cronista.com, CEO de Toyota: "Si no podemos operar donde hay inflación, no podemos ser globales"</i> ( <i>Cronista.com</i> , Toyota CEO: "If we cannot operate where there is inflation, we cannot be global"), 22 September 2013	<i>Cronista.com</i> , Toyota CEO: "If we cannot operate where there is inflation, we cannot be global", 22 September 2013
ARG-63	<i>Argentina Autoblog (autoblog.com.ar), Mercedes-Benz fabricará la nueva Vito en la Argentina</i> ( <i>Argentina Autoblog</i> , Mercedes-Benz will produce new Vito in Argentina), 5 October 2012	News item: <i>Argentina Autoblog</i> , Mercedes-Benz will produce new Vito in Argentina), 5 October 2012

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ARG-65	<i>Ministerio de Relaciones Exteriores y Culto, Centro de Economía Internacional, Determinantes del nivel de importaciones en la economía argentina en el período 1993-2012</i> (Ministry of External Relations and Worship, Center of International Economics, Factors affecting the level of Argentine imports in the period 1993-2012), November 2013	Study: <i>Centro de Economía Internacional</i> , Factors affecting the level of Argentine imports in 1993-2012, November 2013
ARG-E4	<i>Audiencia Pública celebrada en el Congreso de la Nación Argentina antes de sancionarse la Ley No. 26.736 – Pasta celulosa y papel para diarios</i> (Public Hearing of the Argentine Congress on the adoption of Law 26,736 – Newsprint), 16 September 2010	Public Hearing of the Argentine Congress on a Bill on Newsprint, 16 September 2010
ARG-E7	<i>Secretaría de Comercio Interior, Imputación a la firma PAPEL PRENSA S.A.I.C.F. y de M. por presunta infracción de la Ley No. 26.736</i> (Secretariat of Domestic Trade, PAPEL PRENSA S.A.I.C.F. y de M. is charged with an alleged breach of Law 26,736), 19 February 2013	Secretariat of Domestic Trade, <i>Papel Prensa</i> is charged with alleged breach of Law 26,736, 19 February 2013
ARG-E8	Newspaper articles, statements made by the Chief Executive Officer of Grupo Clarín	Newspaper articles, statements made by the Chief Executive Officer of Grupo Clarín
EU-418+	<i>Clément Comercio Exterior, Informe Técnico, DJAI: Su evolución</i> (Clément Foreign Trade, Technical Report, DJAI: Its Evolution), 13 December 2012	Report: <i>Clément Comercio Exterior, DJAI: Its Evolution</i> , 13 December 2012
JE-1, JE-398 and EU-84	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Una importadora automotriz podrá compensar exportando</i> (Argentine Republic Press Office, An automobile importer may compensate by exporting), 25 March 2011	News item: <i>Sala de Prensa República Argentina</i> , An automobile importer may compensate by exporting, 25 March 2011
JE-2	<i>Juguetes y Negocios, Cómo liberar Declaraciones de Importación</i> (Toys and Business: How to Release Import Declarations), 6 March 2012	News item: <i>Juguetes y Negocios</i> , How to Release Import Declarations, 6 March 2012
JE-3	<i>Buenos Aires Económico, Moreno aclaró que sus controles sobre las importaciones se aplicarán a cien empresas que consumen 80% de las divisas</i> ( <i>Buenos Aires Económico</i> , Moreno clarified that his import controls will apply to one hundred companies that use 80% of available foreign exchange), 31 January 2012	<i>Buenos Aires Económico</i> , Import controls will apply to one hundred companies, 31 January 2012
JE-4	<i>Ministerio de Industria, Giorgi, Boudou y Moreno subscribieron el plan de exportaciones e importaciones de General Motors</i> (Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan), 2 May 2011	News item: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011
JE-5	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Compromiso de automotriz para equiparar su balanza</i> (Argentine Republic Press Office, Automaker pledges to balance its trade), 6 April 2011	News item: <i>Sala de Prensa República Argentina</i> , Automaker pledges to balance its trade, 6 April 2011
JE-6	<i>Perfil, Faltarán más ropa, juguetes y electrónicos importados</i> , by Pedro Ylarri ( <i>Perfil</i> , Clothes, toys, and electronic products will be in short supply), 17 July 2011	<i>Perfil</i> , Clothes, toys, and electronic products will be in short supply, 17 July 2011
JE-7, JE-322 and EU-8	<i>Ministerio de Industria, Amplían el universo de productos importados monitoreados por el sistema de licencias no automáticas</i> (Ministry of Industry, List of products subject to monitoring by non-automatic licences is increased), 15 February 2011	News item: Ministry of Industry, List of products subject to non-automatic licences is increased, 15 February 2011
JE-8	<i>Debate, El Plan 2012</i> , by Roberto Navarro (Interview with the Secretary of Domestic Trade ( <i>Debate</i> , The Plan 2012), 27 January 2012	<i>Debate</i> , The Plan 2012, 27 January 2012



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JE-9	<i>Ministerio de Industria, Giorgi: "Este Gobierno cree y aplica administración del comercio"</i> (Ministry of Industry, Giorgi: "This Administration believes in and is implementing trade management"), 25 February 2011	News item: Ministry of Industry, Giorgi: "This Administration believes in and is implementing trade management", 25 February 2011
JE-13	<i>AFIP, Manual de Uso para el Registro y Afectación de la "Declaración Jurada Anticipada de Importación (DJAI)"</i> (User Manual for Registration and Assignment of the "Advance Sworn Import Declaration (DJAI)"), July 2012	AFIP, DJAI User Manual, July 2012
JE-14 and ARG-11	<i>Resolución General AFIP 3256/2012</i> (AFIP General Resolution 3256/2012), 26 January 2012	AFIP General Resolution 3256/2012, 26 January 2012
JE-15 and ARG-6	<i>Resolución General AFIP 3252/2012</i> (AFIP General Resolution 3252/2012), 5 January 2012	AFIP General Resolution 3252/2012, 5 January 2012
JE-16 and ARG-7	<i>Resolución General AFIP 3255/2012</i> (AFIP General Resolution 3255/2012), 20 January 2012	AFIP General Resolution 3255/2012, 20 January 2012
JE-40	<i>Banco Central de la República Argentina, Comunicación "A" 5274</i> (Central Bank of the Argentine Republic, Communication "A" 5274), 30 January 2012	Central Bank of the Argentine Republic, Communication "A" 5274, 30 January 2012
JE-41 and ARG-15	<i>Resolución SCI 1/2012</i> (SCI Resolution 1/2012), 11 January 2012	SCI Resolution 1/2012, 11 January 2012
JE-43	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Sedronar e INV adhirieron a la ventanilla única electrónica y DDJJ anticipada para importaciones (Sala de Prensa República Argentina (prensa.argentina.com.ar), SEDRONAR and INV adhered to the single electronic window and the Advanced Sworn Import Declaration)</i> , 27 February 2012	News item: <i>Prensa Argentina</i> , SEDRONAR and INV adhered to the single electronic window and the DJAI, 27 February 2012
JE-46	<i>Unión Industrial del Oeste, Boletín Informativo, Declaraciones Juradas Anticipadas de Importación</i> (Industrial Union of the West: Information Bulletin, Advance Sworn Import Declarations), 21 March 2012	Information note: <i>Unión Industrial del Oeste</i> , Advance Sworn Import Declarations, 21 March 2012
JE-47	<i>GM Comex Estudio de Comercio Exterior, DJAI Observada "Intervención de la SCIN"</i> (GM Comex Foreign Trade Bureau, Observed DJAI "Intervention by the SCI"), 22 February 2012	Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012
JE-48	<i>Consultores Industriales Asociados, Defensa de Mercado: DJAI</i> (Industrial Consultants Associates, Market Defense: DJAI), 2012	Information note: <i>Consultores Industriales Asociados</i> , Market Defense: DJAI, 2012
JE-49	United Logistic Company, <i>Newsletter 369: DJAI Observada</i> (United Logistic Company, Newsletter 369: Observed DJAI)	Newsletter: United Logistic Company, Observed DJAI
JE-50	<i>Cámara Argentina de Comercio: Comisión de Importaciones y Exportaciones, Declaración Jurada Anticipada de Importación (DJAI)</i> (Argentine Chamber of Commerce, Export and Import Commission, Advance Sworn Import Declaration, DJAI)	Slides: Argentine Chamber of Commerce, Advance Sworn Import Declaration, DJAI
JE-51	<i>SIQAT S.R.L., Instrucciones sobre D.J.A.I., Declaración Jurada Anticipada de Importación</i> (SIQAT SRL, Instructions on the DJAI, Advance Sworn Import Declaration)	Information note: SIQAT SRL, Instructions on the DJAI
JE-52	<i>Cámara Argentina de la Industria Plástica, Secretaría de Comercio Interior: Procedimiento por DJAI "Observadas"</i> (Argentine Chamber of the Plastic Industry, Secretariat of Domestic Trade: Procedure for DJAIs in "Observed" Status), February 2012	Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012

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JE-54	<i>Clément Comercio Exterior, Procedimiento DJAI bloqueadas</i> (Clément Foreign Trade, Procedure for Blocked DJAIs)	Information note: <i>Clément Comercio Exterior</i> , Procedure for Blocked DJAIs
JE-55	<i>Cámara de Comercio Exterior de Córdoba, Circular Operativa N° 01/2012, DJAI: Observadas por Secretaría de Comercio Interior / Manual para registro y afectación de las DJAIs – Última versión disponible</i> (Córdoba Foreign Trade Chamber, Operative Circular N° 01/2012, DJAI: Observed by the Secretariat of Domestic Trade / Manual for registration and assignment of DJAIs – Last available version), 1 March 2012	Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012
JE-56	U.S. Chamber of Commerce, "Report on the U.S. Chamber of Commerce's survey on Argentina's DJAI system", 3 March 2013	U.S. Chamber of Commerce, Report on survey on Argentina's DJAI system, 3 March 2013
JE-57	<i>Sala Contencioso Administrativo No. 2, Causa 1674/2012, Zatel Adrian Ramon c/en M° Economía SCI Resol 1/12-AFIP-Resol 3252 3255/12 S/Medida cautelar (autonoma)</i> (National Court for Federal Administrative Disputes, Zatel Adrian Ramon v. Ministry of Economy SCI Resolutions 1/12 AFIP 3252 3255/12, Preliminary injunction), 23 August 2012	National Court for Federal Administrative Disputes, <i>Zatel Adrian Ramon v. Ministry of Economy</i> , 23 August 2012
JE-58	<i>Sala Contencioso Administrativo No. 4, Causa 16137/2012, Wabro SA c/en M° Economía Resol 3252/12 3255/12 S/Proceso en conocimiento</i> (National Court for Federal Administrative Disputes, Wabro SA v. Ministry of Economy Resolutions 3252/12 3255/12, Confirmation procedure), 2 October 2012	National Court for Federal Administrative Disputes, <i>Wabro SA v. Ministry of Economy</i> , 2 October 2012
JE-59	<i>Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Yudigar Argentina S.A. c/ en M° de Economía s/ Amparo-Ley N° 16.986</i> (National Court of Appeals for Federal Administrative Disputes, Yudigar Argentina S.A. v. Ministry of Economy / Injunction Law 16,986), 16 August 2012	National Court of Appeals for Federal Administrative Disputes, <i>Yudigar Argentina S.A. v. Ministry of Economy</i> , 16 August 2012
JE-64	<i>BAE Argentina (Diariobae), Los importadores financian y subsidian exportaciones para compensar sus balanzas</i> , by Patricia Valli ( <i>BAE Argentina (Diariobae)</i> , Importers finance and subsidize exports to offset their balances), 7 August 2012	News item: <i>BAE Argentina (Diariobae)</i> , Importers finance and subsidize exports to offset their balances, 7 August 2012
JE-80	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Boudou habló del éxito de la política de sustitución de importaciones</i> ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , Boudou spoke about the success of the import substitution policy), 18 March 2011	News item: <i>Prensa Argentina</i> , Boudou spoke about the success of the import substitution policy, 18 March 2011
JE-81	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La comercializadora de Porsche acordó compensar importaciones con exportaciones de vinos y aceites</i> (Argentine Republic Press Office, Porsche's trading company agreed to compensate imports with exports of wine and oil), 30 March 2012	News item: <i>Prensa Argentina</i> , Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012

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JE-82	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La automotriz Chery acordó con el Gobierno revertir su balanza comercial en 2012 (Sala de Prensa República Argentina (prensa.argentina.com.ar), The automaker Chery agreed with the Government to revert its trade balance in 2012), 19 May 2011</i>	News item: <i>Prensa Argentina</i> , Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011
JE-84	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Economía, Industria y Comercio firmaron el acuerdo de Mercedes Benz para equilibrar su balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), [Ministries of] Economy, Industry and Trade sign an agreement with Mercedes Benz to even out its trade balance), 7 April 2011</i>	News item: <i>Prensa Argentina</i> , Economy, industry and trade sign an agreement with Mercedes Benz to even out its trade balance, 7 April 2011
JE-85	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Ya son 5 las automotrices que acordaron con el Gobierno aportar u\$s 2.200 millones a la balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Five car producers have signed an agreement with the Government to contribute USD 2.2 billion to the balance of trade), 20 April 2011</i>	News item: <i>Prensa Argentina</i> , Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011
JE-86	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La automotriz Hyundai acordó con el Gobierno compensar su balanza comercial (Ministry of Industry, Car Manufacturer Hyundai reaches agreement with Government on offsetting its trade balance), 13 June 2011</i>	News item: <i>Prensa Argentina</i> , Car producer Hyundai agrees to offset its trade balance, 13 June 2011
JE-87	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), También la automotriz KIA se comprometió a equilibrar su balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Car manufacturer KIA also pledged to even out its trade balance), 15 June 2011</i>	News item: <i>Prensa Argentina</i> , Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011
JE-88	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Fiat, otra automotriz que firmó ante el Gobierno su compromiso de equiparar la balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Fiat: Another automaker signs an agreement with the Government to ensure trade balance), 5 May 2011</i>	News item: <i>Prensa Argentina</i> , Fiat: Another automaker signs an agreement with the Government to ensure trade balance, 5 May 2011
JE-89	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Nissan acordó un nuevo plan de equilibrio de balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Nissan agreed to a new trade balancing plan), 19 October 2011</i>	News item: <i>Prensa Argentina</i> , Nissan agreed to a new trade balancing plan, 19 October 2011
JE-90	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Renault, Mitsubishi, Nissan y Volvo también firmaron un plan para alcanzar el superávit comercial en 2012 (Sala de Prensa República Argentina (prensa.argentina.com.ar), Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012), 5 August 2011</i>	News item: <i>Prensa Argentina</i> , Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011

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JE-91	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La empresa Subaru acordó con Industria equilibrar su balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Subaru agreed with the Ministry of Industry to restore its trade balance), 29 August 2011</i>	News item: <i>Prensa Argentina</i> , Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011
JE-92	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Industria anticipó que BMW equilibrará su balanza comercial en 2012 (Sala de Prensa República Argentina (prensa.argentina.com.ar), Ministry of Industry announced that BMW will balance imports and exports in 2012), 13 October 2011</i>	News item: <i>Prensa Argentina</i> , Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011
JE-95	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Ford exportará más e importará menos, (Sala de Prensa República Argentina (prensa.argentina.com.ar), Ford will export more and import less, 23 May 2011</i>	News item: <i>Prensa Argentina</i> , Ford will export more and import less, 23 May 2011
JE-101	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Scania le informó a la Presidenta que invertirá u\$s 40 millones en la Argentina (Sala de Prensa República Argentina (prensa.argentina.com.ar), Scania informed the President it will invest USD 40 million in Argentina), 21 November 2011</i>	News item: <i>Prensa Argentina</i> , Scania informed the President it will invest USD 40 million in Argentina, 21 November 2011
JE-102	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), El Gobierno firmó un convenio con la automotriz Thermodyne Vial para aumentar exportaciones (Sala de Prensa República Argentina (prensa.argentina.com.ar), The Government signed an agreement with automaker Thermodyne Vial to increase exports), 1 February 2012</i>	News item: <i>Prensa Argentina</i> , The Government signed an agreement with automaker Thermodyne Vial to increase exports, 1 February 2012
JE-103	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Renault Trucks anunció al Gobierno que aumentará sus exportaciones (Sala de Prensa República Argentina (prensa.argentina.com.ar), Renault Trucks announced to the Government it will increase its exports), 7 February 2012</i>	News item: <i>Prensa Argentina</i> , Renault Trucks announced to the Government it will increase its exports, 7 February 2012
JE-104	<i>Argentina Autoblog (autoblog.com.ar), Exclusivo: pesificada y exportando vinos, Harley-Davidson vuelve a la carga (Argentina Autoblog, Exclusive: Valued in Pesos and exporting wines, Harley-Davidson makes a come back), 29 June 2012</i>	News item: <i>Argentina Autoblog</i> , Valued in Pesos and exporting wines, Harley-Davidson makes a come back, 29 June 2012
JE-105	<i>Argentina Autoblog (autoblog.com.ar), ¿Qué despachó Juki Argentina rumbo a Ucrania y Estados Unidos? (Argentina Autoblog, What did Juki Argentina dispatch to Ukraine and the United States?), 27 April 2012</i>	News item: <i>Argentina Autoblog</i> , What did Juki Argentina dispatch to Ukraine and the United States?, 27 April 2012
JE-106	<i>Ámbito Financiero, Juki exporta vinos (Ámbito Financiero, Juki exports wine), 23 April 2012</i>	News item: <i>Ámbito Financiero</i> , Juki exports wine, 23 April 2012
JE-107	<i>La Nación, En dos ruedas (La Nación, On two wheels), 26 May 2012</i>	<i>La Nación</i> , On two wheels, 26 May 2012
JE-108	<i>La Moto (lamotodigital.com.ar), Ante la crisis, Juki exporta vinos (La Moto (lamotodigital.com.ar), Faced with the crisis, Juki exports wine), 2 May 2012</i>	News item: <i>La Moto (lamotodigital.com.ar)</i> , Faced with the crisis, Juki exports wine, 2 May 2012
JE-110	<i>Ámbito Financiero, Suzuki Motos Argentina exporta (Ámbito Financiero, Suzuki Motos Argentina Exports), 31 May 2012</i>	News item: <i>Ámbito Financiero</i> , Suzuki Motos Argentina Exports, 31 May 2012

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JE-111	<i>La Moto (lamotodigital.com.ar), Suzuki cerró la primera fase de exportación (La Moto (lamotodigital.com.ar), Suzuki closed the first phase of exportations), 31 May 2012</i>	News item: <i>La Moto (lamotodigital.com.ar)</i> , Suzuki closed the first phase of exportations, 31 May 2012
JE-112	<i>motomax.com.ar, Suzuki Motos exporta desde Argentina (motomax.com.ar, Suzuki Motos exports from Argentina), 1 June 2012</i>	News item: <i>motomax.com.ar</i> , Suzuki Motos exports from Argentina, 1 June 2012
JE-113	<i>tiempomotor.com, Suzuki Motos concretó primera fase de exportación de mosto (tiempomotor.com, Suzuki Motos completed its first phase of grape-must exports), 1 June 2012</i>	News item: <i>tiempomotor.com</i> , Suzuki Motos completed its first phase of grape-must exports, 1 June 2012
JE-114	<i>iProfesional.com, Vino por motos: Motomel construirá una bodega y una planta de mosto para compensar su balanza comercial (iProfesional.com, Motomel will construct a winery and a grape-must plant to compensate its trade balance), 8 June 2012</i>	News item: <i>iProfesional.com</i> , Motomel will construct a winery and a grape-must plant to compensate its trade balance, 8 June 2012
JE-115	<i>La Nación, Una fábrica de motos deberá exportar vino y mosto para poder importar insumos (La Nación, A motorcycle factory will have to export wine and grape-must to be able to import supplies), 11 June 2012</i>	News item: <i>La Nación</i> , A motorcycle factory will have to export wine and grape-must to be able to import supplies, 11 June 2012
JE-117	<i>La Voz (lavo.com.ar), Más fábricas de motos exportan vino (La Voz (lavo.com.ar), More motorcycle factories export wine), 9 June 2012</i>	News item: <i>(La Voz (lavo.com.ar), More motorcycle factories export wine)</i> , 9 June 2012
JE-119	<i>tiempomotor.com, Motomel exporta vino y mosto para importar piezas (tiempomotor.com, Motomel exports wine and grape must in order to import motoparts), 10 June 2012</i>	News item: <i>tiempomotor.com</i> , Motomel exports wine and grape must in order to import motoparts, 10 June 2012
JE-121	<i>La Moto (lamotodigital.com.ar), Motomel sigue exportando (La Moto (lamotodigital.com.ar), Motomel continues exporting), 11 June 2012</i>	News item: <i>La Moto (lamotodigital.com.ar)</i> , Motomel continues exporting, 11 June 2012
JE-122	<i>enretail.com, "Zanella ha cumplido y se ha alineado a todas las exigencias del Gobierno Nacional" (enretail.com, "Zanella has complied with and fulfilled all the demands from the National Government"), 2 October 2012</i>	News item: <i>enretail.com</i> , Zanella has fulfilled all the demands from the National Government, 2 October 2012
JE-123	<i>Argentina Autoblog (autoblog.com.ar), Zanella: "No sabemos por qué se hacen estas diferencias" (Argentina Autoblog, Zanella: "We do not know why there is different treatment"), 5 March 2012</i>	News item: <i>Argentina Autoblog (autoblog.com.ar)</i> , Zanella: "We do not know why there is different treatment", 5 March 2012
JE-128	<i>Presidencia, La empresa de maquinaria agrícola Claas acordó con el Gobierno un plan con equilibrio de balanza comercial (Office of the President of Argentina, Agricultural Machinery Company Claas agreed with the Government on a plan with trade balance), 1 April 2011</i>	News item: Office of the President, Agricultural Machinery Company Claas agreed with the Government on a plan with trade balance, 1 April 2011
JE-129	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Editoriales acuerdan equilibrar la balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Publishing Companies Agree to Restore Trade Balance), 31 October 2011</i>	News item: <i>Prensa Argentina</i> , Publishing Companies Agree to Restore Trade Balance, 31 October 2011
JE-131	<i>Clarín, Liberarían los libros en las próximas 48 horas, by Patricia Kolesnicov (Clarín, Books to be released in the next 48 hours), 1 November 2011</i>	News item: <i>Clarín</i> , Books to be released in the next 48 hours, 1 November 2011



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JE-133	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi y Moreno firmaron acuerdo con libreros para compensar importaciones (Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi and Moreno Signed an Agreement with Booksellers to Offset Their Imports), 11 November 2011</i>	News item: <i>Prensa Argentina</i> , Giorgi and Moreno Signed an Agreement with Booksellers to Offset Their Imports, 11 November 2011
JE-137	<i>Presidencia, Palabras de la Presidenta de la Nación Cristina Fernández en el acto de cierre de ronda de negocios "Argentina Exporta Audiovisual" (Office of the President of Argentina, Address by the President, Cristina Fernández, in the closing ceremony of the business round "Argentina Exporta Audiovisual"), 6 December 2011</i>	Office of the President, Address by the President, Cristina Fernández, in the closing ceremony of the business round "Argentina Exporta Audiovisual"
JE-145	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Directivos de Electrolux anunciaron a Cristina que comenzarán a exportar electrodomésticos a Brasil (Sala de Prensa República Argentina (prensa.argentina.com.ar), Electrolux executives announced to [President] Cristina [Fernández] that they will begin exporting small appliances to Brazil), 25 August 2011</i>	News item: <i>Prensa Argentina</i> , Electrolux executives announced to President Cristina Fernández that they will begin exporting small appliances to Brazil, 25 August 2011
JE-149	<i>La Nación, Moreno une el agua con el aceite, by Luján Scarpinelli (La Nación, Moreno mixes water and oil), 6 May 2012</i>	News item: <i>La Nación</i> , Moreno mixes water and oil, 6 May 2012
JE-158	<i>El Cronista, Zegna ayuda a exportar lana y reabre (El Cronista, Zegna reopens by helping to export wool), 2 August 2012</i>	News item: <i>El Cronista</i> , Zegna reopens by helping to export wool, 2 August 2012
JE-159	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Nike anunció una inversión de casi US\$5 millones para incrementar la producción en el país (Ministry of Industry, Nike announces a USD 5 million investment to increase local production), 5 April 2011</i>	News item: <i>Prensa Argentina</i> , Nike announces a USD 5 million investment to increase local production, 5 April 2011
JE-160	<i>Cronista.com, Vende mobiliario a las sucursales de otros país para cumplir con los pedidos de Moreno, by Matías Bonelli (Cronista.com, [Adidas] sells furniture to other countries' stores to comply with Moreno's orders), 22 July 2011</i>	News item: <i>Cronista.com</i> , Adidas sells furniture to other countries' stores to comply with Moreno's orders, 22 July 2011
JE-163	Fair Disclosure Wire, "Q2 2012 Cencosud SA Earnings Conference Call - Final ", 4 September 2012	Cencosud SA Earnings Conference Call (Q2 2012), 4 September 2012
JE-164	<i>infobae.com, Tras varios meses, Guillermo Moreno permite importar la muñeca Barbie (infobae.com, After several months, Moreno allows the importation of Barbie dolls), 18 August 2011</i>	News item: <i>infobae.com</i> , After several months, Moreno allows the importation of Barbie dolls, 18 August 2011
JE-165	<i>La Nación, Moreno flexibiliza el ingreso de más productos importados, by Alfredo Sainz (La Nación, Moreno increases flexibility for more imported products), 18 August 2011</i>	News item: <i>La Nación</i> , Moreno increases flexibility for more imported products, 18 August 2011
JE-166	<i>26 Noticias, Las Barbies vuelven a las jugueterías gracias a Rasti (26 Noticias, Barbie dolls come back to toy shops thanks to Rasti), 18 August 2011</i>	News item: <i>26 Noticias</i> , Barbie dolls come back to toy shops thanks to Rasti, 18 August 2011
JE-167	<i>iProfesional.com, Entran muñecas, salen ladrillos: las Barbies vuelven a cambio de Rastis (iProfesional.com, Dolls come in, bricks go out: Barbie dolls come back in exchange for Rastis), 18 August 2011</i>	News item: <i>iProfesional.com</i> , Barbie dolls come back in exchange for Rastis, 18 August 2011

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JE-168	Presidencia, <i>En 2020 se podrán producir en el país 1.350 millones de unidades de medicamentos y generar 40 mil nuevos empleos en el sector</i> (Office of the President of Argentina, In 2020, this country will be able to produce 1.35 billion medication units and generate 40 thousand new jobs in the sector), 10 May 2011	News item: Office of the President, In 2020, this country will be able to produce 1.35 billion medication units and generate 40 thousand new jobs in the sector, 10 May 2011
JE-172	Fair Disclosure Wire, "Q3 2012 Lojack Corp Earnings Conference Call – Final", 1 November 2012	Lojack Corp Earnings Conference Call (Q3 2012), 1 November 2012
JE-188	<i>Cronista.com, Fiat comienza a producir cosechadores en el país</i> , by Julieta Camandone ( <i>Cronista.com</i> , Fiat starts producing harvesters in Argentina), 20 December 2011	News item: <i>Cronista.com</i> , Fiat starts producing harvesters in Argentina, 20 December 2011
JE-197, JE-539 and EU-225	<i>Ministerio de Industria, Exigen al sector de maquinaria agrícola sustituir importaciones por US\$450 millones</i> (Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million), 10 February 2011	News item: Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011
JE-199	Fair Disclosure Wire, "Q4 2011 AGCO Corp Earnings Conference Call – Final", 7 February 2012	AGCO Corp Earnings Conference Call (Q4 2011), 7 February 2012
JE- 201	<i>Ministerio de Industria, Giorgi acordó con el Grupo Fiat desarrollar proveedores locales para la fabricación de maquinaria agrícola y motores</i> (Giorgi agreed with Fiat Group to develop domestic suppliers for the production of agricultural machinery and motors), 26 February 2012	News item: Ministry of Industry, Giorgi agreed with Fiat to develop domestic suppliers for the production of agricultural machinery and motors, 26 February 2012
JE-202	<i>Ministerio de Industria, Giorgi exigió a fabricantes de maquinaria agrícola presentar en un mes proyectos concretos de integración</i> (Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month), 21 March 2012	News item: Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012
JE-203	<i>Ministerio de Industria, Giorgi: "el que más rápido integre piezas nacionales es el que más va a ganar"</i> (Ministry of Industry, Giorgi: "whoever integrates national parts faster will gain most"), 22 March 2012	News item: Ministry of Industry, Giorgi: "whoever integrates national parts faster will gain most", 22 March 2012
JE-204	<i>Ministerio de Industria, Giorgi reunió a fabricantes de maquinaria agrícola y agripartistas para aumentar la integración de piezas nacionales</i> (Ministry of Industry, Giorgi brought together agricultural machinery manufacturers and agroparts manufacturers to increase the integration of national supplies), 24 April 2012	News item: Ministry of Industry, Giorgi brought together agricultural machinery manufacturers and agroparts manufacturers, 24 April 2012
JE-205	<i>Ministerio de Industria, Giorgi exhortó a los agripartistas a sustituir importaciones</i> (Ministry of Industry, Giorgi urged agroparts manufacturers to substitute imports), 12 June 2012	News item: Ministry of Industry, Giorgi urged agroparts manufacturers to substitute imports, 12 June 2012
JE-207	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi ratificó que se prorrogarán beneficios para producir maquinarias agrícolas en el país</i> ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country), 19 November 2012	News item: <i>Prensa Argentina</i> , Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country, 19 November 2012

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JE-209	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Tres metalmecánicas comprometieron inversiones y que no girarán utilidades (Sala de Prensa República Argentina (prensa.argentina.com.ar), Three metallurgical companies committed investments and will not transfer profits), 23 December 2011</i>	News item: <i>Prensa Argentina</i> , Three metallurgical companies committed investments and will not transfer profits, 23 December 2011
JE-210	<i>Ministerio de Industria, La Ministra Giorgi se reunió con empresarios mineros (Ministry of Industry, Minister Giorgi met with representatives of the mining industry), 11 August 2011</i>	News item: Ministry of Industry, Minister Giorgi met with representatives of the mining industry, 11 August 2011
JE-211	<i>Ministerio de Industria, Giorgi sostuvo que la minería debe generar más empleo y crecimiento local desarrollando proveedores nacionales (Ministry of Industry, Giorgi declared that the mining sector must generate more employment and local growth by developing national suppliers), 28 March 2012</i>	News item: Ministry of Industry, Giorgi declared that the mining sector must generate more employment and local growth by developing national suppliers, 28 March 2012
JE-213	<i>Ministerio de Industria, Giorgi con mineras: impulso a la fabricación local de bienes de capital para el sector (Ministry of Industry, Giorgi with mining companies: boost to local manufacturing of capital goods for the sector), 22 April 2012</i>	News item: Ministry of Industry, Giorgi with mining companies: boost to local manufacturing of capital goods for the sector, 22 April 2012
JE-214	<i>Ministerio de Industria, Giorgi se reunió con directivos de minera La Alumbrera para que desarrollen más proveedores locales (Ministry of Industry, Giorgi met with executives of La Alumbrera mining company to ask them to develop more local suppliers), 26 April 2012</i>	News item: Ministry of Industry, Giorgi asks executives of La Alumbrera mining company to develop more local suppliers, 26 April 2012
JE-216	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi reunió a mineras y proveedores para avanzar en un plan de sustitución de importaciones por más de u\$s 200 millones (Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi met with mining companies and suppliers to move forward a plan to substitute over USD 200 million in imports), 27 August 2012</i>	News item: <i>Prensa Argentina</i> , Giorgi met with mining companies and suppliers to move forward a plan to substitute over USD 200 million in imports, 27 August 2012
JE-217	<i>Ministerio de Industria, Giorgi: "Consolidar la industrialización de un insumo es caminar hacia la real soberanía minera" (Ministry of Industry, Giorgi: "Consolidating the industrialization of an input means walking towards real sovereignty in the mining sector"), 25 September 2012</i>	News item: Ministry of Industry, Giorgi: "Consolidating the industrialization of an input means walking towards real sovereignty in the mining sector", 25 September 2012
JE-222	Fair Disclosure Wire, "Q3 2012 Pan American Silver Earnings Conference Call – Final", 8 November 2012	Pan American Silver Earnings Conference Call (Q3 2012), 8 November 2012
JE-223	Fair Disclosure Wire, "Q4 2011 Pan American Silver Earnings Conference Call – Final", 23 February 2012	Pan American Silver Earnings Conference Call (Q4 2011), 23 February 2012
JE-226	Goldcorp, Management's discussion and analysis of financial condition and results of operations for the three and six months ended, 25 July 2012	Goldcorp, Management's discussion and analysis of financial condition and results of operations
JE-227	Fair Disclosure Wire, "Q1 2012 Goldcorp Earnings Conference Call – Final", 26 April 2012	Goldcorp Earnings Conference Call (Q1 2012), 26 April 2012
JE-229	<i>Ministerio de Industria, Giorgi se reunió con automotrices y planteó acciones para integrar piezas locales y diversificar exportaciones (Ministry of Industry, Giorgi met with car manufacturers and laid out actions to integrate local parts and diversify exports), 24 April 2012</i>	News item: Ministry of Industry, Giorgi met with car manufacturers and laid out actions to integrate local parts and diversify exports, 24 April 2012



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JE-230	<i>Ministerio de Industria, Giorgi reunió a automotrices y autopartistas con productores y forjadores de aceros especiales para avanzar en una mayor integración en esa cadena de valor</i> (Ministry of Industry, Giorgi gathered automakers and auto part producers with special-steel manufacturers to advance in the integration within that value chain), 2 May 2012	News item: Ministry of Industry, Giorgi gathered automakers and auto part producers with special-steel manufacturers, 2 May 2012
JE-231	<i>Ministerio de Industria, Giorgi y Moreno acordaron con terminales, autopartistas y forjadores sustituir importaciones de aceros especiales</i> (Ministry of Industry, Giorgi and Moreno agreed with automakers, auto part producers and steel makers to substitute imports of special steels), 19 June 2012	News item: Ministry of Industry, Giorgi and Moreno agreed with automakers, auto part producers and steel makers to substitute imports of special steels, 19 June 2012
JE-232	<i>Ministerio de Industria, "El desafío es agregar valor a las exportaciones de cueros", aseguró Giorgi</i> (Ministry of Industry, Giorgi declared: "The challenge is to add value to leather exports"), 19 June 2012	News item: Ministry of Industry, Giorgi: "The challenge is to add value to leather exports", 19 June 2012
JE-234	<i>Ministerio de Industria, Giorgi impulsa la sustitución de importaciones y el aumento de las exportaciones de software en la industria automotriz</i> (Ministry of Industry, Giorgi fosters import substitution and increased exports of software in the automobile industry), 9 October 2012	News item: Ministry of Industry, Giorgi fosters import substitution and increased exports of software in the automobile industry, 9 October 2012
JE-236	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La inversión que GM hará en el país le permitirá revertir su balanza comercial</i> (Sala de Prensa República Argentina (prensa.argentina.com.ar), GM's investments in Argentina will help it reverse its trade deficit), 15 June 2011	News item: <i>Prensa Argentina</i> , GM's investments in Argentina will help it reverse its trade deficit, 15 June 2011
JE-237	<i>Presidencia, La mitad de las motos que se venden en el país tienen mano de obra argentina</i> (Office of the President of Argentina, Half of the motorcycles sold in the country have Argentine labor), 4 June 2011	News item: Office of the President, Half of the motorcycles sold in the country have Argentine labor, 4 June 2011
JE-241	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Procter &amp; Gamble anunció a la Presidenta inversiones por \$557 millones y un plan de sustitución de importaciones</i> (Sala de Prensa República Argentina (prensa.argentina.com.ar), Procter & Gamble announces to the President ARS 557 million in investments and an import substitution plan), 5 September 2012	News item: <i>Prensa Argentina</i> , Procter & Gamble announces ARS 557 million in investments and an import substitution plan, 5 September 2012
JE-242	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Marcó del Pont destacó el crecimiento de la inversión en la Argentina</i> (Sala de Prensa República Argentina (prensa.argentina.com.ar), Marcó del Pont highlighted investment growth in Argentina), 14 November 2012	News item: <i>Prensa Argentina</i> , Marcó del Pont highlighted investment growth in Argentina, 14 November 2012
JE-244	<i>Presidencia, Anuncio de nuevas inversiones en GM: discurso de la Presidenta</i> (Office of the President of Argentina, Announcement of New Investments in GM: Address by the President), 15 November 2011	News item: Office of the President, Announcement of New Investments in GM: Address by the President, 15 November 2011

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JE-245	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Peugeot acordó con el Gobierno equilibrar su balanza comercial (Sala de Prensa República Argentina (prensa.argentina.com.ar), Peugeot agrees with the Government to balance its trade), 17 November 2011</i>	News item: <i>Prensa Argentina</i> , Peugeot agrees with the Government to balance its trade, 17 November 2011
JE-252	<i>Ministerio de Industria, Argentina ya sustituyó importaciones por 4.000 millones de dólares en el primer semestre del año (Ministry of Industry, Argentina already substituted imports amounting to USD 4 billion in the first semester of the year), 23 August 2011</i>	News item: Ministry of Industry, Argentina already substituted imports amounting to USD 4 billion in the first semester of the year, 23 August 2011
JE-254	<i>Presidencia, Honda invertirá 3 millones de dólares para comenzar a producir motos en su planta de Campana (Office of the President of Argentina, Honda will invest 3 million dollars to begin producing motorcycles in its Campana factory), 27 June 2011</i>	News item: Office of the President, Honda will invest USD 3 million to begin producing motorcycles in its Campana factory, 27 June 2011
JE-255	<i>La Nación, BMW exportará arroz para poder ingresar sus vehículos al país, by Juan Pablo De Santis (La Nación, BMW will export rice so that its cars can enter the country), 13 October 2011</i>	News item: <i>La Nación</i> , BMW will export rice so that its cars can enter the country, 13 October 2011
JE-259	<i>Clarín, Argentina retuvo un millón de libros (Clarín, Argentina retained a million books), 26 September 2011</i>	News item: <i>Clarín</i> , Argentina retained a million books, 26 September 2011
JE-265	<i>Página 12, El abastecimiento tiene remedio, by Javier Lewkowicz (Página 12, Supply has a remedy), 25 April 2012</i>	News item: <i>Página 12</i> , Supply has a remedy, 25 April 2012
JE-267	<i>Ministerio de Industria, Bridgestone Argentina ratificó su compromiso para sustituir importaciones y aumentar exportaciones (Ministry of Industry, Bridgestone Argentina ratified its commitment to substitute imports and increase exports), 22 August 2012</i>	News item: Ministry of Industry, Bridgestone Argentina ratified its commitment to substitute imports and increase exports, 22 August 2012
JE-268	<i>Cámara Argentino-China de la Producción, la Industria y el Comercio, Procedimiento para Desbloqueo de DJAI Observadas (Argentine-Chinese Chamber of Production, Industry and Commerce, email communication sent to members: "Procedure to Unblock Observed DJAIs"), 11 December 2012</i>	Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012
JE-269	<i>Ámbito Financiero, Lo que hay que saber sobre nuevo régimen (Ámbito Financiero, What you should know about the new rules), 1 February 2012</i>	Newspaper article: <i>Ámbito Financiero</i> , What you should know about the new rules, 1 February 2012
JE-276	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), El Gobierno avanza con medidas para proteger el sector textil de la competencia desleal (Sala de Prensa República Argentina (prensa.argentina.com.ar), The Government moves forward with measures to protect the textile industry from unfair competition), 31 January 2012</i>	News item: <i>Prensa Argentina</i> , The Government moves forward with measures to protect the textile industry from unfair competition, 31 January 2012
JE-277	<i>Ministerio de Industria, Ford presentó su nuevo modelo de pick up, en el marco del plan de inversiones por US\$250 millones presentado al Ministerio de Industria (Ministry of Industry, Ford debuted its new pickup model, under the USD 250 million investment plan submitted to the Ministry of Industry), 3 July 2012</i>	News item: Ministry of Industry, Ford debuted its new pickup model, under the USD 250 million investment plan submitted to the Ministry of Industry, 3 July 2012

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JE-288	<i>Diario BAE, Giorgi instó a fabricantes de maquinaria agrícola para que aceleren la sustitución de partes</i> ( <i>Diario BAE, Giorgi called on producers of agricultural machinery to accelerate substitution of parts</i> ), 22 March 2012	Newspaper article: <i>Diario BAE</i> , Giorgi called on producers of agricultural machinery to accelerate substitution of parts, 22 March 2012
JE-298	<i>Representación Comercial de ProChile en Mendoza, Estudio de Mercado: Proveedores para la Vitivinicultura en Argentina</i> (Commercial Representation of ProChile in Mendoza, Market Study of Vitiviniculture: Suppliers in Argentina), May 2012	Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012
JE-300	<i>Ministerio de Industria, Giorgi analizó el crecimiento productivo de Ford Argentina con directivos de la empresa</i> (Ministry of Industry, Giorgi analyzed Ford Argentina's production growth with the company's executives), 15 March 2013	News item: Ministry of Industry, Giorgi analyzed Ford Argentina's production growth with the company's executives, 15 March 2013
JE-302	<i>Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Causa 33616/2012 Fity SA –Inc Med- c/ en M Economía Resol 251/09 (DJA/ 50033S/12) S/ Medida cautelar (autónoma)</i> (National Court of Appeals for Federal Administrative Disputes, Fity SA –Inc Med- v. Ministry of Economy Resolution 251/09 DJAI 50033S/12), 22 November 2012	National Court of Appeals for Federal Administrative Disputes, <i>Fity SA v. Ministry of Economy</i> , 22 November 2012
JE-304	Letter from Company X to the Secretary of Domestic Trade, 3 April 2012	Letter from Company X to the Secretary of Domestic Trade, 3 April 2012
JE-305	E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012	E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012
JE-306	Sworn affidavit from Vice President of Company X, 12 July 2012	Sworn affidavit from Vice President of Company X, 12 July 2012
JE-307	Sworn affidavit from officer of Company X, 10 April 2013	Sworn affidavit from officer of Company X, 10 April 2013
JE-312	Government of Japan, Ministry of Economy, Trade and Industry, "DS445: Summary of Survey Results", 24 December 2012	Japan Ministry of Economy, Trade and Industry, Summary of Survey Results, 24 December 2012
JE-312-2	Government of Japan, Ministry of Economy, Trade and Industry, "DS445: Summary of Survey Results" (Rev), 4 December 2013	Government of Japan, Ministry of Economy, Trade and Industry, Summary of Survey Results (Rev), 4 December 2013
JE-315 and EU-1	<i>Presidencia, Palabras de la Presidenta de la Nación Cristina Fernández en el Acto de Inauguración de la Segunda Etapa de las Obras de Construcción del Estadio Polideportivo, en Villa Adelina, Partido de Vicente López</i> (Office of the President of Argentina, Address by the President, Cristina Fernández, in the inauguration of the second phase of construction works of the sports center in Villa Adelina, Partido de Vicente López), 16 October 2008	News item: Office of the President, Address by the President, in the inauguration of the second phase of construction works of the sports center in Villa Adelina, 16 October 2008
JE-316, EU-2 and EU-5	<i>Presidencia, Palabras de la Presidenta de la Nación Cristina Fernández en el Acto de Entrega de Aportes no Reintegrables a Parques Industriales, en el Salón de las Mujeres Argentinas del Bicentenario</i> (Office of the President of Argentina, Address by the President, Cristina Fernández, in the presentation ceremony of non-refundable contributions to industrial parks at the Hall of the Argentine Women of the Bicentenary), 14 December 2011	News item: Office of the President, Address by the President, in the presentation ceremony of non-refundable contributions to industrial parks, 14 December 2011

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JE-317 and EU-3	<i>Presidencia, Palabras de la Presidenta de la Nación, Cristina Fernández, en el acto de la primera declaración del proyecto Gas Plus</i> (Office of the President of Argentina, Address by the President, Cristina Fernández, in the first declaration of the Gas Plus project), 9 October 2008	News item: Office of the President, Address by the President, in the first declaration of the Gas Plus project, 9 October 2008
JE-318 and EU-4	<i>Presidencia, Palabras de la Presidenta de la Nación, Cristina Kirchner, en el Centro Municipal de Viedma, provincia de Río Negro</i> (Office of the President of Argentina, Address by the President, Cristina Kirchner, at the Municipal Center of Viedma, province of Río Negro), 15 October 2008	News item: Office of the President, Address by the President, at the Municipal Center of Viedma, province of Río Negro, 15 October 2008
JE-320 and EU-6	<i>Ministerio de Industria, Débora Giorgi inauguró dos plantas industriales y supervisó el desarrollo de una tercera que totalizan inversiones por \$44 M</i> (Ministry of Industry, Débora Giorgi inaugurated two industrial plants and supervised the development of a third plant, which represent a total investment of ARS \$44M), 24 January 2012	News item: Ministry of Industry, Débora Giorgi inaugurated two industrial plants and supervised the development of a third plant, 24 January 2012
JE-321 and EU-7	<i>Ministerio de Industria, Giorgi: "Rechazamos esta declaración contra Argentina. Tenemos una economía dos veces más abierta que en los '90"</i> (Ministry of Industry, Giorgi: "We reject this statement against Argentina. We have an economy twice as open as in the 90s"), 30 March 2012	News item: Ministry of Industry, Giorgi: "We have an economy twice as open as in the 90s", 30 March 2012
JE-323 and EU-9	<i>Ministerio de Industria, Giorgi: "No dejaremos el mercado interno en manos de la competencia desleal"</i> (Ministry of Industry, Giorgi: "We will not leave the internal market in the hands of unfair competition"), 16 February 2011	News item: Ministry of Industry, Giorgi: "We will not leave the internal market in the hands of unfair competition", 16 February 2011
JE-328 and EU-14	Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013	Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013
JE-368 and EU-54	<i>Ministerio de Industria, La empresa nacional Pauny anunció a Giorgi que alcanzará una producción de 2.500 tractores para 2014</i> (Ministry of Industry, The national company Pauny announced to Giorgi that it will reach a production of 2,500 tractors in 2014), 8 April 2013	News item: Ministry of Industry, Pauny announced to Giorgi that it will reach a production of 2,500 tractors in 2014, 8 April 2013
JE-369 and EU-55	<i>Presidencia, Bajo el compromiso de sustituir importaciones, Giorgi ratificó que se prorrogarán beneficios para producir maquinaria agrícola</i> (Office of the President of Argentina, Giorgi confirmed that benefits to produce agricultural machinery will be extended under the commitment of substituting imports), 19 November 2012	News item: Office of the President, Giorgi confirmed that benefits to produce agricultural machinery will be extended under the commitment of substituting imports, 19 November 2012
JE-370 and EU-56	<i>Latercera.com, Afirman que Argentina fija restricciones a importaciones de supermercados</i> (Latercera.com, Argentina said to impose restrictions on supermarkets imports), 15 June 2009	News item: Latercera.com, Argentina said to impose restrictions on supermarkets imports, 15 June 2009
JE-371 and EU-57	<i>BAE Argentina (Diariobae), El Gobierno liberaría más permisos de importaciones</i> , by Darío Gannio (BAE Argentina (Diariobae), The Government would release more import permits), 20 March 2013	News item: BAE Argentina (Diariobae), The Government would release more import permits, 20 March 2013
JE-374 and EU-60	<i>La Nación, Quejas de las empresas por las nuevas reglas para importar</i> , by Oliver Galak (La Nación, Companies complain about new import rules), 18 July 2011	News item: La Nación, Companies complain about new import rules, 18 July 2011
JE-378 and EU-64	<i>Página 12, Si quieren importar tendrán que exportar</i> , by Javier Lewkowicz (Página 12, If they want to import, they will have to export), 23 February 2012	News item: Página 12, If they want to import, they will have to export, 23 February 2012

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JE-379 EU-65	and	<i>Clément Comercio Exterior, Informe Técnico, Alternativas para Exportar</i> (Clément Foreign Trade, Technical Report, Alternatives for exporting), 17 December 2012	<i>Clément Comercio Exterior, Alternativas for exporting</i> , 17 December 2012
JE-381 EU-67	and	<i>Cronista.com, Por el control a importaciones surge un mercado negro de permisos para el comercio exterior</i> , by Natalia Donato ( <i>Cronista.com</i> , A black market of foreign trade permits arises due to import controls), 28 February 2012	News item: <i>Cronista.com</i> , A black market of foreign trade permits arises due to import controls, 28 February 2012
JE-383 EU-69	and	<i>iProfesional.com, El mercado paralelo no sólo es para el dólar: crece con fuerza el negocio de la "exportación blue"</i> , by Juan Diego Wasilevsky ( <i>iProfesional.com</i> , The parallel market is not only for the dollar: the "Exportación blue" business is booming), 16 April 2012	News item: <i>iProfesional.com</i> , The "Exportación blue" business is booming, 16 April 2012
JE-387 EU-73	and	<i>Clément Comercio Exterior, Maraña de reglas aduaneras, tips para exportadores e importadores</i> (Clément Foreign Trade, A tangle of customs regulations, tips for exporters and importers), 9 August 2012	<i>Clément Comercio Exterior</i> , A tangle of customs regulations, tips for exporters and importers, 9 August 2012
JE-396 EU-82	and	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Las automotrices importarán por el valor que exporten</i> ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , Automakers will import as much as they export), 11 March 2011	News item: <i>Prensa Argentina</i> , Automakers will import as much as they export, 11 March 2011
JE-397 EU-83	and	<i>Tiempo Argentino, Ultimátum oficial a automotrices sin plan</i> , by Mariano Beristain ( <i>Tiempo Argentino</i> , Official ultimatum to automakers without a plan), 11 April 2011	News item: <i>Tiempo Argentino</i> , Official ultimatum to automakers without a plan, 11 April 2011
JE-400 EU-86	and	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), General Motors se comprometió a equilibrar su balanza comercial en 2012</i> ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , General Motors committed to even out its trade balance in 2012), 2 May 2011	News item: <i>Prensa Argentina</i> , General Motors committed to even out its trade balance in 2012, 2 May 2011
JE-401 EU-87	and	<i>iProfesional.com, Por las trabas oficiales, BMW suspendió el envío de autos a la Argentina</i> ( <i>iProfesional.com</i> , BMW suspended the shipment of cars to Argentina because of official obstacles), 17 April 2011	News item: <i>iProfesional.com</i> , BMW suspended the shipment of cars to Argentina because of official obstacles, 17 April 2011
JE-403 EU-89	and	<i>infobae.com, Por trabas, cierran concesionarias BMW y dejan de vender Harley Davidson</i> ( <i>infobae.com</i> , BMW authorised dealers are shutting down and Harley Davidson are no longer sold, due to restrictions), 21 September 2011	News item: <i>infobae.com</i> , BMW authorised dealers are shutting down and Harley Davidson are no longer sold, due to restrictions, 21 September 2011
JE-405 EU-91	and	<i>La Nación, Se frenan las ventas de autos de lujo por las trabas de importar</i> , by Juan Pablo De Santis ( <i>La Nación</i> , Sales of deluxe cars halt because of import obstacles), 5 December 2011	News item: <i>La Nación</i> , Sales of deluxe cars halt because of import obstacles, 5 December 2011
JE-411 EU-97	and	<i>Presidencia, Scania anunció a la Presidenta que invertirá U\$S40 millones en el país</i> (Office of the President of Argentina, Scania has informed the President that it will invest USD 40 million in Argentina), 21 November 2011	News item: Office of the President, Scania has informed the President that it will invest USD 40 million in Argentina, 21 November 2011
JE-412 EU-98	and	<i>MotoMundo, Editorial</i> ( <i>MotoMundo</i> , Editorial), May 2012, Year XXI, Number 241, Month 18, p. 3	News item: <i>MotoMundo</i> , Editorial, May 2012
JE-413 EU-99	and	<i>MotoMundo, JUKI exporta vinos a Ucrania</i> ( <i>MotoMundo</i> , Juki exports wine to Ukraine), May 2012, Year XXI, Number 241, Month 18, p. 5	News item: <i>MotoMundo</i> , Juki exports wine to Ukraine, May 2012



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JE-414 EU-100	and	<i>Los Andes (losandes.com.ar), Los libreros firman un acuerdo para liberar títulos retenidos en aduana (Los Andes, Booksellers sign an agreement to release books blocked at customs), 12 November 2011</i>	News item: <i>Los Andes</i> , Booksellers sign an agreement to release books blocked at customs, 12 November 2011
JE-415 EU-101	and	<i>Club de Traductores Literarios de Buenos Aires (Clubdetraductoresliterariosdbaires.blogspot.be), Más sobre los libros retenidos en la aduana (Club de Traductores Literarios de Buenos Aires, More about the books blocked at Customs), 2 December 2011</i>	<i>Club de Traductores Literarios de Buenos Aires</i> , More about the books blocked at Customs, 2 December 2011
JE-417 EU-103	and	<i>El Diario (eldiario.com.ar), Sigue trabado el ingreso de libros y revistas extranjeros (El Diario (eldiario.com.ar), The entry of foreign books and magazines remains blocked), 29 September 2011</i>	News item: <i>El Diario (eldiario.com.ar)</i> , The entry of foreign books and magazines remains blocked, 29 September 2011
JE-419 EU-105	and	<i>iProfesional.com, A rezarle a "San Moreno": en otra arremetida insólita, ahora trabó la entrada de Biblias a la Argentina (iProfesional.com, Go pray to "Saint Moreno": in an unprecedented drive, Moreno blocked the entry of Bibles into Argentina), 22 November 2011</i>	News item: <i>iProfesional.com</i> , In an unprecedented drive, Moreno blocked the entry of Bibles into Argentina, 22 November 2011
JE-423 EU-109	and	<i>BAE Argentina (Diariobae), Importadores de motos critican la doble exigencia oficial, by Francisco Martirena Auber (BAE Argentina (Diariobae), Motorcycle importers criticise the two-fold official requirements), 22 February 2012</i>	News item: <i>BAE Argentina (Diariobae)</i> , Motorcycle importers criticise the two-fold official requirements, 22 February 2012
JE-424 EU-110	and	<i>Presidencia, Palabras de la Presidenta de la Nación Cristina Fernández en el acto de inauguración de la ampliación de la planta Pirelli neumáticos, en Merlo, provincia de Buenos Aires (Office of the President of Argentina, Address by the President, Cristina Fernández, in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, province of Buenos Aires), 9 March 2011</i>	News item: Office of the President, Address by the President, in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011
JE-435 EU-121	and	<i>Los Andes (losandes.com.ar), Más multinacionales se asocian a bodegas para poder importar (Los Andes, More multinationals form partnerships with wineries to be able to import), 8 July 2012</i>	News item: <i>Los Andes</i> , More multinationals form partnerships with wineries to be able to import, 8 July 2012
JE-436 EU-122	and	<i>infobae.com, Newsan una fábrica del fin del mundo (infobae.com, Newsan: a factory of the end of the world), 4 March 2013</i>	News item: <i>infobae.com</i> , Newsan: a factory of the end of the world, 4 March 2013
JE-438 EU-124	and	<i>biodiesel.com.ar, Airoldi pone en marcha una planta de biodiesel para poder seguir importando (biodiesel.com.ar, Airoldi puts into operation a biodiesel plant in order to be able to continue importing), 7 March 2012</i>	News item: <i>biodiesel.com.ar</i> , Airoldi puts into operation a biodiesel plant in order to be able to continue importing, 7 March 2012
JE-439 EU-125	and	<i>Diario de Cuyo, Una buena: crecen exportaciones, by Hugo D. Carmona Torres (Diario de Cuyo, Good news: exports increase), 16 July 2012</i>	News item: <i>Diario de Cuyo</i> , Good news: exports increase, 16 July 2012
JE-441 EU-127	and	Letter to the Secretary of Domestic Trade from the <i>Unión de la Industria Cárnica Argentina, UNICA</i> (Union of the Argentine Meat Industry), the <i>Cámara Argentina de la Industria de Chacinados y Afines, CAICHA</i> (Argentine Chamber of the Pressed Meat and Related Industries), the <i>Asociación Argentina de Productores de Porcinos, AAPP</i> (Argentine Association of Pork Producers) and the <i>Consejo Argentino de Productores, CAP</i> (Argentine Council of Producers), 7 May 2012	Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012
JE-442 EU-128	and	<i>La Voz, Preocupación de empresas uruguayas por la medida K (La Voz, Uruguayan companies concerned about K measure), 16 May 2010</i>	News item: <i>La Voz</i> , Uruguayan companies concerned about K measure, 16 May 2010

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JE-443 EU-129	and	<i>Perfil, Limitarán importación de alimentos</i> ( <i>Perfil, Importation of foodstuff will be limited</i> ), 6 May 2010	News item: <i>Perfil</i> , Importation of foodstuff will be limited, 6 May 2010
JE-444 EU-130	and	<i>La Nación, Sigue vigente la restricción a la importación de alimentos</i> , by Alfredo Sainz ( <i>La Nación, Restrictions on the importation of foodstuff are still in force</i> ), 19 May 2010	News item: <i>La Nación</i> , Restrictions on the importation of foodstuff are still in force, 19 May 2010
JE-446 EU-132	and	<i>lapoliticaonline.com, Moreno va por las importaciones de alimentos y los supermercadistas piden precisiones</i> ( <i>lapoliticaonline.com, Moreno targets food imports and the supermarket sector requests clarifications</i> ), 10 May 2010	News item: <i>lapoliticaonline.com</i> , Moreno targets food imports and the supermarket sector requests clarifications, 10 May 2010
JE-447 EU-133	and	<i>Fortunaweb, El Gobierno frenaría la importación de alimentos a partir del 1° de Junio</i> ( <i>Fortunaweb, The Government would curb food imports from the 1st of June</i> ), 6 May 2010	News item: <i>Fortunaweb</i> , The Government would curb food imports from the 1st of June, 6 May 2010
JE-448 EU-134	and	<i>infoalimentacion.com, Moreno, con la lupa en alimentos importados</i> ( <i>infoalimentacion.com, Moreno: with the magnifying glass on imported food</i> ), 13 May 2010	News item: <i>infoalimentacion.com</i> , Moreno: with the magnifying glass on imported food, 13 May 2010
JE-450 EU-136	and	<i>Página12, Cuando la industria tiene quién la proteja</i> , by Javier Lewkowicz ( <i>Página12, When the industry has someone to protect it</i> ), 16 February 2011	News item: <i>Página12</i> , When the industry has someone to protect it, 16 February 2011
JE-453 EU-139	and	<i>La Nación, El Gobierno quiere frenar la importación de alimentos</i> , by Alfredo Sainz ( <i>La Nación, The Government wants to restrain the importation of foodstuff</i> ), 6 May 2010	News item: <i>La Nación</i> , The Government wants to restrain the importation of foodstuff, 6 May 2010
JE-455 EU-141	and	<i>La Nación, Moreno vuelve a frenar el ingreso de bienes importados</i> , by Alfredo Sainz ( <i>La Nación, Moreno again restrains the entry of imported goods</i> ), 17 January 2011	News item: <i>La Nación</i> , Moreno again restrains the entry of imported goods, 17 January 2011
JE-459 EU-145	and	<i>BAE Argentina (Diariobae), Por pedido de Moreno, los supermercados paralizaron todas las compras externas</i> , by Francisco Martirena Auber ( <i>BAE Argentina (Diariobae), At Moreno's request, supermarkets paralysed all external purchases</i> ), 16 November 2011	News item: <i>BAE Argentina (Diariobae)</i> , At Moreno's request, supermarkets paralysed all external purchases, 16 November 2011
JE-461 EU-147	and	<i>Página12, No importar nada que se produzca acá</i> , by Javier Lewkowicz ( <i>Página12, Not to import anything that is produced here</i> ), 5 January 2012	News item: <i>Página12</i> , Not to import anything that is produced here, 5 January 2012
JE-462 EU-148	and	<i>infobae.com, Moreno se reunió con los supermercados para regular las importaciones</i> ( <i>infobae.com, Moreno met with the supermarkets to regulate imports</i> ), 4 January 2012	News item: <i>infobae.com</i> , Moreno met with the supermarkets to regulate imports, 4 January 2012
JE-463 EU-149	and	<i>La Nación, Moreno controlará más la importación</i> , by Alfredo Sainz ( <i>La Nación, Moreno will further control importation</i> ), 4 January 2012	News item: <i>La Nación</i> , Moreno will further control importation, 4 January 2012
JE-465 EU-151	and	<i>ámbito.com, Rige compre nacional en los supermercados</i> , by Sergio Dattilo ( <i>ámbito.com, "Buy national" in force in supermarkets</i> ), 5 January 2012	News item: <i>ámbito.com</i> , "Buy national" in force in supermarkets, 5 January 2012
JE-466 EU-152	and	<i>Cronista.com, Moreno prohibió importar a los súper y fijó las pautas de aumentos para este año</i> , by Pablo Fernández Blanco ( <i>Cronista.com, Moreno banned supermarkets from importing and established the guidelines for price increases this year</i> ), 4 January 2012	News item: <i>Cronista.com</i> , Moreno banned supermarkets from importing and established the guidelines for price increases this year, 4 January 2012

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JE-467 and EU-153	<i>iProfesional.com, Moreno: "Los productos que entran al país, no deben ser producidos a nivel local" (iProfesional.com, Moreno: "The products entering the country must not be produced domestically"), 3 January 2012</i>	News item: <i>iProfesional.com</i> , Moreno: "Products entering the country must not be produced domestically", 3 January 2012
JE-473 and EU-159	<i>iProfesional.com, Para descomprimir los precios, Moreno flexibiliza el "cepo" para alimentos, juguetes y textiles (iProfesional.com, In order to lift the pressure on prices, Moreno increases the flexibility of the exchange rate "trap" for foodstuff, toys and textiles), 2 August 2012</i>	News item: <i>iProfesional.com</i> , In order to lift the pressure on prices, Moreno increases the flexibility of the exchange rate "trap" for foodstuff, toys and textiles, 2 August 2012
JE-474 and EU-160	<i>La Nación, Abren el cepo para los alimentos, by Alfredo Sainz (La Nación, The trap has been opened for foodstuff), 2 August 2012</i>	News item: <i>La Nación</i> , The trap has been opened for foodstuff, 2 August 2012
JE-475 and EU-161	<i>24siete.info, Autorizarían más importaciones a los supermercados y podrían flexibilizar requisitos (24siete.info, The Government would authorize more imports to supermarkets and may add some flexibility to the requirements), 4 August 2012</i>	News item: <i>24siete.info</i> , The Government would authorize more imports to supermarkets and may add some flexibility to the requirements, 4 August 2012
JE-476 and EU-162	<i>Urgente24.com, A Moreno se le aflojaron las trabas (Urgente24.com, Moreno's restrictions loosened), 2 August 2012</i>	News item: <i>Urgente24.com</i> , Moreno's restrictions loosened, 2 August 2012
JE-477 and EU-163	<i>Ministerio de Industria, Buscan reducir en un 20% la importación de vehículos de terceros países (Ministry of Industry, [Government] Seeks to reduce third-country car imports by 20%), 10 December 2010</i>	News item: Ministry of Industry, Government seeks to reduce third-country car imports by 20%, 10 December 2010
JE-478 and EU-164	<i>iProfesional.com, El Gobierno avanza con el "corralito" a los autos importados y consumidores ya lo sienten en el bolsillo, by Juan Diego Wasilevsky (iProfesional.com, The Government advances with the "corralito" [freeze] on imported cars and consumers can already feel it in their pockets), 3 February 2011</i>	News item: <i>iProfesional.com</i> , The Government advances with the "corralito" on imported cars and consumers can already feel it in their pockets, 3 February 2011
JE-483 and EU-169	<i>Cronista.com, Por trabas para importar sacan de la venta hasta 2012 las motos Harley-Davidson, by David Cayón (Cronista.com, Harley Davidson motorcycles are withdrawn from sale until 2012 because of import obstacles), 21 September 2011</i>	News item: <i>Cronista.com</i> , Harley Davidson motorcycles are withdrawn from sale until 2012 because of import obstacles, 21 September 2011
JE-488 and EU-174	<i>"La Asociación Argentina Productores de Porcinos y las entidades que nuclea la cadena de valor porcina sellaron un acuerdo para permitir la importación" in Porcinos, Revista de la Asociación Argentina Productores de Porcinos ("The Argentine Association of Pork Producers and other entities within the pork value chain sealed an agreement to allow importation", in Porcinos, Magazine of Asociación Argentina Productores de Porcinos), June 2012, Number 826, p. 6</i>	Magazine: <i>Porcinos</i> , The Argentine Association of Pork Producers and other entities within the pork value chain sealed an agreement to allow importation, June 2012
JE-499 and EU-185	<i>Consumidor.gov.ar, Walmart y Veja-Cencosud reafirman su compromiso con el congelamiento de precios (Consumidor.gov.ar, Secretariat of Domestic Trade, Press notes from Walmart and Veja-Cencosud, Walmart and Veja-Cencosud reaffirm their commitment to freeze prices), February 2013</i>	Secretariat of Domestic Trade, Press notes from Walmart and Veja-Cencosud, February 2013
JE-501 and EU-187	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Ratifican concepto de "tolerancia cero" a suba de precios (Sala de Prensa República Argentina (prensa.argentina.com.ar), Government reaffirms concept of "zero tolerance" against price increases), 21 February 2013</i>	News item: <i>Prensa Argentina</i> , Zero tolerance on price increases, 21 February 2013



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JE-509 and EU-195	<i>Página12, Sin cambios de origen en la góndola</i> , by Javier Lewkowicz ( <i>Página12</i> , No changes of the origin on the store shelves), 2 April 2013	News item: <i>Página12</i> , No changes of the origin on the store shelves, 2 April 2013
JE-512 and EU-198	<i>ámbito.com, Moreno II: promete más importados</i> , by Carlos Burgueño ( <i>ámbito.com</i> , Moreno II: Promises more imported products), 25 February 2013	News item: <i>ámbito.com</i> , Moreno II: Promises more imported products, 25 February 2013
JE-517 and EU-203	<i>Presidencia, Presentación del Plan Estratégico Industrial 2020: Palabras de la Presidenta de la Nación</i> (Office of the President of Argentina, Presentation of the Strategic Industrial Plan 2020: Address by the President), 4 October 2011	News item: Office of the President, Presentation of the Strategic Industrial Plan 2020, 4 October 2011
JE-521 and EU-207	<i>Ministerio de Industria, Plan de Desarrollo de Proveedores y Sustitución de Importaciones en la minería de la Argentina</i> (Ministry of Industry, Plan for the Development of Suppliers and Import Substitution in the Argentine mining sector), 26 November 2012	News item: Ministry of Industry, Plan for the Development of Suppliers and Import Substitution in the Argentine mining sector, 26 November 2012
JE-523 and EU-209	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Casos mineros de sustitución de importaciones (Sala de Prensa República Argentina (prensa.argentina.com.ar))</i> , Cases of import substitution in the mining sector), 6 April 2013	<i>Prensa Argentina</i> , Cases of import substitution in the mining sector, 6 April 2013
JE-525 and EU-211	<i>Resolución 54/2012 (Reglamento para la aplicación de las Resoluciones Nros. 12/2012 y 13/2012)</i> (Resolution 54/2012, Regulations for the application of Resolutions 12/2012 and 13/2012), 27 November 2012	Resolution 54/2012, Regulations for the application of Resolutions 12/2012 and 13/2012, 27 November 2012
JE-527 and EU-213	<i>Ley 24.196 (Ley de Inversiones Mineras)</i> (Law 24,196 on Mining Investments), 28 April 1993	Law 24,196 on Mining Investments, 28 April 1993
JE-528 and EU-214	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Fiat, otra automotriz que firmó ante el Gobierno su compromiso de equiparar la balanza comercial</i> (Argentine Republic Press Office, Fiat: another automaker that signed before the Government its commitment to even out its trade balance), 5 May 2011	News item: <i>Prensa Argentina</i> , Fiat: another automaker that signed before the Government its commitment to even out its trade balance, 5 May 2011
JE-530 and EU-216	<i>Ministerio de Industria, Giorgi acordó con automotrices acelerar la sustitución de importaciones</i> (Ministry of Industry, Giorgi agreed with automakers to accelerate import substitution), 22 November 2012	News item: Ministry of Industry, Giorgi agreed with automakers to accelerate import substitution, 22 November 2012
JE-534 and EU-220	<i>Ministerio de Industria, Sustitución de importaciones: En reunión con Giorgi, se definieron autopartes que pueden comenzar a producirse en la Argentina</i> (Ministry of Industry, Import substitution: In a meeting with Giorgi, auto parts that can start being produced in Argentina were defined), 19 February 2013	News item: Ministry of Industry, Import substitution: Auto parts that can start being produced in Argentina are defined, 19 February 2013
JE-537 and EU-223	<i>Ministerio de Industria, Giorgi: "No financiamos tractores ni cosechadoras que no alcancen un nivel de integración nacional aceptable"</i> (Ministry of Industry, Giorgi: "We will not fund tractors or harvesters that do not reach an acceptable level of national integration"), 27 March 2013	News item: Ministry of Industry, Giorgi: "We will not fund tractors or harvesters that do not reach an acceptable level of national integration", 27 March 2013
JE-538 and EU-224	<i>Ministerio de Industria, Piden duplicar la producción de maquinaria agrícola nacional en 2011 para sustituir importaciones</i> (Ministry of Industry, The Government requests to double the production of national agricultural machinery in 2011 to substitute imports), 9 February 2011	News item: Ministry of Industry, The Government requests to double the production of national agricultural machinery in 2011 to substitute imports, 9 February 2011

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JE-541 and EU-227	<i>Ministerio de Industria, Giorgi ratificó que desde 2013 habrá una integración de piezas nacionales de 55 a 60% en maquinaria agrícola</i> (Ministry of Industry, Giorgi confirmed that from 2013 there will be a level of integration of national supplies in agricultural machinery of around 55-60%), 6 November 2012	News item: Ministry of Industry, Giorgi confirmed that from 2013 there will be a 55-60% level of integration of national supplies in agricultural machinery, 6 November 2012
JE-543 and EU-229	<i>Ministerio de Industria, Terminales de maquinaria agrícola que producen en la Argentina incorporarán ejes y transmisiones fabricados en el país</i> (Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country), 27 February 2013	News item: Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country, 27 February 2013
JE-549 and EU-235	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Prometen aumentar la integración local de maquinaria agrícola</i> (Sala de Prensa República Argentina (prensa.argentina.com.ar), Agricultural machinery manufacturers commit to increase the level of local integration), 13 April 2013	News item: <i>Prensa Argentina</i> , Agricultural machinery manufacturers commit to increase level of local integration, 13 April 2013
JE-550 and EU-236	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), La maquinaria agrícola fabricada en el país deberá tener entre un 40% y un 50% de piezas nacionales</i> (Sala de Prensa República Argentina (prensa.argentina.com.ar), Agricultural machinery manufactured in the country must have 40-50% of national parts), 23 May 2013	News item: <i>Prensa Argentina</i> , Agricultural machinery manufactured in the country must have 40-50% of national parts, 23 May 2013
JE-551 and EU-237	<i>Ley 26.457 (Régimen de incentivo a la inversión local para la fabricación de motocicletas y motopartes)</i> (Law 26,457 on incentives for local investment for the production of motorcycles and motorcycle parts), 15 December 2008	Law 26,457 on incentives for local investment for the production of motorcycles and motorcycle parts, 15 December 2008
JE-553 and EU-239	<i>Ministerio de Industria, Aumentará la producción nacional de motos y motopartes</i> (Ministry of Industry, Domestic production of motorcycles and parts will increase), 26 November 2009	News item: Ministry of Industry, Domestic production of motorcycles and parts will increase, 26 November 2009
JE-555 and EU-241	<i>Ministerio de Industria, Débora Giorgi se reunió con autoridades de la Cámara Industrial de Motocicletas, Bicicletas, Rodados y Afines</i> (Ministry of Industry, Débora Giorgi met with the authorities of the Industrial Chamber of Motorcycles, Bicycles, Wheeled Vehicles and Related Industries), 2 November 2009	News item: Ministry of Industry, Débora Giorgi met with the authorities of the Industrial Chamber of Motorcycles, Bicycles, Wheeled Vehicles and Related Industries, 2 November 2009
JE-556 and EU-242	<i>Ministerio de Industria, Débora Giorgi se reunió con los fabricantes de motos y motocicletas</i> (Ministry of Industry, Débora Giorgi met with motorcycle manufacturers), 4 December 2009	News item: Ministry of Industry, Débora Giorgi met with motorcycle manufacturers, 4 December 2009
JE-557 and EU-243	<i>Cronista.com, Prohiben importar a los fabricantes de motos que no sumen componentes locales</i> , by Natalia Donato ( <i>Cronista.com</i> , Import ban on motorcycle manufacturers that do not increase the use of local components), 20 March 2013	News item: <i>Cronista.com</i> , Import ban on motorcycle manufacturers that do not increase the use of local components, 20 March 2013
JE-560 and EU-246	<i>Ministerio de Industria, Giorgi: "Intereses de importadores buscan debilitar la industria electrónica de Tierra del Fuego, donde trabajan 12.000 personas"</i> (Ministry of Industry, Giorgi: "Importers' interests seek to weaken the electronics industry in Tierra del Fuego, where 12,000 people work"), 11 October 2011	News item: Ministry of Industry, Giorgi: "Importers' interests seek to weaken the electronics industry in Tierra del Fuego, where 12,000 people work", 11 October 2011
JE-561 and EU-247	<i>Resolución 12/2013</i> (Resolution 12/2013), 22 February 2013	Resolution 12/2013, 22 February 2013

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JE-562 EU-248	and	<i>Resolución 13/2013</i> (Resolution 13/2013), 22 February 2013	Resolution 13/2013, 22 February 2013
JE-564 EU-250	and	<i>Ministerio de Industria</i> , Giorgi anunció que todos los equipos de audio y acondicionadores de aire fabricados en Tierra del Fuego tendrán más componentes nacionales (Ministry of Industry, Giorgi announced all audio and air conditioning equipment manufactured in Tierra del Fuego will have more domestic components), 22 March 2013	News item: Ministry of Industry, Giorgi announced all audio and air conditioning equipment manufactured in Tierra del Fuego will have more domestic components, 22 March 2013
JE-569 EU-255	and	<i>Ministerio de Industria</i> , Giorgi destacó la alta integración de la industria argentina de bicicletas (Ministry of Industry, Giorgi highlighted the high level of integration of the Argentine bicycle industry), 5 April 2013	News item: Ministry of Industry, Giorgi highlighted the high level of integration of the Argentine bicycle industry, 5 April 2013
JE-573 EU-259	and	<i>Argentina Autoblog</i> ( <i>autoblog.com.ar</i> ), <i>Suzuki armará motos en el país para evitar trabas a las importaciones</i> ( <i>Argentina Autoblog</i> , Suzuki will assemble motorcycles in the country to avoid import restrictions), 26 April 2011	News item: <i>Argentina Autoblog</i> , Suzuki will assemble motorcycles in the country to avoid import restrictions, 26 April 2011
JE-577 EU-263	and	<i>Sala de Prensa República Argentina</i> ( <i>prensa.argentina.com.ar</i> ), <i>Invertirán US\$ 140 millones para producir tractores</i> (Ministry of Industry, USD 140 million will be invested in producing tractors), 21 October 2011	News item: <i>Sala de Prensa República Argentina</i> , Ministry of Industry, USD 140 million will be invested in producing tractors, 21 October 2011
JE-579 EU-265	and	<i>Sala de Prensa República Argentina</i> ( <i>prensa.argentina.com.ar</i> ), <i>Walmart Argentina anunció a la Presidenta que invertirá US\$110 millones en 2012</i> ( <i>Sala de Prensa República Argentina</i> ( <i>prensa.argentina.com.ar</i> ), Walmart Argentina announced to the President it will invest USD 110 millions in 2012), 16 November 2011	News item: <i>Prensa Argentina</i> , Walmart Argentina announced to the President it will invest USD 110 millions in 2012, 16 November 2011
JE-582 EU-268	and	<i>Ministerio de Industria</i> , Giorgi inauguró dos plantas en General Rodríguez (Ministry of Industry, Giorgi inaugurated two plants in General Rodríguez), 24 January 2012	News item: Ministry of Industry, Giorgi inaugurated two plants in General Rodríguez, 24 January 2012
JE-590 EU-276	and	<i>Ministerio de Economía y Finanzas</i> , <i>Firma de acuerdo con Renault Trucks Argentina</i> (Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina), 7 February 2012	News item: Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012
JE-594 EU-280	and	<i>Diario La Prensa</i> , Giorgi y Lorenzino acordaron con Renault incrementar las exportaciones ( <i>Diario La Prensa</i> , Giorgi and Lorenzino agreed with Renault to increase exports), 7 February 2012	News item: <i>Diario La Prensa</i> , Giorgi and Lorenzino agreed with Renault to increase exports, 7 February 2012
JE-595 EU-281	and	<i>Intereconomia.com</i> , <i>Argentina llega a un acuerdo con Renault Trucks para solucionar el déficit comercial</i> ( <i>Intereconomia.com</i> , Argentina reaches an agreement with Renault Trucks to solve trade deficit), 7 February 2012	News item: <i>Intereconomia.com</i> , Argentina reaches an agreement with Renault Trucks to solve trade deficit, 7 February 2012
JE-596 EU-282	and	<i>Tiempomotor.com</i> , <i>Otro que cierra: Renault Trucks Aumentará Exportaciones</i> ( <i>Tiempomotor.com</i> , Another company reaches an agreement: Renault Trucks will increase exports), 7 February 2012	News item: <i>Tiempomotor.com</i> , Another company reaches an agreement: Renault Trucks will increase exports, 7 February 2012
JE-598 EU-284	and	<i>ambito.com</i> , <i>Gobierno firmó acuerdo con Volkswagen para equilibrar su balanza comercial</i> ( <i>ambito.com</i> , Government signed an agreement with Volkswagen to even out its trade balance), 18 March 2011	News item: <i>ambito.com</i> , Government signed an agreement with Volkswagen to even out its trade balance, 18 March 2011

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JE-605 EU-291	and	<i>iProfesional.com, Cosas extrañas pasan por estos días: Porsche deberá exportar vinos para poder importar vehículos (iProfesional.com, Strange things happening these days: Porsche will have to export wine in order to import cars), 31 March 2011</i>	News item: <i>iProfesional.com</i> , Porsche will have to export wine in order to import cars, 31 March 2011
JE-608 EU-294	and	<i>areadelvino.com, En Argentina Porsche vende vino y BMW vende arroz (areadelvino.com, In Argentina, Porsche sells wine and BMW sells rice), 14 May 2013</i>	News item: <i>areadelvino.com</i> , In Argentina, Porsche sells wine and BMW sells rice, 14 May 2013
JE-609 EU-295	and	<i>BBC Mundo, Por qué en Argentina BMW vende arroz y Porsche vende vino (BBC Mundo, Why in Argentina BMW sells rice and Porsche sells wine), 10 November 2011</i>	News item: <i>BBC Mundo</i> , Why in Argentina BMW sells rice and Porsche wine, 10 November 2011
JE-610 EU-296	and	<i>La Gaceta (Lagaceta.com.ar), Porsche exportará vinos a cambio de importar autos (La Gaceta, Porsche will export wine in exchange for importing cars), 31 March 2011</i>	News item: <i>La Gaceta</i> , Porsche will export wine in exchange for importing cars, 31 March 2011
JE-611 EU-297	and	<i>UNO (Diariouno.com.ar), Grupo Pulenta exportará vinos e importará Porsche (UNO, Grupo Pulenta will export wines and import Porsche), 31 March 2011</i>	News item: <i>UNO</i> , Grupo Pulenta will export wines and import Porsche, 31 March 2011
JE-613 EU-299	and	<i>Ministerio de Economía y Finanzas Públicas, Boudou, Giorgi y Moreno, firmaron un acuerdo con Mercedes Benz (Ministry of Economy and Public Finance, Boudou, Giorgi and Moreno signed an agreement with Mercedes Benz), 7 April 2011</i>	News item: Ministry of Economy and Public Finance, Boudou, Giorgi and Moreno signed an agreement with Mercedes Benz, 7 April 2011
JE-614 EU-300	and	<i>Cronista.com, Mercedes Benz suma un nuevo turno para fabricar más Sprinter y chasis de colectivos, by David Cayón (Cronista.com, Mercedes-Benz adds a new shift to increase manufacturing of Sprinter and bus chassis), 21 April 2011</i>	News item: <i>Cronista.com</i> , Mercedes-Benz adds a new shift to increase manufacturing of Sprinter and bus chassis, 21 April 2011
JE-616 EU-302	and	<i>Argentina Autoblog (autoblog.com.ar), Mercedes-Benz también destrabó las importación de sus autos de alta gama (Argentina Autoblog, Mercedes-Benz also unlocked the importation of its high-end cars), 6 April 2011</i>	News item: <i>Argentina Autoblog</i> , Mercedes-Benz also unlocked the importation of its high-end cars, 6 April 2011
JE-620 EU-306	and	<i>Página12, En camino de reinvertir utilidades, by Cristian Carrillo (Página12, On the way to reinvest profits), 18 November 2011</i>	<i>Página12</i> , On the way to reinvest profits
JE-625 EU-311	and	<i>Reuters, Alfa Romeo Argentina compensará importación con venta biodiesel (Reuters, Alfa Romeo Argentina will compensate with sales of biodiesel), 20 April 2011</i>	News item: <i>Reuters</i> , Alfa Romeo Argentina will compensate with biodiesel sales, 20 April 2011
JE-636 EU-322	and	<i>Infobae.com, El Grupo Fiat mejoró en US\$800 millones su balanza comercial (Infobae.com, Fiat Group improved its trade balance in US\$800 million), 5 May 2011</i>	News item: <i>Infobae.com</i> , Fiat Group improved its trade balance in US\$800 million
JE-649 EU-335	and	<i>Autos.com.ar, Balanza comercial: Renault, Nissan, Ditecar y Mitsubishi alcanzaron el acuerdo con el gobierno (Autos.com.ar, Trade balance: Renault, Nissan, Ditecar and Mitsubishi reached an agreement with the Government)</i>	News item: <i>Autos.com.ar</i> , Trade balance: Renault, Nissan, Ditecar and Mitsubishi reached an agreement with the Government
JE-664 EU-350	and	<i>Cámara Argentina del Libro, Acuerdo con la Secretaría de Comercio (Cámara Argentina del Libro, Agreement with the Secretariat of Domestic Trade)</i>	<i>Cámara Argentina del Libro</i> , Agreement with the Secretariat of Domestic Trade
JE-665 EU-351	and	<i>Página12, El 80 por ciento de los libros se importa, by Javier Lewkowicz (Página12, 80% of books are imported), 26 October 2011</i>	News item: <i>Página12</i> , 80% of books are imported, 26 October 2011

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JE-670 and EU-356	<i>BAE Argentina (Diariobae), Editoriales buscan compensar su balanza comercial para liberar libros</i> , by Pablo Waisberg ( <i>BAE Argentina (Diariobae)</i> , Publishing houses seek to compensate their trade balance to release books), 21 October 2011	News item: <i>BAE Argentina (Diariobae)</i> , Publishing houses seek to compensate their trade balance to release books, 21 October 2011
JE-693 and EU-379	<i>Buenos Aires Económico, Más controles para el ingreso de medicamentos y exigen equilibrar la balanza comercial</i> , by Mariana Prado ( <i>Buenos Aires Económico</i> , More controls over the entry of medicines and demands to even out the trade balance)	News item: <i>Buenos Aires Económico</i> , More controls over entry of medicines
JE-695 and EU-381	<i>PharmaBIZ Sudamérica (pharmabiz.net), Moreno: frenos en la aduana y Neira en CAEME (PharmaBIZ Sudamérica (pharmabiz.net), Moreno: obstacles at customs and Neira in CAEME)</i> , 27 April 2011	<i>PharmaBIZ Sudamérica, Moreno: obstacles at customs and Neira in CAEME</i>
JE-719 and EU-405	AmCham Argentina (American Chamber of Commerce in Argentina), " <i>DJAI Declaración Jurada Anticipada de Importación: Estado de Situación</i> " (AmCham Argentina, Survey: "Advance Sworn Import Declaration: Current status"), March 2012	AmCham Argentina, Survey, "Advance Sworn Import Declaration: Current status", March 2012
JE-720 and EU-406	AmCham Argentina (American Chamber of Commerce in Argentina), " <i>DJAI Declaración Jurada Anticipada de Importación: Estado de Situación</i> " (AmCham Argentina, Survey: "Advance Sworn Import Declaration: Current status"), April 2012	AmCham Argentina, Survey, "Advance Sworn Import Declaration: Current status", April 2012
JE-726 and EU-412	AmCham Argentina (American Chamber of Commerce in Argentina), " <i>COMEX: Situación del Comercio Exterior</i> " (AmCham Argentina, Survey: "Current status of Foreign Trade"), August 2012	AmCham Argentina Survey, "Current status of Foreign Trade", August 2012
JE-729 and EU-415	<i>Cámara Argentina del Papel y Afines, ¿Qué hacer ante una DJAI Observada?</i> (Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI?), 9 May 2012	Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI, 9 May 2012
JE-730 and EU-416	<i>Oklander y Asociados, DJAI Observadas. Procedimiento para desbloquearlas</i> (Oklander and Associates, Observed DJAIs. Procedure to unblock them)	Information note: <i>Oklander y Asociados</i> , Observed DJAIs. Procedure to unblock them
JE-736	Fair Disclosure Wire, "Diageo PLC Brunchtime Call with the Presidents – Final", 10 June 2013	Diageo PLC Brunchtime Call with the Presidents, 10 June 2013
JE-737	Fair Disclosure Wire, "Q2 2013 Valmont Industries Inc Earnings Conference Call – Final", 18 July 2013	Valmont Industries Inc Earnings Conference Call (Q2 2013), 18 July 2013
JE-738	Fair Disclosure Wire, "Q2 2013 Scania AB Earnings Conference Call – Final", 19 July 2013	Scania AB Earnings Conference Call (Q2 2013), 19 July 2013
JE-739	Fair Disclosure Wire, "Q2 2013 AGCO Earnings Conference Call – Final", 31 July 2013	AGCO Earnings Conference Call (Q2 2013), 31 July 2013
JE-740	Fair Disclosure Wire, "Q2 2013 Essilor International SA Earnings and Sales Presentation – Final", 29 August 2013	Essilor International SA Earnings and Sales Presentation (Q2 2013), 29 August 2013
JE-749	<i>Ministerio de Industria, Plan Estratégico Industrial 2020</i> (Ministry of Industry, Strategic Industrial Plan 2020), 4 October 2011	Ministry of Industry, Strategic Industrial Plan 2020, 4 October 2011
JE-750	U.S. Chamber of Commerce, "U.S. Chamber of Commerce's survey on Argentina's DJAI system", 3 March 2013 (Questionnaire)	U.S. Chamber of Commerce, Questionnaire for Survey on Argentina's DJAI system, 3 March 2013
JE-751	Sworn affidavit from Vice President of Company X, 12 July 2012	Sworn affidavit from Vice President of Company X, 12 July 2012
JE-752	Sworn affidavit from officer of Company X, 10 April 2013	Sworn affidavit from officer of Company X, 10 April 2013



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JE-754	Government of Japan, Ministry of Economy, Trade and Industry, "Survey", 4 December 2013, (Questionnaire)	Government of Japan, Ministry of Economy, Trade and Industry, Questionnaire for Survey, 4 December 2013
JE-755	<i>Cámara Argentina de Comercio: Comisión de Importaciones y Exportaciones, Detalle de Normativas y Experiencias sobre las Actuales Operatorias de Comercio Exterior</i> (Argentine Chamber of Commerce, Export and Import Commission, Detail of the Rules and Experiences regarding Current Foreign Trade Practices), October 2013	Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013
JE-759	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Moreno ratificó que seguirá la política de administración del comercio exterior por instrucciones presidenciales</i> ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , Moreno confirmed that the policy of trade administration will continue as per presidential instructions), 3 November 2013	News item: <i>Prensa Argentina</i> , Moreno confirmed that the policy of trade administration will continue as per presidential instructions, 3 November 2013
JE-760	<i>Presidencia, Yamaha anunció a la Presidenta una inversión de \$120 millones para fabricar motos</i> (Office of the President of Argentina, Yamaha announced to the President an investment of ARS 120 million to manufacture motorcycles), 31 July 2013	News item: Office of the President, Yamaha announced to the President an investment of ARS 120 million to manufacture motorcycles, 31 July 2013
JE-794 and EU-444	<i>Presidencia, Inauguración de nueva planta de Fiat Argentina en Córdoba: Palabras de la Presidenta de la Nación</i> (Office of the President of Argentina, Inauguration of a new plant of Fiat Argentina in Córdoba: Address by the President of Argentina), 4 June 2013	News item: Office of the President, Inauguration of a new plant of Fiat Argentina in Córdoba: Address by the President of Argentina, 4 June 2013
JE-799	Fair Disclosure Wire, "Q2 2011 Agco Corp Earnings Conference Call – Final", 28 July 2011	AGCO Corp Earnings Conference Call (Q2 2011), 28 July 2011
JE-800	Fair Disclosure Wire, "Q1 2012 AGCO Corp Earnings Conference Call – Final", 1 May 2012	AGCO Corp Earnings Conference Call (Q1 2012), 1 May 2012
JE-802	Fair Disclosure Wire, "AGCO at RBC Capital Market Global Industrials Conference – Final", 12 September 2012	AGCO at RBC Capital Market Global Industrials Conference, 12 September 2012
JE-803	Fair Disclosure Wire, "AGCO at Goldman Sachs Industrials Conference – Final", 14 November 2012	AGCO at Goldman Sachs Industrials Conference, 14 November 2012
JE-804	Fair Disclosure Wire, "Q2 2013 AGCO Earnings Conference Call – Final", 31 July 2013	AGCO Earnings Conference Call (Q2 2013), 31 July 2013
JE-821	Fair Disclosure Wire, "Deere & Company at JPMorgan Diversified Industries Conference – Final", 7 June 2011	Deere & Company at JPMorgan Diversified Industries Conference, 7 June 2011
JE-827	<i>Sala de Prensa República Argentina (prensa.argentina.com.ar), Giorgi acordó con las cámaras de electrónicos y de automotores reducir un 20% las divisas de exportación</i> (sic) ( <i>Sala de Prensa República Argentina (prensa.argentina.com.ar)</i> , Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports (sic) by 20%), 11 December 2013	News item: <i>Prensa Argentina</i> , Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013
US-2	Monthly data on Argentina's imports from US and US's exports to Argentina (2010-2013)	Monthly data on Argentina's imports from US and US's exports to Argentina, 2010-2013
US-3	Data on Argentina's imports of motor vehicles from the US (2008-2012)	Data on Argentina's imports of motor vehicles from the US, 2008-2012

## 1 INTRODUCTION

### 1.1 Complaints by the European Union, the United States and Japan

1.1. On 25 May 2012, the European Union requested consultations with Argentina pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 19 of the Agreement on Agriculture, Article 6 of the Agreement on Import Licensing Procedures (ILA), Article 8 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement), and Article 14 of the Agreement on Safeguards, with respect to certain measures imposed by Argentina on the importation of goods.<sup>1</sup>

1.2. The following Members asked to join the consultations requested by the European Union: Turkey (on 31 May 2012)<sup>2</sup>; the United States and Ukraine (on 7 June 2012)<sup>3</sup>; Australia, Canada, Guatemala and Japan (on 8 June 2012)<sup>4</sup>; and Mexico (on 3 July 2012).<sup>5</sup> Argentina subsequently informed the Dispute Settlement Body (DSB) that it had accepted the requests of Australia, Canada, Guatemala, Japan, Mexico, Turkey, Ukraine and the United States to join the consultations.<sup>6</sup>

1.3. On 21 August 2012, the United States requested consultations with Argentina pursuant to Articles 1 and 4 of the DSU, Article XXII of the GATT 1994, Article 6 of the ILA, Article 8 of the TRIMs Agreement, and Article 14 of the Agreement on Safeguards, concerning certain measures imposed by Argentina on the importation of goods.<sup>7</sup>

1.4. The following Members asked to join the consultations requested by the United States: Mexico (on 24 August 2012)<sup>8</sup>; Turkey (on 29 August 2012)<sup>9</sup>; the European Union and Guatemala (on 30 August 2012)<sup>10</sup>; and, Australia, Canada and Japan (on 31 August 2012).<sup>11</sup> Argentina subsequently informed the DSB that it had accepted the requests of Australia, Canada, the European Union, Guatemala, Japan, Mexico and Turkey to join the consultations.<sup>12</sup>

1.5. On 21 August 2012, Japan requested consultations with Argentina pursuant to Articles 1 and 4 of the DSU, Article XXII of the GATT 1994, Article 6 of the ILA, Article 8 of the TRIMs Agreement, and Article 14 of the Agreement on Safeguards, with respect to certain measures imposed by Argentina on the importation of goods.<sup>13</sup>

1.6. The following Members asked to join the consultations requested by Japan: Mexico (on 24 August 2012)<sup>14</sup>; Turkey (on 29 August 2012)<sup>15</sup>; the European Union and Guatemala (on

<sup>1</sup> Request for Consultations by the European Union, WT/DS438/1, 30 May 2012.

<sup>2</sup> Request to Join Consultations – Communication from Turkey, WT/DS438/2, 4 June 2012.

<sup>3</sup> Request to Join Consultations – Communication from the United States, WT/DS438/3, 11 June 2012; Request to Join Consultations – Communication from Ukraine, WT/DS438/4, 11 June 2012.

<sup>4</sup> Request to Join Consultations – Communication from Australia, WT/DS438/8, 13 June 2012; Request to Join Consultations – Communication from Canada, WT/DS438/6, 12 June 2012; Request to Join Consultations – Communication from Guatemala, WT/DS438/7, 12 June 2012; Request to Join Consultations – Communication from Japan, WT/DS438/5, 11 June 2012.

<sup>5</sup> Request to Join Consultations – Communication from Mexico, WT/DS438/9, 6 July 2012.

<sup>6</sup> Acceptance by Argentina of the Requests to Join Consultations, WT/DS438/10, 10 July 2012.

<sup>7</sup> Request for Consultations by the United States, WT/DS444/1, 23 August 2012.

<sup>8</sup> Request to Join Consultations – Communication from Mexico, WT/DS444/2, 28 August 2012.

<sup>9</sup> Request to Join Consultations – Communication from Turkey, WT/DS444/3, 30 August 2012.

<sup>10</sup> Request to Join Consultations – Communication from the European Union, WT/DS444/4, 31 August 2012; Request to Join Consultations – Communication from Guatemala, WT/DS444/8, 5 September 2012.

<sup>11</sup> Request to Join Consultations – Communication from Australia, WT/DS444/5, 3 September 2012; Request to Join Consultations – Communication from Canada, WT/DS444/7, 4 September 2012; Request to Join Consultations – Communication from Japan, WT/DS444/6, 4 September 2012.

<sup>12</sup> Acceptance by Argentina of the Requests to Join Consultations, WT/DS444/9, 20 September 2012.

<sup>13</sup> Request for Consultations by Japan, WT/DS445/1, 23 August 2012.

<sup>14</sup> Request to Join Consultations – Communication from Mexico, WT/DS445/2, 28 August 2012.

<sup>15</sup> Request to Join Consultations – Communication from Turkey, WT/DS445/3, 30 August 2012.

30 August 2012)<sup>16</sup>; and, Australia, Canada and the United States (on 31 August 2012).<sup>17</sup> Argentina subsequently informed the DSB that it had accepted the requests of Australia, Canada, the European Union, Guatemala, Mexico, Turkey and the United States to join the consultations.<sup>18</sup>

1.7. The European Union held consultations with Argentina on 12 and 13 July 2012.<sup>19</sup>

1.8. The United States held consultations with Argentina on 20 and 21 September 2012.<sup>20</sup>

1.9. Japan held consultations with Argentina on 20 and 21 September 2012.<sup>21</sup>

1.10. None of these consultations led to a mutually satisfactory solution.<sup>22</sup>

## 1.2 Panel establishment and composition

1.11. On 6 December 2012, the European Union, the United States and Japan separately requested the establishment of a panel with standard terms of reference pursuant to Article 6 of the DSU.<sup>23</sup> At its meeting on 28 January 2013, the DSB established a single panel pursuant to the requests of the European Union in document WT/DS438/11, the United States in document WT/DS444/10, and Japan in document WT/DS445/10, in accordance with Article 9.1 of the DSU.<sup>24</sup>

1.12. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the European Union in document WT/DS438/11, the United States in document WT/DS444/10, and Japan in document WT/DS445/10, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.<sup>25</sup>

1.13. On 15 May 2013, the European Union, the United States and Japan requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU.<sup>26</sup> On 27 May 2013, the Director-General composed the Panel as follows:

Chairperson: Ms Leora Blumberg

Members: Ms Claudia Orozco  
Mr Graham Sampson<sup>27</sup>

1.14. Australia, Canada, China, Ecuador, the European Union (for WT/DS444 and WT/DS445), Guatemala, India, Israel, Japan (for WT/DS438 and WT/DS444), the Republic of Korea, Norway, the Kingdom of Saudi Arabia, Switzerland, Chinese Taipei, Thailand, Turkey, and the United States

<sup>16</sup> Request to Join Consultations – Communication from the European Union, WT/DS445/4, 31 August 2012; Request to Join Consultations – Communication from Guatemala, WT/DS445/7, 5 September 2012.

<sup>17</sup> Request to Join Consultations – Communication from Australia, WT/DS445/5, 3 September 2012; Request to Join Consultations – Communication from Canada, WT/DS445/6, 4 September 2012; Request to Join Consultations – Communication from the United States, WT/DS445/8, 5 September 2012.

<sup>18</sup> Acceptance by Argentina of the Requests to Join Consultations, WT/DS445/9, 20 September 2012.

<sup>19</sup> Request for the Establishment of a Panel by the European Union, WT/DS438/11, 7 December 2012.

<sup>20</sup> Request for the Establishment of a Panel by the United States, WT/DS444/10, 7 December 2012.

<sup>21</sup> Request for the Establishment of a Panel by Japan, WT/DS445/10, 7 December 2012.

<sup>22</sup> Request for the Establishment of a Panel by the European Union, WT/DS438/11, 7 December 2012; Request for the Establishment of a Panel by the United States, WT/DS444/10, 7 December 2012; Request for the Establishment of a Panel by Japan, WT/DS445/10, 7 December 2012.

<sup>23</sup> Request for the Establishment of a Panel by the European Union, WT/DS438/11, 7 December 2012; Request for the Establishment of a Panel by the United States, WT/DS444/10, 7 December 2012; Request for the Establishment of a Panel by Japan, WT/DS445/10, 7 December 2012.

<sup>24</sup> See WT/DSB/M/328, para. 3.13.

<sup>25</sup> Constitution of the Panel Established at the Request of the European Union, the United States and Japan – Note by the Secretariat, WT/DS438/12, WT/DS444/11, WT/DS445/11, 28 May 2013.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.



(for WT/DS438 and WT/DS445), notified their interest in participating in the Panel proceedings as third parties.<sup>28</sup>

### 1.3 Panel proceedings

#### 1.3.1 General

1.15. The Panel held its organizational meeting with the parties on 5 June 2013. After consultation with the parties, the Panel adopted its Working Procedures on 14 June 2013<sup>29</sup> and its timetable on 27 June 2013.<sup>30</sup>

1.16. The complainants filed their separate first written submissions on 3 July 2013. Argentina filed its first written submission on 7 August 2013. Third-party submissions were received on 28 August 2013 from Australia, Israel, Norway, Saudi Arabia, Chinese Taipei, and Turkey.

1.17. The Panel held a first substantive meeting with the parties from 24 to 26 September 2013. A session with the third parties took place on 25 September 2013. Upon request of the parties, on 26 September 2013, the Panel extended for one day the deadline to receive the parties' written responses to questions posed by the Panel after the first substantive meeting. Written responses to questions posed by the Panel were received on 11 October 2013.

1.18. The parties filed their second written submissions on 14 November 2013.

1.19. The Panel held a second substantive meeting with the parties on 10 and 11 December 2013. Written responses to questions posed by the Panel were received on 14 January 2014. Comments by the parties on responses provided by the other parties were received on 4 February 2014.

1.20. On 5 March 2014, the Panel issued the descriptive sections of its draft reports to the parties.<sup>31</sup> Parties provided comments to the descriptive sections of the Panel Reports on 19 March 2014.

1.21. The Panel issued its Interim Reports to the parties on 21 May 2014. On 4 June 2014, parties separately requested the revision of specific aspects of the Interim Reports; on 11 June 2014, parties made comments on other parties' requests. The Panel issued its Final Reports to the parties on 26 June 2014.

1.22. One third party submission was made outside of the deadlines prescribed by the Working Procedures adopted by the Panel.<sup>32</sup> The Panel stresses the importance of all parties, including third parties, adhering to the time-limits for filing documents, in the interests of fairness and the orderly conduct of panel proceedings.

#### 1.3.2 Request for enhanced third party rights

1.23. On 4 June 2013, the Panel received a communication from Canada requesting enhanced third party rights to: (a) receive copies of all submissions and statements of the parties preceding the issuance of the interim report, including responses to panel questions; and, (b) be present for the entirety of all substantive meetings of the panel with the parties. During the Panel's organizational meeting on 5 June 2013, the Panel invited the parties to provide initial comments on Canada's request by 10 June 2013. In their respective responses, none of the parties fully supported Canada's request for enhanced third party rights and two of the parties (the United States and Argentina) rejected the request.

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<sup>28</sup> Constitution of the Panel Established at the Request of the European Union, the United States and Japan – Note by the Secretariat, WT/DS438/12, WT/DS444/11, WT/DS445/11, 28 May 2013.

<sup>29</sup> Working Procedures of the Panel, Annex A.

<sup>30</sup> Communication from the Panel, 27 June 2013.

<sup>31</sup> In the timetable originally adopted by the Panel, the descriptive sections should have been issued to the parties on 26 February 2014. The Panel postponed this date after having consulted the parties.

<sup>32</sup> Turkey submitted hard copies of the executive summary of its arguments, as presented in its third party submission and its oral statement, five working days after the deadline specified in the Panel's timetable.

1.24. In considering Canada's request, the Panel took into account the DSU rules, the circumstances of the present case, the relevant decisions of previous panels and the Appellate Body<sup>33</sup>, and the views expressed by the parties. On 1 July 2013, the Panel informed Canada that it had declined its request for enhanced third party rights. In reaching its decision, the Panel considered that the reasons advanced by Canada in support of its request (i.e. a considerable systemic interest in the outcome of the dispute and in how the panel may interpret certain Covered Agreements) did not constitute a specific situation that would justify the granting of enhanced third party rights additional to those accorded in the DSU and the Working Procedures. In particular, Canada had not explained why the matter at issue would have a significant economic or trade policy effect for Canada, different from that for other World Trade Organization (WTO) Members. In addition, the Panel considered that Canada did not explain why the third party rights provided for in the DSU would not be sufficient to allow Canada's interests, including its systemic concerns regarding this dispute, to be fully taken into account during the panel process. Moreover, consulted by the Panel, none of the parties in this dispute unconditionally supported Canada's request for enhanced third party rights and two of the parties explicitly rejected the request.<sup>34</sup>

### 1.3.3 Special Procedures for the protection of confidential information

1.25. During the Panel's organizational meeting on 5 June 2013, the parties suggested that it would be desirable that the Panel adopt additional procedures for the protection of business confidential information (BCI) provided by the parties in the course of the proceedings. The parties asked the Panel to include language in the working procedures that would allow the adoption of such additional rules and informed the Panel that they intended to submit a joint proposal for the additional procedures. In view of the joint request of the parties, the Panel included the following language in paragraph 2 of the Working Procedures adopted on 14 June 2013:

The Panel may, after consultation with the parties, adopt additional procedures for the protection of business confidential information (BCI) provided by the parties in the course of these proceedings.

1.26. None of the parties subsequently proposed the adoption of additional procedures for the protection of BCI.

1.27. On 22 October 2013, the Panel sent a communication to the parties.<sup>35</sup> In its communication, the Panel noted that the parties had failed to provide certain evidence and information requested in the Panel's written questions after the first substantive meeting. The Panel reminded the parties of the requirement for their collaboration in the presentation of the facts and evidence that are relevant for the Panel to discharge its functions. It also reminded the parties of the Panel's authority to draw appropriate inferences from a Member's refusal to provide information. The Panel noted the concerns expressed by the complainants with respect to the reluctance of companies involved to make available some of the information required, and the concerns expressed by Argentina with respect to the probative value of some evidence provided by the complainants.

1.28. In view of arguments made by the parties, the Panel proposed the adoption of special procedures to allow them to submit evidence and information that had been requested. These procedures would have contemplated the following: (a) the Panel would appoint an independent expert to assist the Panel in establishing the content of certain documents when a party considered that aspects of the information should be confidential and not accessible to other parties; (b) the Panel would designate, as an independent expert, a notary public based in or near Geneva with working knowledge of the Spanish and English languages; (c) before appointing the independent expert, the Panel would identify suitable experts and allow parties the opportunity to indicate whether there was any conflict of interest or any other compelling reason that would preclude the appointment of any of those persons as an independent expert; (d) the independent expert would be subject to the WTO DSU rules of conduct, would confirm in writing, before being

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<sup>33</sup> See, for example, Appellate Body Reports, *EC – Hormones*, para. 154; and, *US – 1916 Act*, para. 150. Panel Reports, *EC and certain member States – Large Civil Aircraft*, paras. 7.166-7.168; *US – Large Civil Aircraft (2<sup>nd</sup> complaint)*, paras. 7.16-7.18; and, *US – Poultry (China)*, para. 7.58.

<sup>34</sup> Communication from the Panel, 1 July 2013.

<sup>35</sup> Communication from the Panel, 22 October 2013.

appointed by the Panel, the lack of any conflict of interest (the statement would be similar to those signed by WTO panelists pursuant to the DSU Rules of Conduct), and would maintain strict confidentiality of the information provided by any of the parties; the confidentiality obligation would continue following the end of the proceedings; (e) once informed by the Panel of the appointment of the independent expert, parties would bring to this expert, individually or jointly, the information requested by the Panel; (f) the confidential evidence provided to the independent expert would not become part of the record; (g) on the basis of the confidential evidence provided by any of the parties, the independent expert would be asked to respond to a questionnaire prepared by the Panel after having consulted the parties; (h) parties could propose questions to be incorporated into the questionnaire, but the Panel would be ultimately responsible for drafting the questionnaire; (i) the independent expert would be limited to responding in writing to the questions addressed by the Panel in the questionnaire; (j) the Panel would forward the independent expert's responses to the parties and parties would be invited to comment on the independent expert's responses; (k) the Panel would retain at all times final authority to assess the facts of the case; (l) there would be no meeting of the Panel with the independent expert and the parties; (m) during the course of the proceedings of the current dispute, the independent expert would have no contact with officials of any of the parties involved or their representatives, except for the purpose of receiving and examining the confidential evidence provided; (n) the independent expert would report to the Panel; and, (o) if the independent expert had any questions or doubts regarding the discharge of its function, he/she would request instructions from the Panel.

1.29. The Panel invited the parties to comment on the proposed special procedures. The parties provided their comments on 30 October 2013. In their responses, none of the parties expressed support for the adoption of the proposed special procedures; moreover, the United States, Japan, and Argentina expressed concerns about the proposed special procedures, their consistency with the rules of the DSU, and their systemic implications.<sup>36</sup>

1.30. In view of the arguments raised by the parties, on 6 November 2013 the Panel informed the parties that it had decided not to adopt the proposed special procedures.<sup>37</sup> In its communication, the Panel reiterated its request to the parties to provide the evidence and information identified in the Panel's written questions after the first substantive meeting. The Panel noted that (other than the European Union's statement that the adoption of usual BCI procedures would not be sufficient to ensure protection for the identity of the companies concerned), the complainants failed to indicate the type of procedural rules that the Panel should adopt to protect information in a manner that would enable the submission of such information. The Panel reminded the parties of the requirement for their collaboration in the presentation of the facts and evidence that are relevant for the Panel proceedings. It also reminded the parties of the Panel's authority to draw appropriate inferences from a Member's refusal to provide information. The Panel invited parties to address these issues in their second written submissions.

1.31. The Panel will revert to the issue of the treatment of evidence in the findings section of these reports.

### 1.3.4 Preliminary rulings

1.32. In its first written submission on 7 August 2013, Argentina requested the Panel to issue a preliminary ruling that the so-called "Restrictive Trade Related Requirements" (RTRRs) identified in the panel requests submitted by the European Union, the United States and Japan fell outside the Panel's terms of reference.<sup>38</sup> Argentina's request raised three main issues with respect to the alleged RTRRs, namely: (a) whether the RTRRs were identified by the complainants as a measure at issue in their respective requests for consultations; (b) whether the reference to the RTRRs as a broad unwritten "overarching measure" in the complainants' panel requests "expanded the scope" and "changed the essence" of the dispute; and, (c) whether the complainants identified, either in

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<sup>36</sup> Communication from the European Union, 30 October 2013; Communication from the United States, 30 October 2013; Communication from Japan, 30 October 2013; Communication from Argentina, 30 October 2013.

<sup>37</sup> Communication from the Panel, 6 November 2013.

<sup>38</sup> Argentina's first written submission, paras. 15, 112-146, and 360.

their respective requests for consultations or in their panel requests, the measures that are subject to their claims against the RTRRs "as applied".

1.33. On 9 August 2013, the Panel invited the complainants to respond in writing to Argentina's request for a preliminary ruling by 10 September 2013. In the same letter, the Panel invited the third parties to comment on Argentina's request in their written submissions, due on 28 August 2013. Australia and Chinese Taipei provided comments in their third-party written submissions. The complainants submitted their respective responses to Argentina's request on 10 September 2013.

1.34. On 16 September 2013, the Panel issued its first preliminary ruling to the parties, copying the third parties. This ruling addressed the broader issue raised by Argentina in its preliminary ruling request, i.e. whether the alleged RTRRs are part of the Panel's terms of reference.<sup>39</sup> In its ruling, the Panel concluded that the alleged RTRRs are within the Panel's terms of reference and that the characterization of the alleged RTRRs as a single "overarching measure" in the complainants' panel requests did not expand the scope or change the essence of the dispute. The Panel decided that it would address the third issue raised by Argentina, i.e. whether the complainants' "as applied" claims against the alleged RTRRs are outside the Panel's terms of reference, as appropriate, in the light of the parties' arguments in the course of the proceedings. The Panel invited the parties to express their views regarding the circulation of the preliminary ruling to the Members.

1.35. On 17 September 2013, the complainants submitted a joint communication to the Panel expressing no objection to the circulation of the preliminary ruling, based on the understanding that circulation would only occur if there was no objection by any of the parties and if parties were given an opportunity to comment on the preliminary ruling at the time of the interim review.<sup>40</sup> On 19 September, Argentina submitted a communication to the Panel opposing the circulation of the preliminary ruling.<sup>41</sup> In its written questions after the first substantive meeting sent on 30 September 2013, the Panel asked Argentina to explain why, in its opinion, the Panel should not circulate to WTO Members the preliminary ruling adopted on 16 September.<sup>42</sup> In its response submitted on 11 October, Argentina stated that it would seem premature to circulate the preliminary ruling to WTO Members because the Panel had not ruled on two of the arguments raised by Argentina related to the complainants' claims regarding specific instances of application of the alleged RTRRs.<sup>43</sup>

1.36. On 20 November 2013, the Panel issued a second preliminary ruling to address the pending issues raised by Argentina's request.<sup>44</sup> In its ruling, the Panel reiterated that the alleged RTRRs are part of the Panel's terms of reference. The Panel also concluded that: (a) whether Japan presents enough arguments and evidence in the course of the proceedings to sustain its request for findings on those measures "as such" and "as applied" is a matter that would be addressed by the Panel in its final report; and, (b) the 23 measures described by the European Union in its first written submission as "specific instances" of application of alleged RTRRs do not constitute "measures at issue" in the present dispute. The Panel requested the views of the parties regarding the circulation of the two preliminary rulings. On 26 November, the complainants submitted a joint communication to the Panel expressing no objection to the circulation of the preliminary rulings, based on the understanding that the parties would have the opportunity to comment on the report during the interim review.<sup>45</sup> On 26 November, Argentina sent a communication to the Panel objecting to the circulation of the two preliminary rulings.<sup>46</sup> The Panel decided that the rulings would be incorporated as an integral part of the Panel's findings in these reports, subject to any changes that may be necessary in the light of comments received from the parties during the interim review.<sup>47</sup>

<sup>39</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (16 September 2013).

<sup>40</sup> Complainants' joint e-mail communication to the Panel, 17 September 2013.

<sup>41</sup> Argentina's e-mail communication to the Panel, 19 September 2013.

<sup>42</sup> Panel question No. 4.

<sup>43</sup> Argentina's response to Panel question No. 4.

<sup>44</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (20 November 2013).

<sup>45</sup> Complainants' joint e-mail communication to the Panel, 26 November 2013.

<sup>46</sup> Argentina's e-mail communication to the Panel, 26 November 2013.

<sup>47</sup> The two preliminary rulings of the Panel have been incorporated in Annex D of these Reports.

### 1.3.5 Consultation with the World Customs Organization (WCO)

1.37. On 13 November 2013, the Panel sent a communication to the parties proposing to seek the assistance of the World Customs Organization's Secretariat (WCO Secretariat) to clarify certain aspects related to the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework).<sup>48</sup> The Panel attached a draft letter to be addressed to the WCO Secretariat together with the draft list of questions to be addressed. On 19 November 2013, the parties submitted their comments on the proposed course of action and on the list of questions to be addressed to the WCO Secretariat.

1.38. On 26 November 2013, having taken the parties' comments into consideration, the Panel sent a communication with a list of questions to the WCO Secretariat. On 2 December 2013, the WCO responded to the Panel. The Panel invited the parties to express their views on the responses received from the WCO. On 14 January 2014, the Panel received the parties' comments on the responses from the WCO Secretariat, as part of the parties' responses to the questions posed by the Panel after the second substantive meeting.

## 2 PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

2.1. The European Union requests that the Panel find that:

- a. The requirement for the Advance Sworn Import Declaration (*Declaración Jurada Anticipada de Importación*, DJAI) is inconsistent with Argentina's obligations under Articles XI:1, X:1, and X:3(a) of the GATT 1994, as well as under Articles 1.3, 1.4(a), 1.6, 3.2, 3.3, and 3.5(f) of the Agreement on Import Licensing Procedures<sup>49</sup>; and,
- b. The Restrictive Trade Related Requirements (RTRRs) are inconsistent with Argentina's obligations under Articles XI:1 and III:4 of the GATT 1994, as well as under Article X:1 of the GATT 1994; alternatively, the application of one or more RTRRs in certain specific instances is inconsistent with Argentina's obligations under Articles XI:1 and/or III:4 of the GATT 1994.<sup>50</sup>

2.2. The European Union further requests that the Panel recommend that Argentina bring its measures into conformity with its WTO obligations.<sup>51</sup>

2.3. The United States requests that the Panel find that:

- a. The requirement for the Advance Sworn Import Declaration (DJAI) is inconsistent with Argentina's obligations under Articles XI:1 and X:3(a) of the GATT 1994, as well as under Articles 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3, and 5.4 of the Agreement on Import Licensing Procedures<sup>52</sup>; and,
- b. The Restrictive Trade Related Requirements (RTRRs) are inconsistent with Argentina's obligations under Articles XI:1 and X:1 of the GATT 1994.<sup>53</sup>

2.4. Japan requests that the Panel find that:

- a. The requirement for the Advance Sworn Import Declaration (DJAI) is inconsistent with Argentina's obligations under Articles XI:1, X:3(a), and X:1 of the GATT 1994, as well as

<sup>48</sup> Communication from the Panel, 13 November 2013.

<sup>49</sup> European Union's first written submission, paras. 21 and 491.

<sup>50</sup> Ibid. paras. 22, 328, 385, and 491; European Union's response to Panel question No. 1.

<sup>51</sup> European Union's second written submission, para. 162.

<sup>52</sup> United States' first written submission, paras. 3 and 211; United States' second written submission, para. 128.

<sup>53</sup> United States' first written submission, paras. 3 and 211; United States' second written submission, paras. 5 and 128.

under Articles 1.3, 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3, and 5.4 of the Agreement on Import Licensing Procedures<sup>54</sup>; and,

- b. The Restrictive Trade Related Requirement (RTRR) is inconsistent with Argentina's obligations under Articles XI:1, III:4, and X:1 of the GATT 1994, in each of the following three respects: (i) the RTRR as an unwritten rule or norm as such; (ii) the RTRR as an unwritten practice or policy, as confirmed by the systematic application of the measure; and, (iii) the RTRR's application in particular instances, as identified in the complainants' submissions.<sup>55</sup>

2.5. Argentina requests that the Panel reject the complainants' claims in this dispute in their entirety. In Argentina's view:

- a. The Advance Sworn Import Declaration (DJAI) is a customs formality established in accordance with Article VIII of the GATT 1994 and the World Customs Organization's SAFE Framework.<sup>56</sup> Alternatively, Argentina argues that the complainants have failed to establish that the DJAI procedure is a quantitative restriction under Article XI:1 of the GATT 1994 or is in breach of Articles X:3(a) and X:1 of the GATT 1994<sup>57</sup>;
- b. Argentina also argues that the DJAI is not an import licence, but even if it were found to be an import licence, it is a procedure that is used for customs purposes and is therefore not within the scope of the Agreement on Import Licensing Procedures.<sup>58</sup> Alternatively, Argentina also argues that the complainants have failed to establish that the DJAI is in breach of the Agreement on Import Licensing Procedures<sup>59</sup>;
- c. With respect to the alleged Restrictive Trade Related Requirements (RTRRs), Argentina initially argued that these measures are outside the Panel's terms of reference.<sup>60</sup> Argentina has subsequently argued that the complainants have failed to prove the existence of an unwritten "overarching" measure of general and prospective application that would support their claims against the alleged RTRRs.<sup>61</sup>

### 3 ARGUMENTS OF THE PARTIES

3.1. The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 19 of the Working Procedures adopted by the Panel (see Annexes B-1, B-2, B-3, B-4, B-5, B-6, B-7, and B-8).

### 4 ARGUMENTS OF THE THIRD PARTIES

4.1. The arguments of Australia, Canada, Israel, Korea, Norway, Saudi Arabia, Chinese Taipei, and Turkey are reflected in their executive summaries, provided in accordance with paragraph 20

<sup>54</sup> Japan's first written submission, para. 218; Japan's second written submission, paras. 7, 39, and 134; Japan's response to Panel question No. 3.

<sup>55</sup> Japan's first written submission, para. 218; Japan's second written submission, paras. 7, 20, and 134; Japan's response to Panel question Nos. 2 and 44.

<sup>56</sup> Argentina's first written submission, paras. 14, 18, 164, 191, 195, 196-217, 257, and 263; Argentina's opening statement at the first meeting of the Panel, paras. 52-61; Argentina's response to Panel question Nos. 21, 34, and 40; Argentina's second written submission, paras. 125-135 and 199-200; Argentina's opening statement at the second meeting of the Panel, paras. 47-61.

<sup>57</sup> Argentina's first written submission, paras. 21, and 313-359; Argentina's opening statement at the first meeting of the Panel, paras. 74-83; Argentina's second written submission, paras. 136-161, and 202-206; Argentina's closing statement at the second meeting of the Panel, para. 7.

<sup>58</sup> Argentina's first written submission, paras. 268, and 273-296; Argentina's opening statement at the first meeting of the Panel, paras. 62-73; Argentina's second written submission, paras. 165-201; Argentina's opening statement at the second meeting of the Panel, paras. 62-75; Argentina's closing statement at the second meeting of the Panel, paras. 8-9.

<sup>59</sup> Argentina's first written submission, para. 269; Argentina's second written submission, para. 162; Argentina's opening statement at the second meeting of the Panel, paras. 75-77.

<sup>60</sup> Argentina's first written submission, paras. 15, and 113-146.

<sup>61</sup> Argentina's opening statement at the first meeting of the Panel, paras. 40, and 42-48; Argentina's second written submission, paras. 72-117; Argentina's opening statement at the second meeting of the Panel, paras. 13-45; Argentina's closing statement at the second meeting of the Panel, paras. 3-6.



of the Working Procedures adopted by the Panel (see Annexes C-1, C-2, C-3, C-4, C-5, C-6, C-7, and C-8). China, Ecuador, Guatemala, India, Switzerland, and Thailand did not submit written or oral arguments to the Panel.

## **5 INTERIM REVIEW**

### **5.1 Introduction**

5.1. On 21 May 2014, the Panel submitted its Interim Reports to the parties. On 4 June 2014, the European Union, the United States, Japan, and Argentina each submitted written requests for the review of precise aspects of the Interim Reports pursuant to Article 15.2 of the DSU. On 11 June 2014, the European Union, the United States, and Japan submitted comments on a number of requests for review presented by Argentina. On the same date, Argentina submitted comments on a number of requests for review presented by the European Union, the United States, and Japan. None of the parties requested an interim review meeting with the Panel.

5.2. In accordance with Article 15.3 of the DSU, this section of the panel reports sets out the Panel's response to the arguments made by the parties at the interim review stage, providing explanations where necessary. The Panel thoroughly reviewed and considered the parties' requests for review before issuing these final reports. As explained below, the Panel modified aspects of its reports in the light of the parties' comments where it considered it appropriate to do so. The Panel turns now to discuss the parties' comments on the Panel's Interim Reports.

5.3. Before doing so, however, we make the following observations. First, the numbering of paragraphs and footnotes in the final reports has changed from the Interim Reports. The text below refers to the paragraph numbers in the Interim Reports. Moreover, the Panel notes that this section forms an integral part of its findings in the present case.

### **5.2 Comments on the Panel's Interim Reports**

#### **5.2.1 General comments**

5.4. The parties submitted several editorial revisions as well as other linguistic changes, which were not contested by the other parties. The Panel made these adjustments. The Panel also made minor editorial and non-substantive consequential changes as a result of other adjustments. The Panel also corrected typographical errors and made other editorial amendments throughout the reports, including those identified by the parties in paragraphs 1.16, 2.46, 6.11, 6.19, 6.28, 6.68, 6.98, 6.116, 6.144, 6.156, 6.158, 6.161, 6.164, 6.197, 6.200, 6.228, 6.230, 6.241, 6.243, 6.248, 6.258, 6.261, 6.301, 6.313, 6.317, 6.363, 6.366, 6.393, 6.426, 6.428, 6.451, 6.454, 6.456, 6.473, and 6.720.

5.5. In addition, the parties pointed to a number of wording errors in the Panel's findings. The parties also made a number of specific suggestions to improve wording. The Panel adjusted its reports accordingly and also made related changes, including in paragraphs 1.36, 6.15, 6.19, 6.21, 6.45, 6.61, 6.62, 6.64, 6.67, 6.119, 6.165, 6.171, 6.196, 6.256, 6.358, 6.372, 6.413, 6.425, 6.426, 6.427, 6.435, 6.474, 6.483, 6.497, and 6.498.

5.6. In specific cases, the parties requested that the Panel adjust its reports to more fully and/or accurately reflect their arguments on specific points. The Panel generally accepted these requests, and made related changes including in paragraphs 3.1, 6.2, 6.49, 6.62, 6.95, 6.97, 6.117, 6.136, 6.270, 6.307, 6.328, 6.431, 6.491, and 6.512.

5.7. The parties requested that the Panel clarify the description of certain aspects of the measures at issue. The Panel adjusted its reports accordingly and made a number of related changes, including in paragraphs 6.57, 6.61, 6.176, 6.207, 6.211, 6.225, 6.340, 6.387, 6.388, 6.390, 6.397, 6.401, 6.407, and 6.410.

5.8. The United States and Japan pointed to some errors in the section containing the Panel's legal conclusions. The Panel adjusted its reports accordingly in paragraphs 7.5, 7.6, 7.7 and 7.9, in the reports corresponding to the complaints by the United States and by Japan.

## 5.2.2 Specific comments

### 5.2.2.1 Judicial economy

5.9. The United States requested that the Panel refrain from exercising judicial economy with respect to its claim under Article X:1 of the GATT 1994 against the TRRs measure. In its view, "Argentina is to publish measures of this type, regardless of whether the measures are consistent with Article XI:1 of the GATT 1994".<sup>62</sup> In the United States' view, absent a finding by the Panel on this claim, there may be a lack of clarity as to whether Argentina must publish any measures taken to comply in a manner consistent with Article X:1 of the GATT 1994.<sup>63</sup>

5.10. Similarly, Japan requested that the Panel refrain from exercising judicial economy with respect to its claims under Article X:1 of the GATT 1994 against the DJAI procedure and the TRRs measure.<sup>64</sup>

5.11. Argentina disagreed with these requests, stating that the United States and Japan have not explained why the Panel's findings under Article XI:1 of the GATT 1994 would lead to a partial resolution of the present dispute.

5.12. In the Panel's view, in the light of the Panel's findings regarding the TRRs measure and the DJAI procedure, additional findings regarding the same measures under Article X:1 of the GATT 1994 were not necessary or useful in resolving the matter at issue. Moreover, given the Panel's findings that the TRRs measure and the DJAI procedure constitute restrictions on the importation of goods and are thus inconsistent with Article XI:1 of the GATT 1994, as well as the Panel's finding in the complaint brought by Japan that the TRRs measure, with respect to its local content requirement, is inconsistent with Article III:4 of the GATT 1994, whether Argentina published its measures in a manner consistent with Article X:1 of the GATT 1994 was no longer relevant for purposes of resolving this dispute.

5.13. Accordingly, the Panel declined to revise its findings and conclusions at paragraphs 6.305, 6.489, 7.5, 7.9, and 7.10 of its Interim Reports.

### 5.2.2.2 TRRs measure

5.14. The European Union requested that the Panel clarify in footnote 289 to paragraph 6.156 of its reports that the 29 agreements to which it refers correspond to the same 30 agreements that the Panel asked Argentina to provide copies of in Panel questions Nos. 63 to 92.<sup>65</sup> The Panel made adjustments accordingly. The 29 agreements identified in footnote 289 correspond to the 30 agreements that the Panel requested copies of in Panel questions Nos. 63 to 92. Although the Panel originally referred to 30 agreements in its questions, there is no evidence on record to suggest that the Argentine Government signed more than one agreement with the supermarket sector, with the result that the total number of agreements relevant to our reports is 29.

5.15. The United States requested that the last sentence of paragraph 6.207 be adjusted so as to cover the automotive, agricultural machinery, and pharmaceutical sectors.<sup>66</sup> Argentina rejected this request, stating that the complainants' evidence was not sufficient to establish that an alleged "import substitution requirement" operated as a condition for the importation of goods into Argentina. In its Interim Reports, the Panel indicated one sector in which the local content requirement was imposed as a condition to import, namely, the motorcycles sector. The evidence on record, however, and particularly the exhibits pointed out by the United States in its request, demonstrate in the Panel's view that the local content requirement has also been imposed on the agricultural machinery sector as a condition to import. The Panel made adjustments accordingly in paragraph 6.207.

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<sup>62</sup> United States' comments on the Panel's Interim Reports, para. 29.

<sup>63</sup> Ibid.

<sup>64</sup> Japan's comments on the Panel's Interim Reports, pp. 1-3.

<sup>65</sup> European Union's comments on the Panel's Interim Reports, p. 2.

<sup>66</sup> United States' comments on the Panel's Interim Reports, paras. 19-23.

### 5.2.2.3 DJAI procedure

5.16. The United States requested that the Panel review its description of how a DJAI acquires "registered" status in paragraph 6.370 of the Panel's Interim Reports. According to the United States, "it is not the importer who designates the DJAI as 'registered', but rather it occurs through the SIM system". In the United States' view, "[i]t is unclear whether this happens automatically, or after AFIP or another agency takes an action to assign the 'registered' designation".<sup>67</sup> Argentina rejected this suggestion, stating that the United States' description of the DJAI procedure is factually incorrect. In Argentina's view, the Panel accurately described the DJAI procedure in the first sentence of paragraph 6.370 of its Interim Reports in noting that the declarant may choose the option "Register" (*Oficializar*) to formally register a DJAI. The Panel agrees with Argentina. The Panel thus declined to make the amendment requested by the United States.

5.17. Argentina requested that the Panel adjust the text of paragraphs 6.373 and 6.377 of its Interim Reports to better reflect that participating agencies must follow the model agreement foreseen in AFIP General Resolution 3256/2012, that the SCI became part of the DJAI procedure through SCI Resolution 1/2012, and that both legal instruments were published in Argentina's official gazette. All three complainants reject Argentina's request. In their view, there are a number of crucial aspects that are not contained in the model agreement foreseen in AFIP General Resolution 3256/2012 (such as the scope of operation covered by the participating agencies, the list of goods the agency can review, and the time-period during which the participating agencies can enter observations). The Panel made some adjustments to paragraphs 6.373 and 6.377 to take into account both Argentina's requested amendments and the complainants' comments in this respect.

## 6 FINDINGS

### 6.1 General issues

#### 6.1.1 Special and differential treatment

6.1. Pursuant to Article 12.11 of the DSU:

[W]here one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

6.2. In the course of these proceedings, Argentina has referred to objectives that guide its economic policy, such as the growth of foreign demand and of its domestic market, strong industrial and productive development, the promotion of social inclusion, improved income distribution, poverty alleviation, and the reduction of unemployment.<sup>68</sup>

6.3. Objectives such as those cited by Argentina are common to many WTO Members, who have recognized in the preamble to the WTO Agreement that trade and economic relations,

[S]hould be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [the] respective

<sup>67</sup> United States' comments on the Panel's Interim Reports, para. 34.

<sup>68</sup> Argentina's first written submission, para. 46; Argentina's opening statement at the first meeting of the Panel, para. 8; Argentina's response to Panel question No. 8.

needs [of WTO Members] and [their] concerns at different levels of economic development ...<sup>69</sup>

6.4. In addition, the preamble to the WTO Agreement recognizes that the reciprocal and mutually advantageous arrangements entered into by WTO Members can contribute to the achievement of these objectives. The preamble also recognizes the need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.<sup>70</sup>

6.5. In other words, the WTO agreements highlight the positive role international trade can play as part of the development policies of developing and least developed country Members. This realization explains why sovereign nations, such as Argentina, voluntarily accept the international obligations that are the result of subscribing to the WTO Agreement and becoming Members of the World Trade Organization. As noted by the Appellate Body:

It is self-evident that in an exercise of their sovereignty, and in pursuit of their own respective national interests, the Members of the WTO have made a bargain. In exchange for the benefits they expect to derive as Members of the WTO, they have agreed to exercise their sovereignty according to the commitments they have made in the *WTO Agreement*.<sup>71</sup>

6.6. At the same time, the WTO agreements contain provisions that allow for differential and more favourable treatment for developing countries, as well as provisions that allow Members to deviate from their WTO obligations under certain specified conditions in order to pursue legitimate objectives.

6.7. Argentina did not raise, in the course of the proceedings, any of the provisions that allow for differential and more favourable treatment for developing countries, nor does any of them appear to be relevant for the resolution of the specific matter in the dispute.

6.8. In any event, nothing in the Panel's rulings calls into question the ability of WTO Members to pursue their development policies, such as those identified by Argentina, in a manner consistent with the overall objectives stated in the preamble of the WTO Agreement and their commitments under the WTO agreements.

6.9. Finally, the DSU provides in Article 12.10 that:

[I]n examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation.

6.10. When adopting the timetable for the proceedings, the Panel took into account the need to allow all parties, and especially Argentina as a developing country respondent, sufficient time to prepare and submit their respective arguments. The Panel noted in this regard that Argentina would be responding to arguments submitted by three different complainants. Accordingly, at its request, Argentina was given five weeks after having received the complainants' first written submissions to file its own first submission, instead of the two to three weeks envisioned in Appendix 3 of the DSU.<sup>72</sup>

#### **6.1.2 Issues related to the Panel's terms of reference**

6.11. The current dispute has raised issues concerning the Panel's terms of reference. As explained above<sup>73</sup>, during the course of the proceedings, Argentina requested the Panel to rule that certain aspects of the measures challenged by the complainants fall outside the Panel's terms

<sup>69</sup> WTO Agreement, preamble, first recital.

<sup>70</sup> Ibid. preamble, second recital.

<sup>71</sup> Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 15, DSR 1996:I, 97, at p. 108.

<sup>72</sup> See Panel's timetable, adopted on 27 June 2013.

<sup>73</sup> See para. 1.32 above.

of reference.<sup>74</sup> Argentina originally raised the matter in its first written submission, asking the Panel to resolve the issue by means of a preliminary ruling.<sup>75</sup>

6.12. Argentina's request raised three main issues with respect to the complainants' claims relating to the alleged "restrictive trade-related requirements" (RTRRs): (a) whether the alleged RTRRs were identified by the complainants as a measure at issue in their requests for consultations; (b) whether the reference to the alleged RTRRs as a broad unwritten "overarching measure" in the complainants' panel requests "expanded the scope" and "changed the essence" of the dispute; and, (c) whether the complainants identified, either in their requests for consultations or in their panel requests, the measures subject to their claims against the alleged RTRRs "as applied".

6.13. In its request for a preliminary ruling, Argentina requested the Panel to resolve these issues "preferably after the First Substantive Meeting of the Panel with the Parties, in a manner that effectively preserves Argentina's due process rights".<sup>76</sup> Argentina also noted it would not address in its first submission any of the complainants' arguments regarding the so-called RTRRs, because in Argentina's opinion this measure was not part of the Panel's terms of reference.<sup>77</sup>

6.14. As explained above<sup>78</sup>, in response to Argentina's request, the Panel issued two separate preliminary rulings, the first one on 16 September 2013 (before the first meeting with the parties), and the second one on 20 November 2013 (before the second meeting with the parties). In its first preliminary ruling, the Panel concluded that: (a) the complainants properly identified the alleged RTRRs in their requests for consultations and panel requests, as measures at issue in the present dispute and, therefore, these measures form part of the Panel's terms of reference<sup>79</sup>; and (b) the characterization of the alleged RTRRs as a single "overarching measure" in the European Union's panel request does not expand the scope or change the essence of the dispute.<sup>80</sup> In its second preliminary ruling, the Panel further concluded that (a) whether Japan presents enough arguments and evidence in the course of the proceedings to sustain its request for findings on those measures "as such" and "as applied" is a matter that would be addressed by the Panel in its final report<sup>81</sup>; and (b) the 23 measures described by the European Union in Section 4.2.4 of its first written submission as "specific instances" of application of alleged RTRRs had not been identified as "specific measures at issue" in the European Union's panel request and, therefore, are not part of the Panel's terms of reference.<sup>82</sup>

6.15. As noted in paragraph 1.36 above and as indicated at the time when they were issued, both preliminary rulings constitute an integral part of these reports. Although the rulings were provided to the parties at the time of their adoption (16 September and 20 November 2013), and the first preliminary ruling was also copied to the third parties, the Panel considers it useful to make the following additional comments.<sup>83</sup>

6.16. The issues raised by Argentina concern the Panel's jurisdiction over certain claims advanced by the complainants with respect to certain measures. The Panel is of the view that a resolution of these issues is essential before the Panel can address the substance of the complainants' allegations.

6.17. As noted above<sup>84</sup>, in its first written submission, Argentina requested that a preliminary ruling be issued by the Panel "preferably after the First Substantive Meeting of the Panel" and "in a

<sup>74</sup> See, for example, Argentina's first written submission, paras. 15, 112-146 and 360.

<sup>75</sup> See, for example, *ibid.* paras. 15, 146 and 360.

<sup>76</sup> *Ibid.* para. 146.

<sup>77</sup> *Ibid.*

<sup>78</sup> See paras. 1.34 and 1.36 above.

<sup>79</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (16 September 2013), paras. 3.12-3.28 and 4.1.

<sup>80</sup> *Ibid.* paras. 3.29-3.33 and 4.1.

<sup>81</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (20 November 2013), paras. 4.25-4.28.

<sup>82</sup> *Ibid.* paras. 4.34-4.38 and 5.1.

<sup>83</sup> In view of the objections expressed by Argentina, the Panel did not circulate the preliminary rulings as separate documents. The first preliminary ruling, dated 16 September 2013, was copied to third parties.

<sup>84</sup> See para. 6.13 above.

manner that effectively preserves Argentina's due process rights".<sup>85</sup> The Panel issued its first preliminary ruling after having heard the views of all parties (and those third parties that expressed an opinion), but before the first meeting with the parties (the first preliminary ruling was issued eight days before the meeting with the parties took place).

6.18. At the first meeting with the Panel, Argentina expressed its disagreement with what it called "the Panel's very summary decision to issue a preliminary ruling without first providing [Argentina] with an opportunity to respond to the complainants' submissions".<sup>86</sup> Argentina added it "had a legitimate expectation that it would have more than a single opportunity to express its views with respect to its preliminary objection".<sup>87</sup>

6.19. The DSU does not contain rules on preliminary rulings nor on the procedures that panels should follow when dealing with this type of request from any of the parties.<sup>88</sup> Paragraph 6 is the only provision in the Panel's Working Procedures dealing explicitly with preliminary ruling requests; it does not set out any rules regarding the timing of the Panel's decision. Moreover, there are no grounds for Argentina's assertion that it "had a legitimate expectation that it would have more than a single opportunity to express its views with respect to its preliminary objection".<sup>89</sup> There is no support for such an expectation, either in the relevant rules of the DSU or the Panel's Working Procedures, or in the practice of previous WTO panels dealing with requests concerning a panel's terms of reference.<sup>90</sup> Nothing would have prevented the Panel or any of the parties from proposing special procedures for the adjudication of the issues raised by Argentina's request for a preliminary ruling, if that was justified.<sup>91</sup> No such special procedures were proposed by any of the parties or considered necessary by the Panel.

6.20. In the Panel's view, there were sound reasons to address the issues raised by Argentina through a separate preliminary ruling. Once the Panel had heard all parties (as well as those third parties who expressed an opinion on the issue) and had sufficient information so as to be able to issue an early ruling on the matters raised by Argentina's request, it would have been unnecessary to delay issuing its ruling. An early decision would allow parties to focus on the issues determined to form part of the Panel's terms of reference.<sup>92</sup> Moreover, the Panel noted Argentina's decision not to address in its first submission any of the complainants' arguments regarding one of the two measures at issue in the dispute (the alleged RTRRs), given its view that these fell outside the Panel's terms of reference.<sup>93</sup> In light of Argentina's decision, the Panel considered that an early preliminary ruling would be instrumental in ensuring a proper development of the proceedings.

6.21. Accordingly, the Panel issued its first preliminary ruling, dealing with the broader issue raised by Argentina, namely whether the alleged RTRRs are part of the Panel's terms of reference, as soon as it had the necessary elements to do so. Argentina has not explained how its due process rights would have been served by delaying a decision on this preliminary issue. On the contrary, the Panel's first preliminary ruling ensured that Argentina could address the complainants' arguments regarding the alleged RTRRs from the time of the Panel's first meeting. Had the Panel delayed ruling on this issue, Argentina might not have provided arguments on this issue until much later in the proceedings, on the assumption that the alleged RTRRs were not part of the Panel's terms of reference.

6.22. Argentina stated in its first written submission that it would not respond to the complainants' arguments regarding the alleged RTRRs because, in its view, this measure was not part of the Panel's terms of reference.<sup>94</sup> This was not the decisive factor in the content or

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<sup>85</sup> Argentina's first written submission, para. 146.

<sup>86</sup> Argentina's opening statement at the first meeting of the Panel, para. 31.

<sup>87</sup> Ibid.

<sup>88</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (20 November 2013), para. 3.14.

<sup>89</sup> Argentina's opening statement at the first meeting of the Panel, para. 31.

<sup>90</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (20 November 2013), para. 3.20. As noted by the Panel, it cannot be asserted that in most cases panels have offered parties more than one opportunity to make submissions before issuing a preliminary ruling. See *ibid.* para. 3.18.

<sup>91</sup> Ibid. para. 3.16.

<sup>92</sup> Ibid. para. 3.8.

<sup>93</sup> Argentina's first written submission, para. 146.

<sup>94</sup> Ibid. paras. 145-146.



procedure of the Panel's preliminary ruling. It was, however, a consideration that further justified an early resolution of the matter. As noted by the Panel in its first preliminary ruling:

In the Panel's view, an early preliminary ruling is appropriate in the interest of due process, and especially in order to allow parties and third parties to engage in a substantive discussion of the claims raised by the complainants with respect to the RTRRs.<sup>95</sup>

6.23. The Panel therefore disagrees with Argentina's characterization of the first preliminary ruling as a "very summary decision" ("*sumarísima decisión*").<sup>96</sup> In the Panel's view, the preliminary ruling issued on 16 September 2013 was a well-reasoned decision (contained in 13 pages), based on arguments received from Argentina, those of all three complainants, the views expressed by third parties who made comments (Australia<sup>97</sup> and Chinese Taipei<sup>98</sup>), and the Panel's own evaluation.

6.24. The remaining issues raised by Argentina concerning the Panel's terms of reference (namely, whether the Panel's terms of reference covered the complainants' separate claims against the alleged RTRRs "as applied", as well as 23 specific measures identified by the European Union in its first written submission as "instances of application" of the alleged RTRRs) were similarly resolved as soon as the Panel had the necessary elements to enable it to make a decision. The resolution of these remaining issues required the Panel to gain a better understanding of the nature of the complainants' claims and of Argentina's concerns than that which the Panel had acquired by the time of the first preliminary ruling. It was unclear to the Panel, by the time of the first preliminary ruling: (a) whether any of the complainants was requesting separate rulings on the alleged RTRRs "as applied"; and (b) whether and how the 23 measures identified by the European Union in its first written submission related to the measures that had been identified in the European Union's request for consultations and panel request. These issues were debated in the course of the Panel's first meeting with the parties and were explored through the Panel's questions to parties during and after the meeting.<sup>99</sup> After receiving additional clarifications from the parties, the Panel issued its second preliminary ruling.

### **6.1.3 The Panel's duty to make an objective assessment of the matter and the treatment of evidence**

6.25. In the following section the Panel will describe its function under the DSU, explain the respective duties of the parties in the proceedings and articulate some of the challenges the Panel confronted when assessing the facts of the case.

#### **6.1.3.1 The Panel's function and the parties' duties**

6.26. According to Article 11 of the DSU:

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements.

6.27. As articulated by the Appellate Body, the general rule in dispute settlement procedures is that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence.<sup>100</sup> Following this principle, the Appellate Body has

<sup>95</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (16 September 2013), para. 3.44.

<sup>96</sup> Argentina's opening statement at the first meeting of the Panel, para. 31.

<sup>97</sup> Australia's third-party submission, paras. 6-11.

<sup>98</sup> Chinese Taipei's third-party submission, paras. 2-8 and 15.

<sup>99</sup> See Argentina's opening statement at the first meeting of the Panel, para. 33; European Union's response to Panel question No. 1; Japan's response to Panel question No. 2; European Union's second written submission, paras. 112 and 160, and fns 102 and 127; Japan's second written submission, paras. 7, 9-20 and 100-134; Argentina's second written submission, paras. 48, 53-71 and 207.

<sup>100</sup> Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, p. 323 at p. 335.

explained that the complaining party in any given case should establish a *prima facie* case of inconsistency of a measure with a provision of the WTO covered agreements, before the burden of showing consistency with that provision or defending it under an exception is to be undertaken by the defending party.<sup>101</sup> In other words, "a party claiming a violation of a provision of the *WTO Agreement* by another Member must assert and prove its claim."<sup>102</sup>

6.28. According to the Appellate Body, a *prima facie* case is "one which, in the absence of effective refutation by the defending party, requires a panel, as a matter of law, to rule in favour of the complaining party presenting the *prima facie* case."<sup>103</sup> To establish a *prima facie* case, the party asserting a particular claim must adduce evidence sufficient to raise a presumption that what is claimed is true. If the complaining 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."<sup>104</sup> In this regard, the Appellate Body has stated that:

[P]recisely how much and precisely what kind of evidence will be required to establish such ... [presumptions] will necessarily vary from measure to measure, provision to provision, and case to case.<sup>105</sup>

6.29. In this dispute, the initial burden of proof rests upon the complainants to establish a *prima facie* case that the measures at issue are inconsistent with the provisions they have identified from the WTO covered agreements. If the Panel finds the complainants have established a *prima facie* case of inconsistency of the challenged measures with the relevant provisions, the burden will then fall on Argentina to rebut such claims.

6.30. As noted by the Appellate Body, the above:

[D]oes not imply that the complaining party is responsible for providing proof of all facts raised in relation to the issue of determining whether a measure is consistent with a given provision of a covered agreement. In other words, although the complaining party bears the burden of proving its case, the responding party must prove the case it seeks to make in response.<sup>106</sup>

6.31. Collaboration from parties to a dispute is essential for a panel to be able to discharge its function of making "an objective assessment of the matter before it". Article 3.10 of the DSU provides that:

It is understood that ... the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute.

6.32. In order to exercise their function of making "an objective assessment of the matter" and especially of making "an objective assessment of the facts of the case", panels are granted, pursuant to Article 13.1 of the DSU, the authority "to seek information and technical advice from any individual or body which [they deem] appropriate". The same provision adds that "[a] Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate".

6.33. In *Canada – Aircraft*, the Appellate Body referred to "the duty of a Member to comply with the request of a panel to provide information", noting that under Article 13.1 of the DSU "Members

<sup>101</sup> Appellate Body Report, *EC – Hormones*, para. 104.

<sup>102</sup> Appellate Body Report, *US – Wool Shirts and Blouses*, p. 16, DSR 1997:I, p. 323 at p. 337.

<sup>103</sup> Appellate Body Report, *EC – Hormones*, para. 104.

<sup>104</sup> Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, p. 323 at p. 335. (footnote omitted)

<sup>105</sup> Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, p. 323 at p. 335.

<sup>106</sup> Appellate Body Report, *Japan – Apples*, para. 154.

are ... under a duty and an obligation to 'respond promptly and fully' to requests made by panels for information".<sup>107</sup>

6.34. In the absence of such collaboration, and pursuant to its duty to make an objective assessment of the facts of the case, a panel is entitled to draw appropriate inferences. In this context, the Appellate Body has stated that:

Where a party refuses to provide information requested by a panel under Article 13.1 of the DSU, that refusal will be one of the relevant facts of record, and indeed an important fact, to be taken into account in determining the appropriate inference to be drawn.<sup>108</sup>

6.35. The Appellate Body further clarified that panels are to draw inferences taking into account *all the relevant facts*.<sup>109</sup> As noted by the Appellate Body:

The DSU does not purport to state in what detailed circumstances inferences, *adverse or otherwise*, may be drawn by panels from infinitely varying combinations of facts. Yet, in all cases, *in carrying out their mandate and seeking to achieve the "objective assessment of the facts" required by Article 11 of the DSU, panels routinely draw inferences from the facts placed on the record*. The inferences drawn may be inferences of fact: that is, from fact A and fact B, it is reasonable to infer the existence of fact C. Or the inferences derived may be inferences of law: for example, the *ensemble* of facts found to exist warrants the characterization of a "subsidy" or a "subsidy contingent ... in fact ... upon export performance". *The facts must, of course, rationally support the inferences made, but inferences may be drawn whether or not the facts already on the record deserve the qualification of a prima facie case*. The drawing of inferences is, in other words, an inherent and unavoidable aspect of a panel's basic task of finding and characterizing the facts making up a dispute.<sup>110</sup> (emphasis added)

6.36. Such inferences may inform the Panel's consideration of the facts and evidence on the record in determining whether either the complainants or the respondent have met their respective burdens of proof.

#### 6.1.3.2 The Panel's objective assessment of the facts

6.37. In the present case, the Panel's task of making an objective assessment of the facts has been especially challenging for two reasons.

6.38. Firstly, one of the two broad measures at issue in the dispute (the alleged RTRRs) is unwritten. Determining the existence, nature, and characteristics of this measure has required careful consideration by the Panel. Secondly, despite repeated requests from the Panel, the parties failed to provide certain documents and information that were relevant for the Panel's task.

##### 6.1.3.2.1 Unwritten measure

6.39. In their panel requests, the complainants identify a measure that consists of a combination of actions that they refer to as the "Restrictive Trade-Related Requirements" (RTRRs). Neither the existence nor the nature and characteristics of the alleged measure are contained in any law, regulation, administrative act or official publication.

6.40. Argentina asserts that in *US – Zeroing (EC)* the Appellate Body established a high standard for challenging unwritten measures (such as the measure constituted by the alleged RTRRs). According to Argentina, this legal standard consists of three elements that a complainant must

<sup>107</sup> Appellate Body Report, *Canada – Aircraft*, para. 187.

<sup>108</sup> Appellate Body Report, *US – Wheat Gluten*, para. 174.

<sup>109</sup> Ibid.

<sup>110</sup> Appellate Body Report, *Canada – Aircraft*, para. 198.

prove: (a) that the measure is attributable to a WTO Member; (b) the precise content of the measure; and, (c) the general and prospective application of the measure.<sup>111</sup>

6.41. Previous WTO panels and the Appellate Body have recognized that unwritten measures can be challenged in WTO dispute settlement. As held by the Appellate Body in *US – Corrosion-Resistant Steel Sunset Review*, "[i]n principle, any act or omission attributable to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings".<sup>112</sup> In *US – Zeroing (EC)*, referring to a challenge against rules or norms "as such", the Appellate Body found no basis to conclude that these measures could be challenged "only if they are expressed in the form of a written instrument".<sup>113</sup> Accordingly, nothing prevents a Member from challenging an unwritten measure through the WTO dispute settlement mechanism.

6.42. In *EC and certain member States – Large Civil Aircraft*, the Appellate Body commented that, "when a challenge is brought against an *unwritten measure*, the very existence and the precise contours of the alleged measure may be uncertain".<sup>114</sup> Accordingly, complainants are expected "to identify such [alleged unwritten] measures in their panel requests as clearly as possible".<sup>115</sup> In turn, when considering a challenge against an unwritten measure, a panel must: first, ascertain the existence of the measure; and, second, examine the consistency of the measure with the relevant provisions of the covered agreements.<sup>116</sup> Panels and the Appellate Body have also referred to the challenges of proving the existence of unwritten measures in dispute settlement proceedings and to the need for the complainants to clearly establish, through arguments and supporting evidence, at least: (a) that the measure is attributable to the responding Member; and (b) its precise content. Additionally, if a complainant requests a finding about a measure "as such", it also needs to establish that the measure has general and prospective application.<sup>117</sup> Therefore, in the Panel's view, a determination that a measure has general and prospective application is not essential in all challenges against unwritten measures, but only if a challenge is against the measure "as such".

#### 6.1.3.2.2 The Panel's treatment of the evidence

6.43. The Panel was confronted with a large number of exhibits provided by the parties (approximately 900 exhibits, of which more than 90% were submitted by the complainants).<sup>118</sup> These exhibits include, *inter alia*, copies of domestic laws, regulations and policy documents; communications addressed to Argentine officials by private companies; statements by Argentine officials and notes posted on websites of the Argentine Government<sup>119</sup>; articles in newspapers and magazines, mostly published in Argentina; statements by company officials; data from industry surveys; reports prepared by market intelligence entities; trade statistics; and information regarding the economic performance of Argentina in recent years. The Panel has considered each of the exhibits provided by the parties on its own merits, in order to assess its appropriate relevance, credibility, weight and probative value. As has been noted by the Appellate Body, a panel enjoys discretion in assessing whether a given piece of evidence is relevant for its

<sup>111</sup> Argentina's second written submission, paras. 73-97.

<sup>112</sup> Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 81.

<sup>113</sup> Appellate Body Report, *US – Zeroing (EC)*, para. 193. (emphasis original) While this statement referred to rules or norms, in the Panel's view it applies more broadly to any acts or omissions attributable to a WTO Member.

<sup>114</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 792. (emphasis original)

<sup>115</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 792.

<sup>116</sup> Appellate Body Report, *US – Zeroing (EC)*, para. 203.

<sup>117</sup> See, for example, Appellate Body Report, *US – Zeroing (EC)*, para. 198; Panel Report, *US – Zeroing (Japan)*, paras. 7.48-7.50.

<sup>118</sup> In addition to the exhibits submitted individually by some of the parties, the complainants have also relied on a common set of exhibits to sustain their respective claims. The complainants' joint exhibits have been numbered JE-1, JE-2, etc., in accordance with paragraph 10 of the Panel's Working Procedures.

<sup>119</sup> Such as the official website of the Argentine *Secretaría de Comunicación Pública* (Secretariat for Public Communications) – *Sala de Prensa República Argentina*, and the websites of the Office of the President of Argentina and the Ministry of Industry.

reasoning<sup>120</sup> and a panel is not required to discuss, in its report, each and every piece of evidence provided by the parties.<sup>121</sup>

6.44. Notwithstanding the abundance of evidence, the Panel's task of establishing the existence and precise contours of the unwritten measure at issue has required considerable time, effort and careful analysis. According to the complainants, the requirement imposed on importers and other economic operators that they undertake certain trade-related commitments as a condition to import into Argentina is reflected in agreements between the Argentine Government and the respective importers or economic operators, or in letters addressed by the importers or economic operators to the Argentine Government, which describe the specific commitments. Ideally, the Panel should have been provided access to these documents to verify the existence, nature and characteristics of the alleged restrictive trade-related requirements (RTRRs).<sup>122</sup> The Panel, however, had access to copies of only some of the relevant letters.<sup>123</sup> The Panel requested the parties, on several occasions, to provide copies of certain specific agreements. It also asked the complainants to provide copies of letters addressed by economic operators in Argentina to officials in the Argentine Government on which the complainants relied. These requests were addressed to the parties in the Panel's list of questions after the first substantive meeting (dated 30 September 2013), in its communication to the parties dated 6 November 2013, and in its list of questions after the second substantive meeting (dated 19 December 2013).<sup>124</sup>

6.45. In response to the Panel's request after the first substantive meeting, the European Union stated that, although it was in possession of various agreements signed between the Argentine Government and importers or economic operators, it had not been authorized by the private companies concerned to divulge the agreements or to provide their identities.<sup>125</sup> The European Union added that Argentina is in possession of the agreements and letters and is in a better position to provide them to the Panel.<sup>126</sup> The United States declared it was not in possession of any agreements or documents containing trade-related commitments beyond what they had already provided to the Panel<sup>127</sup>; the United States also stated that "[a]ll such agreements, letters and emails are in the possession of individual companies and Argentina".<sup>128</sup> Japan indicated that the evidence requested was in Argentina's sole possession; Japan also stated that, "in most instances, Argentina is the only party to this dispute with direct access to the documents, and it is also the only party in a position to assuage the fears of individual economic operators that are reluctant to reveal the details of their commitments undertaken pursuant to the RTRR".<sup>129</sup> Indeed, all the complainants indicated, as a reason to refrain from providing the copies of the agreements and letters requested by the Panel, that the importers and economic operators that are signatories of these agreements and letters had not authorized the complainants to provide copies to the Panel. The complainants argue that, given the discretionary nature of Argentina's import system, the importers and economic operators fear retaliatory actions from the Argentine Government, including concerning pending or future import applications, if their identities are disclosed.<sup>130</sup>

<sup>120</sup> Appellate Body Reports, *EC – Hormones*, para. 132; *Brazil – Retreaded Tyres*, para. 202.

<sup>121</sup> Appellate Body Reports, *Chile – Price Band System (Article 21.5 – Argentina)*, para. 240; *EC – Hormones*, para. 138; *Brazil – Retreaded Tyres*, para. 202.

<sup>122</sup> As noted below, for the purpose of these Reports, the Panel will refer to the five actions identified by the complainants described above as the Trade-Related Requirements (TRRs). The single measure that the complainants are asserting will be referred to as the Trade-Related Requirements measure (the TRRs measure). References to the alleged "Restrictive Trade-Related Requirements" (RTRRs) have been kept in direct quotations from the parties' submissions. See para. 6.131 below.

<sup>123</sup> See Letter from Company X to the Secretary of Domestic Trade, 3 April 2012 (Exhibit JE-304); E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012 (Exhibit JE-305); Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127).

<sup>124</sup> See Panel question Nos. 16 and 93; Communication from the Panel, 6 November 2013.

<sup>125</sup> European Union's response to Panel question No. 19, para. 39.

<sup>126</sup> European Union's second written submission, para. 157.

<sup>127</sup> United States' second written submission, Annex 1, para. 19.

<sup>128</sup> United States' response to Panel question No. 19, para. 24.

<sup>129</sup> Japan's response to Panel question No. 19, para. 31; and second written submission, paras. 5, 27, 35, 37 and 38.

<sup>130</sup> European Union's response to Panel question No. 19, paras. 39-41; European Union's second written submission, para. 159; United States' second written submission, Annex 1, paras. 17-19; United States' comments on Argentina's response to Panel question No. 93, para. 22; Japan's response to Panel question

6.46. Argentina, for its part, stated it "has not denied or called into question the existence" of the 30 agreements that were listed by the Panel in its written questions.<sup>131</sup> However, in its response to the request made by the Panel after the first substantive meeting to provide copies of agreements between the Argentine Government and the importers or economic operators identified in an Annex, Argentina stated that:

[E]ven if the evidence were accepted in its entirety, and notwithstanding its inadequacies, it would not be sufficient to establish that the alleged "overarching" RTRR measure constitutes a single, unwritten measure with precise content, attributable to the State and with general and prospective application. These are the essential elements of the complainants' case, and the evidence submitted by the complainants is insufficient to establish them.<sup>132</sup>

6.47. Argentina provided an identical response to the Panel's request for information published in notes posted on websites of the Argentine Government concerning trade-related commitments announced by economic operators, as well as to a request concerning alleged trade-related demands (*exigencias*) made by the Argentine Government to economic operators.<sup>133</sup>

6.48. In its response to the request made by the Panel after the second substantive meeting to provide copies of specific agreements between the Argentine Government and the importers or economic operators identified by the Panel, Argentina stated it has no obligation to make the case for the complainants.<sup>134</sup> It further added that, as affirmed by the complainants, the copies of these agreements are not necessary for the settlement of the dispute.<sup>135</sup>

6.49. On 22 October 2013, the Panel proposed the adoption of special procedures to address the concerns that had been expressed by the complainants about the reluctance of importers and economic operators to divulge the agreements they had signed or provide their identities. The procedures would enable the complainants to submit the information requested by the Panel in the confidence that the identity of the company or economic entity involved would not be disclosed. These procedures would have allowed parties to submit documents to an independent expert appointed by the Panel. This independent expert would have been asked to respond to a questionnaire prepared by the Panel after having consulted the parties on its contents. Neither the Panel nor any of the other parties would have had access to the documents submitted. The information about the content of the documents would have been provided through responses by the independent expert to Panel questions.<sup>136</sup> Neither the complainants nor the respondent supported the adoption of these special procedures, and three of the parties (the United States, Japan, and Argentina) objected to them.<sup>137</sup> In view of this lack of support and the objections raised, on 6 November 2013 the Panel informed the parties it had decided not to adopt the proposed special procedures.<sup>138</sup>

6.50. After deciding not to adopt the proposed special procedures, the Panel reiterated its request for copies of the agreements signed between the Argentine Government and importers or economic operators, both in its communication of 6 November 2013, and in its list of questions after the second substantive meeting, dated 19 December 2013.<sup>139</sup>

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No. 19, para. 29; Japan's second written submission, para. 27; Japan's opening statement at the second meeting of the Panel, para. 27.

<sup>131</sup> Argentina's response to Panel question Nos. 63-92, para. 20. See also Argentina's response to Panel question No. 16.

<sup>132</sup> Argentina's response to Panel question No. 16.

<sup>133</sup> Argentina's response to Panel question Nos. 17 and 18.

<sup>134</sup> Argentina's response to Panel question No. 93, para. 22.

<sup>135</sup> Argentina's response to Panel question No. 93, para. 23.

<sup>136</sup> Communication from the Panel, 22 October 2013.

<sup>137</sup> The European Union considered the proposed special procedures were unnecessary since in its view the Panel was already entitled to draw inferences from Argentina's refusal to cooperate. However, the European Union expressed that, if the Panel adopted the proposed procedures, it would endeavour to provide the information requested and made specific suggestions to the Panel's proposed procedures. See European Union's letter of 30 October 2013 and European Union's second written submission, paras. 155-161.

<sup>138</sup> Communication from the Panel, 6 November 2013.

<sup>139</sup> See Panel question Nos. 63-93.



6.51. In its communications of 22 October 2013 and 6 November 2013, the Panel reminded the parties of the requirement under the DSU for their collaboration in submitting the information requested by the Panel; it also reminded the parties of the Panel's authority to draw appropriate inferences from a Member's refusal to provide information.<sup>140</sup>

6.52. In *EC – Hormones*, the Appellate Body noted that Article 13 of the DSU enables panels to seek information and advice "as they deem appropriate in a particular case".<sup>141</sup> In *Argentina – Textiles and Apparel*, the Appellate Body added that the same provision grants discretionary authority to panels enabling them to seek information from any relevant source.<sup>142</sup> In *US – Shrimp*, the Appellate Body referred to the "comprehensive nature" of a panel's authority to seek information and technical advice from "any individual or body" it may consider appropriate, to ascertain the acceptability and relevance of the information or advice received, and to decide what weight to ascribe to that information or advice.<sup>143</sup>

6.53. As noted by the Appellate Body in *Canada – Aircraft*:

It is clear from the language of Article 13 that the discretionary authority of a panel may be exercised to request and obtain information, not just "from any individual or body" within the jurisdiction of a Member of the WTO, but also from *any Member*, including *a fortiori* a Member who is a party to a dispute before a panel.<sup>144</sup> (emphasis original)

6.54. Regarding the responding party's role in the proceedings, the panel in *Argentina – Textiles and Apparel* stated that:

Another incidental rule to the burden of proof is the requirement for collaboration of the parties in the presentation of the facts and evidence to the panel and especially the role of the respondent in that process. It is often said that the idea of peaceful settlement of disputes before international tribunals is largely based on the premise of co-operation of the litigating parties. In this context the most important result of the rule of collaboration appears to be that the adversary is obligated to provide the tribunal with relevant documents which are in its sole possession. This obligation does not arise until the claimant has done its best to secure evidence and has actually produced some *prima facie* evidence in support of its case.<sup>145</sup>

6.55. Notwithstanding the last part of the statement of the panel in *Argentina – Textiles and Apparel*, the Appellate Body has clarified that:

"[The] discretionary authority [of a panel] to seek and obtain information is *not* made conditional by this, or any other provision, of the DSU upon the other party to the dispute having previously established, on a *prima facie* basis, such other party's claim or defence. Indeed, Article 13.1 imposes *no conditions* on the exercise of this discretionary authority."<sup>146</sup>

<sup>140</sup> Communications from the Panel dated 22 October and 6 November 2013.

<sup>141</sup> Appellate Body Report, *EC – Hormones*, para. 147. See also, Appellate Body Reports, *Argentina – Textiles and Apparel*, para. 84; and *Canada – Aircraft*, para. 184.

<sup>142</sup> Appellate Body Report, *Argentina – Textiles and Apparel*, para. 84. See also, Appellate Body Report, *Canada – Aircraft*, para. 184.

<sup>143</sup> Appellate Body Report, *US – Shrimp*, para. 104. See also, Appellate Body Report, *Canada – Aircraft*, para. 184.

<sup>144</sup> Appellate Body Report, *Canada – Aircraft*, para. 185.

<sup>145</sup> Panel Report, *Argentina – Textiles and Apparel*, para. 6.40.

<sup>146</sup> Appellate Body Report, *Canada – Aircraft*, para. 185. (emphasis original)

### 6.1.3.2.3 General comments on the evidence provided by the parties

#### 6.1.3.2.3.1 Agreements, letters and other information requested by the Panel

6.56. As noted above<sup>147</sup>, the Panel made repeated attempts to obtain copies of specific agreements between the Argentine Government and importers or economic operators and of letters addressed by the importers or economic operators to the Argentine Government, which allegedly described specific trade-related commitments. Access to these documents would have facilitated the Panel's task of verifying the existence, nature and characteristics of the alleged trade-related requirements imposed by the Argentine Government.

6.57. The Panel requested all parties for copies of those agreements and letters. The Panel also asked Argentina for information concerning trade-related commitments announced by Argentine officials and reflected on the web page of Government agencies, as well as alleged trade-related demands (*exigencias*) made by the Argentine Government to economic operators. Notwithstanding these requests, the parties provided the Panel with copies of only a few letters addressed to the Argentine Government by economic operators.<sup>148</sup> The complainants also provided a certification by a notary public attesting to having been shown four agreements signed between Argentine government officials and private entities, as well as four documents signed by representatives of private companies established in Argentina and addressed to the Argentine Secretary of Domestic Trade. This certification also describes the content of various trade-related commitments contained in these documents.<sup>149</sup>

6.58. The Panel is of the view that it was incumbent upon Argentina to provide copies of the agreements signed between the Argentine Government and importers or economic operators and of letters addressed by importers or economic operators to the Argentine Government, pursuant to the duty of collaboration stipulated in Article 13 of the DSU and confirmed by the Appellate Body on a number of occasions. As a party to these agreements and as the recipient of the letters, the Panel is of the view that Argentina was in the best position to do so.<sup>150</sup>

6.59. Argentina's responses to the Panel that the evidence submitted by the complainants is insufficient to establish their case, or that Argentina is under no obligation to make the case for the complainants, are misplaced. There is nothing in the DSU that supports the proposition that, faced with a panel's request for specific information, a Member can decide whether that information is relevant for the settlement of a dispute or whether the other party has already made a *prima facie* case that would justify the panel's request. As noted above<sup>151</sup>, Members are under a duty and an obligation "to respond promptly and fully" to requests made by panels for information under Article 13.1 of the DSU.<sup>152</sup> Otherwise, Article 13.1 of the DSU would be rendered meaningless and any party to a dispute "could, at will, thwart the panel's fact-finding powers and take control itself of the information-gathering process that Articles 12 and 13 of the DSU place in the hands of the panel". Such a situation would "prevent a panel from carrying out its task of finding the facts constituting the dispute before it and, inevitably, from going forward with the legal characterization of those facts".<sup>153</sup>

6.60. The complainants also failed to provide copies of agreements signed between the Argentine Government and importers or economic operators or copies of letters addressed by importers or economic operators to the Argentine Government, which had been requested by the Panel. The complainants gave different responses as to whether they were in possession or not of these documents. As noted above<sup>154</sup>, the European Union stated it is in possession of various of the

<sup>147</sup> See paras. 6.44-6.51 above.

<sup>148</sup> See, Letter from Company X to the Secretary of Domestic Trade, 3 April 2012 (Exhibit JE-304); E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012 (Exhibit JE-305); Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127).

<sup>149</sup> Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013 (Exhibit JE-328/ EU-14).

<sup>150</sup> Panel Report, *Argentina – Textiles and Apparel*, para. 6.40.

<sup>151</sup> See para. 6.33 above.

<sup>152</sup> Appellate Body Report, *Canada – Aircraft*, para. 187.

<sup>153</sup> Appellate Body Report, *Canada – Aircraft*, para. 188. See also, Appellate Body Report, *US – Shrimp*, para. 106.

<sup>154</sup> See para. 6.45 above.

requested agreements<sup>155</sup>; the United States declared it is not in possession of any agreements or documents of the type requested, beyond what it already provided to the Panel<sup>156</sup>; and Japan indicated that the evidence requested is in Argentina's "sole possession"<sup>157</sup> and that, "in most instances, Argentina is the only party to this dispute with direct access to the documents".<sup>158</sup> All complainants declared that they had not been authorized by the importers or economic operators, who are signatories to these agreements and letters, to provide copies of these documents to the Panel or to divulge their identities, this for fear of possible retaliatory actions from the Argentine Government.<sup>159</sup>

6.61. The Panel must assume that WTO Members engage in dispute settlement in good faith, as required under Article 3.10 of the DSU. Therefore, in the circumstances of this case, the Panel must assume that the complainants' explanation has been provided in good faith and that they are genuinely prevented from providing the information requested by the refusal of the private companies that are signatories to the agreements and letters to let them do so.<sup>160</sup> Whether or not the concerns expressed by the private companies in withholding this authorization are valid is a separate issue, one on which the Panel does not need to rule.

6.62. In its questions to the complainants, the Panel asked them to indicate the type of procedural rules that could be adopted by the Panel to protect information in a manner that would enable the submission of such information.<sup>161</sup> The complainants responded that the type of rules for the protection of confidential information adopted by previous panels would be inadequate to address the concerns expressed by the private companies.<sup>162</sup> The United States and Japan also objected to the special procedures proposed by the Panel on 22 October 2013, described above, including on the basis of considerations related to procedural fairness [due process].<sup>163</sup>

6.63. The complainants have failed to provide copies of the agreements and letters requested by the Panel. However, in contrast to Argentina, the complainants: (a) submitted information to prove the existence and content of those agreements and letters; (b) are not party to these agreements or letters, and can therefore not be presumed to have direct access to these documents; and, (c) put forward a plausible motive for their failure to provide the requested copies, i.e. that they lacked authorization from the companies to release these documents.

6.64. Due to the lack of cooperation or the inability to provide documentation on the part of the parties, the Panel has limited direct evidence of the agreements signed between the Argentine Government and importers or economic operators and of the letters addressed by importers or economic operators to the Argentine Government, that allegedly contain certain trade-related commitments. The Panel notes, as indicated above, that Argentina "has not denied or called into question" the existence of these agreements.<sup>164</sup> In any event, the Panel has established the features of the trade-related requirements imposed by the Argentine Government from evidence, such as copies of domestic laws, regulations and policy documents; communications addressed to Argentine officials by private companies; statements by Argentine officials and notes posted on

<sup>155</sup> European Union's response to Panel question No. 19, para. 39.

<sup>156</sup> United States' second written submission, Annex 1, para. 19.

<sup>157</sup> Japan's second written submission, para. 5.

<sup>158</sup> Japan's response to Panel question No. 19, para. 31.

<sup>159</sup> European Union's response to Panel question No. 19, para. 39; European Union's second written submission, para. 159; United States' second written submission, Annex 1, paras. 17-19; Japan's response to Panel question No. 19, para. 29; Japan's second written submission, para. 27. See also Japan's opening statement at the second meeting of the Panel, para. 27.

<sup>160</sup> Indeed, a notarized statement by a company official on record indicates that it is being submitted to the United States Trade Representative (USTR) "with the express understanding that USTR will maintain the confidentiality of our company's identity as well as the identity of the affiant and any other details of our business activities that could identify our company or any individual." Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752). See also Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013 (Exhibit JE-328/EU-14).

<sup>161</sup> See Panel question No. 19.

<sup>162</sup> European Union's response to Panel question No. 19, para. 41; European Union's second written submission, para. 159; United States' second written submission, Annex 1, paras. 16-19.

<sup>163</sup> See paras. 1.29 and 6.49 above. See also United States' communication to the Panel, 30 October 2013; Japan's communication to the Panel, 30 October 2013; Japan's second written submission, para. 35.

<sup>164</sup> Argentina's response to Panel question Nos. 63-92, para. 20.

websites of the Argentine Government; articles in newspapers and magazines; statements by company officials; data from industry surveys; and reports prepared by market intelligence entities.

6.65. There are some additional points to be made with respect to evidentiary matters. Argentina has questioned some of the documentary evidence provided by the complainants (articles from newspapers and magazines; statements by Argentine officials; statements by company officials; data from industry surveys; and reports prepared by market intelligence entities). The Panel will discuss below Argentina's objections.

#### 6.1.3.2.3.2 Articles from newspapers and magazines

6.66. Argentina has objected to the probative value in these proceedings of articles provided by the complainants from newspapers and magazines. Argentina indicated that the printed media referred to by the complainants "are connected directly or indirectly" with two media companies that "are engaged in an open conflict with the Argentine Government and in an attempt to discredit it".<sup>165</sup>

6.67. In its questions posed after the first meeting with the parties, the Panel asked Argentina whether its objections extended to press releases and articles provided by the complainants from 28 media outlets different from the two newspaper groups initially objected to by Argentina.<sup>166</sup> In its response, Argentina indicated that: (a) none of the evidence presented by the complainants is relevant to the Panel's task; (b) journalistic material, regardless of its source, cannot be "considered to have any probative value", because it can only be treated "as opinion pieces tainted with the ideology of those who wrote them and collected from third sources"; (c) "in Argentina there are few print media that are not integrated into the structure ... or editorially aligned" with the two media companies identified by Argentina; and, (d) numerous press articles provided by the complainants refer to information originally published by the two companies identified by Argentina.<sup>167</sup> Argentina did not provide specific comments in respect of the 28 specific media outlets identified in the Panel's question, nor did it clarify whether and how any of these 28 specific media outlets is in its view "integrated into the structure" or "editorially aligned" with the two newspaper groups objected to by Argentina.<sup>168</sup>

6.68. In its questions posed after the second meeting with the parties, the Panel again asked Argentina to clarify whether the objections it had expressed extended to any of the 28 media outlets that were the source of exhibits provided by the complainants, different from the two media groups that had been identified by Argentina.<sup>169</sup> In its response, Argentina reiterated its view that "[m]edia articles can ... only be treated as journalistic opinion pieces ... because they conform to an editorial line and the interests and ideology of the author and, in many cases, are derived from third sources". Argentina added that at least eight media outlet sources of the articles provided by the complainants (out of the 28 identified in the Panel's questions) simply compile information produced by sources such as the two companies to which it had objected. Finally, Argentina asserted that one of the two media groups it had objected to exerts "a decisive influence on the information published by [other] media" in Argentina.<sup>170</sup>

<sup>165</sup> Argentina's first written submission, para. 8. See also, Argentina's opening statement at the first meeting of the Panel, paras. 5-6.

<sup>166</sup> See Panel question No. 42.

<sup>167</sup> Argentina's response to Panel question No. 42. See also, Argentina's opening statement at the first meeting of the Panel, para. 5.

<sup>168</sup> In its response to Panel question No. 42, Argentina refers to three media companies that seem to be part of the 28 media outlets identified in the Panel question (i.e., Los Andes and TN). Argentina argues in its response that these media companies are part of a monopoly controlled by Grupo Clarín, one of the two media companies objected to by Argentina. However, Argentina provided no further explanation in this regard. As noted in paragraph 6.68 below, in its question No. 99, the Panel asked Argentina to clarify its views with respect to the 28 media outlets, but Argentina did not provide any further specific information.

<sup>169</sup> See Panel question No. 99.

<sup>170</sup> Argentina's response to Panel question No. 99. See also Argentina's first written submission, para. 9; Office of the President, Ministry of Economy and Public Finance, Secretariat of Domestic Trade, "Report on Papel Prensa", August 2010 (Exhibit ARG-30); Public Hearing of the Argentine Congress on a Bill on Newsprint, 16 September 2010 (Exhibit ARG-E4); Secretariat of Domestic Trade, *Papel Prensa* is charged with alleged

6.69. Previous panels have taken into account information contained in articles published in newspapers or magazines.<sup>171</sup> In some cases, however, the probative value of the information contained in press articles has been rejected; for example, because the information was "too little and too random"<sup>172</sup>, it consisted of a "single, anecdotal newspaper article"<sup>173</sup>, or it was limited to foreign press or originated from non-authoritative sources of information on the country at issue.<sup>174</sup>

6.70. Newspapers or magazine articles may sometimes be a reflection of personal opinions by their authors. However, they can be useful sources of information, particularly when dealing with unwritten measures and when corroborating facts asserted through other forms of evidence.<sup>175</sup> Indeed, notwithstanding Argentina's blanket rejection of the appropriateness of newspaper articles as evidence, Argentina has itself provided newspaper articles, including at least one article from one of the two newspaper groups it had previously objected to, as evidence of some of its own assertions.<sup>176</sup>

6.71. A panel must assess the credibility and persuasiveness of newspapers or magazine articles submitted as evidence<sup>177</sup>, taking into account that the articles may reflect personal opinions, and assess the information contained in those articles contrasting it with the other evidence on the record. Ultimately, the Panel's task of making an objective assessment of the facts of the case consists in a holistic consideration of all the available evidence that has probative value. Furthermore, if an article submitted as evidence by one party is thought to contain incorrect information, nothing prevents another party from presenting evidence to rebut that information or to seek to demonstrate that it is incorrect.

6.72. Accordingly, in the absence of sound legal reasons to disregard specific exhibits, the Panel rejects Argentina's argument that journalistic material, regardless of its source, cannot be "considered to have any probative value".

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breach of Law 26,736, 19 February 2013 (Exhibit ARG-E7); and Newspaper articles, statements made by the Chief Executive Officer of Grupo Clarín (Exhibit ARG-E8).

<sup>171</sup> See, for example, Panel Reports, *Brazil – Aircraft*, para. 7.84; *US – Countervailing Duty Investigation on DRAMS*, para. 7.117; *Australia – Automotive Leather II*, para. 9.65 and fn 210; *Turkey – Rice*, fn 367. See also the description of the practice of international tribunals in this respect, in Panel Report, *Australia – Automotive Leather II*, fn 210.

<sup>172</sup> Panel Report, *China – Intellectual Property Rights*, para. 7.617.

<sup>173</sup> Ibid. para. 7.658.

<sup>174</sup> Ibid. paras. 7.628-7.629.

<sup>175</sup> In one case, for example, the International Court of Justice (ICJ) accorded probative value to information contained *inter alia* in newspaper, radio and television reports considering that the information "is wholly consistent and concordant as to the main facts and circumstances of the case". The ICJ also took into account that the facts had not been denied or called into question by the other party. ICJ, Judgment, *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)* (1980), para. 13. In another case, the ICJ indicated it had "been careful to treat [reports in press articles] with great caution; even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e., as illustrative material additional to other sources of evidence". ICJ, *Merits, Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (1986), para. 62.

<sup>176</sup> See *La Nación*, Interview, "Two years to convince Converse to produce in Argentina", 31 December 2011 (Exhibit ARG-55). See also *Radio Nacional*, Interview to AGCO Argentina President), 2 October 2013 (Exhibit ARG-54); *Apertura.com*, Interview to Fiat & Chrysler CEO: "Europe is not the most attractive place to invest", 5 August 2013 (Exhibit ARG-56); *Movilsur*, Interview to Mirko Aksentijevic, Nokia Argentina CEO, 5 July 2011 (Exhibit ARG-58); *Wall Street Journal*, Peugeot Citroen CEO Reaffirms 2013 Cash Flow Guidance, 10 September 2013 (Exhibit ARG-60); *Cronista.com*, Toyota CEO: "If we cannot operate where there is inflation, we cannot be global", 22 September 2013 (Exhibit ARG-62); *Argentina Autoblog*, Mercedes-Benz will produce new Vito in Argentina, 5 October 2012 (Exhibit ARG-63); and Newspaper articles, statements made by the Chief Executive Officer of Grupo Clarín (Exhibit ARG-E8). Note, however, that, when providing some of these exhibits Argentina reaffirmed its view that "no kind of journalistic material, regardless of its source, can be considered to have any probative value". See Argentina's second written submission, para. 35.

<sup>177</sup> Panel Reports, *Australia – Automotive Leather II*, fn 210 to para. 9.65; and *China – Intellectual Property Rights*, para. 7.629.

### 6.1.3.2.3.3 Statements by Argentine officials

6.73. The complainants referred in their submissions to numerous statements by high-ranking Argentine officials, including the President, the Minister of Economy and Public Finance, the Minister of Industry, the Minister of Agriculture, the Secretary of Domestic Trade, and the President of the Central Bank of Argentina.<sup>178</sup>

6.74. Argentina has objected to the probative value of these statements. With respect to the quoted statements from Argentina's President, Argentina indicated that:

[I]t cannot be assumed or asserted that declarations made by a president with respect to policy objectives will necessarily be translated into a specific measure, and even if they were, there is no reason to expect that that measure would be implemented in such a way as to violate the national and multilateral legal system.<sup>179</sup>

6.75. More generally, with respect to statements made by various high-ranking officials, Argentina indicated that:

[I]t cannot be maintained that, simply by having been made, these statements will result in the adoption of measures inconsistent with the multilateral commitments undertaken by the Argentine Republic.<sup>180</sup>

6.76. Argentina also noted that:

Political statements about general guidelines of economic policy made by various Argentine officials are not essentially different from those normally made by most of the leaders and officials of other countries.<sup>181</sup>

6.77. Argentina added that "statements by the President of Argentina are binding under Argentine law only when made under the powers granted to her by Article 99 of the National Constitution and not when made in addresses or speeches. The same applies to the officials whom the complainants seek to include in their arguments as all being authorities forming part of the Executive Power."<sup>182</sup>

6.78. In the Panel's view, caution is warranted when assessing the probative value of any statement, including those made by public officials. Having said that, previous panels have considered that public statements of government officials, even when reported in the press, may serve as evidence to assess the facts in dispute.<sup>183</sup>

<sup>178</sup> See, for example, European Union's first written submission, paras. 3-4, 70, 78, 86, 94-95, 97, 99, 103-104, 107, 121-122, 133-134, 138-140, 166, 169, 179, 185, 187, 189, 191, 193, 200, 202-204, 207-218, 220-223, 225-227, 229, 234, 391, 404, 413, 425, 438, 450-451, and 464; United States' first written submission, paras. 10-12, 39, 41, 52, 54-55, 58, 62, 66, 68, 70, 72-73, 82-83, 87, 90, 92-93, 95-97, 99, 107, and 129; Japan's first written submission, para. 4, 35-36, 42-43, 47-48, 56-57, 64-71, 74, 77, 82-86, 91, 93-95, 98, 105, 146, and 151.

<sup>179</sup> Argentina's second written submission, para. 41.

<sup>180</sup> Argentina's second written submission, para. 43.

<sup>181</sup> Argentina's response to Panel question No. 8. See also, Argentina's second written submission, paras. 37-39 and 41-45.

<sup>182</sup> Argentina's second written submission, para. 44.

<sup>183</sup> See, for example, Panel Reports, *Australia – Automotive Leather II*, fn 210 to para. 9.65; *EC – Approval and Marketing of Biotech Products*, para. 7.532; *Mexico – Taxes on Soft Drinks*, paras. 8.76-8.77; *Turkey – Rice*, paras. 7.78-7.79 and fn 367. Other international courts, such as the ICJ, for example, also accord value to public statements by government officials. The ICJ has said that "statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission. However, it is natural also that the Court should treat such statements with caution... The Court must take account of the manner in which the statements were made public; evidently, it cannot treat them as having the same value irrespective of whether the text is to be found in an official national or international publication, or in a book or newspaper." ICJ, *Merits, Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (1986), paras. 64-65. See also, ICJ, *Fisheries Case (United Kingdom v. Norway)* (1951), pp. 23-24. In its



6.79. Consistent public statements made on the record by a public official cannot be devoid of importance, especially when they relate to a topic in which that official has the authority to design or implement policies. That is the case for the Argentine officials that have been cited, such as the President, the Minister of Economy and Public Finance, the Minister of Industry, the Minister of Agriculture, the Secretary of Domestic Trade, and the President of the Central Bank of Argentina. It is appropriate for the Panel to assume that these officials have authority to make statements in the matters that relate to their respective competences. In many cases, the statements were prepared speeches delivered at formal events or were contained in notes issued by the press office of agencies of the Argentine Government; these cannot be dismissed as casual statements.<sup>184</sup> While the Panel notes Argentina's assertion that statements made by public officials, and even by the President of Argentina, have limited legal value, "a panel must not lightly cast doubt on the good faith underlying governmental declarations and on the veracity of these declarations".<sup>185</sup> Indeed, Argentina itself cited and relied upon statements made by its high-ranking officials, including some made by the Argentine President.<sup>186</sup>

6.80. Moreover, as has been noted by the International Court of Justice, statements made by public officials, "are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them".<sup>187</sup> Additionally, account must be taken as to the manner in which the statements are made, including the medium in which they are made public<sup>188</sup>, but also whether the statements are unambiguous and, in the case of plural statements, whether they are consistent and repeated over time.<sup>189</sup>

6.81. Accordingly, the Panel will not disregard the evidence of public statements made by high-ranking officials.

#### 6.1.3.2.3.4 Statements from company officials

6.82. The complainants have submitted statements made by the officials of companies operating in Argentina, as evidence of the existence of trade-related requirements imposed by the Argentine Government, as well as of the operation of the Advance Sworn Import Declaration (DJAI). Some of these statements have been witnessed by notaries public<sup>190</sup>, while others are contained in

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judgment on *Nuclear Tests*, the ICJ accorded legal value to "a number of consistent public statements" made by certain French authorities (such as the President of the French Republic and the Office of the President; the Minister for Foreign Affairs; the Minister of Defence; and, the French Embassy in Wellington); some of these statements had been made in speeches, at press conferences, or in interviews on television. ICJ, Judgment, *Nuclear Tests (New Zealand v. France)* (1974), paras. 33-44. In its judgment on *Armed Activities*, the ICJ considered the legal value of a statement made by Rwanda's Minister of Justice at the United Nations Commission on Human Rights. The ICJ rejected Rwanda's argument that the Minister could not, by her statement, bind the Rwandan State internationally. The ICJ noted in this regard that the statement had been made in the officer's capacity as Minister and on behalf of her country, and that the subject matter fell within the purview of the minister. The ICJ subsequently considered the circumstances and the terms in which the statement had been made (including whether the terms were clear and specific. The ICJ concluded that the statement could only be taken as a declaration of intent, very general in scope. ICJ, Jurisdiction of the Court and Admissibility of the Application, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, (2006), paras. 45-55. In a judgment on a frontier dispute, the ICJ found that a single statement made by Mali's head of State during an interview, in light of the factual circumstances in which it occurred, did not constitute a unilateral act with legal implications in the case. ICJ, Judgment, *Frontier Dispute (Burkina Faso v. Mali)* (1986), paras. 36-40.

<sup>184</sup> Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.532.

<sup>185</sup> Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.480.

<sup>186</sup> See, for example, Argentina's first written submission, para. 45.

<sup>187</sup> International Court of Justice, *Merits, Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (1986), para. 64.

<sup>188</sup> *Ibid.* para. 65.

<sup>189</sup> The panel in *China – Intellectual Property Rights* rejected the probative value of certain information that was considered to be "too little and too random" to serve as evidence. It also rejected certain press articles that were printed in the foreign press or in foreign-language media that was "not claimed to be authoritative sources of information" on China. As well as "a single, anecdotal newspaper article". Panel Report, *China – Intellectual Property Rights*, paras. 7.617, 7.628-7.629 and 7.658. See also, International Court of Justice, *Fisheries Case (United Kingdom v. Norway)* (1951), p. 26.

<sup>190</sup> Sworn affidavit from Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751); Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752); Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013 (Exhibit JE-328/EU-14). See also, European Union's first written

transcripts of earnings conference calls organized by public companies (earnings conference calls).<sup>191</sup>

6.83. One such exhibit is a certification by a notary public in the canton of Geneva (Switzerland) dated 13 June 2013. The notary attests to having been shown copies of eight documents from the years 2011 and 2012, which include four agreements signed between representatives of private companies established in Argentina and Argentine public officials (such as the Minister of Industry, the Minister of Economy and Public Finance, and the Secretary of Domestic Trade) and four documents signed by representatives of private companies established in Argentina and addressed to the Argentine Secretary of Domestic Trade. The notary describes the content of various trade-related commitments contained in these documents.<sup>192</sup>

6.84. A second exhibit is a statement made by the Vice President of an unidentified private company, witnessed by a notary public in the State of Michigan (United States) dated 12 July 2012. The notary certifies that the declarant (a) has personally appeared before her; (b) is known to be the person identified in the statement; and, (c) has sworn that the facts described in the statement "are true to the best of his information, knowledge and belief". The statement describes the "operational difficulties" experienced by the declarant's company "as a result of informal restrictions on imports imposed by the Argentinean government".<sup>193</sup>

6.85. The third exhibit is a statement made by "a duly authorized officer [the Chief Financial Officer] and member of the board of directors of a multinational consumer product company", witnessed by a notary public in the State of New Jersey (United States) dated 10 April 2013. The notary certifies that the declarant signed this statement before her and swore that the facts described therein were true. The statement describes difficulties faced by the company's affiliate in Argentina since 2012. The declarant ends his statement by noting that the Argentine affiliate company "has been advised by counsel that any direct challenge to the requirements imposed as a result of [Resolution 3252/2012 of January 2012] could result in retaliation by the [Argentine] government". The declarant adds that "[a]ccordingly, we are submitting this affidavit to USTR [the Office of the United States Trade Representative] with the express understanding that USTR will maintain the confidentiality of our company's identity as well as the identity of the affiant and any other details of our business activities that could identify our company or any individual."<sup>194</sup>

6.86. With respect to these notarized statements, Argentina initially declared it would "not address the evidence produced by the complainants in alleged support of their assertions, because

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submission, para. 72; European Union's opening statement at the first meeting of the Panel, para. 40; European Union's response to Panel question No. 19, paras. 39-40; European Union's second written submission, paras. 127, 140-141, 143 and 158; United States' first written submission, paras. 45, 130 and 187, 190; United States' opening statement at the first meeting of the Panel, para. 56; United States' response to Panel question Nos. 9, 15, 19 and 22, paras. 14, 23, 25 and 28-30; United States' second written submission, para. 109 and Annex 1, paras. 8-9, 10-12 and 62; United States' response to Panel question No. 94, para. 25; Japan's response to Panel question No. 12, para. 26; Japan's second written submission, paras. 2, 37, and 120-126, and fn 6 to para. 3; Japan's response to Panel question Nos. 50 and 54, paras. 33-34, 46 and 49.

<sup>191</sup> See Cencosud SA Earnings Conference Call (Q2 2012), 4 September 2012 (Exhibit JE-163); Lojack Corp Earnings Conference Call (Q3 2012), 1 November 2012 (Exhibit JE-172); AGCO Corp Earnings Conference Call (Q4 2011), 7 February 2012 (Exhibit JE-199); Pan American Silver Earnings Conference Call (Q3 2012), 8 November 2012 (Exhibit JE-222); Pan American Silver Earnings Conference Call (Q4 2011), 23 February 2012 (Exhibit JE-223); Goldcorp Earnings Conference Call (Q1 2012), 26 April 2012 (Exhibit JE-227); Diageo PLC Brunchtime Call with the Presidents, 10 June 2013 (Exhibit JE-736); Valmont Industries Inc Earnings Conference Call (Q2 2013), 18 July 2013 (Exhibit JE-737); Scania AB Earnings Conference Call (Q2 2013), 19 July 2013 (Exhibit JE-738); AGCO Earnings Conference Call (Q2 2013), 31 July 2013 (Exhibit JE-739); Essilor International SA Earnings and Sales Presentation (Q2 2013), 29 August 2013 (Exhibit JE-740); AGCO Corp Earnings Conference Call (Q2 2011), 28 July 2011 (Exhibit JE-799); AGCO Corp Earnings Conference Call (Q1 2012), 1 May 2012 (Exhibit JE-800); AGCO at RBC Capital Market Global Industrials Conference, 12 September 2012 (Exhibit JE-802); AGCO at Goldman Sachs Industrials Conference, 14 November 2012 (Exhibit JE-803); AGCO Earnings Conference Call (Q2 2013), 31 July 2013 (Exhibit JE-804); and, Deere & Company at JPMorgan Diversified Industries Conference, 7 June 2011 (Exhibit JE-821).

<sup>192</sup> Brechbul & Rodriguez Notaires, Notarial certification, 13 June 2013 (Exhibit JE-328/EU-14).

<sup>193</sup> Sworn affidavit from Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751).

<sup>194</sup> Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

even if that evidence were accepted in its entirety, and notwithstanding its inadequacies, it would not be sufficient to establish [the essential elements of the complainants' case]".<sup>195</sup>

6.87. More specifically, in the case of the notarial certification contained in one of the exhibits (exhibit EU-14/JE-328), Argentina argued that "the Panel should exercise caution when evaluating whether, and to what extent, assertions made by public notaries should be given any evidentiary weight in the absence of any ability by the Panel to corroborate those assertions".<sup>196</sup> Argentina added that (a) the notary was only able to examine copies and not originals of the relevant documents; (b) the identity of the declarant is unknown both to Argentina and to the notary; (c) the notary did not attest to the presence of anyone; (d) the date of the document registered by the notary is unclear; and, (e) the copies supplied to the notary had no legal effect in the country in which the notary registered them.<sup>197</sup>

6.88. In the case of the notarized affidavits from officials of private companies contained in exhibits provided by the complainants (exhibits JE-306, JE-307, JE-751 and JE-752), Argentina argued that "the Panel should exercise caution when evaluating whether, and to what extent, assertions made by anonymous sources should be given any evidentiary weight in the absence of any ability by the Panel to corroborate the underlying assertions".<sup>198</sup> Argentina added that the notaries have only attested to the fact that a person made a statement, and not to the accuracy of the statements themselves, including the purported representativeness of the declarants. Therefore, in Argentina's view, the evidence "is totally lacking in probative value".<sup>199</sup>

6.89. The complainants also submitted 17 transcripts of earnings conference calls from companies that operate in Argentina, which took place in the months of June 2011, July 2011, February 2012, April 2012, May 2012, September 2012, November 2012, June 2013, July 2013, and August 2013.<sup>200</sup> In these conference calls, public company officials discuss the company's financial performance and provide future performance estimates. The officials also take questions from participants.<sup>201</sup> In the conference calls, company officials describe the impact of policies and measures instituted by the Argentine Government on the operation of their companies.<sup>202</sup>

6.90. With respect to the earnings conference calls, Argentina has not disputed the veracity of the facts described in the statements. Argentina has, however, argued that these transcripts do not

<sup>195</sup> Argentina's response to Panel question Nos. 13 and 14. See also, Argentina's first written submission, para. 358.

<sup>196</sup> Argentina's response to Panel question No. 13.

<sup>197</sup> Ibid.

<sup>198</sup> Argentina's response to Panel question No. 14.

<sup>199</sup> Ibid.

<sup>200</sup> See Cencosud SA Earnings Conference Call (Q2 2012), 4 September 2012 (Exhibit JE-163); Lojack Corp Earnings Conference Call (Q3 2012), 1 November 2012 (Exhibit JE-172); AGCO Corp Earnings Conference Call (Q4 2011), 7 February 2012 (Exhibit JE-199); Pan American Silver Earnings Conference Call (Q3 2012), 8 November 2012 (Exhibit JE-222); Pan American Silver Earnings Conference Call (Q4 2011), 23 February 2012 (Exhibit JE-223); Goldcorp Earnings Conference Call (Q1 2012), 26 April 2012 (Exhibit JE-227); Diageo PLC Brunchtime Call with the Presidents, 10 June 2013 (Exhibit JE-736); Valmont Industries Inc Earnings Conference Call (Q2 2013), 18 July 2013 (Exhibit JE-737); Scania AB Earnings Conference Call (Q2 2013), 19 July 2013 (Exhibit JE-738); AGCO Earnings Conference Call (Q2 2013), 31 July 2013 (Exhibit JE-739); Essilor International SA Earnings and Sales Presentation (Q2 2013), 29 August 2013 (Exhibit JE-740); AGCO Corp Earnings Conference Call (Q2 2011), 28 July 2011 (Exhibit JE-799); AGCO Corp Earnings Conference Call (Q1 2012), 1 May 2012 (Exhibit JE-800); AGCO at RBC Capital Market Global Industrials Conference, 12 September 2012 (Exhibit JE-802); AGCO at Goldman Sachs Industrials Conference, 14 November 2012 (Exhibit JE-803); AGCO Earnings Conference Call (Q2 2013), 31 July 2013 (Exhibit JE-804); and, Deere & Company at JPMorgan Diversified Industries Conference, 7 June 2011 (Exhibit JE-821).

<sup>201</sup> See "Definition of earnings conference call", in *Financial Times Lexicon*, available at <http://lexicon.ft.com> (consulted on 7 March 2014).

<sup>202</sup> See, for example, European Union's comments on Argentina's response to Panel question No. 100; United States' first written submission, paras. 83, 89, 92, 100, 113, and 129; United States' opening statement at the first meeting of the Panel, para. 5; United States' opening statement at the second meeting of the Panel, para. 57; United States' comments on Argentina's response to Panel question No. 100; Japan's first written submission, paras. 88 and 92; Japan's comments on Argentina's response to Panel question No. 100.

assist the complainants in demonstrating that the alleged trade-restrictive measure exists, the precise content of this measure, as well as its general and prospective application.<sup>203</sup>

6.91. The Panel will exercise caution in considering the probative value of all of these documents with respect to the facts described therein.<sup>204</sup> At the same time, the Panel finds no reason to completely disregard the notarized statements or the transcripts of earnings conference calls as evidence. Indeed, Argentina has not specifically challenged the veracity of the facts described in these documents, nor offered valid reasons for the Panel to disregard the statements. The Panel notes that previous panels have considered evidence submitted in the form of statements and affidavits.<sup>205</sup>

#### 6.1.3.2.3.5 Industry surveys

6.92. The complainants produced data from surveys to serve as evidence of the situation faced by private companies in Argentina with respect to the alleged trade-related requirements and the requirement for the DJAI.<sup>206</sup>

6.93. First, they produced results from a survey on the DJAI, dated March 2012, commissioned by the American Chamber of Commerce in Argentina (AmCham), of "more than 100 companies members of AmCham Argentina", "most of which correspond to different manufacturing sectors".<sup>207</sup> Second, they produced results from a survey on the Advance Sworn Import Declaration, dated April 2012, commissioned by AmCham of "32 member companies of different sectors and sizes, all active in importing both inputs as well as finished products for final consumers".<sup>208</sup> Third, the complainants produced results from a survey of companies "of different sectors and sizes, all active in importing both inputs as well as finished products for final consumers", dated August 2012, also commissioned by AmCham.<sup>209</sup> Fourth, they produced results from a survey, dated 24 December 2012, commissioned by the Government of Japan, of 10 Japanese companies (mostly manufacturing companies) operating in Argentina.<sup>210</sup> Fifth, they produced a report on a survey of more than 45 companies operating in Argentina in "a wide range

<sup>203</sup> Argentina's response to Panel question No. 100.

<sup>204</sup> The Panel agrees with Argentina's statement that "the Panel should exercise caution" in considering the probative value of the notarized statements and other statements from company officials. Indeed, neither the Panel nor the respondent had an opportunity to pose questions to the declarants or, in the case of some of the documents, to have information on the declarants' identity. At the same time, the Panel must assume that the complainants have provided these documents in good faith. As noted by the Appellate Body, in dispute settlement, "every Member of the WTO must assume the good faith of every other Member". Appellate Body Report, *EC – Sardines*, para. 278. Moreover, as noted above, despite its attempts to seek more information from the parties and even a proposal for special procedures, the Panel has been stymied in its efforts to obtain additional evidence related to the matters dealt with in the report. See paras. 6.44-6.51 above.

<sup>205</sup> For example, the panel in *US – COOL* took into account affidavits submitted as exhibits, as evidence of certain facts. These findings were appealed and not reversed by the Appellate Body. See Panel Report, *US – COOL*, paras. 7.364-7.368; and Appellate Body Report, *US – COOL*, para. 310.

<sup>206</sup> European Union's first written submission, paras. 63 and 381; European Union's opening statement at the first meeting of the Panel, para. 40; European Union's response to Panel question No. 10, para. 32; European Union's second written submission, para. 127; European Union's opening statement at the second meeting of the Panel, para. 81; United States' first written submission, paras. 9, 27, 44, 113, 119 and 209; United States' opening statement at the first meeting of the Panel, para. 56; United States' response to Panel question Nos. 12 and 22, paras. 22, 30, 35 and 37; United States' second written submission, para. 109, and Annex 1, para. 62; United States' opening statement at the second meeting of the Panel, paras. 31-34 and 68; Japan's first written submission, paras. 2, 12, 18, 30, 39-40, 52-53, 58, 117, 151, 176, 182, and 186-188; Japan's response to Panel question Nos. 10, 12 and 19, paras. 20, 26 and 29; Japan's second written submission, paras. 2, 37 and 100; Japan's opening statement at the second meeting of the Panel, paras. 18, 28, 50-52; Japan's closing statement at the second meeting of the Panel, para. 4.

<sup>207</sup> AmCham Argentina, Survey, "Advance Sworn Import Declaration: Current status", March 2012 (Exhibit JE-719/EU-405).

<sup>208</sup> AmCham Argentina, Survey, "Advance Sworn Import Declaration: Current status", April 2012 (Exhibit JE-720/EU-406).

<sup>209</sup> AmCham Argentina Survey, "Current status of Foreign Trade", August 2012 (Exhibit JE-726/EU-412).

<sup>210</sup> Government of Japan, Ministry of Economy, Trade and Industry, Summary of Survey Results (Rev), 4 December 2013 (Exhibit JE-312-2). See also Japan's first written submission, para. 52; and opening statement at the second meeting of the Panel, para. 52.

of industry sectors" dated 4 March 2013, commissioned by the U.S. Chamber of Commerce (USCC).<sup>211</sup>

6.94. In its first written submission, the European Union asserted that the August 2012 AmCham survey "indicated that in order to convince the Secretariat for Domestic Trade to remove its objection ('*Observation*') from the DJAI system, 44% of importing companies had presented to the government of Argentina commitments of 'compensation' (*compensaciones*)."<sup>212</sup> In its responses to the Panel's questions after the first meeting, the European Union added that the surveys constituted "evidence that, until the month of August 2012, approximately 44% of the importing companies, whose imports had been blocked through the DJAI, had presented to the government of Argentina commitments on 'compensation'."<sup>213</sup>

6.95. Japan initially stated that:

An industry survey conducted by the American Chamber of Commerce in Argentina ("AmCham") also confirms that DJAIs are regularly not approved. ... The survey responses indicated that only 42.8 percent of DJAIs transitioned to "exit" or "cancelled" status. Among the remainder were DJAIs that were *observada* ("observed", 27 percent), *anulada* ("annulled", *i.e.*, withdrawn, 1.5 percent), or in "another state" (22 percent). The survey makes clear that delays in the approval of DJAIs have affected the productivity levels of more than 20 percent of companies surveyed, and forced more than 10 percent to partially or completely shut down a production line.<sup>214</sup>

6.96. In its statements at the second meeting of the Panel, Japan also asserted that the Japanese Government's survey "shows that the RTRR is actually imposed on nine out of ten companies".<sup>215</sup>

6.97. In other sections of its first written submission, Japan referred, not to proportions of total DJAI applications, but only to proportions of survey respondents:

A survey of American companies conducted in March 2012 found that out of over 100 companies surveyed, roughly 40% of import licensing requests that they had submitted were not approved or were in "diverse pending states"; and a later survey found that for 30% of survey respondents, more than 75% of their import license applications were left pending for more than 60 days. A Japanese Government survey performed in September 2012, moreover, finds that in numerous instances, no explanation for such delays was provided at all, while in two instances where an explanation was provided, the explanation was that DJAIs would not be approved unless the importer agreed to increase exports out of Argentina at the same time.<sup>216</sup>

6.98. In response to questions posed by the Panel after the first substantive meeting, the United States and Japan provided information regarding the methodology used for the surveys provided with the complainants' first written submissions.<sup>217</sup> According to the responses provided, the March 2013 USCC survey was sent to more than 3 million companies that are USCC members worldwide; some of these companies export to Argentina. Forty-five of those companies completed the survey. The proportion of Argentine imports that these companies represent is unknown, and so is the proportion that these companies represent of filed Advance Sworn Import Declarations.<sup>218</sup> The 24 December 2012 survey commissioned by the Government of Japan is based on the

<sup>211</sup> U.S. Chamber of Commerce, Report on survey on Argentina's DJAI system, 4 March 2013 (Exhibit JE-56).

<sup>212</sup> European Union's first written submission, para. 63.

<sup>213</sup> European Union's response to Panel question No. 10, para. 32.

<sup>214</sup> Japan's first written submission, para. 30. (footnotes omitted) See also Japan's first written submission, paras. 40, 52, 117 and 182.

<sup>215</sup> Japan's closing statement at the second meeting of the Panel, para. 4.

<sup>216</sup> Japan's first written submission, para. 2. (footnotes omitted) See also, Japan's first written submission, paras. 18, 39, 53, 58, 117, 151 and 186.

<sup>217</sup> United States' response to Panel question Nos. 31-32, paras. 46-55; Japan's response to Panel question No. 31, paras. 41-46.

<sup>218</sup> United States' response to Panel question No. 32, paras. 47-55. See also U.S. Chamber of Commerce, Questionnaire for Survey on Argentina's DJAI system, 3 March 2013 (Exhibit JE-750).

responses voluntarily provided by ten Japanese companies that manufacture automobiles, auto parts, electronic products, appliances, and chemicals. Those companies represent approximately 22% of total imports by Japanese companies into Argentina in the period covered by the survey, and account for 356 applications for Import Certificates (*Certificados de Importación*, CIs, between February 2011 and July 2012) and 762 DJAI applications (between February and July 2012). The proportion of filed DJAI and CI applications that these companies represent, however, is unknown.<sup>219</sup>

6.99. In contrast, in its first written submission, the United States referred only to the proportions of the respondents to the surveys, and not to a proportion of all importing companies. In the United States' words:

In March 2013, the U.S. Chamber of Commerce conducted a survey on the experience of U.S. companies in using the DJAI system. Nearly one in three respondents reported that it took over 60 days to receive a denial or approval of 75 percent or more of their DJAI applications. Another 20 percent of respondents waited 60 days or more for action on between 50-75 percent of their DJAI applications. One participating company states "[o]f all the countries we ship to, Argentina is the most complicated and time consuming[;] [i]t takes the longest to get the import license (sometimes 3 to 4 weeks" and another stated "[i]t seems the Government simply wants to wait us out, hoping that we will stop trying to import product until we increase exports."<sup>220</sup>

6.100. After the first substantive meeting, the Panel asked Argentina to comment on these surveys. In response, Argentina said it would provide its comments once the complainants had responded to the questions posed by the Panel.<sup>221</sup> In its second written submission, Argentina argued that the surveys provided by the complainants are "not genuine studies and, consequently, are fatally flawed as evidence".<sup>222</sup> Argentina added that, given the shortcomings in the surveys, "it is impossible to determine whether they are representative and statistically significant as far as the firms' experience with the DJAI procedure is concerned".<sup>223</sup> In Argentina's view, the surveys neither purport to show, nor provide any evidentiary support for the claim that the DJAI procedure has imposed a quantitative restriction on imports.<sup>224</sup>

6.101. In response to Argentina's comments, the complainants stated that the surveys "are not, and do not purport to be, scientific. Nor do they set out to demonstrate that all applications made through the DJAI system are delayed or denied, or that a certain percentage is delayed or denied."<sup>225</sup> The United States describes the USCC survey as "an informal voluntary survey circulated by the U.S. Chamber to its members". The United States considers, nevertheless, that the information contained in the surveys "is probative of the general experience of U.S. companies exporting to Argentina and [of] Argentina's restrictive application of the DJAI Requirement and imposition of RTRRs."<sup>226</sup> In the United States' view, the surveys "demonstrate that Argentine officials *do in fact withhold permission to import* through the DJAI system either to extract RTRR commitments from importers or for other reasons."<sup>227</sup>

6.102. Likewise, Japan states that the Japanese Government survey illustrates the situation of "10 specific Japanese companies' ability to import (as well as their experience of being subject to

<sup>219</sup> Japan's response to Panel question No. 31, paras. 41-46; and opening statement at the second meeting of the Panel, para. 52; Government of Japan, Ministry of Economy, Trade and Industry, Summary of Survey Results (Rev), 4 December 2013 (Exhibit JE-312-2); Government of Japan, Ministry of Economy, Trade and Industry, Questionnaire for Survey, 4 December 2013 (Exhibit JE-754). See also Japan's first written submission, paras. 52 and 58.

<sup>220</sup> United States' first written submission, para. 27. (footnotes omitted) See also United States' first written submission, paras. 44, 119 and 209 (footnotes omitted); United States' response to Panel question No. 22, paras. 30, 35 and 37.

<sup>221</sup> Argentina's response to Panel question No. 33.

<sup>222</sup> Argentina's second written submission, para. 154.

<sup>223</sup> Ibid. para. 157.

<sup>224</sup> Ibid. paras. 154-158. See also, Argentina's comments on the complainants' responses to Panel question No. 126.

<sup>225</sup> United States' response to Panel question No. 126, para. 30.

<sup>226</sup> United States' opening statement at the second meeting of the Panel, para. 33.

<sup>227</sup> United States' response to Panel question No. 126, para. 30. (emphasis original)



RTRR-related demands)". In Japan's view, "Argentina's criticism of the sample of companies covered by the survey does not contradict the fact that the DJAI Requirement actually restricts certain importations".<sup>228</sup>

6.103. In certain instances, industry surveys can be a useful source of information for a panel's analysis. In the present case, the Panel notes that the data from surveys submitted by the complainants "are not, and do not purport to be, scientific" and that they are not used to try to demonstrate that a certain percentage of firms in Argentina are affected by trade-related requirements or by delays or rejections of their Advance Sworn Import Declarations.<sup>229</sup> Accordingly, they are not to be taken as proving that any particular percentage of companies in Argentina is affected by the DJAI requirement and the alleged RTRRs. The Panel considers that the data from surveys provided by the complainants have limited value in allowing it to reach general conclusions regarding the operation of the measures at issue. They may, however, serve as background information illustrating the impact of the DJAI requirement and the alleged RTRRs on specific companies.

#### 6.1.3.2.3.6 Documents prepared by market intelligence entities

6.104. Amongst the information submitted by the complainants are documents prepared by market intelligence entities or by an export promotion office informing clients or affiliated members of the information and requirements imposed by the Secretariat of Domestic Trade (SCI) whenever this agency enters observations on DJAIs. The authors of these documents include five chambers of commerce<sup>230</sup>, six consulting firms specialized in international trade<sup>231</sup>, three specialized magazines<sup>232</sup>, one regional industrial union<sup>233</sup> and one export promotion office.<sup>234</sup>

6.105. Argentina requested the Panel not to accord any probative value to these documents since they concern "communications from business chambers and their opinions on and/or interpretation of trade policy".<sup>235</sup>

6.106. As with the Panel's conclusion with respect to articles published in newspapers or magazines, the Panel sees no reason to reject *a priori* documents prepared by market intelligence entities or export promotion offices for their clients or affiliated members, as devoid of any evidentiary value. We agree with Argentina that caution must be exercised in seeking to rely without more on these documents to prove the existence of the unwritten measure. Nevertheless, the documents can be an important source of information, especially with respect to unwritten

<sup>228</sup> Japan's opening statement at the second meeting of the Panel, para. 50.

<sup>229</sup> United States' response to Panel question No. 126.

<sup>230</sup> Slides: Argentine Chamber of Commerce, Advance Sworn Import Declaration, DJAI (Exhibit JE-50); Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755); Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012 (Exhibit JE-52); Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012 (Exhibit JE-55); Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012 (Exhibit JE-268); Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI, 9 May 2012 (Exhibit JE-729/EU-415).

<sup>231</sup> Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012 (Exhibit JE-47); Newsletter: United Logistic Company, Observed DJAI (Exhibit JE-49); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48); Information note: SIQAT SRL, Instructions on the DJAI (Exhibit JE-51); Information note: *Clément Comercio Exterior*, Procedure for Blocked DJAIs (Exhibit JE-54); Report: *Clément Comercio Exterior*, DJAI: Its Evolution, 13 December 2012 (Exhibit EU 418+); Information note: *Oklander y Asociados*, Observed DJAIs. Procedure to unblock them (Exhibit JE-730/EU-416).

<sup>232</sup> News items: *Juguets y Negocios*, How to Release Import Declarations, 6 March 2012 (Exhibit JE-2); *Porcinos*, The Argentine Association of Pork Producers and other entities within the pork value chain sealed an agreement to allow importation, June 2012 (Exhibit JE-488/EU-174); Newspaper article: *Ámbito Financiero*, What you should know about the new rules, 1 February 2012 (Exhibit JE-269).

<sup>233</sup> Information note: *Unión Industrial del Oeste*, Advance Sworn Import Declarations, 21 March 2012 (Exhibit JE-46).

<sup>234</sup> Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012 (Exhibit JE-298).

<sup>235</sup> Argentina's response to Panel question No. 123.

aspects of a measure.<sup>236</sup> Moreover, in the circumstances of this case, the documents submitted by the complainants may have more relevance and weight than an article published in a newspaper or in a magazine, because they have been prepared by professional entities on a narrow subject of trade policy for a specialized audience (normally, subscribers of a service). In any event, if any of these documents submitted as evidence is believed to contain incorrect information, nothing would have prevented any of the parties from submitting evidence presenting a contrasting view. None did so.

#### 6.1.3.2.3.7 Trade statistics and other economic data

6.107. Finally, Argentina submitted uncontested trade statistics, as well as information regarding the economic performance of the country in recent years.

6.108. According to the information provided by Argentina, between 2004 and 2008 foreign direct investment (FDI) in Argentina increased at an average annual rate of around 24%, while domestic investment grew by 21%. In 2008, FDI inflows in Argentina amounted to USD 9.7 billion. FDI inflows into Argentina fell in 2009 by around 59%, recovering in 2010 and 2011, at an average annual rate of 66%. In 2011, FDI capital inflows totalled USD 10.7 billion (equivalent to around 2.4% of Argentina's gross domestic product).<sup>237</sup>

6.109. The stock of FDI in Argentina has increased since 2004 by some USD 39.14 billion, an average annual growth rate of 9%. Over the period 2004-2011, the stock of FDI in Argentina increased by 126.8%, as compared with the period 1992-1999. By 31 December 2011, the stock of FDI in Argentina reached a record high of USD 96.09 billion.<sup>238</sup>

6.110. Between 2009 and 2012 Argentina's imports grew 77% in value (from USD 38.7 billion in 2009 to USD 68.5 billion in 2012), while its exports grew 45% (from USD 55.6 billion in 2009 to USD 80.9 billion in 2012). This led to a 395% overall growth in the value of Argentina's imports between 2003 and 2012 and a 170% growth in the value of its exports.<sup>239</sup>

6.111. Between 2001 and 2011, Argentina maintained an uninterrupted trade surplus with the European Union. The record annual trade surplus in the period was USD 4.13 billion in the year 2008. In 2012, however, Argentina's balance of trade with the European Union showed a deficit of USD 0.39 billion. The trend continued into the first half of 2013, when Argentine exports to the European Union fell by 20% in value and its imports grew by 8%. While European Union exports to the world grew 94% in value between 2003 and 2012, and 26% between 2009 and 2012, its exports to Argentina grew by 218.5% between 2003 and 2012, and 92% between 2009 and 2012.<sup>240</sup>

6.112. In 2012 Argentina had a record trade deficit with the United States of USD 4.3 billion.<sup>241</sup> Energy comprises a significant share of Argentine imports from the United States; energy products were between 5% to 45% of the total monthly value of United States exports to Argentina in 2012.<sup>242</sup> While United States' exports to the world grew by 113.7% in value between 2003 and

<sup>236</sup> As noted above, despite its attempts to seek more information from the parties and even a proposal for special procedures, the Panel has been stymied in its efforts to obtain additional evidence related to the matters dealt with in the report. See paras. 6.44-6.51 above.

<sup>237</sup> Argentina's second written submission, paras. 14-17.

<sup>238</sup> Ibid. paras. 18-19.

<sup>239</sup> Argentina's first written submission, paras. 51-52 and 66; and opening statement at the first meeting of the Panel, para. 15. See also National Institute for Statistics and Census, Argentina's monthly trade data (Exhibit ARG-41).

<sup>240</sup> Argentina's first written submission, paras. 69-72, 76-79; National Institute for Statistics and Census, Argentina's imports, exports and balance, by region and main countries 2007-2011 (Exhibit ARG-38); Journal: *INDEC Informa*, Year 18, No. 7, July 2013 (Exhibit ARG-40); and National Institute for Statistics and Census, Argentina's trade exchanges, Provisional 2012 data and projections for 2013 – 1st semester (Exhibit ARG-42). See also European Union's response to Panel question No. 6; Argentina's opening statement at the first meeting of the Panel, para. 21.

<sup>241</sup> Argentina's first written submission, paras. 92; opening statement at the first meeting of the Panel, para. 24. See also Journal: *INDEC Informa*, Year 18, No. 7, July 2013 (Exhibit ARG-40).

<sup>242</sup> United States' response to Panel question No. 6. See also Monthly data on Argentina's imports from US and US's exports to Argentina, 2010-2013 (Exhibit US-2); Data on Argentina's imports of motor vehicles from the US, 2008-2012 (Exhibit US-3).

2012, and 46.5% between 2009 and 2012, its exports to Argentina grew by 324.4% between 2003 and 2012, and 85.9% between 2009 and 2012.<sup>243</sup>

6.113. In 2012 Argentina had an annual deficit of USD 285 million in its trade with Japan. While Japanese exports to the world grew by 17% in value between 2003 and 2012, and 18% between 2009 and 2012, its exports to Argentina grew by 195% between 2003 and 2012, and 60% between 2009 and 2012.<sup>244</sup>

6.114. The Panel will consider this uncontested information on Argentina's trade and economic performance, where relevant and together with other evidence, in its findings.<sup>245</sup>

#### 6.1.3.2.3.8 Conclusion with respect to the treatment of evidence

6.115. As indicated above<sup>246</sup>, to determine whether the complainants have successfully established a *prima facie* case and, if so, whether Argentina has successfully rebutted such a case, the Panel has examined all the sources of evidence provided by the parties on their own specific merits. In examining the evidence, the Panel has considered its appropriate relevance, credibility, weight and probative value. The Panel has exercised caution in its assessment of the facts of the case, especially because of the unwritten nature of the alleged RTRRs.

6.116. The Panel has also taken into account that Argentina has not disputed the basic facts concerning the existence and operation of the alleged RTRRs. With respect to the RTRRs, Argentina has only stated in generic terms that the complainants have presented a false description of Argentina's trade policy and business environment<sup>247</sup> and made three assertions. First, that the complainants have not produced evidence of the existence of a single "overarching" measure that has general and prospective application.<sup>248</sup> Second, that the complainants have at most proven the existence of a series of individual one-off and isolated actions that concern a limited number of individual economic operators in a limited number of sectors, whose content varies considerably and lacks anything resembling general and specific application.<sup>249</sup> Third, that the description of the facts made by the complainants is unsupported by Argentina's trade data and by the experience of companies in Argentina.<sup>250</sup> Argentina has failed to produce evidence to dispute the facts asserted by the complainants; it has only submitted economic data in support of its statement that its economy is highly dependent on imports and that in past years there has been a direct correlation between economic growth in Argentina and an increase in imports.<sup>251</sup>

6.117. In the course of the proceedings, the Panel asked the parties for copies of specific agreements between the Argentine Government and importers or economic operators, which allegedly described trade-related commitments imposed by the government. The Panel also asked the complainants to produce copies of letters addressed by the importers or economic operators to the Argentine Government, which allegedly describe those commitments. Despite repeated requests from the Panel, the parties failed to provide the requested information. The Panel also proposed the adoption of special procedures to address the concerns expressed by the complainants and to facilitate the submission of the information. None of the parties supported the

<sup>243</sup> Argentina's first written submission, paras. 96-98. See also Argentina's opening statement at the first meeting of the Panel, paras. 24-25.

<sup>244</sup> Argentina's first written submission, paras. 84-86; and opening statement at the first meeting of the Panel, paras. 22-23; Journal: *INDEC Informa*, Year 18, No. 7, July 2013 (Exhibit ARG-40). See also, Japan's response to Panel question No. 6.

<sup>245</sup> See para. 6.43 above.

<sup>246</sup> See para. 6.43 above.

<sup>247</sup> Argentina's second written submission, paras. 3-6.

<sup>248</sup> Argentina's response to Panel question Nos. 13, 14, 16, 17, and 18.

<sup>249</sup> Argentina's second written submission, para. 106; opening statement at the second meeting of the Panel, para. 25; and closing statement at the second meeting of the Panel, para. 5.

<sup>250</sup> Argentina's second written submission, paras. 6-40; opening statement at the second meeting of the Panel, para. 4.

<sup>251</sup> See, for example, National Institute for Statistics and Census, Argentina's monthly trade data (Exhibit ARG-41); *Centro de Economía Internacional del Ministerio de Relaciones Exteriores y Culto de la República Argentina, Determinantes del nivel de importaciones en la economía argentina en el período 1993-2012* (National Directorate Centre for International Economy – Ministry of Foreign Affairs and Worship of the Argentine Republic, Factors determining the level of imports in the Argentine economy in the period 1993-2012), November 2013, Exhibit ARG-65.

adoption of these special procedures, and three of them (the United States, Japan, and Argentina) objected to the procedures.<sup>252</sup> The Panel notes that Argentina is the only party that is a signatory to the agreements requested by the Panel and can be therefore presumed to have direct access to these documents. Argentina did not deny the existence of the agreements and it did not provide a valid reason for its failure to submit the documents.

6.118. Despite the failure to provide the requested copies of agreements and letters, the complainants submitted a large number of exhibits with the objective of proving the existence and precise content of the alleged TRRs. This evidence includes, *inter alia*, copies of domestic laws, regulations and policy documents; communications addressed to Argentine officials by private companies; statements by Argentine officials and notes posted on websites of the Argentine Government; articles in newspapers and magazines; statements by company officials; data from industry surveys; and reports prepared by market intelligence entities.

6.119. The Panel has examined the information available and has assessed all the evidence in a holistic manner in order to reach its conclusions. As a result, the Panel is persuaded on the basis of the totality of the evidence of the following general facts, as well as of the specific facts that are discussed in sections 6.2 and 6.3 below. First, high-ranking Argentine Government officials have announced in public statements and speeches a policy of so-called "managed trade" (*comercio administrado*), with the objectives of substituting imports for domestically-produced goods and reducing or eliminating trade deficits. Second, since at least 2009 the Argentine Government has imposed a combination of TRRs<sup>253</sup> on prospective importers as a condition to import or to receive certain benefits. Third, these TRRs have been imposed on importers covering a broad range of sectors such as foodstuffs, automobiles, motorcycles, mining equipment, electronic and office products, agricultural machinery, medicines, publications, and clothing. Fourth, the TRRs are in some cases reflected in agreements signed between specific economic operators and the Argentine Government and in other cases contained in letters addressed by economic operators to the Argentine Government. Fifth, the Argentine Government has on occasion required compliance with TRRs as a condition for lifting observations entered into DJAI applications. Sixth, statements made by high-ranking Argentine Government officials, including the President, the Minister of Industry and the Secretary of Trade, suggest that the TRRs seek to implement the policy of so-called "managed trade" explained above.

6.120. Each of these conclusions will be described and developed in the following section, with reference in each case to the supporting evidence considered by the Panel.

## 6.2 The Trade-Related Requirements (TRRs)

### 6.2.1 Preliminary considerations

#### 6.2.1.1 Parties' description of the measure at issue

6.121. In their panel requests, the complainants identify a number of actions that they refer to as the "Restrictive Trade-Related Requirements" (RTRRs). According to the complainants, Argentina requires economic operators to undertake certain specific actions as part of a policy seeking to eliminate trade balance deficits and substitute imports for domestically-produced goods.<sup>254</sup> The actions identified by the complainants are<sup>255</sup>:

<sup>252</sup> The European Union considered the proposed special procedures were unnecessary since in its view the Panel was already entitled to draw inferences from Argentina's refusal to cooperate. However, the European Union expressed that, if the Panel adopted the proposed procedures, it would endeavour to provide the information requested and made specific suggestions to the Panel's proposed procedures. See European Union's letter of 30 October 2013 and European Union's second written submission, paras. 155-161.

<sup>253</sup> As noted before, for the purpose of these Reports, the Panel will refer to the five actions identified by the complainants described above as the Trade-Related Requirements (TRRs). The single measure that the complainants are asserting will be referred to as the Trade-Related Requirements measure (the TRRs measure). References to the alleged "Restrictive Trade-Related Requirements" (RTRRs) have been kept in direct quotations from the parties' submissions.

<sup>254</sup> European Union's request for the establishment of a panel, p. 3; Japan's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4.

<sup>255</sup> Ibid.

- a. to export a certain value of goods from Argentina related to the value of imports;
- b. to limit the volume of imports and/or reduce their price;
- c. to refrain from repatriating funds from Argentina to another country;
- d. to make or increase investments in Argentina (including in production facilities); and/or,
- e. to incorporate local content into domestically produced goods.

6.122. In their first written submissions, the European Union and Japan indicated that the list of requirements that are part of the single measure is not exhaustive.<sup>256</sup>

6.123. The complainants allege that these requirements are enforced by "withholding permission to import, *inter alia*, by withholding the issuance of DJAI or CI approvals".<sup>257</sup>

6.124. The European Union adds in its panel request that the specific requirements may be viewed as an "overarching measure" aiming at eliminating trade balance deficits and/or substituting imports by domestic products.<sup>258</sup>

6.125. The three complainants affirm that the measure at issue: (a) consists of a combination of one or more of the five identified trade-related requirements<sup>259</sup>; (b) is an unwritten measure "not stipulated in any published law or regulation"<sup>260</sup>; (c) is imposed on economic operators in Argentina as a condition to import or to obtain certain benefits<sup>261</sup>; (d) is enforced, *inter alia*, through the DJAI requirement<sup>262</sup>; and, (e) is imposed by the Argentine Government with the objective of eliminating trade deficits and increasing import substitution.<sup>263</sup> The complainants also assert that, to meet these trade-related requirements, "economic operators normally either submit a statement or conclude an agreement with Argentina setting out the actions they will take."<sup>264</sup>

6.126. The European Union has emphasized that the content of the "overarching measure" at issue is different from that of the five individual trade-related requirements. In the European Union's view:

<sup>256</sup> European Union's first written submission, fn 105 to para. 69; Japan's first written submission, para. 41.

<sup>257</sup> European Union's request for the establishment of a panel, p. 3; Japan's request for the establishment of a panel, p. 4; United States' request for the establishment of a panel, p. 4.

<sup>258</sup> European Union's request for the establishment of a panel, p. 4. In its panel request, the European Union also referred to 29 "separate measures" listed in Annex III of the request. In its second preliminary ruling, the Panel decided that 23 measures described by the European Union in its first written submission as "specific instances of application" of the restrictive trade-related requirements, which according to the European Union, correspond to the 29 "separate measures" listed in Annex III of the European Union's panel request, do not constitute "measures at issue" in this dispute. Preliminary Ruling by the Panel, *Argentina – Import Measures* (20 November 2013), paras. 4.34-4.38 and 5.1.

<sup>259</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, p. 3. See also European Union's first written submission, para. 325; United States' second written submission, para. 111; Japan's first written submission, paras. 4 and 41; Japan's second written submission, paras. 112-113.

<sup>260</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, p. 4.

<sup>261</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, pp. 3-4. See also European Union's first written submission, paras. 9 and 69; European Union's second written submission, para. 117; United States' first written submission, para. 49; United States' opening statement at the first meeting of the Panel, para. 58; Japan's first written submission, paras. 4, 41 and 43.

<sup>262</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, p. 4. See also European Union's first written submission, para. 12; United States' first written submission, para. 128; Japan's first written submission, paras. 49-60.

<sup>263</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, p. 3. See also European Union's second written submission, para. 117; Japan's first written submission, para. 41.

<sup>264</sup> European Union's request for the establishment of a panel, p. 3; Japan's request for the establishment of a panel, p. 4; United States' request for the establishment of a panel, p. 4.

[T]he overarching measure implies the existence of a single unwritten measure whereby Argentina seeks to impose certain trade-restrictive actions on economic operators with a view to achieving two specific objectives, i.e., eliminating trade balance deficits and achieving the substitution of imported products by domestic products.<sup>265</sup>

6.127. The United States refers to a measure that consists of:

[T]he 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.<sup>266</sup>

6.128. In turn, Japan considers that:

[T]he RTRR is not merely five independent requirements. The RTRR is a comprehensive and general measure and consistent practice that restricts imports by imposing a practical threshold on importers and limits competitive opportunities of imports vis-à-vis the situation in the absence of the RTRR."<sup>267</sup>

6.129. In its first written submission, Argentina requested a preliminary ruling as it considered that, by including in their panel requests claims against the so-called trade-related requirements, the complainants had expanded the scope of the dispute because in its view this measure was not identified in their requests for consultations. Consequently, Argentina contended that this measure did not fall within the Panel's terms of reference.<sup>268</sup> In its first preliminary ruling, the Panel concluded that the "so-called 'Restrictive Trade Related Requirements' (RTRRs) were identified by the complainants as a measure at issue in their requests for consultations" and, therefore, these requirements are within the Panel's terms of reference.<sup>269</sup> The Panel also noted in that preliminary ruling that the characterization of the RTRRs as a single global measure (which the European Union has referred to as an "overarching measure") in the complainants' panel requests did not expand the scope or change the essence of the dispute as it was originally described in the requests for consultations.<sup>270</sup>

6.130. Following the Panel's first preliminary ruling, in its second written submission, Argentina argues that the complainants have failed to make a *prima facie* case of the existence of a single global measure. In Argentina's view, the complainants' characterization of the measure is "broad, amorphous and ill-defined".<sup>271</sup> Argentina contends that there is a high threshold to be met by the complainants in order to prove the existence of an unwritten measure such as the alleged RTRRs measure alleged by the complainants. More particularly, Argentina alleges that the complainants have failed to establish the precise content and the general and prospective application of the TRRs measure.<sup>272</sup> According to Argentina, the evidence provided by the complainants at most demonstrates "a series of unrelated 'one-off' actions whose content varies so widely that it is insufficient even to demonstrate the content of a series of distinct requirements, let alone a single 'overarching' RTRR measure".<sup>273</sup>

<sup>265</sup> European Union's second written submission, para. 117.

<sup>266</sup> United States' second written submission, para. 5. See also *ibid.* para. 111 and United States' opening statement at the second meeting of the Panel, para. 62. In its first written submission, the United States referred to the RTRRs as "measures" (in plural) and stated that "the RTRRs can be viewed as distinct measures that cause trade restrictions". United States' first written submission, para. 126. See also United States' first written submission, paras. 127 and 168.

<sup>267</sup> Japan's second written submission, para. 113.

<sup>268</sup> Argentina's first written submission, paras. 113-114.

<sup>269</sup> Preliminary Ruling by the Panel, *Argentina – Import Measures* (16 September 2013), para. 4.1(a).

<sup>270</sup> *Ibid.* para. 3.33.

<sup>271</sup> Argentina's second written submission, para. 49.

<sup>272</sup> *Ibid.* paras. 98-117.

<sup>273</sup> Argentina's opening statement at the first meeting of the Panel, para. 45. See also Argentina's second written submission, para. 106.



6.131. For the purpose of these Reports, the Panel will refer to the five actions identified by the complainants described above as the Trade-Related Requirements (TRRs). The single measure that the complainants are asserting will be referred to as the Trade-Related Requirements measure (the TRRs measure). References to the alleged "Restrictive Trade-Related Requirements" (RTRRs) have been kept in direct quotations from the parties' submissions.

#### 6.2.1.2 Description of the claims

6.132. The complainants have presented claims in respect of the TRRs measure under Articles XI:1, X:1 and III:4 of the GATT 1994.

6.133. First, the complainants allege that the TRRs measure imposed by Argentina has a limiting effect on the economic operators' ability to import and, therefore, constitutes a violation of Article XI:1 of the GATT 1994.

6.134. Second, the complainants argue that the TRRs measure is inconsistent with Article X:1 of the GATT 1994 because Argentina has failed to publish promptly the measure, thereby preventing governments and traders from becoming acquainted with it.

6.135. The European Union and Japan further contend that the TRRs measure, in respect of the local content requirement, is inconsistent with Article III:4 of the GATT 1994, because it requires economic operators to use domestic, instead of imported, products to achieve a specified level of local content. In their view, this requirement improves the competitive position of domestically produced goods in the Argentine market vis-à-vis like imported products.<sup>274</sup>

6.136. In addition, Japan requests separate findings concerning Articles XI:1, III:4 and X:1 of the GATT 1994 in respect of the TRRs measure "as such" and "as applied".<sup>275</sup> Japan has clarified it seeks that the Panel issue three sets of findings: "(i) findings against the RTRR as an unwritten rule or norm as such; (ii) findings against the RTRR as an unwritten practice or policy, as confirmed by the systematic application of the measure (*i.e.*, the RTRR's application as a whole – *i.e.*, the systematic application of the RTRR); and (iii) findings against individual applications of the RTRR (*i.e.*, the RTRR's application in each and every individual instance)".<sup>276</sup>

6.137. For its part, Argentina argues that the complainants have failed to prove the existence of an unwritten "overarching" measure, with precise content and general and prospective application, that would support the complainants' claims against the TRRs measure.

<sup>274</sup> The United States has not developed this claim in its written submissions, although it included it in its panel request. In the European Union's and Japan's panel requests, the claims against the TRRs measure under Article III:4 of the GATT 1994 refer to two requirements encompassed by the TRRs measure: the one-to-one requirement and the local content requirement. European Union's request for establishment of a panel, p. 4; Japan's request for establishment of a panel, p. 4. In their respective submissions, however, the European Union and Japan only raise claims under Article III:4 of the GATT 1994 in respect of the local content requirement as part of the TRRs measure. European Union's first written submission, paras. 360-369; Japan's first written submission, paras. 199-212. However, it is worth noting that Japan refers to the one-to-one requirement in its first written submission when it argues that "Argentina improves the competitive position of domestically produced goods because (i) domestically produced goods can be purchased freely, and to the extent that a company purchases domestically produced goods, it would not be subject to the RTRR at all; and (ii) only domestically produced goods can be used to satisfy the local content requirement, and thus augment the purchaser's importation rights". See Japan's first written submission, para. 199.

<sup>275</sup> Japan's second written submission, para. 7; see also Japan's first written submission, footnote 357 to para. 186 (explaining that Japan's claims with respect to the "RTRR" apply "equally to the general requirement ... and to any and each of those requirements separately or in combination"). The European Union has expressly stated that, in its submissions, it "does not mean to refer to the 'as such/as applied' distinction". See European Union's response to Panel question No. 1, para. 1. Argentina, however, considers that the three complainants are challenging the TRRs measure as such. See Argentina's second written submission, footnote 35 to para. 72.

<sup>276</sup> Japan's second written submission, para. 20. See also Japan's opening statement at the second meeting with the Panel, paras. 12, 20, 29 and 31; Japan's response to Panel question No. 44. In earlier submissions, Japan asked the Panel to make two types of findings: (a) findings against the TRRs measure as an unwritten rule or norm "as such"; and (b) findings against individual applications of the TRRs measure. See Japan's response to Panel question No. 2, para. 1. See also, Japan's first written submission, paras. 185, 198 and 218.

### 6.2.1.3 Order of analysis

#### 6.2.1.3.1 The existence of a single measure

6.138. The Panel will first assess whether there is evidence of the existence of the TRRs. Since it is uncontested by the parties that the TRRs measure is unwritten<sup>277</sup>, the threshold issue of ascertaining the existence of the TRRs and the purported single measure is especially important. As noted by the Appellate Body in *EC and certain member States – Large Civil Aircraft*, "when a challenge is brought against an *unwritten* measure, the very existence and the precise contours of the alleged measure may be uncertain."<sup>278</sup>

6.139. As noted, the complainants are challenging the existence of a single measure consisting of a combination of one or more of the five TRRs. Previous panels have been confronted with the need to determine the existence of a single broad measure constituted by a number of individual requirements that work in combination. In these cases, panels have considered whether a measure consisting of various elements should be examined as a single measure or as separate measures.

6.140. In *US – Export Restraints*, the complainant argued that certain "elements" that had been identified separately in its panel request constituted a measure at issue both individually and collectively. In the complainant's view, those elements operated both individually and taken together. In that case, the panel considered that a measure could be considered separately in order to assess whether it individually gives rise to a violation of WTO obligations if "[it] operates in some concrete way in its own right [meaning] that each measure would have to constitute an instrument with a functional life of its own, i.e., that it would have to *do* something concrete, independently of any other instruments."<sup>279</sup> Accordingly, the panel in *US – Export Restraints* started by considering each measure on its own to assess whether it was operational and subsequently examining how, if at all, the measures operated "taken together".<sup>280</sup>

6.141. Other panels have also treated a number of individual requirements or legal provisions as a single measure. As noted by the panel in *Japan – Apples*:

[P]anels and the Appellate Body have in the past considered as one single "measure" legal requirements comprised of several obligations, some simply prohibiting importation, some allowing importation under certain conditions.<sup>281</sup>

6.142. In *Japan – Apples* the complainant had identified nine requirements in its panel request, which in its view restricted the importation of United States' apples into Japan. The panel in that case found that there was "no legal, logical or factual obstacle" to treating those requirements as one single phytosanitary measure. In the panel's view, the requirements cumulatively constituted the measures actually applied by Japan to the importation of US apple fruit, to protect itself against certain phytosanitary risks. The panel also noted in this regard the fact that both parties had presented the requirements as a single measure.<sup>282</sup>

6.143. In *US – Tuna II (Mexico)*, the panel considered whether it was appropriate to assess certain measures jointly in the analysis of the complainant's claims, and make findings based on the combined operation of the measures, rather than on the basis of each individual measure separately. Based on its analysis of how the various instruments cited by the complainant functioned and related to each other, the panel found it was not clear that some of the separate measures could be operational or totally independent on their own. Accordingly, the panel saw merit "in considering these closely related instruments together as a single measure for the purposes of [the] dispute".<sup>283</sup> Citing the earlier panel decisions in *Japan – Apples* and *Australia –*

<sup>277</sup> See para. 6.125 above and Argentina's second written submission, para. 72.

<sup>278</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 792.

<sup>279</sup> Panel Report, *US – Export Restraints*, para. 8.85. (emphasis original)

<sup>280</sup> Ibid. paras. 8.85-8.86.

<sup>281</sup> Panel Report, *Japan – Apples*, para. 8.14 (referring to Appellate Body Reports, *Australia – Salmon*, para. 98; *EC – Asbestos*, para. 64).

<sup>282</sup> Panel Report, *Japan – Apples*, paras. 8.15-8.17.

<sup>283</sup> Panel Report, *US- Tuna II (Mexico)*, paras. 7.19-7.24.

*Apples*, the panel in *US – Tuna II (Mexico)* saw "no 'legal, factual or logical obstacle' to treating the various interrelated legal instruments identified by Mexico as the basis for its claims ... as a single measure for the purposes of [its] findings."<sup>284</sup>

6.144. In assessing whether to examine certain instruments as one single measure or individual separate measures, the panel in *US – COOL* summarized the main factors considered by previous panels and the Appellate Body in relation to this question as follows:

(i) the manner in which the complainant presented its claim(s) in respect of the concerned instruments<sup>285</sup>; (ii) the respondent's position; and (iii) the legal status of the requirements or instrument(s), including the operation of, and the relationship between, the requirements or instruments, namely whether a certain requirement or instrument has autonomous status.<sup>286, 287</sup>

6.145. In the current dispute, in order to facilitate its analysis, the Panel will start by determining whether the evidence available demonstrates the existence of each of the five TRRs identified by the complainants. Were the Panel to conclude that one or more of the five TRRs exist, and given that the complainants have not requested separate findings as to the inconsistency of each of the TRRs with provisions in the covered agreements, the Panel shall proceed to assess whether, as argued by the complainants, the TRRs operate as a single measure.<sup>288</sup> The Panel will examine the precise content and operation of that alleged single TRRs measure and whether it can be attributed to Argentina.

#### 6.2.1.3.2 Order of analysis between the claims

6.146. If the single TRRs measure described by the complainants were found to exist, the Panel would examine its consistency with the WTO provisions raised by the complainants, namely, Articles XI:1, X:1 and III:4 of the GATT 1994.

6.147. As regards the order of analysis between the three provisions referred to by the complainants, it is worth recalling that the Appellate Body in *Canada – Wheat Exports and Grain Imports* noted that:

As a general principle, panels are free to structure the order of their analysis as they see fit. In so doing, panels may find it useful to take account of the manner in which a claim is presented to them by a complaining Member ... At the same time, panels must

<sup>284</sup> Ibid. para. 7.26, with reference to Panel Reports, *Japan – Apples*, para. 8.17; *Australia – Apples*, paras. 7.113-7.115.

<sup>285</sup> (footnote original) In *US – Export Restraints*, the panel describes Canada's, the complainant in that dispute, arguments as follows: "each of the elements that [Canada] cites (the statute, the SAA; the Preamble, and US practice) individually constitutes a measure that is susceptible to dispute settlement, and that, 'taken together' as well, these elements constitute a measure. Further, ... these measures individually and collectively require a particular treatment of export restraints". The United States, as the respondent, disagreed with Canada and argued that "it is dangerous for the Panel to seek to analyse an ill-defined 'measure' as a 'package'". In light of Canada's position, the Panel decided to first analyse each concerned measure separately and subsequently in light of other measures to the extent necessary. (Panel Report, *US – Export Restraints*, paras. 8.82-8.131)

In *Japan – Film*, the United States argued that Japan's application of the eight distribution "measures" encouraged and facilitated the creation of a market structure for photographic film and paper in Japan in which imports are excluded from traditional distribution channel. Japan was of the view that each measure must be examined on its own merit. The panel proceeded to examine each of the eight distribution measures individually. Regarding the United States' claim that certain measures in combination nullify or impair benefits accruing to the United States, the panel noted that for US theory to have factual relevance in that case, it must be based on a detailed justification and convincing evidence of record. But the panel considered that the United States failed to make such a showing. (Panel Report, *Japan – Film*, paras. 10.90-10.94, 10.350-10.367)

<sup>286</sup> (footnote original) Appellate Body Report, *EC – Asbestos*, para. 64; Panel Report, *US – Export Restraints*, para. 8.85. The panel in *US – Export Restraints* explains that "it would have to do something concrete, independently of any other instruments, for it to be able to give rise independently to a violation of WTO obligations". It then examined the status of each measure under US law to determine whether such measure is operational on its own.

<sup>287</sup> Panel Report, *US – COOL*, para. 7.50.

<sup>288</sup> See paras. 6.125-6.127 above.

ensure that they proceed on the basis of a properly structured analysis to interpret the substantive provisions at issue. As the Appellate Body found in *US – Shrimp* and *Canada – Autos*, panels that ignore or jump over a prior logical step of the analysis run the risk of compromising or invalidating later findings. This risk is compounded in the case of two legally interrelated provisions, where one of those provisions must, as a matter of logic and analytical coherence, be analyzed before the other ...<sup>289</sup>

6.148. In the same case, the Appellate Body indicated that the nature of the relationship between two provisions "will determine whether there exists a mandatory sequence of analysis which, if not followed, would amount to an error of law".<sup>290</sup>

6.149. Considering first the claims raised under the substantive provisions of Articles XI:1 and III:4 of the GATT 1994, the Panel does not consider that the relationship between these provisions imposes any specific order of analysis. Indeed, previous panels in which claims under Articles XI:1 and III:4 of the GATT 1994 were raised in respect of the same measure have approached the order of analysis differently depending on the specific circumstances. In some disputes, the order of analysis was determined by the fact that the complainants brought a claim in the alternative.<sup>291</sup> In those cases, the panels started with the analysis of the main claim. In other cases, the complainants raised cumulative claims under both Articles XI:1 and III:4 of the GATT 1994.<sup>292</sup> For example, in *India – Autos*, the panel started its analysis with Article XI "because both the European Communities' and the United States' claims seek to bring the entire measure within Article XI and because the European Communities addresses a wider range of effects under that Article than under Article III".<sup>293</sup>

6.150. The Panel will start its analysis with Article XI:1 of the GATT 1994, which is the provision invoked by all three complainants. It will continue by examining the claim under Article III:4, which was only raised by the European Union and Japan and affects a limited aspect of the TRRs measure (the local content requirement).

6.151. All three complainants have also raised claims under Article X:1 of the GATT 1994. As noted by the Appellate Body:

Article X relates to the *publication* and *administration* of "laws, regulations, judicial decisions and administrative rulings of general application", rather than to the *substantive content* of such measures...<sup>294</sup> (emphasis original)

6.152. If the Panel finds that the purported single TRRs measure is in breach of substantive obligations under either Article XI:1 or Article III:4 of the GATT 1994, it will consider whether findings under Article X:1 concerning the publication of the measure are necessary or useful for the resolution of the matter between the parties. The Panel notes that, pursuant to the principle of judicial economy, panels are allowed to address only those claims that are necessary to resolve the dispute.<sup>295</sup> However, there is no obligation for a panel to exercise judicial economy. It is within a panel's discretion to decide which claims it is going to rule upon<sup>296</sup>, as long as it addresses "those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance by a Member with those recommendations and rulings 'in order to ensure effective resolution of disputes to the benefit of all Members'".<sup>297</sup>

<sup>289</sup> Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, paras. 126-127.

<sup>290</sup> Ibid. para. 109.

<sup>291</sup> See Panel Reports, *Dominican Republic – Import and Sale of Cigarettes*, para. 3.1 (a claim under Article III:4 was made in the alternative); *Brazil – Retreaded Tyres*, para. 4.349 (the European Union and Japan made alternative claims under Article III:4); *Turkey – Rice*, para. 7.192 (the United States made an alternative claim under Article XI:1).

<sup>292</sup> Panel Reports, *EC – Asbestos* and *India – Autos*.

<sup>293</sup> Panel Report, *India – Autos*, para. 7.216.

<sup>294</sup> Appellate Body Report, *EC – Poultry*, para. 115.

<sup>295</sup> Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, para. 133; *US – Wool Shirts and Blouses*, pp. 18-19, DSR 1997:I, p. 323 at pp. 339-340.

<sup>296</sup> Appellate Body Report, *US – Lead and Bismuth II*, para. 71.

<sup>297</sup> Appellate Body Report, *Australia – Salmon*, para. 223.

6.153. Finally, the Panel shall decide whether it considers it necessary or useful to make the additional findings about the purported single TRRs measure "as such" requested by Japan.<sup>298</sup> There are two reasons why the Panel will deal with Japan's claims against the TRRs measure "as such" at a later stage. First, because the TRRs measure is unwritten, the evidence used for considering all claims concerning this measure will necessarily relate to its application. Second, if a finding of inconsistency is made with regard to the initial claims raised by all complainants, the Panel would only need to move a step further to complete the examination of Japan's claims against the TRRs measure "as such" by determining, mainly, whether the measure has general and prospective application.<sup>299</sup>

6.154. Finally, it should be noted that the complainants have indicated that, although in some cases the DJAI procedure may serve to implement certain TRRs, they are challenging the DJAI procedure and the TRRs measure as separate measures.<sup>300</sup> Therefore, the Panel will address both measures separately in these Reports.

## 6.2.2 Existence and operation of the trade-related requirements

### 6.2.2.1 The individual trade-related requirements

6.155. Having examined thoroughly and with due caution the variety and extensive evidence on record described above and having drawn inferences from the refusal of Argentina to provide evidence in its possession which it has not denied, the Panel concludes that, at least since 2009, the Argentine Government has required from certain importers and other economic operators that they undertake one or more of the following trade-related commitments: (a) offsetting the value of their imports with, at least, an equivalent value of exports (one-to-one requirement); (b) limiting their imports, either in volume or in value (import reduction requirement); (c) reaching a certain level of local content in their domestic production (local content requirement); (d) making investments in Argentina (investment requirement); and, (e) refraining from repatriating profits from Argentina (non-repatriation requirement). We explain our conclusion below, linking it to the various pieces of evidence before us.

6.156. These TRRs are in some cases reflected in agreements signed between specific economic operators and the Argentine Government and in other cases contained in letters addressed by economic operators to the Argentine Government.<sup>301</sup> There is evidence on record of the existence

<sup>298</sup> See para. 6.136 above.

<sup>299</sup> See para. 6.42 above and Appellate Body Report, *US – Zeroing (EC)*, para. 198.

<sup>300</sup> European Union's response to Panel question No. 10; United States' response to Panel question Nos. 9 and 10; Japan's response to Panel question No. 10.

<sup>301</sup> News items: *Prensa Argentina*, An automobile importer may compensate by exporting, 25 March 2011 (Exhibits JE-1 and JE-398/EU-84); *iProfesional.com*, Porsche will have to export wine in order to import cars, 31 March 2011 (Exhibit JE-605/EU-291); *La Gaceta*, Porsche will export wine in exchange for importing cars, 31 March 2011 (Exhibit JE-610/EU-296); *UNO*, Grupo Pulenta will export wines and import Porsche, 31 March 2011 (Exhibit JE-611/EU-297); *Argentina Autoblog*, Mercedes-Benz also unlocked the importation of its high-end cars, 6 April 2011 (Exhibit JE-616/EU-302); *Prensa Argentina*, Automaker pledges to balance its trade, 6 April 2011 (Exhibit JE-5); *Prensa Argentina*, Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012 (Exhibit JE-81); *Prensa Argentina*, Fiat: another automaker that committed to even out its trade balance, 5 May 2011 (Exhibit JE-528/EU-214); *Prensa Argentina*, USD 140 million will be invested in producing tractors, 21 October 2011 (Exhibit JE-577/EU-263); Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012 (Exhibit JE-590/ EU-276); *Diario La Prensa*, Giorgi and Lorenzino agreed with Renault to increase exports, 7 February 2012 (Exhibit JE-594/EU-280); *Intereconomia.com*, Argentina reaches an agreement with Renault Trucks to solve trade deficit, 7 February 2012 (Exhibit JE-595/EU-281); *Tiempomotor.com*, Another company reaches an agreement: Renault Trucks will increase exports, 7 February 2012 (Exhibit JE-596/EU-282); *ámbito.com*, Government signed an agreement with Volkswagen to even out its trade balance, 18 March 2011 (Exhibit JE-598/EU-284); *areadelvino.com*, In Argentina, Porsche sells wine and BMW sells rice, 14 May 2013 (Exhibit JE-608/EU-294); Ministry of Economy and Public Finance, Boudou, Giorgi and Moreno signed an agreement with Mercedes Benz, 7 April 2011 (Exhibit JE-613/EU-299); *Cronista.com*, Mercedes-Benz adds a new shift to increase manufacturing of Sprinter and bus chassis, 21 April 2011 (Exhibit JE-614/EU-300). See also Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127); Sworn affidavit from Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751); Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

of at least the following 29 agreements<sup>302</sup> signed between the Argentine Government and: (i) the *Asociación de Fábricas Argentinas Terminales de Electrónica* (Afarte) and the *Cámara Argentina de Industrias Electrónicas, Electromecánicas y Luminotécnicas* (Cadieel)<sup>303</sup>; (ii) *General Motors*<sup>304</sup>; (iii) *AGCO*<sup>305</sup>; (iv) *Renault Trucks Argentina*<sup>306</sup>; (v) *Claas*<sup>307</sup>; (vi) *Mercedes Benz*<sup>308</sup>; (vii) *Volkswagen*<sup>309</sup>; (viii) *Alfa Romeo*<sup>310</sup>; (ix) *Porsche*<sup>311</sup>; (x) *Peugeot Citroën*<sup>312</sup>; (xi) *Fiat*<sup>313</sup>;

<sup>302</sup> As noted above, the Panel made repeated requests to the parties for copies of these agreements. See paras. 6.44-6.51 above. (The 29 agreements identified correspond to the 30 agreements the Panel asked Argentina to provide a copy of. See Panel question Nos. 63 to 93.)

<sup>303</sup> News item: Ministry of Industry, Giorgi announced all audio and air conditioning equipment manufactured in Tierra del Fuego will have more domestic components, 22 March 2013 (Exhibit JE-564/EU-250).

<sup>304</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95); *Prensa Argentina*, GM's investments in Argentina will help it reverse its trade deficit, 15 June 2011 (Exhibit JE-236); Office of the President, Announcement of New Investments in GM: Speech by the President, 15 November 2011 (Exhibit JE-244); and *Prensa Argentina*, General Motors committed to even out its trade balance in 2012, 2 May 2011 (Exhibit JE-400/EU-86).

<sup>305</sup> News item: *Prensa Argentina*, USD 140 million will be invested in producing tractors, 21 October 2011 (Exhibit JE-577/EU-263).

<sup>306</sup> News items: *Prensa Argentina*, Renault Trucks announced to the government it will increase its exports, 7 February 2012 (Exhibit JE-103); and Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012 (Exhibit JE-590/EU-276).

<sup>307</sup> News items: *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209); and Office of the President, Agricultural Machinery Company Claas agreed with the Government on a plan with trade balance, 1 April 2011 (Exhibit JE-128).

<sup>308</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker pledges to balance its trade, 6 April 2011 (Exhibit JE-5); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Economy, industry and trade sign an agreement with Mercedes Benz to even out its trade balance, 7 April 2011 (Exhibit JE-84); *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95); and Ministry of Economy and Public Finance, Boudou, Giorgi and Moreno signed an agreement with Mercedes Benz, 7 April 2011 (Exhibit JE-613/EU-299).

<sup>309</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker pledges to balance its trade, 6 April 2011 (Exhibit JE-5); *Prensa Argentina*, Boudou spoke about the success of the import substitution policy, 18 March 2011 (Exhibit JE-80); *Prensa Argentina*, Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012 (Exhibit JE-81); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95).

<sup>310</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Five car producers have agreed to



(xii) *Hyundai*<sup>314</sup>; (xiii) *Ford*<sup>315</sup>; (xiv) *KIA*<sup>316</sup>; (xv) *Nissan*<sup>317</sup>; (xvi) *Renault*<sup>318</sup>; (xvii) *Chery*<sup>319</sup>; (xviii) *Alfacar (Mitsubishi)*<sup>320</sup>; (xix) *Ditecar (Volvo, Jaguar and Land Rover)*<sup>321</sup>; (xx) *Volvo*

contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95).

<sup>311</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker pledges to balance its trade, 6 April 2011 (Exhibit JE-5); *Prensa Argentina*, Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012 (Exhibit JE-81); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95).

<sup>312</sup> News items: Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95); and *Prensa Argentina*, Peugeot agrees to balance its trade, 17 November 2011 (Exhibit JE-245).

<sup>313</sup> News items: *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95); and Ministry of Industry, Fiat Group will develop local suppliers for the production of agricultural equipment and engines, 26 February 2012 (Exhibit JE-201).

<sup>314</sup> News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>315</sup> News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95).

<sup>316</sup> News items: *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

*Trucks*<sup>322</sup>; (xxi) *Tatsa*<sup>323</sup>; (xxii) *Indumotora Argentina (Subaru)*<sup>324</sup>; (xxiii) *BMW*<sup>325</sup>; (xxiv) *Pirelli*<sup>326</sup>; (xxv) *Thermodyne Vial*<sup>327</sup>; (xxvi) supermarkets<sup>328</sup>; (xxvii) the *Cámara Argentina de Publicaciones*<sup>329</sup>; (xxviii) the *Cámara Argentina del Libro*<sup>330</sup>; and, (xxix) representatives of the automobile and autoparts industry<sup>331</sup>.

6.157. Neither the requirement on economic operators to undertake these commitments, nor the details of the specific trade-related commitments, are explicitly stipulated in any Argentine law, regulation or administrative act. According to the evidence on record, the Argentine Government informs economic operators individually of the specific commitment or commitments it should undertake, depending on the particular circumstances of the respective operator.<sup>332</sup>

<sup>317</sup> News items: *Prensa Argentina*, Nissan agreed to a new trade balancing plan, 19 October 2011 (Exhibit JE-89); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>318</sup> News items: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>319</sup> News items: *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95).

<sup>320</sup> News items: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>321</sup> News items: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>322</sup> News item: *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209).

<sup>323</sup> Ibid.

<sup>324</sup> News items: *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); and *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>325</sup> News item: *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92).

<sup>326</sup> Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110).

<sup>327</sup> News item: *Prensa Argentina*, Automaker Thermodyne Vial agrees to increase exports, 1 February 2012 (Exhibit JE-102).

<sup>328</sup> News items: Secretariat of Domestic Trade, Press notes from Walmart and Vea-Cencosud, February 2013 (Exhibit JE-499/EU-185); *Prensa Argentina*, Zero tolerance on price increases, 21 February 2013 (Exhibit JE-501/EU-187); *La Voz*, Uruguayan companies concerned about K measure, 16 May 2010 (Exhibit JE-442/EU-128).

<sup>329</sup> News item: *Prensa Argentina*, Publishing Companies Agree to Restore Trade Balance, 31 October 2011 (Exhibit JE-129).

<sup>330</sup> News item: *Prensa Argentina*, Giorgi and Moreno signed an agreement with booksellers to offset imports, 11 November 2011 (Exhibit JE-133).

<sup>331</sup> News item: Ministry of Industry, Automakers agree to accelerate import substitution, 22 November 2012 (Exhibit JE-530/EU-216).

<sup>332</sup> News items: *La Nación*, Companies complain about new import rules, 18 July 2011 (Exhibit JE-374/EU-60); *infoalimentacion.com*, Moreno: with the magnifying glass on imported food, 13 May 2010 (Exhibit JE-448/EU-134); *La Nación*, The Government wants to restrain the importation of foodstuff, 6 May 2010 (Exhibit JE-453/EU-139); *La Nación*, Moreno again restrains the entry of imported goods, 17 January 2011 (Exhibit JE-455/EU-141); and *BAE Argentina*, At Moreno's request, supermarkets paralysed all external purchases, 16 November 2011 (Exhibit JE-459/EU-145). See also Sworn affidavit from

6.158. The TRRs cover a broad range of economic sectors and economic operators. The evidence shows that such commitments have been required from producers and/or importers of, *inter alia*, foodstuffs, automobiles, motorcycles, mining equipment, electronic and office products, agricultural machinery, medicines, publications, and clothing. These sectors correspond to at least six out of the 11 industrial sectors (value chains) individually addressed in Argentina's Industrial Strategic Plan 2020 (*Plan Estratégico Industrial 2020*, PEI 2020), published in 2011.<sup>333</sup>

6.159. As will be discussed below, evidence also shows that, irrespective of size and domicile, a variety of economic operators have been affected by these requirements, and that the requirements are not equally imposed on all economic operators or importers.

6.160. The Argentine Government has stated that it monitors the implementation of the commitments undertaken by economic operators.<sup>334</sup>

6.161. The TRRs imposed by the Argentine Government seem in line with three of the five economic objectives or "macroeconomic guidelines" set out in PEI 2020: (a) protection of the domestic market and import substitution; (b) increase of exports; and, (c) promotion of productive investment.<sup>335</sup>

6.162. Within the context of the objectives laid out in PEI 2020, the Argentine Government has proclaimed a policy of "managed trade" (*comercio administrado*).<sup>336</sup> Elements of this policy seem to have been part of the productive model developed in Argentina since 2003.<sup>337</sup> In late 2013, the

Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751); Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

<sup>333</sup> Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749). The 11 industrial sectors are: (a) foodstuffs; (b) automobile and autoparts; (c) capital goods; (d) leather, shoes and other leather goods; (e) agricultural machinery; (f) construction material; (g) medicines; (h) forestry industry; (i) chemical and petrochemical; (j) software; and, (k) textiles. Ibid. pp. 42-43. PEI 2020 explains that these 11 industrial sectors were selected for the following reasons: (a) historic weight in the industrial gross product; (b) competitive natural resources; (c) linkages with suppliers and buyers; (d) technology diffusion; (e) domestic market; (f) import substitution and export potential. Ibid., p. 41.

<sup>334</sup> News items: Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110); *Debate*, Interview with the Secretary of Domestic Trade, 27 September 2012 (Exhibit JE-8); *Prensa Argentina*, Publishing Companies Agree to Restore Trade Balance, 31 October 2011 (Exhibit JE-129); *Prensa Argentina*, Giorgi and Moreno signed an agreement with booksellers to offset imports, 11 November 2011 (Exhibit JE-133); and *Argentina Autoblog*, Suzuki will assemble motorcycles in the country to avoid import restrictions, 26 April 2011 (Exhibit JE-573/EU-259). In one official press release, the Government refers to the monitoring of "the current productive activity of the firm, progress on the degree of integration of local content and the relationship with local suppliers". The press release does not specifically indicate that the monitoring refers to TRRs accepted by the company. See Ministry of Industry, Giorgi analyzed Ford Argentina's production growth with the company's executives, 15 March 2013 (Exhibit JE-300). However, in light of the available evidence, including the fact that this company had signed in May 2011 an agreement with the same Argentine officials to export more, import less, and invest in its local plants – See News item: *Prensa Argentina*, Ford will export more and import less, 23 May 2011 (Exhibit JE-95) – it is reasonable to infer that the subsequent monitoring is related to the TRRs.

<sup>335</sup> Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749), pp. 33-35.

<sup>336</sup> News items: Ministry of Industry, Débora Giorgi inaugurated two industrial plants and supervised the development of a third, 24 January 2012 (Exhibit JE-320/EU-6); Ministry of Industry, Giorgi: "We will not leave the internal market in the hands of unfair competition", 16 February 2011 (Exhibit JE-323/EU-9); Ministry of Industry, List of products subject to non-automatic licences is increased, 15 February 2011 (Exhibits JE-7 and JE-322/EU-8); Ministry of Industry, Giorgi: "This Administration believes in and is implementing trade management", 25 February 2011 (Exhibit JE-9); and Ministry of Industry, Giorgi: "Whoever integrates national parts faster will gain most", 22 March 2012 (Exhibit JE-203). See also, Office of the President, Speech by the President, in the inauguration of the second phase of construction works of the sports center in Villa Adelina, 16 October 2008 (Exhibit JE-315/EU-1); Office of the President, Speech by the President, in the presentation ceremony of non-refundable contributions to industrial parks, 14 December 2011 (Exhibits JE-316/EU-2 and EU-5); Office of the President, Speech by the President, in the first declaration of the Gas Plus project (Exhibit JE-317/EU-3); Office of the President, Speech by the President, at the Municipal Center of Viedma, province of Río Negro (Exhibit JE-318/EU-4); News item: Ministry of Industry, Giorgi: "We have an economy twice as open as in the 90s", 30 March 2012 (Exhibit JE-321/EU-7); and News item: *Prensa Argentina*, Giorgi inaugurated two plants in General Rodríguez, 24 January 2012 (Exhibit JE-582/EU-268).

<sup>337</sup> News item: Ministry of Industry, Ministry of Industry, List of products subject to non-automatic licences is increased, 15 February 2011, 15 February 2011 (Exhibits JE-7 and JE-322/EU-8); and Office of the President, Announcement of New Investments in GM: Speech by the President, 15 November 2011

Secretary of Domestic Trade indicated in an official press release that this policy of "managed trade" would continue to be applied as per instructions from the President of Argentina.<sup>338</sup>

6.163. There is evidence on the record that the DJAI is another tool of Argentina's "managed trade" policy and one of the mechanisms used to enforce the TRRs measure. As explained below<sup>339</sup>, the SCI requires that economic operators submit the company's estimates of imports and exports as part of the conditions to lift observations on DJAIs with "observed" status. In some cases the SCI also requires prospective importers to commit to export<sup>340</sup> or to comply with other TRRs.<sup>341</sup>

6.164. Before addressing how the TRRs operate, it is worth recalling that, despite several requests from the Panel<sup>342</sup>, as explained above<sup>343</sup>, neither the complainants nor the respondent have provided copies of the agreements or the letters addressed by economic operators to the Argentine Government, which presumably reflect the trade-related commitments.<sup>344</sup> Nevertheless, Argentina has indicated it "has not denied or called into question the existence" of the 30 agreements that were listed by the Panel in its written questions.<sup>345</sup>

6.165. In any event, the Panel has received evidence of the existence, the nature and the characteristics of the TRRs imposed by the Argentine Government. As noted in a previous section<sup>346</sup>, this evidence includes, *inter alia*: copies of domestic laws, regulations and policy documents; communications addressed to Argentine officials by private companies; statements by Argentine officials and notes posted on government websites; articles in newspapers and magazines, mostly published in Argentina; statements by company officials; data from industry surveys; and reports prepared by market intelligence entities. As explained above, the Panel examined all of the evidence in a holistic manner and based on the totality of the facts has determined that Argentina imposes a combination of TRRs on importers as a condition to import or receive benefits.<sup>347</sup> In particular, having examined the variety of, and extensive, evidence on record, and having drawn inferences from the refusal of Argentina to provide evidence in its possession which it has not denied, the Panel has concluded that, at least since 2009, the Argentine Government has required from certain importers and other economic operators that they undertake one or more of the five TRRs.<sup>348</sup> Further, the following sections discuss evidence of specific instances of application of each of the individual TRRs.

#### 6.2.2.1.1 The one-to-one requirement

6.166. Economic operators have been required to compensate imports annually with exports of at least the same value, thereby achieving a trade balance, as a condition to import.<sup>349</sup> In some

(Exhibit JE-244). See also Argentina's first written submission, para. 46; Argentina's opening statement at the first meeting of the Panel, para. 8.

<sup>338</sup> News item: *Prensa Argentina*, Moreno confirmed that policy of trade administration will continue as per presidential instructions, 3 November 2013 (Exhibit JE-759).

<sup>339</sup> See paras. 6.393 and 6.395 below.

<sup>340</sup> News items: *BAE Argentina*, The Government would release more import permits, 20 March 2013 (Exhibit JE-371/EU-57); *Clément Comercio Exterior*, A tangle of customs regulations; tips for exporters and importers, 9 August 2012 (Exhibit JE-387/EU-73); and *PharmaBIZ Sudamérica*, Moreno: Obstacles at customs and Neira in CAEME, 27 April 2011 (Exhibits JE-695/EU-381).

<sup>341</sup> Government of Japan, Ministry of Economy, Trade and Industry, Summary of Survey Results (Rev), 4 December 2013 (Exhibit JE-312-2).

<sup>342</sup> The Panel requested the parties to provide copies of the agreements in its list of questions after the first and the second substantive meetings, as well as in its communication to the parties dated 6 November 2013. See Panel question Nos. 16 and 93, Communication from the Panel, 6 November 2013.

<sup>343</sup> See paras. 6.44-6.51 above.

<sup>344</sup> Among the exceptions are: (a) the Letter from Company X to the Secretary of Domestic Trade, 3 April 2012 (Exhibit JE-304); (b) the E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012 (Exhibit JE-305); and, (c) the Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127).

<sup>345</sup> Argentina's response to Panel question Nos. 63-92, para. 20.

<sup>346</sup> See para. 6.64 above.

<sup>347</sup> Para.6.119 above. See also section 6.2.2.2 below.

<sup>348</sup> Para.6.155 above. See also section 6.2.2.2 below.

<sup>349</sup> Exhibits JE-306/JE-751 and JE-307/JE-752 reflect the difficulties experienced by two companies that committed to comply with TRRs in order to have their DJAIs approved. Sworn affidavit from Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751); Sworn affidavit from officer of Company X,

cases, economic operators committed to achieving an export surplus.<sup>350</sup> The details about the one-to-one requirements applicable to specific economic operators are usually contained in agreements, and/or letters that individual economic operators subscribe or submit to the Argentine Government.<sup>351</sup>

6.167. The evidence on record shows that there are three main ways for economic operators to increase exports so as to comply with the one-to-one requirement.<sup>352</sup> First, an economic operator may use an exporter as an intermediary to sell products to a buyer in a third country (exportation "*por cuenta y orden*"). Second, an economic operator may directly export Argentine products that the economic operator (or any other company) produces. And third, the economic operator may conclude an agreement with an exporter so that the exporter's transactions may be considered as the economic operator's own transactions.<sup>353</sup>

6.168. Any of these three options may result in additional costs for economic operators because: (a) the requirement may force economic operators to undertake activities outside of their normal business; and (b) exporters willing to provide these services charge fees to the economic operators in need of achieving a trade balance. Evidence shows that these fees range between 5% and 15% of the total value of the export operation.<sup>354</sup>

6.169. Examples on the record of companies operating in sectors outside their normal business activities as a result of the imposition of a one-to-one requirement are automobile manufacturers, such as *Nissan*, exporting soy flour, soy oil and biodiesel from Argentina<sup>355</sup>; *Alfacar* (importer of *Mitsubishi* automobiles), exporting animal feed, peanuts and premium mineral water from Argentina<sup>356</sup>; *Hyundai*, exporting peanuts, wine, biodiesel and soy flour from Argentina<sup>357</sup>; and *Indumotora* (importer of *Subaru*), exporting poultry feed from Argentina.<sup>358</sup> Evidence with respect to other companies similarly operating in sectors outside their normal business activities, as a result of the imposition of a one-to-one requirement, include sporting equipment producer *Nike*, exporting furniture from Argentina for its stores in Latin America<sup>359</sup>; *Juki* (importer of *Kawasaki*

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10 April 2013 (Exhibits JE-307 and JE-752). See also, Lojack Corp Earnings Conference Call (Q3 2012), 1 November 2012 (Exhibit JE-172); AGCO Corp Earnings Conference Call (Q2 2011), 28 July 2011 (Exhibit JE-799); and AGCO at Goldman Sachs Industrials Conference, 14 November 2012 (Exhibit JE-803).

<sup>350</sup> This is the case of *Volkswagen*, *Mercedes Benz*, *Peugeot-Citroen*, *Casa Milano-Alfa Romeo*, *General Motors*, *Fiat*, *Chery*, *Ford*, *Hyundai*, *Kia*, and *Renault*. See para. 6.171 below.

<sup>351</sup> News items: *Prensa Argentina*, Automakers will import as much as they export, 11 March 2011 (Exhibit JE-396/EU-82); and *Prensa Argentina*, An automobile importer may compensate by exporting, 25 March 2011 (Exhibits JE-1 and JE-398/EU-84). See also, News item: *La Nación*, Companies complain about new import rules, 18 July 2011 (Exhibit JE-374/EU-60); News item: *Tiempo Argentino*, Official ultimatum to automakers without a plan, 11 April 2011 (Exhibit JE-397/EU-83); News item: *Diario de Cuyo*, Good news: exports increase, 16 July 2012 (Exhibit JE-439/EU-125); Sworn affidavit from Vice President of Company X, 12 July 2012 (Exhibits JE-306 and JE-751); Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

<sup>352</sup> Report: *Clément Comercio Exterior*, Alternatives for exporting, 17 December 2012 (Exhibit JE-379/EU-65). See also Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755), pp. 4-5; and News item: *BAE Argentina*, Importers finance and subsidize exports to offset their balances, 7 August 2012 (Exhibit JE-64).

<sup>353</sup> Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

<sup>354</sup> News item: *Cronista.com*, A black market of foreign trade permits arises due to import controls, 28 February 2012 (Exhibit JE-381/EU-67); News item: *iProfesional.com*, The "Exportación blue" business is booming, 16 April 2012, (Exhibit JE-383/EU-69); Sworn affidavit from officer of Company X, 10 April 2013 (Exhibits JE-307 and JE-752).

<sup>355</sup> News item: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>356</sup> *Ibid.*

<sup>357</sup> News item: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86).

<sup>358</sup> News item: *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91).

<sup>359</sup> News item: *Prensa Argentina*, Nike announces USD 5 million investment to increase local production, 5 April 2011 (Exhibit JE-159).

and *Mondial* motorcycles), exporting concentrated white grape juice from Argentina<sup>360</sup>; and tyre producer *Pirelli*, exporting honey from Argentina.<sup>361</sup>

6.170. Evidence available shows that the Argentine Government has imposed a one-to-one requirement on the following sectors: automobiles, trucks, motorcycles, cultural products, tyres, agricultural machinery, clothing, toys, pork meat products, pharmaceutical products and electronic products. The following paragraphs provide more information on the operation of the one-to-one requirement as it affects the automotive, truck and motorcycles, and cultural products sectors.

6.171. *Automotive sector.* The automotive sector is the economic sector for which there is the earliest evidence showing the imposition of a one-to-one requirement. Since March 2010, the Argentine Government has signed agreements with car manufacturers and importers whereby they commit to achieve trade balance.<sup>362</sup> In March 2011, the Argentine Government announced to companies in the sector that their imports would be limited to the volume of their exports.<sup>363</sup> Between March 2011 and October 2011, 17 car importers and/or manufacturers concluded agreements with the Argentine Government in which they committed to even out their trade deficits.<sup>364</sup> At least 11 of these 17 importers and manufacturers also committed to achieve an export surplus: *Volkswagen*<sup>365</sup>, *Mercedes Benz*<sup>366</sup>, *Peugeot-Citroen*<sup>367</sup>, *Casa Milano-Alfa Romeo*<sup>368</sup>,

<sup>360</sup> News items: *Argentina Autoblog*, What did Juki Argentina dispatch to Ukraine and the United States?, 27 April 2012 (Exhibit JE-105); *Ámbito Financiero*, Juki exports wine, 23 April 2012 (Exhibit JE-106); *La Nación*, On two wheels, 26 May 2012 (Exhibit JE-107); *La Moto*, Faced with the crisis, Juki exports wine, 2 May 2012 (Exhibit JE-108); and *MotoMundo*, Juki exports wine to Ukraine, May 2012 (Exhibit JE-413/EU-99), p. 5.

<sup>361</sup> Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110).

<sup>362</sup> News items: *Prensa Argentina*, Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012 (Exhibit JE-81); and *Prensa Argentina*, Automakers will import as much as they export, 11 March 2011 (Exhibit JE-396/EU-82).

<sup>363</sup> The Minister of Industry and the Secretary of Domestic Trade made this announcement in a meeting with representatives of Cidua (Chamber of Car Importers and Authorized Dealers –*Cámara de Importadores y Distribuidores Oficiales de Automotores*), Mercedes Benz, Renault, BMW, Volkswagen, Fiat, Hyundai, Alfacar (importer of Mitsubishi), Chrysler, Isuzu, Chery, Kia, Centro Milano (importer of Alfa Romeo), Ditecar (importer of Jaguar, Volvo and Land Rover) and Indumotora Argentina (importer of Subaru). News item: *Prensa Argentina*, Automakers will import as much as they export, 11 March 2011 (Exhibit JE-396/EU-82). See also News items: *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *La Nación*, BMW will export rice so that its cars can enter the country, 13 October 2011 (Exhibit JE-255); *iProfesional.com*, BMW suspended the shipment of cars to Argentina because of official obstacles, 17 April 2011 (Exhibit JE-401/EU-87); and *La Nación*, Sales of deluxe cars stop because of import obstacles, 5 December 2011 (Exhibit JE-405/EU-91).

<sup>364</sup> Ford, Chery, General Motors, Volkswagen, Mercedes Benz, Porsche, Fiat, PSA Peugeot Citroën, Alfa Romeo, Hyundai, Renault, BMW and the importers Alfacar (Mitsubishi), Ditecar (Volvo, Jaguar y Land Rover), Nissan, Kia and Indumotora Argentina (Subaru). See, News item: *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92). See also News items: *Prensa Argentina*, Boudou spoke about the success of the import substitution policy, 18 March 2011 (Exhibit JE-80); *Prensa Argentina*, General Motors committed to even out its trade balance in 2012, 2 May 2011 (Exhibit JE-400/EU-86); Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Scania informed the President it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-101); *Prensa Argentina*, Automaker Thermodyne Vial agrees to increase exports, 1 February 2012 (Exhibit JE-102); *Prensa Argentina*, Electrolux executives announced to President that they will begin exporting small appliances to Brazil, 25 August 2011 (Exhibit JE-145); Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202); Ministry of Industry, Giorgi: "Whoever integrates national parts faster will gain most", 22 March 2012 (Exhibit JE-203); *Prensa Argentina*, GM's investments in Argentina will help it reverse its trade deficit, 15 June 2011 (Exhibit JE-236); and Ministry of Industry, Argentina substituted imports amounting to USD 4 billion in the first semester of the year, 23 August 2011 (Exhibit JE-252).

<sup>365</sup> News items: *Prensa Argentina*, Boudou spoke about the success of the import substitution policy, 18 March 2011 (Exhibit JE-80); *Prensa Argentina*, General Motors committed to even out its trade balance in 2012, 2 May 2011 (Exhibit JE-400/EU-86); *Prensa Argentina*, Fiat: another automaker that committed to even out its trade balance, 5 May 2011 (Exhibit JE-528/EU-214); and Ministry of Industry, Giorgi, Boudou, and Moreno Sign General Motors export-import plan, 2 May 2011 (Exhibit JE-4).



*General Motors*<sup>369</sup>, *Fiat*<sup>370</sup>, *Chery*<sup>371</sup>, *Ford*<sup>372</sup>, *Hyundai*<sup>373</sup>, *Kia*<sup>374</sup>, and *Renault*.<sup>375</sup> In order to achieve these objectives, importers and manufacturers committed to increase exports, including exports not related to the automotive sector.<sup>376</sup> Some importers and manufacturers also committed to make or increase investments in production facilities<sup>377</sup>, increase the level of local content of their products<sup>378</sup> or make irrevocable capital contributions to the industry.<sup>379</sup>

6.172. The Argentine Government gives economic operators a specified period, such as one year, to achieve a trade balance.<sup>380</sup> If the level of exports committed to by the economic operator is not ultimately achieved, the economic operator can either limit its imports or, alternatively, make an irrevocable investment in the local operations of the firm, in the form of a contribution to its capital, to compensate for the value of the imports<sup>381</sup> (this has been described by the complainants as the investment requirement and will be discussed below).<sup>382</sup>

<sup>366</sup> News items: *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, General Motors committed to even out its trade balance in 2012, 2 May 2011 (Exhibit JE-400/EU-86).

<sup>367</sup> News item: *Prensa Argentina*, Peugeot agrees to balance its trade, 17 November 2011 (Exhibit JE-245).

<sup>368</sup> News item: *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85).

<sup>369</sup> News item: *Prensa Argentina*, General Motors committed to even out its trade balance in 2012, 2 May 2011 (Exhibit JE-400/EU-86).

<sup>370</sup> News item: *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214).

<sup>371</sup> News item: *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82).

<sup>372</sup> News item: Ministry of Industry, Ford presented its new pickup model, under the USD 250 million investment plan submitted to the Ministry of Industry, 3 July 2012 (Exhibit JE-277).

<sup>373</sup> News item: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86).

<sup>374</sup> News item: *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87).

<sup>375</sup> News item: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>376</sup> Exports of soy flour, soy oil and biodiesel by Nissan (Exhibit JE-90); animal feed, peanuts and water by Alfacar (Exhibit JE-90), peanuts, wine, biodiesel and soy flour by Hyundai (Exhibit JE-86) and poultry feed by Indumotora (Exhibit JE-91). See para. 6.169 above.

<sup>377</sup> Renault, General Motors and Fiat. See, News items: *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); and *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>378</sup> Renault, Fiat, and Ford. See, News items from *Prensa Argentina*: Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); and Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>379</sup> Renault, Nissan, Ditecar (Volvo, Jaguar, Land Rover), Hyundai, Indumotora (Subaru) and Chery (if projected level of exports is not achieved). News items: *Prensa Argentina*, Automaker Chery agreed with the Government to revert its trade balance in 2012, 19 May 2011 (Exhibit JE-82); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); and *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91).

<sup>380</sup> Exports during this grace period given by Argentina count in the calculations with a view to achieve trade balance. See, News items from *Prensa Argentina*: An automobile importer may compensate by exporting, 25 March 2011 (Exhibits JE-1 and JE-398/EU-84); Porsche's trading company agreed to compensate imports with exports of wine and oil, 30 March 2012 (Exhibit JE-81); and Automaker pledges to balance its trade, 6 April 2011 (Exhibit JE-5).

<sup>381</sup> News items from *Prensa Argentina*: An automobile importer may compensate by exporting, 25 March 2011 (Exhibits JE-1 and JE-398/EU-84); Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85); and Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86).

<sup>382</sup> See section 6.2.2.1.4 below.

6.173. *Truck and motorcycle sectors.* In the truck sector, *Scania*<sup>383</sup>, *Thermodyne Vial* (importer of *Mack* trucks)<sup>384</sup>, and *Renault Trucks*<sup>385</sup> also undertook commitments with the Argentine Government to achieving a trade balance or an export surplus. In the motorcycle sector, *Harley Davidson*<sup>386</sup>, *Juki* (which represents *Kawasaki* and *Mondial*)<sup>387</sup>, *Suzuki*<sup>388</sup>, *Motomel*<sup>389</sup>, and *Zanella*<sup>390</sup> all committed to even out their trade balance as well. Similar to what happened in the automotive sector, export commitments were often made in sectors unrelated to the core business activities of these companies.<sup>391</sup>

6.174. *Cultural products sector.* Producers and importers of publications<sup>392</sup>, books<sup>393</sup>, and audiovisual products<sup>394</sup> also committed to achieving a trade balance. In the case of books and publications, the Argentine Chamber of Books (*Cámara Argentina del Libro*) and the Argentine Chamber of Publications (*Cámara Argentina de Publicaciones*) signed agreements with the Argentine Government in the last quarter of 2011 whereby they committed to even out their trade balance by the end of 2012.<sup>395</sup> In order to do so, members of these two Chambers committed to increase domestic printing and exports of books and publications from Argentina.<sup>396</sup>

6.175. In mid-September 2011 (some weeks before the agreements between the Argentine Government and the Argentine Chamber of Books and the Argentine Chamber of Publications were signed), local newspapers reported that over a million imported books were detained at Argentine

<sup>383</sup> News item: Office of the President, Scania informed the President that it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-411/EU-97).

<sup>384</sup> News item: *Prensa Argentina*, Automaker Thermodyne Vial agrees to increase exports, 1 February 2012 (Exhibit JE-102).

<sup>385</sup> News items: Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012 (Exhibit JE-590/EU-276); and *Prensa Argentina*, Renault Trucks announced to the government it will increase its exports, 7 February 2012 (Exhibit JE-103).

<sup>386</sup> News item: *Argentina Autoblog*, Valued in Pesos and exporting wines, Harley-Davidson makes a come back, 29 June 2012 (Exhibit JE-104).

<sup>387</sup> News items: *Argentina Autoblog*, What did Juki Argentina dispatch to Ukraine and the United States?, 27 April 2012 (Exhibit JE-105); *La Moto*, Faced with the crisis, Juki exports wine, 2 May 2012 (Exhibit JE-108); and *MotoMundo*, Juki exports wine to Ukraine, May 2012 (Exhibit JE-413/EU-99).

<sup>388</sup> News items: *tiempomotor.com*, Suzuki Motos completed its first phase of grape-must exports, 1 June 2012 (Exhibit JE-113); *Ámbito Financiero*, Suzuki Motos Argentina Exports, 31 May 2012 (Exhibit JE-110); and *La Moto*, Suzuki closed the first phase of exports, 31 May 2012 (Exhibit JE-111); News item: *motomax.com.ar*, Suzuki Motos exports from Argentina, 1 June 2012 (Exhibit JE-112).

<sup>389</sup> News items: *iProfesional.com*, Motomel will construct a winery and a grape-must plant to compensate its trade balance, 8 June 2012 (Exhibit JE-114); *La Nación*, Motorcycle factory will have to export wine and grape-must to be able to import supplies, 11 June 2012 (Exhibit JE-115); *La Voz*, More motorcycle factories export wine, 9 June 2012 (Exhibit JE-117); *tiempomotor.com*, Motomel exports wine and grape must in order to import motoparts, 10 June 2012 (Exhibit JE-119); and *La Moto*, Motomel continues exporting, 11 June 2012 (Exhibit JE-121).

<sup>390</sup> News items: *enretail.com*, Zanella has complied with all demands from the National Government, 2 October 2012 (Exhibit JE-122); and *Argentina Autoblog*, Zanella: "We do not know why there is different treatment", 5 March 2012 (Exhibit JE-123).

<sup>391</sup> News items: *La Nación*, Moreno mixes water and oil, 6 May 2012 (Exhibit JE-149); and *MotoMundo*, Juki exports wine to Ukraine, May 2012 (Exhibit JE-413/EU-99).

<sup>392</sup> News items: *Prensa Argentina*, Publishing Companies Agree to Restore Trade Balance, 31 October 2011 (Exhibit JE-129); *Los Andes*, Booksellers sign an agreement to release books blocked at customs, 12 November 2011 (Exhibits JE-414/EU-100); and *iProfesional.com*, In an unprecedented drive, Moreno blocked entry of Bibles into Argentina, 22 November 2011 (Exhibits JE-419/EU-105).

<sup>393</sup> News items: *Prensa Argentina*, Giorgi and Moreno signed an agreement with booksellers to offset imports, 11 November 2011 (Exhibit JE-133); *Los Andes*, Booksellers sign an agreement to release books blocked at customs, 12 November 2011 (Exhibits JE-414/EU-100); and *iProfesional.com*, In an unprecedented drive, Moreno blocked entry of Bibles into Argentina, 22 November 2011 (Exhibits JE-419/EU-105); *Cámara Argentina del Libro*, Agreement with the Secretariat of Domestic Trade (Exhibits JE-664/EU-350).

<sup>394</sup> Office of the President, Speech by the President, Cristina Fernández, in the closing ceremony of the business round "Argentina Exporta Audiovisual", 6 December 2011 Exhibit JE-137.

<sup>395</sup> News items: *Prensa Argentina*, Publishing Companies Agree to Restore Trade Balance, 31 October 2011 (Exhibit JE-129); *Prensa Argentina*, Giorgi and Moreno signed an agreement with booksellers to offset imports, 11 November 2011 (Exhibit JE-133); and *Cámara Argentina del Libro*, Agreement with the Secretariat of Domestic Trade (Exhibits JE-664/EU-350).

<sup>396</sup> News items: *Prensa Argentina*, Giorgi and Moreno signed an agreement with booksellers to offset imports, 11 November 2011 (Exhibit JE-133); *Los Andes*, Booksellers sign an agreement to release books blocked at customs, 12 November 2011 (Exhibits JE-414/EU-100); and *Cámara Argentina del Libro*, Agreement with the Secretariat of Domestic Trade (Exhibits JE-664/EU-350).

customs.<sup>397</sup> According to articles published in the Argentine press, the commitment to achieve a trade balance, contained in the agreements with the Argentine Government signed by the book and publication chambers, was a condition for releasing these books detained at customs.<sup>398</sup>

6.176. *Other sectors.* Other sectors in which economic operators undertook one-to-one commitments are tyres<sup>399</sup>, agricultural machinery<sup>400</sup>, clothing<sup>401</sup>, toys<sup>402</sup>, pharmaceutical<sup>403</sup> and electronic products.<sup>404</sup> As a result, some companies operating in these sectors have committed to start exporting Argentine products or increase such exports.<sup>405</sup>

6.177. The evidence cited above leads the Panel to conclude that the commitments relating to the one-to-one requirement have not been undertaken by economic operators on their own initiative, but have been accepted in order to ensure their right to import or to continue importing certain goods into Argentina.

#### 6.2.2.1.2 The requirement to limit the volume or value of imports

##### 6.2.2.1.2.1 Scope of the requirement

6.178. Before describing in detail this requirement, the Panel will examine the scope of the requirement, given the different interpretations provided by the complainants in their submissions.

6.179. In their panel requests, the complainants listed among the five actions that Argentina allegedly requires from economic operators in order to attain the objectives of elimination of trade

<sup>397</sup> News items: *Clarín*, Argentina retained a million books, 26 September 2011 (Exhibit JE-259); and *Clarín*, Books to be released in the next 48 hours, 1 November 2011 (Exhibit JE-131).

<sup>398</sup> News items: *Página 12*, 80% of books are imported, 26 October 2011 (Exhibit JE-665/EU-351); *BAE Argentina*, Publishing houses seek to compensate their trade balance to release books, 21 October 2011 (Exhibit JE-670/EU-356); *Clarín*, Books to be released in the next 48 hours, 1 November 2011 (Exhibit JE-131); *Club de Traductores Literarios de Buenos Aires*, More about the books blocked at Customs, 2 December 2011 (Exhibit JE-415/EU-101); and *El Diario*, Entry of foreign books and magazines remains blocked, 29 September 2011 (Exhibits JE-417/EU-103).

<sup>399</sup> Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110).

<sup>400</sup> News items: Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225); *Prensa Argentina*, USD 140 million will be invested in producing tractors, 21 October 2011 (Exhibit JE-577/EU-263); Ministry of Industry, Giorgi: "Whoever integrates national parts faster will gain most", 22 March 2012 (Exhibit JE-203); and Office of the President, Agricultural Machinery Company Claas agreed with the Government on a plan with trade balance, 1 April 2011 (Exhibit JE-128).

<sup>401</sup> News items: *Prensa Argentina*, The Government moves forward with measures to protect the textile industry from unfair competition, 31 January 2012 (Exhibit JE-276); *Cronista.com*, Adidas sells furniture to other countries' stores to comply with Moreno's orders, 22 July 2011 (Exhibit JE-160); *El Cronista*, Zegna Reopens and Helps to Export Wool, 2 August 2012 (Exhibit JE-158).

<sup>402</sup> News items: *Perfil*, Imported clothes, toys, and electronic products will be in short supply, 17 July 2011 (Exhibit JE-6), pp. 22-23; *infobae.com*, After several months, Moreno allows the importation of Barbie dolls, 18 August 2011 (Exhibit JE-164); *La Nación*, Moreno increases flexibility for more imported products, 18 August 2011 (Exhibit JE-165); *26 Noticias*, Barbie dolls come back to toy shops thanks to Rasti, 18 August 2011 (Exhibit JE-166); and *iProfesional.com*, Barbie dolls come back in exchange for Rastis, 18 August 2011 (Exhibit JE-167).

<sup>403</sup> News item: Office of the President, In 2020, this country will be able to produce 1.35 billion medication units and generate 40 thousand new jobs in the sector, 10 May 2011 (Exhibit JE-168).

<sup>404</sup> News items: *Prensa Argentina*, Electrolux executives announced to President that they will begin exporting small appliances to Brazil, 25 August 2011 (Exhibit JE-145); *Los Andes*, More multinationals form partnerships with wineries to be able to import, 8 July 2012 (Exhibit JE-435/EU-121); *infobae.com*, Newsan: a factory of the end of the world, 1 March 2013 (Exhibits JE-436/EU-122); *biodiesel.com.ar*, Airoldi puts into operation a biodiesel plant in order to be able to continue importing, 7 March 2012 (Exhibit JE-438/EU-124); *Diario de Cuyo*, Good news: exports increase, 16 July 2012 (Exhibit JE-439/EU-125); and, *Cronista*, Newsan begins to export fish to compensate for imports, 7 March 2012 (Exhibit JE-148).

<sup>405</sup> For instance, the tyre manufacturer Pirelli started to export Argentine honey. See, Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110). For some other examples, see para. 6.169 above.

balance deficits and import substitution, to "limit the volume of imports and/or reduce their price".<sup>406</sup> The complainants have explained the content of this requirement differently.

6.180. The European Union divides the requirement to limit "the volume of imports and/or reduce their price" into two distinct requirements: (a) a requirement to limit the volume of imported products (a so-called "import reduction requirement");<sup>407</sup> and (b) a requirement to freeze or reduce prices of products sold domestically (a so-called "price control requirement").<sup>408</sup> The United States and Japan do not refer to a price control requirement in their submissions.<sup>409</sup> Instead, they assert only the existence of requirements "to limit the volume of imports or – less frequently – to limit the unit price of imports. According to the United States, both of these requirements serve to reduce the overall value of the import transaction".<sup>410</sup>

6.181. In response to a Panel question<sup>411</sup>, the United States indicated that the requirement to reduce the price of imports identified in its panel request and its submissions refers to a reduction in the unit price value of such imports. The United States added that a reduction in either the unit price or the volume of imports might result in a reduction in the total value of imports.<sup>412</sup> In response to a subsequent Panel question, the United States argued that a reduction in the unit price of imports might affect the market price of the products and asserted that "the requirement impacts both imports and market prices".<sup>413</sup> Likewise, Japan asserted that "'the reduction of the price of imports' (...) refers to (a) the unit price of imports, as well as (b) the total value of imports".<sup>414</sup> Japan also alleged that a reduction in either the unit price or the total value of imports could lead to a reduction in the market price of imports.<sup>415</sup>

6.182. Only the European Union has asserted that the requirement to reduce the price of imports identified in its panel request should be interpreted to include a price control requirement, i.e. a commitment from economic operators to freeze or reduce prices of products sold domestically. This interpretation<sup>416</sup> was subsequently confirmed in its responses to the Panel, where the European Union asserted that the term "imports" should be interpreted as "imported products" as a result of a joint reading of the European Union's panel request and its first written submission.<sup>417</sup>

6.183. Argentina affirms that the price control requirement identified by the European Union is different from an alleged requirement to limit "the volume of imports and/or reduce their price". In Argentina's view, by arguing the existence of a price control requirement, the European Union is attempting to rewrite the terms of its panel request in order to make it conform to the evidence it has submitted to the Panel, which only refers to a purported price control requirement.<sup>418</sup> Argentina notes also that the alleged objective pursued by the price control requirement is "to control inflation and not impede imports".<sup>419</sup>

<sup>406</sup> European Union's request for the establishment of a panel, p. 3; United States' request for the establishment of a panel, p. 4; Japan's request for the establishment of a panel, p. 3.

<sup>407</sup> European Union's first written submission, paras. 161-175.

<sup>408</sup> Ibid. paras. 176-182.

<sup>409</sup> Although in the section relating to the import reduction requirement, Japan and the United States have not referred to the price control requirement identified by the European Union, they both include evidence referring to price freezes for certain clothing retailers that, as Japan and the European Union have indicated, seems to refer to limits on the prices at which the products are sold in the domestic market. European Union's response to Panel question No. 52, para. 15; Japan's response to Panel question No. 52, paras. 41-42. The United States considers that the interpretation of the phrase "halt in prices" in the evidence listed by the Panel in Question No. 52 is not clear but it asserts that an interpretation "consistent with the other evidence with respect to this requirement" could lead to the conclusion that the references to "halt in prices" refer to the unit price of imports. See United States' response to Panel question No. 52, para. 21.

<sup>410</sup> United States' first written submission, para. 84. (footnote omitted)

<sup>411</sup> Panel question Nos. 12 and 52.

<sup>412</sup> United States' response to Panel question No. 12, para. 21.

<sup>413</sup> United States' response to Panel question No. 52, para. 21.

<sup>414</sup> Japan's response to Panel question No. 12, para. 26.

<sup>415</sup> Japan's response to Panel question No. 52, para. 42.

<sup>416</sup> European Union's first written submission, para. 176; and second written submission, para. 113.

<sup>417</sup> European Union's response to Panel question No. 43.

<sup>418</sup> Argentina's comments on the complainants' responses to Panel question No. 43, paras. 1-2. See also Argentina's comments on the complainants' responses to Panel question No. 52, paras. 33-35.

<sup>419</sup> Argentina's second written submission, para. 113.

6.184. In the Panel's view, the terms used by the three complainants in their panel requests do not clearly identify a price control requirement as one of the measures at issue in the dispute. It is unclear from the terms used in the panel requests (that economic operators are required by the Argentine Government to "limit the volume of imports and/or reduce their price") that this TRR refers to a price control requirement. Furthermore, it is unclear how a price control requirement would be related to the Argentine Government's purported policy objectives of eliminating trade balance deficits and substituting imports, which in the panel requests are identified as the common objectives to each of the five TRRs. As noted above, of the three complainants, only the European Union asserts that a price control requirement is covered by the terms used in the panel requests. The Panel has already recalled the Appellate Body's statement that, when a challenge is brought against an unwritten measure, the complainants are expected to identify such measures in their panel requests "as clearly as possible".<sup>420</sup>

6.185. In light of the above, the Panel concludes that the alleged requirement to limit "the volume of imports and/or reduce their price" identified in the complainants' panel requests refers only to a requirement to limit the volume or value of imported products (an "import reduction requirement"). The price control requirement referred to by the European Union in its submissions is not covered by the complainants' panel requests and consequently does not constitute a measure at issue in the present dispute.

#### 6.2.2.1.2.2 Description

6.186. The Argentine Government has required certain economic operators to limit their imports (either in volume or in value). This requirement has often been imposed on economic operators along with other TRRs, such as the one-to-one requirement or the local content requirement.<sup>421</sup>

6.187. Supermarket chains, automobile and motorcycle producers and importers, producers of pork products, and producers of electronic and office equipment, have committed to restrict their imports into Argentina. In the paragraphs that follow the Panel will provide details on how this requirement has operated.

6.188. *Supermarket sector.* In May 2010, the Argentine Secretary of Domestic Trade met with representatives of local supermarkets to inform them that they would not be able to continue importing goods equivalent to products produced domestically.<sup>422</sup> Argentine authorities also specifically required supermarkets to sell domestic products instead of imported ones (a local content requirement that will be discussed below).<sup>423</sup> There is no evidence on record of the list of the products covered by the import reduction requirement. Brazilian products, which were initially affected by this measure, were excluded from the scope of application a few months later.<sup>424</sup>

6.189. In November 2011, the Secretary of Domestic Trade requested supermarkets to refrain from selling certain imported products (mainly household appliances and some food products) for

<sup>420</sup> See para. 6.42 above (citing Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 792).

<sup>421</sup> There are examples of the application of the import reduction requirement together with other TRRs. See, in the motorcycle sector, News item: *Argentina Autoblog*, Valued in Pesos and exporting wines, Harley-Davidson makes a come back, 29 June 2012 (Exhibit JE-104); and, in the supermarket sector, News item: *Página12*, When the industry has someone to protect it, 16 February 2011 (Exhibits JE-450/EU-136).

<sup>422</sup> News items: *La Nación*, The Government wants to restrain the importation of foodstuff, 6 May 2010 (Exhibit JE-453/EU-139); *lapoliticaonline.com*, Moreno targets food imports and the supermarket sector requests clarifications, 10 May 2010 (Exhibit JE-446/EU-132); *infoalimentacion.com*, Moreno: with the magnifying glass on imported food, 13 May 2010 (Exhibit JE-448/EU-134); *La Nación*, Restrictions on the importation of foodstuff are still in force, 19 May 2010 (Exhibit JE-444/EU-130); and *La Voz*, Uruguayan companies concerned about K measure, 16 May 2010 (Exhibit JE-442/EU-128).

<sup>423</sup> News items: *La Nación*, The Government wants to restrain the importation of foodstuff, 6 May 2010 (Exhibit JE-453/EU-139); *lapoliticaonline.com*, Moreno targets food imports and the supermarket sector requests clarifications, 10 May 2010 (Exhibit JE-446/EU-132); *infoalimentacion.com*, Moreno: with the magnifying glass on imported food, 13 May 2010 (Exhibit JE-448/EU-134); and *La Nación*, Restrictions on the importation of foodstuff are still in force, 19 May 2010 (Exhibit JE-444/EU-130).

<sup>424</sup> In May 2010, Brazilian products were affected by the import reduction requirement on supermarkets. According to reports dated January 2011, they were subsequently excluded. See, News item: *La Nación*, Moreno again restrains the entry of imported goods, 17 January 2011 (Exhibit JE-455/EU-141).

at least one month.<sup>425</sup> In early 2012, the Secretary of Domestic Trade informed supermarkets that they should stop importing and selling foreign products when there was an equivalent domestic product.<sup>426</sup> This requirement was applied throughout 2012, although by mid-2012 the measure was relaxed, particularly for foodstuffs, toys and textiles.<sup>427</sup> In April 2013, the Secretary of Domestic Trade allowed for an increase of imports within the context of an agreement between the Argentine Government and several supermarkets.<sup>428</sup>

6.190. *Automotive and motorcycle sector.* In 2011, with a view to reversing their trade deficits, economic operators in the automobile and motorcycle sectors were required to reduce their imports by 20% and 40% respectively.<sup>429</sup> In the case of the automobile sector, the Argentine Government subsequently imposed additional TRRs such as an investment requirement, a non-repatriation requirement and a requirement to increase the level of local content in domestically produced goods.<sup>430</sup>

6.191. In December 2013, the Minister of Industry reached an agreement with car manufacturers and importers to reduce their imports by around 20% in value in the first quarter of 2014; a percentage based on their level of imports in 2013.<sup>431</sup> The 20% decrease in the value of imports demanded by the Ministry of Industry was an average for the sector; the actual percentage of import reduction varied depending on the trade balance of each car manufacturer or importer. According to evidence, the reduction could reach up to 27.5% for those car manufacturers with a higher trade deficit and for net car importers.<sup>432</sup>

<sup>425</sup> News item: *BAE Argentina*, At Moreno's request, supermarkets paralysed all external purchases, 16 November 2011 (Exhibit JE-459/EU-145).

<sup>426</sup> News items: *Página12*, Do not import anything that is produced here, 5 January 2012 (Exhibit JE-461/EU-147); *infobae.com*, Moreno met with the supermarkets to regulate imports, 4 January 2012 (Exhibit JE-462/EU-148); *La Nación*, Moreno will further control importation, 4 January 2012 (Exhibit JE-463/EU-149); *ambito.com*, "Buy national" in force in supermarkets, 5 January 2012 (Exhibit JE-465/EU-151); *Cronista.com*, Moreno banned supermarkets from importing and established the guidelines for price increases this year, 4 January 2012 (Exhibit JE-466/EU-152); and *iProfesional.com*, Moreno: "Products entering the country must not be produced domestically", 3 January 2012 (Exhibit JE-467/EU-153).

<sup>427</sup> A 20% increase of the volume of imports was permitted by the Secretary of Domestic Trade. See News items: *iProfesional.com*, In order to lift the pressure on prices, Moreno increases the flexibility of the exchange rate "trap" for foodstuff, toys and textiles, 2 August 2012 (Exhibit JE-473/EU-159); *La Nación*, The trap has been opened for foodstuff, 2 August 2012 (Exhibit JE-474/EU-160); *24siete.info*, The Government would authorize more imports to supermarkets and may add some flexibility to the requirements, 4 August 2012 (Exhibit JE-475/EU-161); and *Urgente24.com*, Moreno's restrictions loosened, 2 August 2012 (Exhibit JE-476/EU-162).

<sup>428</sup> News items: *Página12*, No changes of the origin on the store shelves, 2 April 2013 (Exhibit JE-509/EU-195); and *ambito.com*, Moreno II: Promises more imported products, 25 February 2013 (Exhibit JE-512/EU-198).

<sup>429</sup> For examples of import reduction in the automotive sector, see News items: Ministry of Industry, Government seeks to reduce third-country car imports by 20%, 10 December 2010 (Exhibit JE-477/EU-163); and *iProfesional.com*, The Government advances with the "corralito" on imported cars and consumers can already feel it in their pockets, 3 February 2011 (Exhibit JE-478/EU-164). For examples in the motorcycle sector, see, News item: *Cronista.com*, Harley Davidson motorcycles are withdrawn from sale until 2012 because of import obstacles, 21 September 2011 (Exhibit JE-483/EU-169).

<sup>430</sup> See, News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); and *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90). Economic operators in the motorcycle sector also committed to even out their trade balances by increasing exports or the amount of local content in their products. See, News item: *BAE Argentina*, Motorcycle importers criticise the two-fold official requirements, 22 February 2012 (Exhibit JE-423/EU-109).

<sup>431</sup> The entities that reached this agreement with the Argentine Government are the Association of Argentine Manufacturers of Electronic Terminals (*Asociación de Fábricas Argentinas de Terminales de Electrónica*, Afarte), the Argentine Chamber of Office and Commercial Equipment (*Cámara Argentina de Máquinas de Oficina, Comerciales y Afines*, Camoca), the Association of Car Manufacturers (*Asociación de Fábricas de Automotores*, Adefa), and the Chamber of Car Importers and Authorized Dealers (*Cámara de Importadores y Distribuidores Oficiales de Automotores*, Cidoa). News item: *Prensa Argentina*, Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013 (Exhibit JE-827).

<sup>432</sup> News item: *Prensa Argentina*, Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013 (Exhibit JE-827).



6.192. *Pork producers.* Following a meeting with the Secretary of Domestic Trade, in May 2012, four entities representing the pork products value chain proposed a number of trade-related commitments relating to the importation of pork cuts<sup>433</sup>: (a) not to import pork cuts with bone-in nor finished products; only pork meat and fat may be imported; (b) only companies in the pressed-meat industry with a valid SENASA authorization may import; (c) imports for the following annual period (from 1 May 2012 to 30 April 2013) would be limited to 80% of the volume of imports made by each company in 2011; (d) the pressed-meat industry would submit its list of prices for 2010-2011 within seven days; (e) the pressed-meat industry would submit its annual import-export commitments; and, (f) the signing entities would inform their members about the current import procedures, which involve the filing of the DJAI with the Federal Administration of Public Revenues (*Administración Federal de Ingresos Públicos*, AFIP), the Import Operations Registry (*Registro de las Operaciones de Importación*, ROI) and the Unit on Coordination and Evaluation of Subsidies on Internal Consumption (*Unidad de Coordinación y Evaluación de Subsidios al Consumo Interno*, UCESCI), and the submission of price lists and import-export commitments to the Secretariat of Domestic Trade.<sup>434</sup>

6.193. In the same document, representatives of the industry also made two petitions to the Argentine Government: (a) the release of pork products and inputs loaded before 31 January 2012, which were still at the Argentine customs, ports or fiscal warehouses; and (b) the prohibition for the importation of natural bovine intestines. The last petition was in support of the request made earlier by the Argentine Chamber of Producers of Natural Casing (*Cámara Argentina de Elaboradores de Tripas Naturales*, CADELTRIP), who committed to substitute these imports with national products sold at the price authorized by the Secretariat of Domestic Trade.<sup>435</sup>

6.194. *Electronic and office equipment.* In December 2013, electronic and office equipment producers<sup>436</sup> met with the Minister of Industry and the Secretary of Domestic Trade and agreed to reduce their imports in the first quarter of 2014 by 20% as compared to the previous year.<sup>437</sup>

6.195. Evidence on record indicates that these commitments to limit the volume or value of imports were undertaken by economic operators in response to requests from the Argentine Government. In certain instances (such as in the pork sector) compliance with these commitments constituted a condition for operators to import goods into Argentina.

#### 6.2.2.1.3 The local content requirement

6.196. The Argentine Government has required certain economic operators to reach a higher level of local content in their products by substituting imports with products that are produced or could be produced in Argentina.

<sup>433</sup> Argentina has acknowledged receipt of the proposal. See Argentina's response to Panel question No. 55. The four entities submitting the proposal are the Union of the Argentine Meat Industry (*Unión de la Industria Cárnica Argentina*, UNICA), the Argentine Chamber of the Pressed Meat and Related Industries (*Cámara Argentina de la Industria de Chacinados y Afines*, CAICHA), the Argentine Association of Pork Producers (*Asociación Argentina de Productores de Porcinos*, AAPP) and the Argentine Council of Producers (*Consejo Argentino de Productores*, CAP). See Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127). See also, News item: *Porcinos*, The Argentine Association of Pork Producers and other entities within the pork value chain sealed an agreement to allow importation, June 2012 (Exhibit JE-488/EU-174), p. 6.

<sup>434</sup> Letter from the Argentine meat and pork industry to the Secretary of Domestic Trade, 7 May 2012 (Exhibit JE-441/EU-127).

<sup>435</sup> Ibid.

<sup>436</sup> The entities that reached this agreement with the Argentine Government are the Association of Argentine Manufacturers of Electronic Terminals (*Asociación de Fábricas Argentinas de Terminales de Electrónica*, Afarte), the Argentine Chamber of Office and Commercial Equipment (*Cámara Argentina de Máquinas de Oficina, Comerciales y Afines*, Camoca), the Association of Car Manufacturers (*Asociación de Fábricas de Automotores*, Adefa) and the Chamber of Car Importers and Authorized Dealers (*Cámara de Importadores y Distribuidores Oficiales de Automotores*, Cidoa). News item: *Prensa Argentina*, Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013 (Exhibit JE-827).

<sup>437</sup> News item: *Prensa Argentina*, Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013 (Exhibit JE-827).

6.197. The Argentine Government stated that import substitution is a state policy and one of the main tools to reindustrialize the country.<sup>438</sup> It has referred to this objective in numerous statements<sup>439</sup>, as well as in its Industrial Strategic Plan 2020 (PEI 2020).<sup>440</sup> The President of Argentina stated in October 2011 that the final objective of the Government is to domestically substitute around 45% of imports.<sup>441</sup>

6.198. The PEI 2020 refers to 11 Working Groups (*Mesas de Implementación*) in the following sectors (value chains): (a) leather and footwear; (b) wood; (c) textile and apparel; (d) automotive and auto parts; (e) construction materials; (f) software; (g) agricultural machinery; (h) medicines for human consumption; (i) capital goods; (j) poultry, pork and dairy products; and, (k) chemical and petrochemical.<sup>442</sup> In these Working Groups, manufacturers, potential local suppliers and government representatives are to meet regularly with a view to discussing the development of these respective sectors. As described below, subsequent discussions have given rise to agreements on which imported products can be substituted by domestic production.

6.199. Argentine authorities stated that the level of import substitution reached USD 9.2 billion in 2010<sup>443</sup> and USD 4 billion in the first half of 2011.<sup>444</sup> The percentage of local content to be reached by economic operators has varied in the different sectors for which there is available evidence (mining equipment, agricultural machinery, motorcycles, and electronic products), and even between producers within the same sector.

6.200. *Mining Equipment.* In August 2011, the Minister of Industry met with industry representatives and urged them to substitute imports. In her statement, the minister highlighted that Argentina possessed the sixth largest mineral reserves and such endowment should lead the country to develop domestically the capital goods needed for the extraction industry.<sup>445</sup> In 2012, the Argentine Government established a system for regular meetings between mining companies, potential national suppliers, and government representatives aimed at developing the value chain for this sector. In addition, it requested to representatives of mining companies that they strive to increase the use of locally produced goods and services.<sup>446</sup> The Minister of Industry stated that it should be possible to substitute imports in the mining sector by USD 200 million.<sup>447</sup> In the particular case of ball mills, the minister estimated the development of the industry could result in the substitution of imports valued in USD 80 million.<sup>448</sup> The Ministry of Industry established a

<sup>438</sup> The Minister of Industry has indicated that import substitution in the agricultural machinery sector is a State policy. See, News item: Office of the President, Giorgi confirmed that benefits to produce agricultural machinery will be extended under a commitment to substituting imports, 19 November 2012 (Exhibit JE-369/EU-55).

<sup>439</sup> See, for example, News items: Ministry of Industry, Minister Giorgi met with representatives of the mining industry, 11 August 2011 (Exhibit JE-210); and Ministry of Industry, Giorgi met with car manufacturers and laid out actions to integrate local parts and diversify exports, 24 April 2012 (Exhibit JE-229).

<sup>440</sup> Since 2003, import substitution is one of the five pillars of Argentina's macroeconomic policies. See, Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749), p. 33.

<sup>441</sup> Office of the President, Presentation of the Strategic Industrial Plan 2020, Speech by the President, 4 October 2011 (Exhibit JE-517/EU-203). See also Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749), p. 38.

<sup>442</sup> European Union's first written submission, para. 186. See also "*Mesas de Implementación*" (Working Groups), in Ministry of Industry's website, available at <http://www.industria.gob.ar/plan-estrategico-industrial-2020/mesas-de-implementacion/> (consulted on 7 March 2014). European Union's first written submission, fn 253 to para. 186.

<sup>443</sup> News item: Ministry of Industry, Giorgi: "We will not leave the internal market in the hands of unfair competition", 16 February 2011 (Exhibit JE-323/EU-9).

<sup>444</sup> News item: Ministry of Industry, Argentina substituted imports amounting to USD 4 billion in the first semester of the year, 23 August 2011 (Exhibit JE-252).

<sup>445</sup> News item: Ministry of Industry, Minister Giorgi met with representatives of the mining industry, 11 August 2011 (Exhibit JE-210).

<sup>446</sup> News items: Ministry of Industry, Giorgi declared that the mining sector must generate more employment and local growth by developing national suppliers, 28 March 2012 (Exhibit JE-211); Ministry of Industry, Giorgi asks executives of La Alumbrera mining company to develop more local suppliers, 26 April 2012 (Exhibit JE-214); and Ministry of Industry, Giorgi with mining companies: boost to local manufacturing of capital goods for the sector, 22 April 2012 (Exhibit JE-213).

<sup>447</sup> News item: *Prensa Argentina*, Giorgi met with mining companies and suppliers to move forward a plan to substitute over USD 200 million in imports, 27 August 2012 (Exhibit JE-216).

<sup>448</sup> News item: Ministry of Industry, Giorgi: "Consolidating the industrialization of an input means walking towards real sovereignty in the mining sector", 25 September 2012 (Exhibit JE-217).

system to monitor developments in this regard.<sup>449</sup> Argentina provides certain fiscal benefits to mining companies (such as fiscal stability, credits on their income tax for exploration expenses and other investments, tax exemptions on purchases of certain goods and services, duty- and tax-free importation of capital goods and other inputs necessary for their mining activity).<sup>450</sup> In order to enjoy these benefits, mining companies must establish an internal department for import substitution and, through this department, submit their purchase plans to the government for approval 120 days before purchasing the products. When a company is planning to purchase imported products or services, it must indicate in its purchase plans the reason why it is not possible to buy domestic products or services. A technical evaluation working group will assess the purchase plan and determine whether it complies with import substitution targets.<sup>451</sup>

6.201. *Automotive sector.* In April 2012, the Minister of Industry urged car manufacturers to achieve a larger integration of domestically produced parts and a greater development of national suppliers, so as to allow the exportation of domestically produced parts.<sup>452</sup> The Argentine Government reached agreements with certain car manufacturers whereby they committed to produce certain car models in Argentina and increase local content in their production processes.<sup>453</sup> The Ministry of Industry also organized meetings with sectors providing inputs to the automotive sector other than auto-parts, such as leather<sup>454</sup>, steel<sup>455</sup> or software<sup>456</sup>, to foster the incorporation of local content in cars manufactured in Argentina.<sup>457</sup>

6.202. *Agricultural machinery.* Since February 2011, the Argentine Government has asked producers of agricultural machinery to increase their production (mainly of tractors and harvesters) and to submit import substitution plans to incorporate more local agro-parts into their final products.<sup>458</sup> To support this effort, the Ministry of Industry established a Working Group (*Mesa de Integración Nacional de Maquinaria Agrícola*) to launch negotiations between producers of agricultural machinery and local producers of agro-parts.<sup>459</sup> The main objective pursued by the government is to advance in the integration of local content by manufacturers purchasing agro-

<sup>449</sup> News item: *Prensa Argentina*, Cases of import substitution in the mining sector, 6 April 2013 (Exhibit JE-523/EU-209).

<sup>450</sup> Law 24,196 on Mining Investments, 28 April 1993 (Exhibit JE-527/EU-213).

<sup>451</sup> Resolution 54/2012 (Regulations for the application of Resolutions 12/2012 and 13/2012), 27 November 2012 (Exhibit JE-525/EU-211). For a company's perspective, see Goldcorp Earnings Conference Call (Q1 2012), 26 April 2012 (Exhibit JE-227).

<sup>452</sup> News item: Ministry of Industry, Giorgi met with car manufacturers and laid out actions to integrate local parts and diversify exports, 24 April 2012 (Exhibit JE-229).

<sup>453</sup> News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Ministry of Industry announced that BMW will balance imports and exports in 2012, 13 October 2011 (Exhibit JE-92); and Ministry of Industry, Honda will invest USD 3 million to begin producing motorcycles in its Campana factory, 27 June 2011 (Exhibit JE-254).

<sup>454</sup> News item: Ministry of Industry, Giorgi: "The challenge is to add value to leather exports", 19 June 2012 (Exhibit JE-232).

<sup>455</sup> News items: Ministry of Industry, Giorgi gathered automakers and auto part producers with special-steel manufacturers, 2 May 2012 (Exhibit JE-230); and Ministry of Industry, Giorgi and Moreno agreed with automakers, auto part producers and steel makers to substitute imports of special steels, 19 June 2012 (Exhibit JE-231).

<sup>456</sup> News item: Ministry of Industry, Giorgi fosters import substitution and increased exports of software in the automobile industry, 9 October 2012 (Exhibit JE-234).

<sup>457</sup> News items: Ministry of Industry, Automakers agree to accelerate import substitution, 22 November 2012 (Exhibit JE-530/EU-216); Ministry of Industry, Import substitution: Auto parts that can start being produced in Argentina are defined, 19 February 2013 (Exhibit JE-534/EU-220); and Ministry of Industry, Giorgi and Moreno agreed with automakers, auto part producers and steel makers to substitute imports of special steels, 19 June 2012 (Exhibit JE-231).

<sup>458</sup> News item: Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225); AGCO Corp Earnings Conference Call (Q4 2011), 7 February 2012 (Exhibit JE-199).

<sup>459</sup> News items: Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202); Ministry of Industry, Giorgi: "Whoever integrates national parts faster will gain most", 22 March 2012 (Exhibit JE-203); Ministry of Industry, Giorgi brought together agricultural machinery manufacturers and agroparts manufacturers, 24 April 2012 (Exhibit JE-204); and Ministry of Industry, Giorgi urged agroparts manufacturers to substitute imports, 12 June 2012 (Exhibit JE-205).

parts from domestic producers.<sup>460</sup> The Minister of Industry, who participates in the meetings, has set targets for degrees of local integration and urged economic operators to submit their import substitution plans.<sup>461</sup> Compliance with import substitution plans is monitored by the Ministry of Industry.<sup>462</sup> For agricultural machinery, the goal was to achieve between 55-60% of local content in 2013<sup>463</sup>, although this percentage varies according to the product.<sup>464</sup> These policies seem to be accompanied by the eligibility for soft loans granted for example by the *Banco Nación*.<sup>465</sup>

6.203. *Motorcycle sector.* The local content requirement has also been applicable to motorcycle producers. In November 2009, news items posted on government websites reported the adoption of legislation requiring substitution of imported parts to a level of 30% of the unit value of production within a period of five years and announcing fiscal credits for companies that achieve the proposed targets.<sup>466</sup> The Argentine Government established a tax benefit for those companies submitting an export-import plan and a production plan to be approved by the "competent authority".<sup>467</sup> Pursuant to Law 26,457 of 15 December 2008, on the Regime of Incentives for Local Investment in the Motorcycles and Motoparts Industry (*Régimen de Incentivo a la Inversión Local de Emprendimientos de Motocicletas y Motopartes*), the production plan should contain a programme for the progressive integration of local content into final products, subject to approval by the Argentine Government. In June 2011, the Ministry of Industry required motorcycle manufacturers either to produce motorcycles with at least one-half domestic motoparts or,

<sup>460</sup> News items: Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202); Ministry of Industry, Giorgi: "Whoever integrates national parts faster will gain most", 22 March 2012 (Exhibit JE-203); Ministry of Industry, Giorgi brought together agricultural machinery manufacturers and agroparts manufacturers, 24 April 2012 (Exhibit JE-204); and Ministry of Industry, Giorgi urged agroparts manufacturers to substitute imports, 12 June 2012 (Exhibit JE-205).

<sup>461</sup> News items: Ministry of Industry, The Government requests to double the production of national agricultural machinery in 2011 to substitute imports, 9 February 2011 (Exhibit JE-538/EU-224); Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225); Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country, 27 February 2013 (Exhibit JE-543/EU-229); and Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202).

<sup>462</sup> News item: Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202).

<sup>463</sup> News items: Ministry of Industry, Giorgi confirmed that from 2013 there will be a 55-60% level of integration of national supplies in agricultural machinery, 6 November 2012 (Exhibit JE-541/EU-227); Office of the President, Giorgi confirmed that benefits to produce agricultural machinery will be extended under a commitment to substituting imports, 19 November 2012 (Exhibit JE-369/EU-55); *Prensa Argentina*, Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country, 19 November 2012 (Exhibit JE-207); Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country, 27 February 2013 (Exhibit JE-543/EU-229); and Ministry of Industry, Pauny announced to Giorgi that it will reach a production of 2,500 tractors in 2014, 8 April 2013 (Exhibit JE-368/EU-54).

<sup>464</sup> For harvester, the objective of local content for the first trimester of 2014 is 20% and 40% for the first trimester of 2015. In respect of tractors, the objective of local content is 35% for the first trimester of 2014 and 50% in early 2015. See News item: *Prensa Argentina*, Agricultural machinery manufactured in the country must have 40-50% of national parts, 23 May 2013 (Exhibit JE-550/EU-236).

<sup>465</sup> News items: Ministry of Industry, Giorgi: "We will not fund tractors or harvesters that do not reach an acceptable level of national integration", 27 March 2013 (Exhibit JE-537/EU-223); *Prensa Argentina*, Agricultural machinery manufacturers commit to increase level of local integration, 13 April 2013 (Exhibit JE-549/EU-235); and *Prensa Argentina*, Agricultural machinery manufactured in the country must have 40-50% of national parts, 23 May 2013 (Exhibit JE-550/EU-236). See also News items: Office of the President, Giorgi confirmed that benefits to produce agricultural machinery will be extended under a commitment to substituting imports, 19 November 2012 (Exhibit JE-369/EU-55); *Prensa Argentina*, Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country, 19 November 2012 (Exhibit JE-207); Ministry of Industry, Giorgi confirmed that from 2013 there will be a 55-60% level of integration of national supplies in agricultural machinery, 6 November 2012 (Exhibit JE-541/EU-227); and Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country, 27 February 2013 (Exhibit JE-543/EU-229).

<sup>466</sup> News item: Ministry of Industry, Domestic production of motorcycles and parts will increase, 26 November 2009 (Exhibit JE-553/EU-239).

<sup>467</sup> Article 3, Law 26,457 on incentives for local investment for the production of motorcycles and motorcycle parts, 15 December 2008 (Exhibit JE-551/EU-237).

alternatively, to assemble two motorcycles in the country for each imported motorcycle.<sup>468</sup> Negotiations between motorcycle manufacturers and producers of motoparts have reportedly taken place on a regular basis to advance the import substitution process in this sector.<sup>469</sup> In March 2013, the Secretary of Domestic Trade is reported to have declared that motorcycle producers would not be able to import unless they complied with the Government's integration plan.<sup>470</sup>

6.204. *Electronic products.* The Argentine Government adopted Resolution 12/2013 for audio systems and equipment and Resolution 13/2013 for window- and split-type air conditioning systems that establish a minimum level of local content as a condition to benefit from certain tax and customs benefits.<sup>471</sup> A Working Group (*Mesa de Desarrollo de Proveedores de Material y Equipos Eléctricos y Electrónicos*) was established to serve as a forum for dialogue between manufacturers, input suppliers and the government.<sup>472</sup>

6.205. *Pharmaceutical sector.* In May 2011, the Minister of Industry declared that, in order to enjoy access to the Argentine market, pharmaceutical laboratories would have to engage in local production. The Minister announced that by 2020 Argentina should increase domestic production of medicines from less than 500 million units to 1.35 billion, thereby creating 40 thousand new jobs and achieving an export surplus of USD 1.5 billion.<sup>473</sup>

6.206. *Bicycle sector.* In April 2013, the Argentine Government launched a Working Group for the bicycle sector (*Mesa Nacional de Integración de la Industria de Bicicletas*) with the objective to increase the production of domestic bicycle parts in order to strengthen the Argentine bicycle industry. This sector is reported to have a level of approximately 55-60% local content.<sup>474</sup>

6.207. The available evidence leads the Panel to conclude that in some economic sectors a local content requirement has been set by the Argentine Government as a condition for economic operators to benefit from tax incentives or soft loans.<sup>475</sup> In addition, in at least two sectors the Argentine Government seems to have imposed this requirement as a condition for economic operators to import or to continue importing goods into Argentina.<sup>476</sup>

<sup>468</sup> News item: Office of the President, Half of the motorcycles sold in the country have Argentine labor, 4 June 2011 (Exhibit JE-237).

<sup>469</sup> News item: *Cronista.com*, Import ban on motorcycle manufacturers that do not increase the use of local components, 20 March 2013 (Exhibit JE-557/EU-243).

<sup>470</sup> Ibid.

<sup>471</sup> Ministry of Industry, Resolution 12/2013, 22 February 2013 (Exhibit JE-561/EU-247); Ministry of Industry, Resolution 13/2013, 22 February 2013 (Exhibit JE-562/EU-248).

<sup>472</sup> News item: Ministry of Industry, Giorgi: "Importers' interests seek to weaken the electronics industry in Tierra del Fuego, where 12,000 people work", 11 October 2011 (Exhibit JE-560/EU-246).

<sup>473</sup> News item: Office of the President, In 2020, this country will be able to produce 1.35 billion medication units and generate 40 thousand new jobs in the sector, 10 May 2011 (Exhibit JE-168).

<sup>474</sup> News item: Ministry of Industry, Giorgi highlighted the high level of integration of the Argentine bicycle industry, 5 April 2013 (Exhibit JE-569/EU-255).

<sup>475</sup> News items: *Prensa Argentina*, Giorgi ratified the extension of benefits to manufacture agricultural machinery in the country, 19 November 2012 (Exhibit JE-207); Ministry of Industry, Débora Giorgi met with the authorities of the Industrial Chamber of Motorcycles, Bicycles, Wheeled Vehicles and Related Industries, 2 November 2009 (Exhibit JE-555/EU-241); Ministry of Industry, Débora Giorgi met with motorcycle manufacturers, 4 December 2009 (Exhibit JE-556/EU-242); and Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225). See also Article 3, Law 26,457 on incentives for local investment for the production of motorcycles and motorcycle parts, 15 December 2008 (Exhibit JE-551/EU-237); Office of the President, Inauguration of a new plant of Fiat Argentina in Córdoba: Speech by the President of Argentina, 4 June 2013 (Exhibit JE-794/EU-444).

<sup>476</sup> News items: *Cronista.com*, Import ban on motorcycle manufacturers that do not increase the use of local components, 20 March 2013 (Exhibit JE-557/EU-243); *Diario BAE*, Giorgi called on producers of agricultural machinery to accelerate substitution of parts, 22 March 2012 (Exhibit JE 288); and, Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202).

#### 6.2.2.1.4 The investment requirement

6.208. The Argentine Government requires certain companies to make or increase investments in Argentina. This requirement is usually linked to the one-to-one requirement<sup>477</sup> or to the local content requirement.<sup>478</sup>

6.209. With respect to the one-to-one requirement, the Argentine Government has required economic operators to undertake investments in the form of irrevocable capital contributions, when their level of imports exceeds that of their exports.<sup>479</sup> With respect to the local content requirement, the Argentine Government has required certain economic operators to undertake investments in order to commence manufacturing processes in Argentina or to increase or improve manufacturing capacity.<sup>480</sup>

6.210. There is evidence that economic operators in the automotive sector have been required by the Argentine Government to make investments related to their manufacturing output, in order to increase existing levels of production or produce new models in Argentina. Companies like Renault<sup>481</sup>, Nissan<sup>482</sup>, Ditecar<sup>483</sup>, Fiat<sup>484</sup>, General Motors<sup>485</sup>, Indumotora (Subaru)<sup>486</sup>, Honda<sup>487</sup>, Centro Milano (Alfa Romeo)<sup>488</sup> and Hyundai<sup>489</sup> have committed to make such capital contributions.

<sup>477</sup> In the context of the one-to-one requirement, see, News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90); *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91); *Prensa Argentina*, Scania informed the President it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-101); *Prensa Argentina*, Renault Trucks announced to the government it will increase its exports, 7 February 2012 (Exhibit JE-103); and *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209).

<sup>478</sup> For investment commitments within the context of the local content requirement, see, News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); Office of the President, Announcement of New Investments in GM: Speech by the President, 15 November 2011 (Exhibit JE-244); and Ministry of Industry, Honda will invest USD 3 million to begin producing motorcycles in its Campana factory, 27 June 2011 (Exhibit JE-254).

<sup>479</sup> News items: *Página 12*, On the way to reinvest profits, 18 November 2011 (Exhibit JE-620/EU-306); *Prensa Argentina*, An automobile importer may compensate by exporting, 25 March 2011 (Exhibits JE-1 and JE-398/EU-84); and *Prensa Argentina*, Car manufacturer KIA also pledged to even out its trade balance, 15 June 2011 (Exhibit JE-87).

<sup>480</sup> News items: Ministry of Industry, Argentina substituted imports amounting to USD 4 billion in the first semester of the year, 23 August 2011 (Exhibit JE-252); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); and Office of the President, Announcement of New Investments in GM: Speech by the President, 15 November 2011 (Exhibit JE-244).

<sup>481</sup> News item: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>482</sup> News item: *Prensa Argentina*, Nissan agreed to a new trade balancing plan, 19 October 2011 (Exhibit JE-89).

<sup>483</sup> News item: *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>484</sup> News items: *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214); *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86).

<sup>485</sup> News item: *Prensa Argentina*, Fiat: Another automaker agrees to ensure trade balance, 5 May 2011 (Exhibits JE-88 and JE-528/EU-214).

<sup>486</sup> News item: *Prensa Argentina*, Subaru agreed with the Ministry of Industry to restore its trade balance, 29 August 2011 (Exhibit JE-91).

<sup>487</sup> News item: Ministry of Industry, Honda will invest USD 3 million to begin producing motorcycles in its Campana factory, 27 June 2011 (Exhibit JE-254).

<sup>488</sup> News item: *Prensa Argentina*, Five car producers have agreed to contribute USD 2.2 billion to the balance of trade, 20 April 2011 (Exhibit JE-85).

<sup>489</sup> News item: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86).



6.211. The investment requirement has also been imposed on producers of trucks (*Scania*<sup>490</sup>, *Renault Trucks*<sup>491</sup>), motorcycles<sup>492</sup>, agricultural machinery<sup>493</sup> and clothing (*Nike*<sup>494</sup>). Notes posted on government websites report that companies such as *Walmart* and *Procter & Gamble* have announced investments combined with other commitments such as import substitution or non-repatriation of profits.<sup>495</sup>

6.212. On the basis of the evidence cited in the section above, the Panel concludes that the Argentine Government has imposed on some economic operators a requirement to make investments in Argentina, in combination with the one-to-one requirement or with the local content requirement.

#### 6.2.2.1.5 The requirement to refrain from repatriating profits from Argentina abroad

6.213. The European Union considers that this commitment is linked to an investment requirement, whereas the United States and Japan distinguish between an investment requirement and a non-repatriation requirement.<sup>496</sup>

6.214. The Argentine Government has required certain economic operators to refrain from repatriating profits abroad.<sup>497</sup> There is no evidence on the record to suggest that a non-repatriation requirement has been imposed by the Argentine Government in and of itself as a condition to import. However, the evidence suggests that a commitment to refrain from repatriating profits is linked to the one-to-one requirement or to the local content requirement. These combinations are found in the agreements between the Argentine Government and several truck manufacturers (*Scania*<sup>498</sup>, *Renault Trucks*<sup>499</sup> and *Volvo Trucks*<sup>500</sup>), car manufacturers (*Ford*<sup>501</sup>, *General Motors*<sup>502</sup> and *Peugeot-Citroen*<sup>503</sup>) and agricultural machinery manufacturers (*Claas*<sup>504</sup>). Mining companies have also been subject to this requirement.<sup>505</sup>

<sup>490</sup> News items: Office of the President, Scania informed the President that it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-411/EU-97); and *Prensa Argentina*, Scania informed the President it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-101).

<sup>491</sup> News items: Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012 (Exhibit JE-590/EU-276); and *Prensa Argentina*, Renault Trucks announced to the government it will increase its exports, 7 February 2012 (Exhibit JE-103).

<sup>492</sup> News items: *Argentina Autoblog*, Suzuki will assemble motorcycles in the country to avoid import restrictions, 26 April 2011 (Exhibit JE-573/EU-259); and Office of the President, Yamaha announced to the President an investment of ARS 120 million to manufacture motorcycles, 31 July 2013 (Exhibit JE-760).

<sup>493</sup> News items: *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209); *Cronista.com*, Fiat starts producing harvesters in Argentina, 20 December 2011 (Exhibit JE-188); and, Ministry of Industry, John Deere informed Industry that in August it will formally introduce its Argentina-manufactured line of tractors and harvesters, 27 June 2012 (Exhibit JE-279).

<sup>494</sup> News item: *Prensa Argentina*, Nike announces USD 5 million investment to increase local production, 5 April 2011 (Exhibit JE-159).

<sup>495</sup> News item: *Prensa Argentina*, Walmart Argentina announced to the President it will invest USD 110 millions in 2012, 16 November 2011 (Exhibit JE-579/EU-265); News item: *Prensa Argentina*, Procter & Gamble announces ARS 557 million in investments and an import substitution plan, 5 September 2012 (Exhibit JE-241).

<sup>496</sup> European Union's first written submission, para. 9; United States' first written submission, para. 9; Japan's first written submission, para. 4.

<sup>497</sup> News item: *BAE Argentina*, At Moreno's request, supermarkets paralysed all external purchases, 16 November 2011 (Exhibit JE-459/EU-145); Pan American Silver Earnings Conference Call (Q3 2012), 8 November 2012 (Exhibit JE-222); News item: *Página 12*, On the way to reinvest profits, 18 November 2011 (Exhibit JE-620/EU-306).

<sup>498</sup> News items: Office of the President, Scania informed the President that it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-411/EU-97); *Prensa Argentina*, Scania informed the President it will invest USD 40 million in Argentina, 21 November 2011 (Exhibit JE-101).

<sup>499</sup> News items: Ministry of Economy and Public Finance, Agreement signed with Renault Trucks Argentina, 7 February 2012 (Exhibit JE-590/EU-276); *Prensa Argentina*, Renault Trucks announced to the government it will increase its exports, 7 February 2012 (Exhibit JE-103).

<sup>500</sup> News item: *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209).

<sup>501</sup> News item: Ministry of Industry, Ford presented its new pickup model, under the USD 250 million investment plan submitted to the Ministry of Industry, 3 July 2012 (Exhibit JE-277).

6.215. In November 2012, the President of the Central Bank of Argentina stated that "in view of the international uncertainty and with the need to have dollars to finance growth", the Argentine Government had requested companies to refrain from repatriating profits. In her statement, she indicated that this situation had only occurred in 2012, because in previous years multinational companies had been able to transfer profits to their headquarters.<sup>506</sup>

6.216. As in the case of the investment requirement, the available evidence persuades the Panel that, in combination with the one-to-one and the local content requirements, the Argentine Government has imposed on certain economic operators a requirement not to repatriate profits abroad.

### 6.2.2.2 The single TRRs measure

#### 6.2.2.2.1 Preliminary considerations

6.217. Argentina argues that the complainants have not produced evidence of the existence of a single "overarching" measure that has general and prospective application. In Argentina's view, even if the Panel were to accept the complainants' characterization of the evidence relating to the TRRs, at most this might indicate the existence of a series of individual one-off and isolated actions that concern a limited number of individual economic operators in a limited number of sectors, whose content varies considerably and lacks anything resembling general and prospective application.<sup>507</sup>

6.218. Argentina's argument raises two issues that will be dealt separately by the Panel: (a) whether there is evidence of the existence of a single measure as described by the complainants; and, if so, (b) whether there is evidence that this measure has general and prospective application.

6.219. With respect to the first point, the Panel will determine whether the five TRRs imposed by Argentina and described above apply and operate in a combined manner and as part of a single measure. This single measure would consist of Argentina's imposition of one or more TRRs on economic operators as a condition to import goods or to obtain certain benefits.

6.220. With respect to the second point (the general and prospective application of the measure), the Panel will deal with this issue subsequently, and only if it considers that a finding about that measure "as such" becomes necessary or useful for the resolution of the matter between the parties.<sup>508</sup>

#### 6.2.2.2.2 Existence and content of the TRRs measure

6.221. As noted in the preceding sections, the Panel has found evidence that demonstrates that, at least since 2009, Argentina has required from importers and other economic operators to undertake one or more of the following trade-related commitments, as a condition to import goods

<sup>502</sup> Office of the President, Announcement of New Investments in GM: Speech by the President, 15 November 2011 (Exhibit JE-244); News item: *Página 12*, On the way to reinvest profits, 18 November 2011 (Exhibit JE-620/EU-306).

<sup>503</sup> News item: *Prensa Argentina*, Peugeot agrees to balance its trade, 17 November 2011 (Exhibit JE-245); News item: *Página 12*, On the way to reinvest profits, 18 November 2011 (Exhibit JE-620/EU-306).

<sup>504</sup> News item: *Prensa Argentina*, Three metallurgical companies committed investments and will not transfer profits, 23 December 2011 (Exhibit JE-209).

<sup>505</sup> Pan American Silver Earnings Conference Call (Q3 2012), 8 November 2012 (Exhibit JE-222); Pan American Silver Earnings Conference Call (Q4 2011), 23 February 2012 (Exhibit JE-223); Goldcorp, Management's discussion and analysis of financial condition and results of operations, 25 July 2012 (Exhibit JE-226).

<sup>506</sup> News item: *Prensa Argentina*, Marcó del Pont highlighted investment growth in Argentina, 14 November 2012 (Exhibit JE-242).

<sup>507</sup> Argentina's second written submission, para. 106; opening statement at the second meeting of the Panel, para. 25; and closing statement at the second meeting of the Panel, para. 5. See also para. 6.130 above.

<sup>508</sup> See para. 6.42 above and Appellate Body Report, *US – Zeroing (EC)*, para. 198.

or to obtain certain benefits: (a) offsetting the value of their imports with, at least, an equivalent value of exports (one-to-one requirement); (b) limiting their imports, either in volume or in value (import reduction requirement); (c) reaching a certain level of local content in their domestic production (local content requirement); (d) making investments in Argentina (investment requirement); and, (e) refraining from repatriating profits from Argentina (non-repatriation requirement).<sup>509</sup> The Panel has also found that Argentina has imposed one or more of these five TRRs in different combinations.<sup>510</sup>

6.222. To determine whether the five TRRs operate in a manner such that they constitute a single measure, the Panel will take into account three factors: (a) the manner in which the complainants have presented their claims in respect of the concerned measures; (b) the respondent's position; and (c) the manner in which the TRRs operate and are related to each other, in order to determine whether they can be considered to be autonomous or independent.<sup>511</sup> If the Panel finds that a single measure exists, it will examine the content of the measure and whether it can be attributed to Argentina.

6.223. As explained above<sup>512</sup>, the determination of the existence and content of the individual TRRs was the first step in determining the existence and content of a single measure (the TRRs measure). The Panel's examination of the existence, nature and characteristics of the individual TRRs was based on evidence such as copies of domestic laws, regulations and policy documents; communications addressed to Argentine officials by private companies; statements by Argentine officials and notes posted on websites of the Argentine Government; articles in newspapers and specialized publications; and statements by company officials.<sup>513</sup>

6.224. With respect to the parties' arguments, the complainants have identified the five requirements as elements of the TRRs measure.<sup>514</sup> The complainants have clarified that they are not seeking from the Panel separate determinations with regard to each TRR because, in their view, there is only one measure at issue.<sup>515</sup> Argentina, in turn, contends that the complainants have failed to determine the precise content of the TRRs measure because (a) the complainants have provided a non-exhaustive list of requirements that the TRRs measure encompasses; and (b) the alleged requirements are not the same for different economic operators.<sup>516</sup> In Argentina's view, the single measure the complainants have identified has been artificially created for the purpose of this dispute.<sup>517</sup> In light of this difference in view, the Panel will examine the manner in which the TRRs operate and how they are related to each other.

6.225. With respect to the operation of the measure, in many cases for which there is evidence, Argentina has imposed a combination of TRRs on economic operators. It appears that the TRRs operate in combination such that more than one TRR has been imposed at a given time on a specific economic operator. For example, in the automotive and motorcycle sectors, the one-to-one requirement has often operated in combination with other requirements such as the investment requirement or the local content requirement.<sup>518</sup> The Panel notes that the one-to-one requirement, the import reduction requirement and the local content requirement have been imposed separately and not necessarily in combination with other TRRs.<sup>519</sup> In any event, the resulting combination of requirements imposed on individual economic operators at a given time seems to depend on the features of the operator and on the contribution of the requirement to the attainment of Argentina's policy of substituting imports and reducing or eliminating trade deficits.

<sup>509</sup> See para. 6.155 above.

<sup>510</sup> See para. 6.157 above.

<sup>511</sup> See para. 6.144 above.

<sup>512</sup> See para. 6.145 above.

<sup>513</sup> See para. 6.165 above.

<sup>514</sup> See para. 6.121 above.

<sup>515</sup> See paras. 6.124-6.128 above.

<sup>516</sup> Argentina's second written submission, paras. 75 and 103-106.

<sup>517</sup> Argentina's second written submission, para. 102.

<sup>518</sup> See, for example, News items: *Sala de Prensa República Argentina*, An automobile importer may compensate by exporting, 25 March 2011 (Exhibit JE-1); *tiempomotor.com*, Suzuki Motos completed its first phase of grape-must exports, 1 June 2012 (Exhibit JE-113); and, *Argentina Autoblog*, Suzuki will assemble motorcycles in the country to avoid import restrictions, 26 April 2011 (Exhibit JE-573/EU-259).

<sup>519</sup> See sections 6.2.2.1.1, 6.2.2.1.2 and 6.2.2.1.3 above.

6.226. Statements made by Argentine officials confirm that TRRs are imposed according to the particular situation of economic operators. For example, in an official press release posted on a government website dated 11 December 2013, the Minister of Industry explained that the exact percentage by which local producers and importers of automotive products would be required to reduce their imports of finished products for the first quarter of 2014 would depend on the trade balance of each manufacturer. The press release states that companies having an export surplus would be able to continue importing as much as in 2013, whereas companies with higher trade deficits should reduce their car purchases abroad by up to 27.5%.<sup>520</sup>

6.227. The fact that the TRRs can be imposed separately does not mean that a single global measure does not exist. Even the imposition of a single requirement on a specific operator would not convert a global measure into an individual one. If the Argentine Government imposed five requirements at once on a specific economic operator, this would not make the TRRs measure in that particular case any more "global" as compared to a TRRs measure that consisted of a single requirement. The TRRs measure would remain a single measure regardless of the number of requirements imposed in a specific case because, in all instances of application, it implies the imposition of one or more requirements. The final decision by the Argentine Government in each specific case to impose one or more requirements would not affect the inherent nature of the TRRs measure, nor would it make the individual requirements autonomous or independent.

6.228. In addition, it appears that the requirements constitute different elements that contribute in different combinations and degrees – as part of a single measure – towards the realization of common policy objectives that guide Argentina's "managed trade" policy, i.e. substituting imports and reducing or eliminating trade deficits. A separate consideration of each of the TRRs would therefore go against the nature of the measure, drawing an artificial segmentation that would not reflect accurately the way in which the measure operates in practice. Moreover, an individual consideration of the requirements would not capture some of the main features of the TRRs measure, namely, its flexibility and versatility.

6.229. Lastly, Argentina has not provided evidence and arguments to rebut the complainants' assertions that there is a single measure made up of constituent elements, nor to support its contention that the evidence provided by the complainants at most demonstrates "a series of unrelated 'one-off' actions whose content varies so widely that it is insufficient even to demonstrate the content of a series of distinct requirements, let alone a single 'overarching' RTRR measure".<sup>521</sup>

6.230. Finally, the Panel notes that Argentina has not disputed the attribution of the TRRs measure. Argentina has only stated that "the complainants have failed to establish the precise content of the alleged 'overarching measure' they are contesting or that the measure is of general and prospective application".<sup>522</sup> Although the TRRs measure is unwritten, the evidence shows that it implements a policy that has been announced in public statements and speeches and on government websites by high-ranking Argentine Government officials, including the President, the Minister of Industry and the Secretary of Trade. High-ranking Argentine officials have also referred to the imposition of TRRs on specific companies and sectors. The evidence suggests that these TRRs will continue to be imposed, until and unless the policy is repealed or modified. By way of example, the Argentine Secretary of Domestic Trade expressed in an official press release issued in late 2013 that the policy of "managed trade" would continue to be applied in the future as per the instructions from the President of Argentina.<sup>523</sup>

6.231. The Panel concludes that the Argentine authorities' imposition on economic operators of one or more of the five requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina.

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<sup>520</sup> News item: *Prensa Argentina*, Giorgi agreed with electronic and automotive industries to reduce foreign currency for exports by 20%, 11 December 2013 (Exhibit JE-827).

<sup>521</sup> See para. 6.217 above.

<sup>522</sup> Argentina's second written submission, para. 98.

<sup>523</sup> News item: *Prensa Argentina*, Moreno confirmed that policy of trade administration will continue as per presidential instructions, 3 November 2013 (Exhibit JE-759).

### 6.2.3 Legal analysis

#### 6.2.3.1 Whether the TRRs measure is inconsistent with Article XI:1 of the GATT 1994

##### 6.2.3.1.1 Arguments of the parties

6.232. Of the three complainants, only the European Union argues that each of the TRRs is inconsistent with Article XI:1 of the GATT 1994, since each one prohibits or restricts the importation of goods into Argentina.<sup>524</sup>

6.233. The European Union alleges that the one-to-one requirement "has a limiting condition on the importation of products into Argentina" because economic operators must even out their trade balance in order to import.<sup>525</sup> This limits the freedom of economic operators to import as much as they wish. To support its argument, the European Union refers to the findings of the panel in *India – Autos* that a similar requirement (a trade balancing requirement) was inconsistent with Article XI:1 of the GATT 1994.<sup>526</sup> The European Union further supports its allegation by referring to paragraph 2(a) of the Illustrative List contained in the Annex to the TRIMs Agreement. Pursuant to this provision, "measures which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and 'which restrict the importation by an enterprise of products used in or related to its local production, generally or *to an amount related to the volume or value of local production that it exports*'" are inconsistent with Article XI:1 of the GATT 1994.<sup>527</sup>

6.234. The European Union submits that the import reduction requirement is inconsistent with Article XI:1 of the GATT 1994 because "the importation of certain products is totally banned (like the case of the pork industry) or restricted (like the case of automobiles and motorcycles) as a condition to continue importing the same or other products into Argentina".<sup>528</sup>

6.235. Concerning the local content requirement, the European Union considers that the Argentine Government is breaching Article XI:1 "by requiring entities to engage with a particular level of domestic content in order to import products".<sup>529</sup>

6.236. Finally, the European Union also considers the investment requirement<sup>530</sup> to be inconsistent with Article XI:1 because it is imposed as a condition to import.<sup>531</sup>

6.237. In the European Union's view, each of the five TRRs imposes "a limiting condition on the importation of products" and, therefore, the TRRs measure resulting from the imposition of one or more of these requirements, as an overarching measure, is also inconsistent with Article XI:1.<sup>532</sup>

6.238. The United States alleges that the TRRs measure is a limitation on imports because "importers are restricted in the amount of goods that they may import based on their ability to satisfy the RTRRs" imposed by Argentina.<sup>533</sup> Like the European Union, the United States also supports its argument on the finding of inconsistency with Article XI:1 of a "trade balancing" requirement in the *India – Autos* dispute.<sup>534</sup> The United States considers that the TRRs measure acts as a "practical limit on the volume of imports due to the conditions Argentina places on the importation".<sup>535</sup>

<sup>524</sup> European Union's first written submission, para. 329.

<sup>525</sup> Ibid. para. 352.

<sup>526</sup> Ibid. para. 350.

<sup>527</sup> Ibid. para. 353. (emphasis original)

<sup>528</sup> Ibid. para. 356.

<sup>529</sup> Ibid. para. 362.

<sup>530</sup> According to the European Union, the investment requirement covers both the requirement to make investments in Argentina and to refrain from repatriating profits abroad. See European Union's first written submission, para. 325.

<sup>531</sup> European Union's first written submission, para. 371.

<sup>532</sup> Ibid. paras. 329, 352, 356, 362 and 371.

<sup>533</sup> United States' first written submission, para. 132. See also second written submission, para. 121.

<sup>534</sup> United States' first written submission, para. 132; and second written submission, para. 122.

<sup>535</sup> United States' first written submission, para. 133.

6.239. The United States further argues that the imposition of the TRRs measure is a disincentive to import because it results in extra costs that must be borne by economic operators. Moreover, failure to comply with the conditions set by Argentina can lead to the inability to import.<sup>536</sup>

6.240. In Japan's view, the requirements imposed through the TRRs measure "operate as practical thresholds on the importer's ability to import" and increase the burden on economic operators to import thereby functioning as a disincentive. In line with the panel in *India – Autos*, Japan considers that economic operators are not free to import as much as they wish due to the imposition of the TRRs measure.<sup>537</sup>

6.241. Argentina has not addressed this specific claim. Argentina has argued, however, that the complainants have failed to make a *prima facie* case of inconsistency with respect to a single "overarching" TRRs measure. In Argentina's view, in order to challenge an unwritten measure, a complainant must clearly establish (a) that the alleged measure is attributable to the responding Member; (b) the precise content of the measure; and, (c) that the measure has general and prospective application. Argentina argues that this standard has been applied for determining the existence of an unwritten measure, even when the unwritten measure was not challenged "as such".<sup>538</sup> Argentina asserts that the complainants have failed to establish the precise content of the TRRs measure that they are challenging and its general and prospective application.<sup>539</sup> Argentina submits that:

[E]ven if the Panel were to accept the complainants' characterization of the evidence relating to the alleged "requirements" in full, the most this might indicate is a series of specific "one-off" actions that concern a limited number of individual "economic operators", whose particular content varies greatly and lacks anything resembling the general and prospective application one would expect to find in the operation of an unwritten rule or regulation.<sup>540</sup>

6.242. Argentina has also provided evidence that there is a direct correlation between economic growth in Argentina and an increase in imports.<sup>541</sup> By way of example, Argentina alleges that United States' exports to Argentina increased by 324% between 2003 and 2012.<sup>542</sup>

#### 6.2.3.1.2 Legal analysis

6.243. Article XI:1 of the GATT 1994 provides that:

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

6.244. The Panel will examine whether, in the light of the available evidence, the complainants have made a *prima facie* case that the TRRs measure is inconsistent with Article XI:1 of the GATT 1994. The Panel's analysis will focus on two elements: (a) whether the TRRs measure constitutes "quotas, import or export licences or other measures"; and (b) whether the TRRs measure constitutes a "prohibition or restriction ... on the importation of any product of the territory of any other contracting party".

<sup>536</sup> United States' first written submission, para. 134.

<sup>537</sup> Japan's first written submission, paras. 197-198.

<sup>538</sup> Argentina's second written submission, para. 79 (citing Panel Report, *EC and certain member States – Large Civil Aircraft*, para. 7.519; and Appellate Body Report, *US – Zeroing (EC)*, para. 198). See also *ibid.* paras. 77-97.

<sup>539</sup> Argentina's second written submission, paras. 98-117.

<sup>540</sup> *Ibid.* para. 106.

<sup>541</sup> Study: *Centro de Economía Internacional*, Factors affecting the level of Argentine imports in 1993-2012, November 2013 (Exhibit ARG-65), p. 2.

<sup>542</sup> Argentina's second written submission, para. 40.



#### 6.2.3.1.2.1 Whether the TRRs measure constitutes an "other measure"

6.245. For a prohibition or restriction on importation to be covered by Article XI:1 of the GATT 1994, it must be "made effective through quotas, import or export licences or other measures". The TRRs measure, on its face, does not qualify as a quota or an import or export licence. Therefore, the Panel will analyse whether it qualifies as an "other measure" within the meaning of Article XI:1 of the GATT 1994.

6.246. Concerning the term "other measures", the panel in *Argentina – Hides and Leather* interpreted this term as a "broad residual category".<sup>543</sup> A broad interpretation of the term "other measures" is also supported by a GATT panel in *Japan – Semi-Conductors*, in which "[t]he Panel noted that this wording was comprehensive: it applied to all measures instituted or maintained by a contracting party prohibiting or restricting the importation, exportation or sale for export of products other than measures that take the form of duties, taxes or other charges".<sup>544</sup>

6.247. By way of example, the Panel notes that in the GATT panel *Japan – Semi-Conductors*, a non-mandatory government action in the form of an administrative guidance was considered an "other measure" inconsistent with Article XI:1.<sup>545</sup> In *India – Autos*, the panel concluded that a Public Notice and Memorandums of Understanding at issue were "measures" in the sense of Article XI:1. In this regard, the panel in *India – Autos* saw "no reason to interpret the more general notion of 'measure' under Article XI:1 more restrictively" than under Article III:4 since the terms of Article III:4 are more specific ("laws, regulations or requirements") and especially as these two provisions, as the GATT *Superfund* panel stated, have "'essentially the same rationale, namely to protect expectations of the contracting parties as to the competitive relationship between their products and those of the other contracting parties'".<sup>546</sup>

6.248. The Panel agrees with the broad scope accorded to the term "other measures" in past case law and considers that the TRRs measure, described above, meets the broad criteria referred to by previous panels. Therefore, the Panel finds that the TRRs measure constitutes an "other measure" within the meaning of Article XI:1 of the GATT 1994.

#### 6.2.3.1.2.2 Whether the TRRs measure constitutes a "prohibition or restriction"

6.249. The second element that the Panel will examine under Article XI:1 is whether the TRRs measure constitutes a "prohibition or restriction on imports".

6.250. The meaning of the term "restriction" under Article XI:1 of the GATT has been addressed by a number of panels and the Appellate Body.<sup>547</sup>

6.251. The panel in *India – Quantitative Restrictions* noted that the scope of the term "restriction" contained in Article XI:1 of the GATT 1994 is very broad and that it applies "to *all* measures instituted or maintained by a [Member] prohibiting or restricting the importation, exportation, or sale for export of products other than measures that take the form of duties, taxes or other

<sup>543</sup> Panel Report, *Argentina – Hides and Leather*, para. 11.17.

<sup>544</sup> GATT Panel Report, *Japan – Semi-Conductors*, para. 104.

<sup>545</sup> The measure at issue in that dispute (a third country market monitoring system) consisted of several elements. The Japanese Government requested Japanese producers and exporters of semi-conductors not to export semi-conductors at prices below company-specific costs to contracting parties other than the United States. This request was "combined with the statutory requirement for exporters to submit information on export prices and the systematic monitoring of company and product-specific costs and export prices by the Government". This was "backed up with the use of supply and demand forecasts to impress on manufacturers the need to align their production to appropriate levels". The panel in that case considered that all these elements "constituted a coherent system restricting the sale for export of monitored semi-conductors at prices below company-specific costs to markets other than the United States, inconsistent with Article XI:1". See GATT Panel Report, *Japan – Semi-Conductors*, paras. 108-109 and 132.A.

<sup>546</sup> Panel Report, *India – Autos*, para. 7.250. See also GATT Panel Report, *US – Superfund*, para. 5.2.2.

<sup>547</sup> See, for example, Appellate Body Report, *China – Raw Materials*, para. 319; Panel Reports, *India – Quantitative Restrictions*, para. 5.128; *India – Autos*, para. 7.270.

charges".<sup>548</sup> The same panel stated that a "restriction" can be defined as "a limitation on action, a limiting condition or regulation".<sup>549</sup> The panel in *India – Autos* endorsed this view and concluded that "any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1".<sup>550</sup> Both panels opted for an interpretation based on the ordinary meaning of the term "restriction" that emphasized the limiting effects of the measure at issue.<sup>551</sup> The Appellate Body in *China – Raw Materials* also based its interpretation of the term restriction on the ordinary meaning of the term.<sup>552</sup>

6.252. In *India – Autos*, the panel asserted that the expression "limiting conditions" used by the panel in *India – Quantitative Restrictions*:

[S]uggests the need to identify not merely a condition placed on importation, but a condition that is limiting, i.e. that has a limiting effect. In the context of Article XI, that limiting effect must be on importation itself.<sup>553</sup>

6.253. The idea that not any condition placed on importation is inconsistent with Article XI, but only those that have a limiting effect on imports, found further support in the *China – Raw Materials* dispute. In that case, the panel stated that:

[R]equiring an applicant to satisfy a certain prerequisite before being granted an import or export licence would not necessarily offend Article XI:1. The requirement to satisfy a prerequisite would be prohibited under Article XI:1 only if the prerequisite itself created a restriction or limiting effect on importation or exportation.<sup>554</sup>

6.254. The Panel shares the views expressed by previous panels and the Appellate Body and will examine the complainants' contention that the TRRs measure constitutes a "limiting condition" that has restrictive effects on importation.<sup>555</sup>

6.255. It appears from the evidence on the record that in certain instances companies are not allowed to import unless they achieve a trade balance or an export surplus. There are several ways whereby companies might do this: (a) by increasing exports; (b) by reducing imports; (c) by increasing the level of local content of domestic production through import substitution (either by purchasing from domestic producers or by developing local manufacture); or, (d) by making capital contributions or not repatriating funds, with a view to evening out a negative trade balance. The Panel will assess these options below to determine whether they have a limiting effect on imports.

6.256. For those companies that, in order to continue importing, opt for increasing their level of exports, their right to import is contingent upon their level of exports and, therefore, the requirement constitutes a "limiting condition" on imports, hence, a restriction under Article XI:1 of the GATT 1994. The limiting effects stem from the fact that, by imposing such a requirement, Argentina imposes an artificial threshold which restricts the level of imports of economic operators irrespective of commercial considerations. This conclusion is consistent with the findings of the panel in *India – Autos* with regard to a so-called "trade balancing condition" by which the Indian Government "effectively limit[ed] the amount of imports that a manufacturer may make by linking imports to [a] commitment to undertake a certain amount of exports".<sup>556</sup> The *India – Autos* panel concluded that such a "trade balancing condition" amounted to an import restriction inconsistent

<sup>548</sup> Panel Report, *India – Quantitative Restrictions*, para. 5.128. (emphasis added) See also Panel Reports, *Colombia – Ports of Entry*, para. 7.233; and *Dominican Republic – Import and Sale of Cigarettes*, para. 7.248.

<sup>549</sup> Panel Report, *India – Quantitative Restrictions*, para. 5.128.

<sup>550</sup> Panel Report, *India – Autos*, para. 7.265. (emphasis original)

<sup>551</sup> See also Appellate Body Report, *China – Raw Materials*, paras. 319-320.

<sup>552</sup> Appellate Body Report, *China – Raw Materials*, para. 319.

<sup>553</sup> Panel Report, *India – Autos*, para. 7.270. See also Panel Report, *India – Quantitative Restrictions*, para. 5.142.

<sup>554</sup> Panel Report, *China – Raw Materials*, para. 7.917.

<sup>555</sup> European Union's first written submission, paras. 329, 352-372; United States' first written submission, paras. 132-135; United States' second written submission, paras. 121 and 123; Japan's first written submission, para. 197; Japan's second written submission, para. 113.

<sup>556</sup> Panel Report, *India – Autos*, para. 7.320.

with Article XI:1 of the GATT 1994, since there would necessarily be a practical threshold to the amount of exports that each manufacturer could expect to make, which in turn would determine the amount of imports that could be made.<sup>557</sup> Similarly, in the present case, for those importers who opt for increasing their exports as the means to achieve trade balance, the value of goods they are allowed to import is conditioned to the value of their exports. In the Panel's view, this restriction imposes a limiting condition on imports since importers are not free to import as much as they desire or need without regard to their export performance.

6.257. The import reduction requirement involves *per se* a limitation on imports. A measure that requires economic operators to reduce the level of imports is by definition imposing a limit on imports. There is evidence on the record that supermarket chains, automobile and motorcycle producers and importers, pork producers, and electronic and office equipment producers have all committed to reduce imports.<sup>558</sup> For example, in May 2012, economic operators in the pork industry submitted a letter to the Argentine Secretary of Domestic Trade with a proposal to self-limit imports.<sup>559</sup> This letter notes that the proposal is the result of a meeting between the pork industry and the Secretary of Domestic Trade.<sup>560</sup> In addition to the proposal to self-limit imports, the letter also included a request from the pork industry that the Argentine Government release pork raw materials and other products shipped up to 31 January 2012, that had been detained at customs, ports or fiscal warehouses. From the content of this letter, the Panel infers that the commitments to limit imports undertaken by the pork industry are linked to the request for the release of shipments detained at the border.<sup>561</sup>

6.258. The required increase of local content, either by purchasing from domestic producers or by developing local manufacture, has a direct limiting effect on imports, because the measure is designed to force the substitution of imports in line with policies set by Argentina in the PEI 2020.<sup>562</sup> Economic operators in the motorcycle or the agricultural machinery sectors have been required to replace a specified amount of imports with domestic products in order to continue importing.<sup>563</sup> In addition, economic operators in the automotive sector have been required to invest in new production facilities or in expanding existing ones.<sup>564</sup>

6.259. Operators have also been required to make irrevocable capital contributions or refrain from repatriating profits when their level of exports is not sufficient to compensate for their imports.<sup>565</sup> There is no evidence on record that these requirements have been applied as stand-alone conditions to import. However, both requirements have been imposed on economic operators in combination with other requirements, such as the local content requirement, as a condition to import.<sup>566</sup> The investment and the non-repatriation requirements have a limiting effect on imports because the right to import is linked to making capital investments and/or refraining from repatriating profits.

6.260. The uncertainty generated by the unwritten and discretionary nature of the requirements is an additional and significant element in limiting imports. As reflected above<sup>567</sup>, the TRRs measure is not written and the mix of requirements that Argentina imposes varies amongst

<sup>557</sup> Ibid. paras. 7.277-7.281.

<sup>558</sup> See section 6.2.2.1.2.2 above.

<sup>559</sup> Commitments proposed by the Unión de la Industria Cárnica Argentina ("UNICA"); the Cámara Argentina de la Industria de Chacinados y Afines ("CAICHA"); Asociación Argentina de Productores de Porcinos ("AAPP"); and the Consejo Argentino de Productores ("CAP") (Exhibit EU 127). See Argentina's response to Panel question No. 55.

<sup>560</sup> Commitments proposed by the Unión de la Industria Cárnica Argentina ("UNICA"); the Cámara Argentina de la Industria de Chacinados y Afines ("CAICHA"); Asociación Argentina de Productores de Porcinos ("AAPP"); and the Consejo Argentino de Productores ("CAP") (Exhibit EU 127).

<sup>561</sup> On the use of inferences, see paras. 6.34-6.36 above.

<sup>562</sup> Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749), p. 27.

<sup>563</sup> News items: *Cronista.com*, Import ban on motorcycle manufacturers that do not increase the use of local components, 20 March 2013 (Exhibit JE-557/EU-243); *Diario BAE*, Giorgi called on producers of agricultural machinery to accelerate substitution of parts, 22 March 2013 (Exhibit JE-288); and Ministry of Industry, Giorgi demanded that agricultural machinery manufacturers submit specific integration projects within a month, 21 March 2012 (Exhibit JE-202).

<sup>564</sup> See para. 6.171 above.

<sup>565</sup> See para. 6.209 and section 6.2.2.1.5 above.

<sup>566</sup> See sections 6.2.2.1.4 and 6.2.2.1.5 above.

<sup>567</sup> See para. 6.157 above.

economic operators without regard to any known criteria. There is no certainty as to what TRRs will be imposed, when the economic operator will be required to comply with them, or whether the requirements will be imposed as a temporary or permanent measure. This uncertainty creates additional negative effects on imports, for it negatively impacts business plans of economic operators who cannot count on a stable environment in which to import and who accordingly reduce their expectations as well as their planned imports into the Argentine market. While the circumstances in the present case are different, the fact that uncertainties can constitute "restrictions" under Article XI:1 of the GATT 1994 was analysed by the panel in *Colombia – Ports of Entry*.<sup>568</sup> We agree with that panel's analytical approach in that regard.

6.261. Furthermore, the TRRs may result in costs unrelated to the business activity of the particular operator. Extra costs as a general matter will discourage importation and, thus, will have an additional limiting effect on imports. While the circumstances in the present case are different, the fact that a measure may constitute a restriction on importation within the meaning of Article XI:1 of the GATT 1994 when it acts to discourage importation by penalizing it and making it prohibitively expensive, was analysed by the panel in *Brazil – Retreaded Tyres*.<sup>569</sup> We agree with the panel's analytic approach in that case.

6.262. Evidence shows that, to comply with the requirement to export, companies have engaged in activities unrelated to their respective business activity. For instance, companies from the automotive sector have exported peanuts, water, wine, soy products and biodiesel<sup>570</sup>; companies from the motorcycle sector exported grape juice and wine<sup>571</sup>; tyre producers exported honey<sup>572</sup> and clothing brands have exported wool.<sup>573</sup> Other companies have engaged in export activities within their sector to even out their trade balance. For example, bible importers exported children books<sup>574</sup> and multinational toy companies exported domestic toys produced by unrelated companies.<sup>575</sup> In addition, at the behest of the Argentine Government, operators have made investments and refrained from repatriating profits, both of which result in additional costs for economic operators.

6.263. These new export activities and limitations on repatriation of profits did not come about as a result of business decisions. Rather, as the Panel has found in paragraphs 6.177 and 6.216 above, they were brought about in response to requirements imposed by Argentina.

6.264. Finally, with respect to the data on trade flows provided by Argentina, the Panel notes that it is not necessary to establish actual negative effects on the overall level of imports to find that a measure violates Article XI:1 of the GATT 1994. The panel in *Argentina – Hides and Leather* stated that "Article XI:1, like Articles I, II and III of the GATT 1994, protects competitive opportunities of imported products, not trade flows".<sup>576</sup> This interpretation was confirmed by the panel in *Colombia – Ports of Entry*, which stated that to the extent that a complainant is able to demonstrate a violation of Article XI:1 based on the measure's design, structure, and architecture, "it would not

<sup>568</sup> Panel Report, *Colombia – Ports of Entry*, para. 7.240.

<sup>569</sup> Panel Report, *Brazil – Retreaded Tyres*, paras. 7.370-7.374.

<sup>570</sup> News items: *Prensa Argentina*, Car producer Hyundai agrees to offset its trade balance, 13 June 2011 (Exhibit JE-86); *La Nación*, Companies complain about new import rules, 18 July 2011 (Exhibit JE-374/EU-60); *La Nación*, Sales of deluxe cars stop because of import obstacles, 5 December 2011 (Exhibit JE-405/EU-91); *BBC Mundo*, Why in Argentina BMW sells rice and Porsche sells wine, 10 November 2011 (Exhibit JE-609/EU-295); *Autos.com.ar*, Trade balance: Renault, Nissan, Ditecar and Mitsubishi reached an agreement with the Government (Exhibit JE-649/EU-335); *Reuters Argentina*, Alfa Romeo Argentina will compensate its imports with biodiesel sales, 20 April 2011 (Exhibit JE-625/EU-311); and *Prensa Argentina*, Renault, Mitsubishi, Nissan and Volvo also signed a plan to achieve a trade surplus in 2012, 5 August 2011 (Exhibit JE-90).

<sup>571</sup> News items: *Argentina Autoblog*, What did Juki Argentina dispatch to Ukraine and the United States?, 27 April 2012 (Exhibit JE-105); and *tiempomotor.com*, Suzuki Motos completed its first phase of grape-must exports, 1 June 2012 (Exhibit JE-113).

<sup>572</sup> Office of the President, Speech by the President in the inauguration of the enlargement of the Pirelli tyre plant in Merlo, 9 March 2011 (Exhibit JE-424/EU-110).

<sup>573</sup> News item: *El Cronista*, Zegna Reopens and Helps to Export Wool, 2 August 2012 (Exhibit JE-158).

<sup>574</sup> News item: *iProfesional.com*, In an unprecedented drive, Moreno blocked entry of Bibles into Argentina, 22 November 2011 (Exhibits JE-419/EU-105).

<sup>575</sup> News items: *La Nación*, Moreno mixes water and oil, 6 May 2012 (Exhibit JE-149); and *iProfesional.com*, Barbie dolls come back in exchange for Rastis, 18 August 2011 (Exhibit JE-167).

<sup>576</sup> Panel Report, *Argentina – Hides and Leather*, para. 11.20.

be necessary to consider trade volumes or a causal link between the measure and its effects on trade volumes".<sup>577</sup> Likewise, the panel in *China – Raw Materials* found that "the very *potential* to limit trade is sufficient to constitute a 'restriction ...'".<sup>578</sup> Accordingly, the Panel is unpersuaded by Argentina's argument that the complainants' description of the facts cannot be taken into account in determining the consistency of the TRRs measure with Argentina's WTO obligations because it is not supported by trade data.<sup>579</sup>

### 6.2.3.1.3 Conclusion

6.265. For the reasons stated above, the Panel considers that the TRRs measure has limiting effects on the importation of goods into Argentina. In addition to these direct limiting effects on imports, the TRRs measure is characterized by a lack of transparency and predictability, which further discourages imports. Therefore, the Panel finds that the TRRs measure, consisting of the Argentine authorities' imposition of one or more of the five requirements identified by the complainants as a condition to import, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994.

### 6.2.3.2 Whether the TRRs measure, with respect to the requirement to incorporate local content, is inconsistent with Article III:4 of the GATT 1994

#### 6.2.3.2.1 Arguments of the parties

6.266. The European Union contends that the requirement to incorporate local content (local content requirement) is also inconsistent with Article III:4 of the GATT 1994, because it requires economic operators to use domestic instead of imported products to achieve a certain level of local content in order to obtain certain benefits (such as tax benefits or soft loans).<sup>580</sup>

6.267. Japan argues that:

Argentina improves the competitive position of domestically produced goods because (i) domestically produced goods can be purchased freely, and to the extent that a company purchases domestically produced goods, it would not be subject to the RTRR at all; and (ii) only domestically produced goods can be used to satisfy the local content requirement, and thus augment the purchaser's importation rights.<sup>581</sup>

6.268. Japan contends that Argentina imposes the local content requirement on economic operators: (a) in order to lower the level of imported products, thereby achieving a trade surplus; or, (b) as a condition for economic operators "to benefit from tax incentives or other types of support".<sup>582</sup>

6.269. The United States has not developed this claim in its written submissions, although it included it in its panel request.

6.270. Argentina has not addressed this specific claim.<sup>583</sup> As noted above, however, Argentina has argued that the complainants have failed to make a *prima facie* case of inconsistency with respect to a single "overarching" TRRs measure.<sup>584</sup>

#### 6.2.3.2.2 Legal analysis

6.271. Article III:4 of the GATT provides in relevant part that:

<sup>577</sup> Panel Report, *Colombia – Ports of Entry*, paras. 7.252.

<sup>578</sup> Panel Report, *China – Raw Materials*, para. 7.1081.

<sup>579</sup> Argentina's second written submission, paras. 6 and 39.

<sup>580</sup> European Union's first written submission, paras. 77, 217, 219, 363.

<sup>581</sup> Japan's first written submission, para. 199. See also *Ibid.* para. 45.

<sup>582</sup> *Ibid.* para. 45. (footnote omitted)

<sup>583</sup> See, for example, Japan's second written submission, para. 108.

<sup>584</sup> See para. 6.241 above.

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use...

6.272. The Panel will examine whether, in the light of the available evidence, the complainants have made a *prima facie* case that the TRRs measure, with respect to the local content requirement, is inconsistent with Article III:4 of the GATT 1994. In this regard, the Panel will consider the legal standard established by the Appellate Body in *Korea – Various Measures on Beef*<sup>585</sup>: (a) whether imported and domestic products are "like products"; (b) whether the measure at issue is a "law, regulation, or requirement affecting" the "internal sale, offering for sale, purchase, transportation, distribution, or use" of the like products; and, (c) whether imported products are granted less favourable treatment than that accorded to like domestic products.

#### **6.2.3.2.2.1 Whether imported and domestic products are "like products"**

6.273. The European Union and Japan argue that, when the difference in the treatment between domestic and imported products is based exclusively on the products' origin, all products should be considered to be "like".<sup>586</sup>

6.274. A number of WTO panels have established that when origin is the only factor distinguishing between imported and domestic products, there is no need to conduct a likeness analysis on the basis of the traditional likeness criteria established in the GATT panel report on *Border Tax Adjustments*. In these cases, imported and domestic products may be considered to be alike under Article III:4.<sup>587</sup>

6.275. The local content requirement focuses on the origin of the product. The only distinguishing feature between an imported product and a domestic one, in terms of the application of this requirement, is its origin. Only the use of domestic products will enable a producer to comply with the local content requirement demanded by the Argentine Government.

6.276. Therefore, the Panel concludes that, as far as the TRRs measure is concerned, with respect to the local content requirement, imported and domestic products are "like" for the purposes of Article III:4 of the GATT 1994.

#### **6.2.3.2.2.2 Whether the TRRs measure, with respect to the local content requirement, is a law, regulation, or requirement affecting internal sale, offering for sale, purchase, transportation, distribution or use**

6.277. Regarding whether the TRRs measure, with respect to the local content requirement, is a "law, regulation or requirement", the complainants assert that the measure is a "requirement" that is not stipulated in writing. The panel in *Canada – Autos* found that the term "requirement" under Article III:4 of the GATT 1994 covers both mandatory measures and "conditions that an enterprise accepts in order to receive an advantage".<sup>588</sup> This idea is reflected in earlier GATT and WTO panel reports.<sup>589</sup> The panels in *India – Autos*<sup>590</sup> and *China – Auto Parts*<sup>591</sup> also found that measures need not be mandatory to be subject to Article III:4 of the GATT 1994.

<sup>585</sup> Appellate Body Report, *Korea – Various Measures on Beef*, para. 133.

<sup>586</sup> European Union's first written submission, para. 364 (citing Panel Report, *Turkey – Rice*, para. 7.214, and the cases cited therein); Japan's first written submission, para. 203 citing Panel Reports, *India – Autos*, para. 7.174; and *China – Auto Parts*, paras. 7.234-7.235).

<sup>587</sup> Panel Reports, *India – Autos*, para. 7.174; *Canada – Wheat Exports and Grain Imports*, para. 6.164; *Canada – Autos*, para. 10.74; *Turkey – Rice*, paras. 7.214-7.216; *China – Auto Parts*, paras. 7.216-7.217 and 7.235; *China – Publications and Audiovisual Products*, paras. 7.1444-7.1447; and *Thailand – Cigarettes (Philippines)*, paras. 7.661-7.662.

<sup>588</sup> Panel Report, *Canada – Autos*, para. 10.73.

<sup>589</sup> GATT Panel Reports, *Canada – FIRA*, para. 5.4; and *EEC – Parts and Components*, para. 5.21.

<sup>590</sup> Panel Report, *India – Autos*, paras. 7.183-7.186.

<sup>591</sup> Panel Report, *China – Auto Parts*, para. 7.240.



6.278. The complainants argue that compliance with the local content requirement is necessary to benefit from tax advantages or soft loans, or to be entitled to import. In this respect, it is worth recalling that the panel in *China – Auto Parts* stated that the advantage obtained by undertaking commitments voluntarily could consist of the right to import a product.<sup>592</sup>

6.279. In a number of speeches by the President of Argentina as well as in news items posted on government websites, the local content requirement has been presented as a policy that the Argentine Government has been systematically implementing, by requiring importers to engage in import substitution plans, and granting tax incentives and soft loans to economic operators that achieve a certain level of local content.<sup>593</sup> The PEI 2020 considers import substitution as one of the pillars of Argentina's macroeconomic policy.<sup>594</sup>

6.280. In the Panel's view, the evidence makes clear that the achievement of a certain level of local content is required by the Argentine Government in order for economic operators to import and for them to obtain certain advantages. This constitutes a "requirement" within the meaning of Article III:4 of the GATT 1994.

6.281. Regarding whether the TRRs measure, with respect to the local content requirement, affects internal sale, offering for sale, purchase, transportation, distribution or use, the European Union argues that economic operators are not free to use imported products in their production processes as a result of the local content requirement. In the European Union's view, their import decisions are therefore not merely made on the basis of commercial considerations.<sup>595</sup> In turn, Japan submits that the TRRs measure influences domestic manufacturers' choices between imported and domestic input products because (a) only domestic production helps meet import substitution commitments; and (b) purchases of domestically produced goods do not need to be offset under the one-to-one requirement.<sup>596</sup>

6.282. In *EC – Bananas III*, the Appellate Body found that the term "affecting" must be interpreted according to its ordinary meaning, i.e. having "an effect on".<sup>597</sup> This interpretation results in the term being ascribed a broad scope going beyond more restrictive definitions like "governing" or "regulating".<sup>598</sup> The panels in *Canada – Autos*, *India – Autos* and *China – Auto Parts* followed the approach adopted by the Appellate Body in *EC – Bananas III* and also opted for a broad scope of the term "affecting" based on its ordinary meaning.<sup>599</sup>

6.283. Further clarification was provided by the panel in *China – Publications and Audiovisual Products*, which stated that "the word 'affecting' covers not only measures which directly regulate or govern the sale of domestic and imported like products, but also measures which create incentives or disincentives with respect to the sale, offering for sale, purchase, and use of an imported product 'affect' those activities".<sup>600</sup> On appeal, the Appellate Body clarified that "effects on those who sell, purchase, transport, distribute, or use the products are not beyond scrutiny under Article III:4."<sup>601</sup>

6.284. Evidence shows that the Ministry of Industry informed the Argentine Chamber of Producers of Agricultural Machinery (*Cámara Argentina de Fabricantes de Maquinaria Agrícola*, CAFMA) of the import substitution policy aiming at securing at least a quarter of the domestic market for locally-

<sup>592</sup> Ibid. footnote 486 (citing Panel Report, *EC – Bananas III (US)*, para. 4.385).

<sup>593</sup> Argentina's response to Panel question Nos. 57-58; News item: *Prensa Argentina*, Agricultural machinery manufactured in the country must have 40-50% of national parts, 23 May 2013 (Exhibit JE-550/EU-236); Office of the President, Inauguration of a new plant of Fiat Argentina in Córdoba: Speech by the President of Argentina, 4 June 2013 (Exhibit JE-794/EU-444).

<sup>594</sup> Ministry of Industry, PEI 2020, 4 October 2011 (Exhibits ARG-51 and JE-749), p. 33.

<sup>595</sup> European Union's first written submission, para. 366.

<sup>596</sup> Japan's first written submission, para. 208.

<sup>597</sup> Appellate Body Report, *EC – Bananas III*, para. 220.

<sup>598</sup> Panel Report, *EC – Bananas III (Ecuador)*, para. 7.175.

<sup>599</sup> Panel Reports, *Canada – Autos*, para. 10.83; *India – Autos*, para. 7.305; and *China – Auto Parts*, para. 7.251.

<sup>600</sup> Panel Report, *China – Publications and Audiovisual Products*, para. 7.1450 (footnote omitted).

<sup>601</sup> Appellate Body Report, *China – Publications and Audiovisual Products*, para. 305 (footnote omitted).

produced goods.<sup>602</sup> It also shows that, subsequently, the manufacturers of agricultural machinery committed to submit plans to increase their production capacities.<sup>603</sup> News items posted on government websites demonstrate that the Minister of Industry demanded domestic manufacturers of agricultural machinery to reach a level of 55% of import substitution by the end of 2013.<sup>604</sup> The Minister of Industry also stated that increasing the level of local content would be a condition to be eligible for soft loans granted by the *Banco Nación*.<sup>605</sup>

6.285. The requirement to reach a level of local content has had "an effect on" the level of imports purchased and/or used. As a result of the requirement, the level of imports that would otherwise have occurred decreases, as manufacturers that would have used imported products are required to or artificially encouraged to use domestically-produced like products.

6.286. In light of the above, the Panel concludes that the TRRs measure, with respect to the local content requirement imposed by the Argentine Government on economic operators, affects the purchase and use of imported products.

#### **6.2.3.2.2.3 Whether imported products are granted less favourable treatment than that accorded to like domestic products**

6.287. The European Union and Japan contend that the Argentine Government modifies the conditions of competition to the detriment of imported products because it sets levels of local content that have to be reached either to operate in Argentina or to benefit from certain advantages.<sup>606</sup>

6.288. The panel in *US – Gasoline* recalled that GATT panels had determined that the words "treatment no less favourable" called for effective equality of opportunities for imported products in respect of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products.<sup>607</sup>

6.289. In *Korea – Various Measures on Beef*, the Appellate Body found that the analysis of less favourable treatment must focus on whether the measure at issue "modifies the *conditions of competition* in the relevant market to the detriment of imported products".<sup>608</sup> Based on that interpretation, the Appellate Body in *Dominican Republic – Import and Sale of Cigarettes* stated that "a measure accords less favourable treatment to imported products if it gives domestic like products a competitive advantage in the market over imported like products".<sup>609</sup>

6.290. The relationship that must exist between the measure at issue and the imported products allegedly granted less favourable treatment was addressed by the Appellate Body in *Thailand – Cigarettes (Philippines)*. In that case, the Appellate Body stated that, to support a finding that imported products are treated less favourably, there must be a genuine relationship between the measure at issue and its adverse impact on competitive opportunities for imported versus like domestic products.<sup>610</sup> The Appellate Body commented that such analysis need not be based on

<sup>602</sup> News item: Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225).

<sup>603</sup> Ibid.

<sup>604</sup> News item: Ministry of Industry, Agricultural machinery manufacturers in Argentina will incorporate axles and transmissions produced in the country, 27 February 2013 (Exhibit JE-543/EU-229).

<sup>605</sup> News item: *Prensa Argentina*, Agricultural machinery manufacturers commit to increase level of local integration, 13 April 2013 (Exhibit JE-549/EU-235). See also News item: *Prensa Argentina*, Agricultural machinery manufactured in the country must have 40-50% of national parts, 23 May 2013 (Exhibit JE-550/EU-236).

<sup>606</sup> European Union's first written submission, para. 367, Japan's first written submission, para. 209.

<sup>607</sup> Panel Report, *US – Gasoline*, para. 6.10 (referring to GATT Panel Report, *US – Section 337 Tariff Act*, para. 5.11). See also Panel Reports, *Japan – Film*, para. 10.379; and *Korea – Alcoholic Beverages*, para. 10.95.

<sup>608</sup> Appellate Body Report, *Korea – Various Measures on Beef*, para. 137 (emphasis original).

<sup>609</sup> Appellate Body Report, *Dominican Republic – Import and Sale of Cigarettes*, para. 93 (referring to the Appellate Body Reports, *Korea – Various Measures on Beef*, para. 137 and *EC – Asbestos*, para. 100).

<sup>610</sup> Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 134.

empirical evidence as to the actual effects of the measure at issue in the internal market of the Member concerned.<sup>611</sup>

6.291. Government measures providing incentives for the use of domestic over imported input products have been found to be inconsistent with Article III:4 by several panels.<sup>612</sup> The panel in *India – Autos* found that an indigenization requirement imposed by the Indian Government on car manufacturers modified the conditions of competition in the Indian market to the detriment of imported products and was, therefore, in violation of Article III:4 of the GATT 1994.<sup>613</sup>

6.292. The Argentine Government requires economic operators to achieve a certain level of domestic content in order to be eligible to import or to benefit from certain advantages.<sup>614</sup> This necessarily results in a preference for the purchase and/or use of domestic over imported like products. Indeed, the use of domestic products will contribute to reaching the specified level of local content, thereby making the economic operator eligible for benefits. In contrast, economic operators using imported products will not become eligible for the benefits.

6.293. Argentina has a programme of soft loans for manufacturers of agricultural machinery to encourage import substitution.<sup>615</sup> The *Bicentenario* Program (*Programa Fondo del Bicentenario*), which has import substitution as one of its main objectives, has been used in the agricultural machinery sector as well as in the automotive industry.<sup>616</sup> In addition, an incentive scheme called *Bonos de Bienes de Capital K* (K Capital Goods Bonds) is available for manufacturers of "capital goods, information technology (IT) and telecommunications" products and provides tax credits that can be applied against the payment of domestic taxes. Those tax credits increase depending on local content.<sup>617</sup>

6.294. Consequently, the local content requirement imposed by the Argentine Government affects the conditions of competition of imported products in the Argentine market. First, because economic operators that use domestic over imported products are granted advantages, thereby providing an incentive for the use of domestic over imported products. Second, because imports must be compensated with exports in accordance with the one-to-one requirement.

#### 6.2.3.2.3 Conclusion

6.295. In light of the above, the Panel concludes that the TRRs measure, with respect to the local content requirement, modifies the conditions of competition in the Argentine market to the detriment of imported products. Therefore, imported products are granted less favourable treatment than like domestic products within the meaning of Article III:4 of the GATT 1994. Accordingly, the TRRs measure, with respect to the local content requirement, is inconsistent with Article III:4 of the GATT 1994.

6.296. This conclusion is further supported by reference to paragraph (a) of Article 1 of the Annex to the TRIMS Agreement. This paragraph contains an Illustrative List of investment measures related to trade in goods, and provides that measures, mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage,

<sup>611</sup> Ibid. para. 129. See also Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 215.

<sup>612</sup> Appellate Body Reports, *US – FSC (21.5-EC)*, para. 220; and *China – Auto Parts*, paras. 195-197; Panel Report, *US – COOL*, paras. 7.357-7.359.

<sup>613</sup> Panel Report, *India – Autos*, paras. 7.201-7.203 (for the indigenization requirement) and 7.308-7.309 (for the trade balancing requirement).

<sup>614</sup> See para. 6.207 above.

<sup>615</sup> Exhibits EU-235, EU-236

<sup>616</sup> Argentina's response to Panel question No. 57, para. 3. See also News items: Ministry of Industry, The agricultural machinery sector is required to substitute imports amounting to USD 450 million, 10 February 2011 (Exhibits JE-197 and JE-539/EU-225); Office of the President, Inauguration of a new plant of Fiat Argentina in Córdoba: Speech by the President of Argentina, 4 June 2013 (Exhibit JE-794/EU-444); *Página 12*, On the way to reinvest profits, 18 November 2011 (Exhibit JE-620/EU-306); Infobae, Fiat Group improved its trade balance in USD 800 million, 5 May 2011 (Exhibit JE-636/EU-322).

<sup>617</sup> Argentina's response to Panel question No. 58, paras. 6-7.

and which require the purchase or use by an enterprise of products of domestic origin or from any domestic source are inconsistent with Article III:4 of the GATT 1994.<sup>618</sup>

### 6.2.3.3 Whether the TRRs measure is inconsistent with Article X:1 of the GATT 1994

#### 6.2.3.3.1 Arguments of the parties

6.297. The European Union considers that the TRRs measure violates Article X:1 of the GATT 1994 because Argentina did not publish the requirements promptly.<sup>619</sup> The European Union further argues in this regard that the TRRs measure (a) is a measure of general application, because the requirements are not isolated cases, but are part of an overarching measure that applies to a wide range of situations and to a variety of economic operators and sectors; (b) is made effective by Argentina; and, (c) pertains to the category of "requirements, restrictions or prohibitions on imports", as it imposes certain requirements as a condition to import products or as a condition to use imported products in Argentina.<sup>620</sup>

6.298. The United States argues that the TRRs measure, when applied in conjunction with the DJAI requirement, constitutes regulations or administrative rulings of general application for two reasons. First, because it affects importers in general and, second, because it is imposed by the Argentine officials that have authority, control and influence over import transactions and importers. This second element determines, in the United States' view, the "degree of authoritativeness" necessary to qualify as "regulations or administrative rulings", because Argentine officials widely apply the TRRs to DJAI applicants and use their authority, control and influence to condition the approval of DJAIs upon compliance with the TRRs.<sup>621</sup>

6.299. The United States further states that the TRRs measure (a) "pertain[s] to requirements, restrictions or prohibition on imports"<sup>622</sup>; (b) has been made effective by Argentina<sup>623</sup>; (c) has not been published promptly, since the measure has been in force at least since 2010, first operating together with the requirement for Import Certificates (CIs) and later, from 1 February 2012, in conjunction with the DJAI requirement<sup>624</sup>; and, (d) has not been published in a manner that would enable governments and traders to become acquainted with it.<sup>625</sup>

6.300. Japan recalls that the panel in *EC – IT Products* considered the "exercise of influence" by certain administrative bodies as part of the instruments (laws, regulations, judicial decisions and administrative rulings) covered by Article X:1 of the GATT 1994.<sup>626</sup> Japan argues that the TRRs measure is covered by Article X:1 because "[a]t a minimum, the TRR constitutes the 'exercise of influence' by Argentine administrative bodies".<sup>627</sup> Japan asserts that the Argentine Government has acknowledged the existence of the TRRs measure (for example, in official press releases and in the PEI 2020), but it has failed to publicly articulate the precise content of the measure, its precise scope of application, or the methods it uses to enforce the measure, in a manner that would allow governments and traders to become acquainted with it.<sup>628</sup>

6.301. Argentina has not addressed this specific claim. As noted above, however, Argentina has argued that the complainants have failed to make a *prima facie* case of inconsistency with respect to a single "overarching" TRRs measure.<sup>629</sup>

<sup>618</sup> On the relevance of Article 1 of the Annex to the TRIMS Agreement regarding Article III:4 of the GATT 1994, see Panel Report, *India – Autos*, para. 7.157.

<sup>619</sup> European Union's first written submission, paras. 373-384.

<sup>620</sup> European Union's first written submission, paras. 379-382.

<sup>621</sup> United States' first written submission, para. 168.

<sup>622</sup> *Ibid.* paras. 171-172.

<sup>623</sup> *Ibid.* paras. 177-178.

<sup>624</sup> *Ibid.* paras. 179-180.

<sup>625</sup> *Ibid.* paras. 173-176.

<sup>626</sup> Japan's first written submission, para. 215 (citing Panel Report, *EC – IT Products*, paras. 7.1026-7.1027).

<sup>627</sup> Japan's first written submission, para. 216.

<sup>628</sup> *Ibid.* para. 217.

<sup>629</sup> See para. 6.241 above.

### 6.2.3.3.2 Legal analysis

6.302. The first sentence of Article X:1 of the GATT 1994 reads as follows:

Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.

6.303. The Appellate Body has indicated that "Article X relates to the publication and administration of laws, regulations, judicial decisions and administrative rulings of general application, rather than to the substantive content of such measures".<sup>630</sup>

6.304. As noted above<sup>631</sup>, pursuant to the principle of judicial economy, panels are allowed to address only those claims that are necessary to resolve the dispute.<sup>632</sup> It is within a panel's discretion to decide which claims it is going to rule upon<sup>633</sup>, as long as it addresses "those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance by a Member with those recommendations and rulings 'in order to ensure effective resolution of disputes to the benefit of all Members'"'.<sup>634</sup>

6.305. The Panel has found that the TRRs measure is inconsistent with Article XI:1 of the GATT 1994.<sup>635</sup> An additional finding regarding the same measure under Article X:1 of the GATT 1994 is not necessary or useful in resolving the matter at issue. Accordingly, guided by the principle of judicial economy, the Panel refrains from making any findings with respect to this particular claim.

### 6.2.3.4 Whether the TRRs measure "as such" is inconsistent with Articles XI:1, III:4 and X:1 of the GATT 1994

6.306. After having determined the inconsistency of the TRRs measure with Articles XI:1 of the GATT 1994, as well as with Article III:4 of the GATT with respect to the local content requirement, the Panel will address Japan's claim that the measure "as such" is inconsistent with Articles XI:1, III:4 and X:1 of the GATT 1994. As mentioned above, Japan is the only complainant to request separate findings with respect to the TRRs measure "as such". In the section dealing with the order of analysis, the Panel explained it would address at a later stage the claims advanced by Japan against the measures "as such" for two reasons: (a) because the TRRs measure is unwritten, the evidence of its existence and content necessarily relates to the application of the measure; and (b) because if a finding of inconsistency were made with regard to the joint claims raised by all three complainants, the Panel would only need to move a step further to complete the examination of Japan's claims against the measure "as such" by determining, mainly, whether the measure has general and prospective application.<sup>636</sup>

#### 6.2.3.4.1 Arguments of the parties

6.307. Japan asks the Panel to issue separate rulings about the TRRs "as such" and "as applied".<sup>637</sup> Japan argues that, to prevent the Argentine Government from imposing these

<sup>630</sup> Appellate Body Report, *EC – Poultry*, para. 115.

<sup>631</sup> See para. 6.152 above.

<sup>632</sup> Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, para. 133; *US – Wool Shirts and Blouses*, pp. 18-19, DSR 1997:I, p. 323 at pp. 339-340.

<sup>633</sup> Appellate Body Report, *US – Lead and Bismuth II*, para. 71.

<sup>634</sup> Appellate Body Report, *Australia – Salmon*, para. 223.

<sup>635</sup> See para. 6.265 above.

<sup>636</sup> See para. 6.153 above.

<sup>637</sup> See para. 6.136 above.

requirements in the future, with respect to any sector, company, or product, it is "critically important"<sup>638</sup> that the Panel formulate its findings in such a way as to ensure that any future effort to enforce, extend or maintain the TRRs measure will be WTO consistent. Japan considers that a finding about the measure "as such" would be "the most clear-cut and effective way to prevent Argentina from continuing to apply or reapplying the RTRR or some form of it in the future".<sup>639</sup>

6.308. The European Union notes that its request for the Panel to issue rulings with respect to a single "overarching" TRRs measure and with respect to 23 specific instances of applications of alleged RTRRs does not refer to an "as such"/"as applied" distinction. In its view, all its claims refer to "cases" or "measures" taken by Argentina that are contrary to the GATT 1994.<sup>640</sup> The United States does not request separate findings about the TRRs measure "as such".

6.309. Argentina contends that all three complainants are challenging the TRRs measure "as such", but only Japan "has been forthright in acknowledging that this is the case". In Argentina's view, the United States has remained silent about the exact nature of its claims, but has not refuted Argentina's characterization of its claims being against the measure "as such"; while the European Union has not offered a coherent explanation regarding the nature of its claims against the TRRs measure, and its explanations that it is not pursuing a claim against the measure "as such" is implausible and inconsistent with the way in which the European Union has framed its case.<sup>641</sup>

6.310. As noted above<sup>642</sup>, Argentina asserts that there is a high legal standard for challenging unwritten measures (such as the TRRs measure) consisting of three elements: (a) that the measure is attributable to a WTO Member; (b) the precise content of the measure; and, (c) the general and prospective application of the measure.<sup>643</sup> Argentina contends that the complainants have neither acknowledged this legal standard nor demonstrated the precise content of the TRRs measure and its general and prospective application.<sup>644</sup> Therefore, in Argentina's view, the complainants have not successfully made a *prima facie* case of the existence of the TRRs measure.<sup>645</sup> The United States rejects the idea that there is a separate and higher burden placed on a party that alleges the existence of an unwritten measure. In the United States' view, the usual rules apply and a complainant must provide sufficient evidence. For an unwritten measure, "additional evidence may be required", but this does not imply a higher standard of proof.<sup>646</sup>

6.311. Regarding the first element of the legal standard cited by Argentina (attribution to a WTO Member), the complainants argue that the TRRs measure is imposed by the Argentine Government on economic operators, who undertake commitments, not because they freely decide to do so, but as a response to a demand from Argentine officials.<sup>647</sup> The attribution of the TRRs measure made by the complainants has not been disputed by Argentina.

6.312. Regarding the second element of the legal standard proposed by Argentina (precise content), the European Union asserts it has made a detailed description of the TRRs measure, indicating not just the requirements challenged but also the objectives pursued by the overarching measure: eliminating trade deficits and substituting imports by domestic products.<sup>648</sup> The United States asserts that there is a large volume of evidence on the precise content of the TRRs measure, including statements by Argentine officials and press releases issued by the Argentine Government.<sup>649</sup> Japan argues that it identified the TRRs measure with precision in its panel request

<sup>638</sup> Japan's second written submission, para. 13.

<sup>639</sup> Ibid.

<sup>640</sup> European Union's response to Panel question No. 1, paras. 1-6.

<sup>641</sup> Argentina's second written submission, footnote 35 to para. 72.

<sup>642</sup> See para. 6.40 above.

<sup>643</sup> Argentina's second written submission, paras. 73-79. See also *ibid.* paras. 80-97.

<sup>644</sup> Ibid. paras. 73, 74 and 98.

<sup>645</sup> Ibid. paras. 72-76, 98-117.

<sup>646</sup> United States' second written submission, paras. 102-109.

<sup>647</sup> European Union's first written submission, paras. 69, 352 and 366; European Union's second written submission, paras. 114-115; United States' first written submission, para. 135; Japan's first written submission, paras. 185 and 198; Japan's second written submission, paras. 12, 34, 109.

<sup>648</sup> European Union's second written submission, paras. 114-115. See also European Union's first written submission, paras. 325-327.

<sup>649</sup> United States' second written submission, para. 112.



and its first written submission. Japan adds that it was unable to provide a closed list of the actions that are part of the TRRs measure due to the measure's lack of transparency.<sup>650</sup> In response, Argentina contends that the complainants have not established the precise content of the measure because (a) the list of requirements that the TRRs measure allegedly comprises is not exhaustive<sup>651</sup>; and (b) the complainants argue that the measure "includes 'one or more' of a total of five, and maybe more, distinct alleged requirements".<sup>652</sup> In Argentina's view, the measure described by the complainants is broad and amorphous and therefore insufficiently precise.<sup>653</sup>

6.313. Regarding the third element of the legal standard cited by Argentina (general and prospective application), the European Union argues that the TRRs measure has general application because it does not constitute isolated actions undertaken by the Argentine Government, but instead applies to a wide range of sectors and economic operators and can potentially apply to all goods.<sup>654</sup> In the European Union's view, the TRRs measure is applied prospectively because the imposition of the requirements responds to "a systemic approach and coordinated efforts" and this leads to the presumption that they will continue to be applied in the future, as long as Argentina's policy objectives remain unchanged.<sup>655</sup> As noted above, the United States has not asked for separate findings about the TRRs measure "as such". The United States argues that, with respect to its challenge against the TRRs measure there is no basis for requiring an additional showing of "general and prospective application", but, were the Panel to require proof thereof, the complainants have met their burden of proof by providing extensive evidence on the "repeated and systematic application of the TRRs measure".<sup>656</sup> Japan considers that the TRRs measure applies generally because it is applied in a number of sectors, on a wide range of economic operators, and its application is not isolated or limited to a few cases.<sup>657</sup> In Japan's view, the general application of the TRRs measure reinforced by elements, such as (a) the submission of request notes (*notas de pedido*) is required by SCI to unblock DJAI applications for "practically all goods to be imported into Argentina"<sup>658</sup>; (b) official news items refer to the TRRs measure in a general manner<sup>659</sup>; and, (c) PEI 2020, which the TRRs measure is designed to facilitate, covers most Argentine economic sectors.<sup>660</sup> Japan argues that the measure is prospective, because it seeks to achieve "trade balancing" and "import substitution" objectives contained in PEI 2020 that will continue to be policy goals for the Argentine Government. In Japan's view, the general and prospective nature of the TRRs measure is also demonstrated by: (a) the systematic and coordinated application of the requirements across sectors; (b) the repeated public statements of Argentine officials implying the existence of the requirements; (c) the consistency between the requirements and Argentina's broader economic policy goals; (d) the absence of any evidence that the requirements are being imposed at the initiative of individual, low-level officials; and, (e) the absence of any motivation on the part of private parties to conclude agreements related to such requirements.<sup>661</sup>

6.314. Argentina considers that, even if the Panel were to accept the characterization of the TRRs measure made by the complainants, it does not have sufficient evidence to conclude on the general and prospective application of the requirements because they "do not have any normative content at all, since they neither require nor entail prospective courses of action".<sup>662</sup> In Argentina's view, the Panel would find, at most, isolated actions relating to a limited number of economic

<sup>650</sup> Japan's second written submission, paras. 111-115.

<sup>651</sup> The complainants use the phrase "*inter alia*" when identifying the TRRs in their request for consultations and panel requests. See European Union's first written submission, para. 69; Japan's first written submission, para. 41.

<sup>652</sup> Argentina's second written submission, para. 104.

<sup>653</sup> Ibid.

<sup>654</sup> European Union's first written submission, para. 379; and second written submission, paras. 123-124.

<sup>655</sup> European Union's second written submission, paras. 126-129.

<sup>656</sup> United States' second written submission, paras. 116-117. See also opening statement at the second meeting of the Panel, paras. 82-83.

<sup>657</sup> Japan's closing statement at the first meeting of the Panel, para. 5; second written submission, paras. 101, 107; response to Panel question No. 51, para. 38.

<sup>658</sup> Japan's second written submission, para. 101.

<sup>659</sup> Ibid.

<sup>660</sup> Ibid.

<sup>661</sup> Japan's closing statement at the first meeting of the Panel, para. 6; second written submission, para. 102.

<sup>662</sup> Argentina's opening statement at the first meeting of the Panel, para. 47.

operators. Moreover, there would not even be a common content to all actions, nor any indication that the TRRs measure is generally or prospectively applied.<sup>663</sup>

#### 6.2.3.4.2 Legal analysis

6.315. It is established practice in WTO dispute settlement that Members can challenge, not only the application of measures in specific circumstances, but also rules or norms of general and prospective application, irrespective of their actual application. In this respect, as stated by the Appellate Body:

[T]he distinction between "as such" and "as applied" claims ... has been developed in the jurisprudence as an analytical tool to facilitate the understanding of the nature of a measure at issue. This heuristic device, however useful, does not define exhaustively the types of measures that may be subject to challenge in WTO dispute settlement. In order to be susceptible to challenge, a measure need not fit squarely within one of these two categories, that is, either as a rule or norm of general and prospective application, or as an individual instance of the application of a rule or norm.<sup>664</sup>

6.316. Challenges against a measure "as such" can be brought independently or simultaneously with challenges against a measure "as applied".<sup>665</sup>

6.317. The Appellate Body has noted that "as such" challenges against a Member's measure in WTO dispute settlement proceedings (that seek to prevent Members *ex ante* from engaging in certain conduct) are especially serious challenges, because they have more far-reaching implications than "as applied" claims:

By definition, an "as such" claim challenges laws, regulations, or other instruments of a Member that have general and prospective application, asserting that a Member's conduct—not only in a particular instance that has occurred, but in future situations as well—will necessarily be inconsistent with that Member's WTO obligations. In essence, complaining parties bringing "as such" challenges seek to prevent Members *ex ante* from engaging in certain conduct.<sup>666</sup>

6.318. Unwritten measures, like the TRRs measure at issue in this dispute, can also be challenged "as such". The Appellate Body has noted in this regard that:

Particular rigour is required on the part of a panel to support a conclusion as to the existence of a "rule or norm" that is *not* expressed in the form of a written document. A panel must carefully examine the concrete instrumentalities that evidence the existence of the purported "rule or norm" in order to conclude that such "rule or norm" can be challenged, as such.<sup>667</sup> (footnote omitted)

6.319. As the Appellate Body held in *US – Zeroing (EC)* with respect to the possibility to bring an "as such" claim against an unwritten measure:

When bringing a challenge against such a "rule or norm" that constitutes a measure of general and prospective application, a complaining party must clearly establish, through arguments and supporting evidence, at least that the alleged "rule or norm" is attributable to the responding Member; its precise content; and indeed, that it does have general and prospective application.<sup>668</sup>

<sup>663</sup> Argentina's second written submission, para. 106.

<sup>664</sup> Appellate Body Report, *US – Continued Zeroing*, para. 179.

<sup>665</sup> Appellate Body Report, *US – 1916 Act*, para. 61. In the present dispute, Japan has specifically requested that the Panel examine the TRRs measure both "as such" and "as applied". For further details on Japan's request for findings, see Japan's second written submission, paras. 9-20.

<sup>666</sup> Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 172.

<sup>667</sup> Appellate Body Report, *US – Zeroing (EC)*, para. 198.

<sup>668</sup> *Ibid.*

6.320. The Panel agrees with Argentina that the assessment of the three elements of the legal standard set out by the Appellate Body in *US – Zeroing (EC)* is warranted when examining Japan's claims against the TRRs measure "as such". The European Union and Japan have argued in this regard that the unwritten TRRs measure they are challenging has general and prospective application.<sup>669</sup> The United States, in turn, has stated that, although "there is no basis for requiring an additional showing of 'general and prospective application'", were the Panel to require proof thereof, the complainants have met their burden of proof by providing extensive evidence on the "repeated and systematic application of the RTRRs measure".<sup>670</sup>

6.321. The Panel will therefore examine the three elements proposed by Argentina, in order to consider Japan's request for findings that the TRRs measure "as such" is inconsistent with Articles XI:1, III:4 and X:1 of the GATT 1994. Although this test is not applicable to examine all claims against unwritten measures, as noted in the previous paragraph it is pertinent in the context of a challenge against an unwritten measure "as such".

#### 6.2.3.4.2.1 Whether the TRRs measure is attributable to Argentina

6.322. The Panel has already concluded that the TRRs measure is attributable to Argentina.<sup>671</sup> The Panel has also noted that the attribution of the TRRs measure made by the complainants has not been disputed by Argentina, which has stated only that "the complainants have failed to establish the precise content of the alleged 'overarching measure' they are contesting or that the measure is of general and prospective application".<sup>672</sup>

#### 6.2.3.4.2.2 The precise content of the TRRs measure

6.323. The Panel agrees with the United States that challenging an unwritten measure does not involve a different burden of proof than when challenging a written measure, although it may result in a larger volume of evidence necessary to prove the existence of the measure.<sup>673</sup> As the Appellate Body indicated in *EC and certain member States – Large Civil Aircraft*, "[w]hen a challenge is brought against an unwritten measure, the very existence and the precise contours of the alleged measure may be uncertain".<sup>674</sup>

6.324. The panel in *US – Zeroing (EC)* recognized that "norms are not always susceptible of such a clear definition" and that the type of evidence needed to determine the precise content of a measure can vary.<sup>675</sup> In *EC and certain member States – Large Civil Aircraft*, the panel found that the content of a challenged measure was sufficiently precise on the basis of the complainant's arguments and submissions although the description thereof was "not always... crystal clear".<sup>676</sup> The panel in *EC – Approval and Marketing of Biotech Products* used a similar reasoning when it stated that "the informal nature of a governmental measure may affect the degree of precision with which a measure can be set out in a panel request".<sup>677</sup>

6.325. Were panels to request an extremely high level of detail in the definition of the content of unwritten measures, this could make it almost impossible in practice to challenge such types of measures. This is more so in cases where one of the purported characteristics of the challenged measure is precisely its lack of transparency and the broad discretion that the authorities have in its implementation.<sup>678</sup> This could affect the right of WTO Members to bring a challenge against a measure under the DSU. In any event, what is crucial is that, based on the available evidence, both a panel and the respondent party have a clear understanding of the components and the operation of the challenged measure.

<sup>669</sup> European Union's second written submission, paras. 122-129; United States' second written submission, paras. 116-117 and 125; Japan's second written submission, para. 107.

<sup>670</sup> United States' second written submission, paras. 116-117.

<sup>671</sup> See para. 6.231 above.

<sup>672</sup> Argentina's second written submission, para. 98. See para. 6.230 above.

<sup>673</sup> United States' second written submission, paras. 102 and 108.

<sup>674</sup> Appellate Body Report, *EC and certain Member States – Large Civil Aircraft*, para. 792.

<sup>675</sup> Panel Report, *US – Zeroing (EC)*, para. 7.102.

<sup>676</sup> Panel Report, *EC and certain Member States – Large Civil Aircraft*, para. 7.527.

<sup>677</sup> Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.47.

<sup>678</sup> See, for example, Japan's second written submission, para. 115.

6.326. The Panel notes that the complainants identified the same five requirements as the constituent elements of the TRRs measure imposed by the Argentine Government on economic operators. The fact that the list provided by the European Union and Japan is not exhaustive does not constitute an obstacle to considering the measure as one composed of several requirements as described by the complainants and demonstrated through the evidence. As indicated above, the complainants have requested findings about a single global or overarching measure that consists in the Argentine authorities' imposition on economic operators of one or more of those requirements as a condition to import goods into Argentina.<sup>679</sup>

6.327. The Panel considers that the available evidence provides it with sufficient elements to establish the existence and the precise content of the challenged measure, notwithstanding the fact that the measure is unwritten.

#### 6.2.3.4.2.3 General application of the TRRs measure

6.328. The complainants contend that the TRRs measure is an unwritten measure with normative value<sup>680</sup>, or constitutes rules of general application for controlling importation and regulating the conduct of importers.<sup>681</sup> This argument has been contested by Argentina, who asserts that "the alleged commitments described by the complainants do not have any normative content at all, since they neither require nor entail prospective courses of action".<sup>682</sup> It is therefore for the Panel to assess whether the complainants have provided enough evidence of the general application of the TRRs measure.

6.329. The concept of "general application" has been interpreted by previous panels in the context of Article X of the GATT. The panel in *US – Underwear* found that:

If, for instance, the restraint was addressed to a specific company or applied to a specific shipment, it would not have qualified as a measure of general application. However, to the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers, we find it to be a measure of general application.<sup>683</sup>

6.330. Subsequent panels interpreting this term, such as *Japan – Film*, *EC – Poultry* and *Thailand – Cigarettes (Philippines)*, adopted a similar approach. In *Japan – Film*, the panel established that "administrative rulings addressed to specific individuals or entities" did not have general application and, therefore, they did not fall under the publication requirement set forth in Article X:1 of the GATT 1994.<sup>684</sup> In *EC – Poultry*, the panel stated that "licences issued to a specific company or applied to a specific shipment cannot be considered to be a measure of general application".<sup>685</sup>

6.331. In *EC – Selected Customs Matters*, the panel also examined this issue and concluded that laws, regulations, judicial decisions and administrative rulings of general application are those "that apply to a range of situations or cases, rather than being limited in their scope of application".<sup>686</sup> In that dispute, the panel found that the *Explanatory Notes to the Combined Nomenclature* were of general application because they were "not limited to a single import or a single importer".<sup>687</sup> Another dispute in which this issue was raised was *China – Raw Materials*,

<sup>679</sup> Similarly, the panel in *China – Raw Materials*, asserted that an open-ended list included in the panel request was not a problem in terms of determining the content of the measure at issue because the panel was only going to consider the measures explicitly listed. Communication from the Panel, *China – Raw Materials*, WT/DS394/9, WT/DS395/9, WT/DS398/8, 18 May 2010, p. 1.

<sup>680</sup> European Union's second written submission para. 122; United States' second written submission, para. 125; Japan's second written submission, para. 104.

<sup>681</sup> United States' second written submission, para. 125.

<sup>682</sup> Argentina's opening statement at the first meeting of the Panel, para. 47.

<sup>683</sup> Panel Report, *US – Underwear*, para. 7.65.

<sup>684</sup> Panel Report, *Japan – Film*, para. 10.385.

<sup>685</sup> Panel Report, *EC – Poultry*, para. 269.

<sup>686</sup> Panel Report, *EC – Selected Customs Matters*, para. 7.116.

<sup>687</sup> Ibid. para. 7.778.

where the panel considered that "a measure that has the potential to affect trade and traders" was of general application.<sup>688</sup>

6.332. In some previous disputes, measures that apply in all cases have been found to have "general application".<sup>689</sup> As noted above, however, the term "general application" does not necessarily imply a requirement that the measure at issue "apply to all cases". In the Panel's view, limiting "general application" to application in all cases would result in an inappropriately narrow interpretation.

6.333. In a recent dispute, *US – Countervailing and Anti-Dumping Measures (China)*, the panel reviewed two aspects when assessing whether a law or another relevant measure is of "general application" within the meaning of Article X:1: (a) the subject-matter or content; and (b) the persons or entities to whom it applies, or the situations or cases in which it applies.<sup>690</sup>

6.334. Concerning the subject-matter of the measure at issue, the Panel has found that the TRRs measure affects a wide range of sectors such as foodstuffs, automobiles, motorcycles, mining equipment, electronic and office products, agricultural machinery, medicines, publications, and clothing.<sup>691</sup> Furthermore, the Panel has found that the measure could affect any economic sector because trade in any good can contribute to achieving a trade balance or surplus and import substitution. The Panel has also noted that Argentina has not provided evidence and arguments to support its contention that the TRRs can at most be characterized as a series of unrelated one-off and isolated actions.<sup>692</sup> Indeed, the Panel has found that the TRRs measure seeks to implement a policy announced by high-ranking Argentine Government officials.<sup>693</sup> The Panel has also found that the TRRs measure is not limited to a single import or a single importer, but is part of a policy implemented by the Argentine Government.<sup>694</sup>

6.335. With regard to the persons or entities to whom the measure applies or the situations or cases in which it applies, the Panel has found that the TRRs measure can apply to any economic operator, regardless of the sector in which it operates and its size. The flexibility of the TRRs measure, which allows the Argentine Government to adapt it to the specific characteristics of any economic operator, supports the Panel's conclusion. In the Panel's view, the fact that the type and content of the specific TRRs imposed by the Argentine Government varies depending on the sector and the economic operator does not detract from our conclusion that the requirements have "general application".

6.336. For the reasons explained above, the Panel concludes that the TRRs measure has general application.

#### 6.2.3.4.2.4 Prospective application of the TRRs measure

6.337. With respect to the prospective application of the TRRs measure, the Appellate Body in *US – Continued Zeroing* found that:

The density of factual findings in these cases, regarding the continued use of the zeroing methodology in a string of successive proceedings pertaining to the same anti-dumping duty order, provides a sufficient basis for us to conclude that the zeroing methodology would likely continue to be applied in successive proceedings...<sup>695</sup>

6.338. The Panel is aware that mere repetition is not sufficient to demonstrate the prospective application of a measure. Nevertheless, as stated by the panel in *China – Publications and*

<sup>688</sup> Panel Report, *China – Raw Materials*, para. 7.1098.

<sup>689</sup> See, for example, Panel Reports, *EC – Approval and Marketing of Biotech Products*, para. 7.1272; *Thailand – Cigarettes (Philippines)*, para. 7.773.

<sup>690</sup> Panel Report, *US – Countervailing and Anti-Dumping Measures (China)*, para. 7.35.

<sup>691</sup> See para. 6.158 above.

<sup>692</sup> See para. 6.229 above.

<sup>693</sup> See para. 6.230 above.

<sup>694</sup> See paras. 6.157-6.158 above.

<sup>695</sup> Appellate Body Report, *US – Continued Zeroing*, para. 191.

*Audiovisual Products*, repetition can create an "expectation" that a certain behaviour will be followed in the future.<sup>696</sup>

6.339. The concept of "deliberate policy" was also addressed by the panel in *Thailand – Cigarettes (Philippines)*. In that dispute, the panel rejected the argument by the Philippines that the measure had prospective application because it did not find "evidence showing a deliberate policy by the Thai Government of maintaining a general rule".<sup>697</sup> In line with this finding, the panel in *US – Shrimp (Vietnam)* considered that "the zeroing methodology may be found to have general and prospective application if the USDOC is shown to have a deliberate policy of applying that methodology, going beyond the simple repetition of the application of that methodology in specific cases."<sup>698</sup> In that dispute, since the measure was unwritten, the panel's conclusions "rest on inferences drawn from evidence in the form, *inter alia*, of expert opinions, statements by the authorities concerned, or other evidence which indirectly supports the view that the application by the authorities of the methodology at issue reflects a 'deliberate policy'".<sup>699</sup>

6.340. Argentina's imposition of the TRRs measure reflects a deliberate policy, as it constitutes repeated actions, coordinated by the highest authorities, including the President, the Minister of Industry and the Secretary of Trade. The TRRs measure has been applied to a wide range of economic sectors and economic operators.<sup>700</sup> The related policy has also been publicly announced in public statements and speeches and posted on government websites. It is part of a stated policy implemented by the Argentine Government at the highest level.<sup>701</sup>

6.341. Evidence on the record suggests that these commitments will continue to be required, unless and until the policy is repealed or modified. By way of example, the Argentine Secretary of Domestic Trade expressed in an official press release in late 2013 that the policy of "managed trade" would continue to be applied in the future as per the instructions from the President of Argentina.<sup>702</sup>

6.342. In light of the above, the Panel finds that the imposition of the TRRs measure is a policy tool that has been applied at least since 2009. The repeated imposition of the TRRs measure for several years encompassing a number of sectors and undefined economic operators supports the view that the TRRs measure could potentially affect any sector and any economic operator. Accordingly, the Panel concludes that the TRRs measure has prospective application.

#### 6.2.3.4.3 Conclusion

6.343. Having determined the inconsistency of the TRRs measure with Article XI:1 of the GATT 1994, as well as with Article III:4 of the GATT 1994 with respect to the local content requirement, and that the TRRs measure is of general and prospective application, the Panel concludes that the TRRs measure is also inconsistent with the above-mentioned provisions "as such".

### 6.3 The Advance Sworn Import Declaration (DJAI) procedure

#### 6.3.1 Preliminary considerations

##### 6.3.1.1 Description of the claims

6.344. The complainants have presented two different lines of argument in their claims against the DJAI procedure.

<sup>696</sup> Panel Report, *China – Publications and Audiovisual Products*, para. 7.198.

<sup>697</sup> Panel Report, *Thailand – Cigarettes (Philippines)*, para. 7.132.

<sup>698</sup> Panel Report, *US – Shrimp (Viet Nam)*, para. 7.112. (footnote omitted)

<sup>699</sup> *Ibid.* (footnote omitted)

<sup>700</sup> See paras. 6.334 and 6.335 above.

<sup>701</sup> See paras. 6.230 and 6.334 above.

<sup>702</sup> News item: *Prensa Argentina*, Moreno confirmed that policy of trade administration will continue as per presidential instructions, 3 November 2013 (Exhibit JE-759).



6.345. First, the complainants argue that, irrespective of whether the Panel considers the DJAI procedure to be an import licence: (a) the DJAI procedure is an import restriction inconsistent with Article XI:1 of the GATT 1994; (b) the DJAI procedure is administered in a manner inconsistent with Argentina's obligations under Article X:3(a) of the GATT 1994; and, (c) Argentina has failed to publish promptly information relating to the operation of the DJAI procedure in the manner required by Article X:1 of the GATT 1994.

6.346. Second, if the Panel considers the DJAI procedure to be an import licence, the complainants argue that: (a) the DJAI procedure is an import restriction, made effective through an import licence, inconsistent with Article XI:1 of the GATT 1994; (b) the DJAI procedure is administered in a manner inconsistent with Argentina's obligations under Articles 1.3, 1.6, 3.2, and 3.5(f) of the Import Licensing Agreement; (c) Argentina has failed to publish promptly information relating to the operation of the DJAI procedure in the manner required by Articles 1.4(a) and 3.3 of the Import Licensing Agreement; and, (d) Argentina has failed to notify the DJAI procedure in the manner required by Articles 1.4(a), 5.1, 5.2, 5.3, and 5.4 of the Import Licensing Agreement.

6.347. Argentina contends that the Import Licensing Agreement and Articles XI:1, X:1 and X:3(a) of the GATT 1994 are not applicable to the DJAI procedure. In Argentina's view, the DJAI procedure is a formality or requirement imposed in connection with importation and is therefore subject to Article VIII of the GATT 1994. While Argentina put forward a number of other counter arguments to respond to the complainants' claims under Articles XI:1, X:1 and X:3(a) of the GATT 1994 and under Article 3.2 of the Import Licensing Agreement, it did not address the claims that were raised by the complainants under other provisions of the Import Licensing Agreement cited by the complainants (Articles 1.3, 1.4(a), 1.6, 3.3, 3.5(f), 5.1, 5.2, 5.3 and 5.4).

### 6.3.1.2 Order of analysis

6.348. As noted above, the Appellate Body has observed that, as a general principle, panels are free to structure the order of their analysis as they see fit and, in doing so, they may find it useful to take account of the manner in which claims are presented to them by a complaining Member.<sup>703</sup>

6.349. The three complainants request that the Panel examine their claims under the GATT 1994 prior to their claims under the Import Licensing Agreement.<sup>704</sup> In the European Union's view, the Panel would only need to analyse the complainants' claims under the Import Licensing Agreement if the Panel determined that the DJAI procedure constitutes an import licence within the meaning of Article XI:1 of the GATT 1994. In the event the Panel finds that the DJAI procedure constitutes an import licence for the purpose of Article XI:1 of the GATT 1994, the European Union argues that its claim under Article 1.3 of the Import Licensing Agreement should be examined before that under Article X:3(a) of the GATT 1994. In support of its argument, the European Union refers to the Appellate Body's statement in *EC – Bananas III* that Article 1.3 of the Import Licensing Agreement and Article X:3(a) of the GATT 1994 have "identical coverage", but the Import Licensing Agreement "deal[s] specifically and in detail with the administration of import licensing procedures".<sup>705</sup>

6.350. In turn, the United States indicates that "[t]he co-complainants are challenging the DJAI not so much as a set of [import licensing procedures] than as a restriction on imports imposed through import licensing". As a result, it is not the case that the Import Licensing Agreement is the more specific agreement in relation to the claims advanced by the co-complainants. Rather, 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. Therefore, the United States requests that the Panel start its analysis with the GATT 1994.<sup>706</sup>

<sup>703</sup> See para. 6.147 above (referring to Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 126).

<sup>704</sup> European Union's response to Panel question No. 20, para. 43; United States' opening statement at the first substantive meeting, paras. 47-48; Japan's response to Panel question No. 20, paras. 32-33.

<sup>705</sup> European Union's response to Panel question No. 20, paras. 48-49; first written submission, para. 291 (referring to Appellate Body Report, *EC – Bananas III*, para. 204).

<sup>706</sup> United States' opening statement at the first meeting of the Panel, paras. 47-48.



6.351. Japan also considers that the Panel should first analyse the claims against the DJAI procedure under the GATT 1994, and afterwards address the claims against the DJAI procedure under the Import Licensing Agreement. According to Japan, this order of analysis would be more logical for the following reasons: (a) Article XI:1 of the GATT 1994 "deals more specifically with the matter before the Panel"; (b) it would allow the Panel to first address the DJAI procedure itself, and then to review the manner in which it is administered under the Import Licensing Agreement, which is consistent with the approach adopted by the panel in *Turkey – Rice*; and (c) under Article XI:1, the Panel would be able to analyse the DJAI procedure and its substantive content as a whole and in isolation from other measures; in contrast, under the Import Licensing Agreement (in particular, under Article 3.2 of the Import Licensing Agreement) the focus of the inquiry would require that the Panel review the DJAI procedure in relation to the "restriction" it implements.<sup>707</sup>

6.352. On the other hand, Argentina considers that "[a]ny examination of claims relating to formalities or requirements of importation, such as the DJAI procedure, must begin with Article VIII of the GATT 1994".<sup>708</sup> In Argentina's view, if the Panel were to find that the DJAI procedure can be examined under provisions other than Article VIII of the GATT 1994, particularly under Article XI:1 of the GATT 1994, it should examine the complainants' claims under the Import Licensing Agreement first<sup>709</sup>, since "[t]he threshold issue for the Panel ... is whether the DJAI procedure is subject to the provisions of the [Import Licensing Agreement]".<sup>710</sup>

6.353. Certain parties have further expressed their preferences as to the order of analysis the Panel should adopt with regard to the two different lines of argument raised by the complainants' under Article XI:1 of the GATT 1994. As noted above, the complainants argue that (a) the DJAI procedure constitutes an import restriction made effective through an import licence inconsistent with Article XI:1 of the GATT 1994<sup>711</sup>; and (b) irrespective of whether it constitutes an import licence, it amounts to an import restriction that is inconsistent with Article XI:1 of the GATT 1994.<sup>712</sup>

6.354. The European Union indicates it would prefer that the Panel commence its analysis by examining whether the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, irrespective of whether it constitutes an import licence. In the European Union's view, "[i]n these circumstances, the Panel will not even need to determine whether the DJAI procedure constitutes an import licence given that, for purposes of Article XI of the GATT, the category of 'other measures' is broader than the category of 'import licences'".<sup>713</sup> The United States states that "[t]he co-complainants are challenging the DJAI not so much as a set of procedures imposing import licensing than as a restriction on imports imposed through import licensing".<sup>714</sup>

6.355. In contrast, neither Japan nor Argentina express any preference as to which of the lines of argument advanced by the complainants under Article XI:1 of the GATT 1994 should be examined by the Panel first.

6.356. Argentina argues, however, that Article XI:1 of the GATT 1994 is not applicable to import formalities such as the DJAI procedure.<sup>715</sup> In Argentina's view, "[b]ecause formalities and requirements subject to Article VIII cannot be evaluated as quantitative restrictions under Article XI ... the complainants' claims under Article XI in respect of the DJAI procedure must fail".<sup>716</sup> Argentina submits that, if the Panel finds that the DJAI procedure can be examined under provisions other than Article VIII, it should examine the complainants' claims under the Import Licensing Agreement before their claims under Article XI:1 of the GATT 1994.<sup>717</sup> Only if the Panel

<sup>707</sup> Japan's response to Panel question No. 20, paras. 32-33.

<sup>708</sup> Argentina's first written submission, para. 161. See also *ibid.* para. 191.

<sup>709</sup> *Ibid.* paras. 266-269.

<sup>710</sup> *Ibid.* para. 267.

<sup>711</sup> European Union's first written submission, paras. 281-290; United States' first written submission, paras. 102, 121-125; Japan's first written submission, paras. 107-119.

<sup>712</sup> European Union's first written submission, paras. 237-251; United States' first written submission, paras. 102-120; Japan's first written submission, paras. 107, 120-123.

<sup>713</sup> European Union's response to Panel question No. 20, paras. 43-45.

<sup>714</sup> United States' opening statement at the first substantive meeting, para. 48.

<sup>715</sup> See, for example, Argentina's first written submission, paras. 181 and 299.

<sup>716</sup> *Ibid.* para. 299.

<sup>717</sup> *Ibid.* paras. 266-269.

were to conclude that the DJAI procedure is not subject to the provisions of the Import Licensing Agreement, the Panel should examine the complainants' claims under Article XI:1 of the GATT 1994.<sup>718</sup>

6.357. Regarding the order of analysis to be undertaken by the Panel in respect of the DJAI procedure, the Panel will first consider whether the DJAI is a customs formality imposed in connection with importation subject to Article VIII of the GATT 1994 and, if so, whether Article XI:1 of the GATT 1994 and the Import Licensing Agreement are not applicable.

6.358. In the event that Article XI:1 of the GATT 1994 and the Import Licensing Agreement are found to be applicable, the question then becomes:

- a. what order of analysis the Panel should follow among the claims raised by the complainants under: (i) Article XI:1 of the GATT 1994; (ii) the provisions of the Import Licensing Agreement cited by the complainants; and, (iii) Articles X:1 and X:3(a) of the GATT 1994; and,
- b. which of the lines of argument advanced by the complainants under Article XI:1 of the GATT 1994 (i.e. whether the DJAI procedure is a restriction made effective through an import licence or rather whether it is made effective through another measure) should be examined first.

6.359. The Panel will deal first with the issue of what order of analysis it should follow among the claims raised by the complainants under (i) Article XI:1 of the GATT 1994; (ii) the provisions of the Import Licensing Agreement cited by the complainants; and, (iii) Articles X:1 and X:3(a) of the GATT 1994. The Panel notes in this regard that Article XI:1 of the GATT 1994 imposes a substantive obligation on Members to refrain from imposing prohibitions or restrictions on the importation or the exportation of goods. In contrast, Articles X:1 and X:3(a) of the GATT 1994 deal with the publication and administration of trade measures, as opposed to the substantive content of such measures.<sup>719</sup>

6.360. With respect to the complainants' claims under Articles 1.3, 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, the Appellate Body interpreted in *EC – Bananas III* that:

As a matter of fact, none of the provisions of the *Licensing Agreement* concerns import licensing *rules, per se*. As is made clear by the title of the *Licensing Agreement*, it concerns import licensing *procedures*. The preamble of the *Licensing Agreement* indicates clearly that this agreement relates to import licensing procedures and their administration, not to import licensing rules. Article 1.1 of the *Licensing Agreement* defines its scope as the *administrative procedures* used for the operation of import licensing regimes.<sup>720</sup> (italics original)

6.361. Accordingly, the Panel will commence its analysis with the complainants' claims under Article XI:1 of the GATT 1994 since this is the only provision among the ones raised by the complainants that deals with trade measures of a substantive nature. After having considered the complainants' claims under Article XI:1 of the GATT 1994, and depending on the nature of any findings made, the Panel will decide whether any additional findings under Articles X:1 and X:3(a) of the GATT 1994 and the provisions of the Import Licensing Agreement cited by the complainants would be necessary or useful for the resolution of the matter between the parties.

6.362. The Panel turns to the issue of which of the two lines of argument advanced by the complainants under Article XI:1 of the GATT 1994 should be analysed first.

6.363. The expression "whether made effective through quotas, import or export licences *or other measures*" used in Article XI:1 of the GATT 1994 implies that the provision covers all measures

<sup>718</sup> Ibid. para. 270.

<sup>719</sup> Appellate Body Report, *EC – Poultry*, para. 115.

<sup>720</sup> Appellate Body Report, *EC – Bananas III*, para. 197.

that constitute import "prohibitions or restrictions" regardless of the means by which they are made effective. The reference to "quotas, import or export licences" is only indicative of some means by which import prohibitions or restrictions may be made effective. This does not imply that the scope of Article XI:1 of the GATT 1994 is limited to prohibitions or restrictions that are made effective through quotas or import or export licences. What is relevant when examining a measure under Article XI:1 of the GATT 1994 is whether a measure prohibits or restricts trade, rather than the means by which such prohibition or restriction is made effective. In light of this reasoning, the Panel will commence by examining the claims raised by the complainants under Article XI:1 of the GATT 1994 *irrespective* of whether this measure constitutes an import licence.

### 6.3.2 Description of the DJAI procedure

#### 6.3.2.1 The DJAI requirement

6.364. With the exception of certain limited cases listed in the Annex of AFIP General Resolution 3255/2012<sup>721</sup>, importers are required to file an Advance Sworn Import Declaration (DJAI) for any imports for consumption in Argentina.<sup>722</sup> Importers are required to submit a DJAI providing the stipulated information prior to the issuance of an order form, purchase order, or similar document issued to purchase items from abroad that are destined for consumption in Argentina.<sup>723</sup> The filing of a DJAI by the importer initiates the DJAI procedure. As will be described below, in order to import goods into Argentina, an importer must attain a DJAI in "exit" status.

#### 6.3.2.2 The DJAI procedure

6.365. The DJAI procedure was implemented by Argentina's Federal Public Revenue Administration (*Administración Federal de Ingresos Públicos*, AFIP) on 5 January 2012 by means of AFIP General Resolution 3252/2012<sup>724</sup>, which entered into force on 1 February 2012.<sup>725</sup> AFIP General Resolution 3252/2012 is complemented by other legal instruments, including AFIP General Resolutions 3255/2012<sup>726</sup> and 3256/2012.<sup>727</sup> The Argentine Government has issued publications that detail and explain the operation of the DJAI, such as the "User Manual for Registration and Assignment of the 'Advance Sworn Import Declaration (DJAI)'" (DJAI User Manual)<sup>728</sup> and the "Step-by-Step Guide" on "How to Submit an Advance Sworn Import Declaration"<sup>729</sup>

6.366. Argentina has not notified to the WTO either the DJAI procedure, or the sources in which the rules and information related to the DJAI procedure are to be published.<sup>730</sup>

<sup>721</sup> These exemptions are: (a) imports under the re-importation regime; (b) importation or exportation to compensate for deficient merchandise; (c) donations; (d) samples; (e) diplomatic exemptions; (f) merchandise with duty and tax exemptions; (g) postal shipments; (h) courier shipments; and, (i) imports by the Secretary General of the Presidency. See Updated Annex at Section B, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); AFIP, DJAI User Manual, July 2012 (Exhibit JE-13).

<sup>722</sup> Article 1, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6). See also Argentina's first written submission, para. 219; European Union's first written submission, paras. 37-38; United States' first written submission, para. 18 and fn. 43; Japan's first written submission, para. 21 and fn. 47.

<sup>723</sup> Article 2, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); Article 91(1), Law 22,415, Customs Code, 2 March 1981 (Exhibit ARG-3).

<sup>724</sup> AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6).

<sup>725</sup> Ibid. article 9.

<sup>726</sup> AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>727</sup> AFIP General Resolution 3256/2012, 26 January 2012 (Exhibits JE-14 and ARG-11).

<sup>728</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13).

<sup>729</sup> MARIA System, Step-by-Step Guides: How to Submit a DJAI (Exhibit ARG-12).

<sup>730</sup> From the date of adoption of the DJAI requirement on 5 January 2012, Argentina has made two notifications pursuant to Article 5 of the ILA. First, Argentina notified Resolution 304/2012 of the Ministry of Economy and Public Finance, which concerns a model certificate required for applications for non-automatic import licences. See Committee on Import Licensing, Notification under Article 5, Argentina, G/LIC/N/2/ARG/25, 28 September 2012. Second, Argentina notified Resolution 11/2013 of the Ministry of Economy and Public Finance, by which Argentina repealed a number of prior resolutions that imposed non-automatic import licences. See Committee on Import Licensing, Notification under Article 5, Argentina, G/LIC/N/2/ARG/26, 31 January 2013. Neither of these notifications refers to the DJAI procedure.

6.367. As described below, some fundamental features of the DJAI procedure must be inferred from how the measure operates in practice because they are not expressed in the relevant laws and regulations.

6.368. To initiate the DJAI procedure, the customs broker (or the importer, if that person is registered in accordance with AFIP General Resolution 333/99) submits a sworn declaration through AFIP's electronic portal, known as the MARIA informatics system (*Sistema Informático MARIA*, SIM), or the SIM system.<sup>731</sup> Declarants must submit this sworn declaration before the importation takes place and prior to the issuance of purchase orders or similar documents.<sup>732</sup> For each DJAI, the declarant must provide the following information:

- a. Name and taxpayer identification code (*Clave Única de Identificación Tributaria*, CUIT) of the importer, where applicable;
- b. Name and ID code of the customs broker, where applicable;
- c. Customs office of registration;
- d. Quantity, codes, capacity and type of containers;
- e. Total and per-item "free on board" (f.o.b.) value, and corresponding currency;
- f. Customs classification;
- g. Type and quantity of marketing units;
- h. Condition of the merchandise;
- i. Country of origin;
- j. Approximate shipping date; and,
- k. Approximate arrival date.<sup>733</sup>

6.369. In addition, a declarant may provide information concerning the means of transport, the identity of the seller, the value of freight and insurance, and any adjustments to be included or deducted from the customs value.<sup>734</sup>

6.370. Once the information has been entered into the SIM system, the declarant can choose the "Register" (*Oficializar*) option to formally register the declaration. After a DJAI is filed, the procedure may transit through the following stages, each of which is referred to as a "status" (*estado*): (a) registered (*oficializada*); (b) observed (*observada*); (c) exit (*salida*); (d) cancelled (*cancelada*); and, (e) voided (*anulada*).<sup>735</sup>

6.371. The electronic system automatically assigns a control number to the declaration, which serves the purpose of tracking the state of that declaration for both users and authorities. Once entered into the system, the following information may not be amended: (a) name and CUIT of the importer; (b) f.o.b. value and corresponding currency; (c) tariff classification; (d) type and quantity of marketing units; (e) condition of the merchandise; (f) country of origin; (g) name of

<sup>731</sup> MARIA System, Step-by-Step Guides: How to Submit a DJAI (Exhibit ARG-12); AFIP General Resolution 333/99, 15 January 1999 (Exhibit ARG-13).

<sup>732</sup> Article 2, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6).

<sup>733</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13); Updated Annex at Section E, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, para. 223; Argentina's response to Panel question No. 116(c).

<sup>734</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13); Argentina's first written submission, para. 224.

<sup>735</sup> Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, paras. 221 and 223-238.

the declarant; and, (h) customs office of registration.<sup>736</sup> In the case of clerical error, or to subsequently modify a declaration, the declarant must cancel the DJAI at issue and register a new one.<sup>737</sup>

### 6.3.2.3 Registered status

6.372. Once a DJAI has been registered in the SIM system, it enters the "registered" (*oficializada*) status<sup>738</sup> and, thereafter, the importer has 180 days to import the authorized goods into Argentina.<sup>739</sup>

### 6.3.2.4 Observed status

#### 6.3.2.4.1 The entering of observations in DJAI applications

6.373. Once a DJAI attains registered status, AFIP and a number of governmental agencies may review the information entered into the SIM system and are entitled to enter observations. Pursuant to AFIP General Resolution 3256/2012, to participate in the DJAI procedure, governmental agencies must sign an accession agreement with AFIP.<sup>740</sup> Participating agencies may review the information entered into the SIM system and are entitled to enter observations "in accordance with their functions" and "based on the type of goods being imported or other conditions established by such institutions or by AFIP".<sup>741</sup> Accession agreements signed between AFIP and the participating agencies have not been published or otherwise made available to traders, but Argentina has indicated that, pursuant to AFIP General Resolution 3256/2012, those accession agreements must follow the model contained in the Annex to Resolution 3256/2012.<sup>742</sup> The model agreement contained in AFIP General Resolution 3256/2012, however, does not specify: (a) the scope of the operations that can be reviewed and observed by the relevant acceding agency; (b) the additional information that the acceding agency may request from importers; or, (c) the time-frame for the acceding agency to enter observations on a DJAI application.<sup>743</sup> As noted previously, the SCI became part of the DJAI procedure through SCI Resolution 1/2012.<sup>744</sup>

6.374. The following agencies currently participate in the DJAI procedure:

- a. The Federal Public Revenue Administration (AFIP)<sup>745</sup>;
- b. The Secretariat of Domestic Trade (*Secretaría de Comercio Interior*, SCI)<sup>746</sup>;
- c. The National Drugs, Food and Medical Technology Administration (*Administración Nacional de Medicamentos, Alimentos y Tecnología Médica*, ANMAT)<sup>747</sup>; and,

<sup>736</sup> Updated Annex at Section E, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>737</sup> Updated Annex at paragraph 14 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 12; Argentina's first written submission, para. 225.

<sup>738</sup> Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>739</sup> Argentina's response to Panel question No. 119.

<sup>740</sup> AFIP General Resolution 3256/2012, 26 January 2012 (Exhibits JE-14 and ARG-11). See also Argentina's response to Panel question No. 104.

<sup>741</sup> Article 3, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6). See also Article 2, AFIP General Resolution 3255/2012 (Exhibits JE-16 and ARG-7).

<sup>742</sup> Argentina's response to Panel question No. 104.

<sup>743</sup> See Clause 2, AFIP General Resolution 3256/2012, 26 January 2012 (Exhibits JE-14 and ARG-11).

<sup>744</sup> See para. 6.389 above.

<sup>745</sup> Updated Annex at paragraph 5 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>746</sup> SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15).

<sup>747</sup> ANMAT's Accession Agreement, 8 February 2012 (Exhibit ARG-48).

- d. The Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking (*Secretaría de Programación para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico, SEDRONAR*).<sup>748</sup>

6.375. The Secretariat of Domestic Trade (*Secretaría de Comercio Interior, SCI*) has not signed an accession agreement with AFIP. Argentina has explained that the SCI participates in the DJAI procedure as a result of SCI Resolution 1/2012, which predates AFIP General Resolution 3256/2012.<sup>749</sup>

6.376. The National Agriculture and Food Quality and Health Service (*Servicio Nacional de Sanidad y Calidad Agroalimentaria, SENASA*)<sup>750</sup> and the National Grape-Growing and Wine Production Institute (*Instituto Nacional de Vitivinicultura, INV*)<sup>751</sup> have signed accession agreements. Argentina has explained that these agencies have not yet been integrated into the SIM system and thus cannot review the information entered by applicants nor enter observations on DJAIs.<sup>752</sup>

6.377. The DJAI procedure does not allow importers to know which agencies may review and enter observations on a DJAI. First, the relevant laws and regulations do not contain a list of governmental agencies that can participate in the DJAI procedure. Second, although AFIP General Resolutions 3252/2012 and 3256/2012 seem to allow any governmental agency to participate in the DJAI procedure, provided that the agency signs an accession agreement<sup>753</sup>, these signed agreements have not been published or otherwise made available to importers.<sup>754</sup>

6.378. Moreover, when a specific DJAI has been registered, the information displayed in the SIM system is not sufficient to identify the agencies that may enter observations.<sup>755</sup> Argentina provided a screen shot of the site showing a sample DJAI in "registered" status. This screen shot lists participating agencies through the following codes: (a) "BI15-INTERV. SEC. COM. INT. 1"; (b) "BI17-INTERVENCION AFIP 1"; (c) "BI18-INTERVENCION AFIP 2"; (d) "BI20-INTERV. ANMAT TEC. MED."; (e) "BI30-INTERV. DJAI FISCALIZACION"; (f) "BI31-INTERV.DJAI SUBDIR. GRAL. CTRL.A"; and, (g) "BI33-INTERV. DJAI DI ISSM".<sup>756</sup> In the course of the proceedings, the parties provided information that allows the Panel to infer from the screen shot that the SCI, the AFIP and the ANMAT are among the agencies that may review and observe the specific DJAI used in Argentina's example.<sup>757</sup> However, there is no evidence on record that such information is publicly available to importers. BI30 is the only code identified in a publicly-available document (the DJAI User Manual) as referring to the intervention of AFIP in the DJAI procedure.<sup>758</sup>

<sup>748</sup> SEDRONAR's Accession Agreement, 22 February 2012 (Exhibit ARG-47).

<sup>749</sup> SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15). See also Argentina's response to Panel question No. 109.

<sup>750</sup> SENASA's Accession Agreement, 14 February 2012 (Exhibit ARG-49).

<sup>751</sup> INV's Accession Agreement, 16 February 2012 (Exhibit ARG-50).

<sup>752</sup> Argentina's response to Panel question No. 105.

<sup>753</sup> AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); AFIP General Resolution 3256/2012, 26 January 2012 (Exhibits JE-14 and ARG-11).

<sup>754</sup> Argentina's response to Panel question No. 104. The SCI became part of the DJAI procedure, not through an accession agreement, but through SCI Resolution 1/2012, which was published in Argentina's official gazette. See SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15). Note also that, although ANMAT's accession instrument is not available to importers, the DJAI User Manual identifies the ANMAT, as well as the SCI, as entities that are part of the DJAI procedure. This Manual is accessible to the general public. See AFIP, DJAI User Manual, July 2012 (Exhibit JE 13). However, there is no such indication in respect of SEDRONAR, SENASA or INV, which are also part of the DJAI procedure.

<sup>755</sup> See European Union's comments on Argentina's response to Panel question No. 125; United States' comments on Argentina's response to Panel question No. 125.

<sup>756</sup> Argentina's response to Panel question No. 125.

<sup>757</sup> Argentina explained that the codes BI18 and BI31 refer to the intervention of AFIP's Directorate-General of Customs (*Dirección General de Aduanas, DGA*); BI15 is the code for the SCI; BI20 is the code for ANMAT; BI33 is the code for AFIP's Directorate-General for Revenues from Social Security (*Dirección General de los Recursos de la Seguridad Social, DGRSS*). See Argentina's response to Panel question No. 23. It is unclear what agency of AFIP corresponds to the code BI17. On the use of inferences, see paras. 6.34-6.36 above.

<sup>758</sup> See AFIP, DJAI User Manual, July 2012 (Exhibit JE-13). See also Argentina's response to Panel question No. 23.

6.379. Participating agencies review the information entered into the SIM system in accordance with their respective statutory authority.<sup>759</sup> An agency may enter an observation when it considers that the information provided is "insufficient, faulty or incomplete" to demonstrate compliance with requirements under the domestic legislation that the agency concerned administers.<sup>760</sup> Argentina provided copies of the legislation administered by each agency. None of the legal instruments provided contains the specific criteria that the relevant agency may apply to enter observations.<sup>761</sup> Argentina clarified that, when the DJAI procedure was instituted, "it was not considered necessary to establish specific rules to determine the criteria that agencies have to follow for the evaluation of the information required through the DJAI procedure".<sup>762</sup>

6.380. If a governmental agency enters an observation on a DJAI, the DJAI procedure will enter "observed" (*observada*) status.<sup>763</sup> A single DJAI may be observed by any of the participating agencies.<sup>764</sup> When a DJAI is "observed" by more than one agency, each observation must be dealt with by the importer separately.<sup>765</sup> A DJAI will leave observed status, and proceed to "exit" status only after all observations are lifted by the respective agencies.<sup>766</sup>

6.381. Unless an accession agreement provides for a different time-frame, the rules indicate that a participating agency can enter an observation within 72 hours after a DJAI has been registered.<sup>767</sup> This 72-hour period may be extended up to a maximum of ten calendar days in cases where "the specific jurisdiction of the adhering agency justifies it".<sup>768</sup> Exceptionally, the SCI has 15 working days to enter observations.<sup>769</sup>

6.382. Goods covered by a DJAI in observed status cannot be imported into Argentina.<sup>770</sup> If a DJAI is in observed status, prospective importers are required to (a) identify the entity that entered the observation; (b) contact such agency in order to be informed of the supplementary documents or information that must be provided; and, (c) provide the information required.<sup>771</sup> Although the relevant rules contain a list of information that must be provided when filing a DJAI application<sup>772</sup>, there is no indication which supplementary documents or information may be required by a participating agency that enters an observation on a DJAI.<sup>773</sup> Argentina has stated that any supplementary information required will depend on "the reasons [that led to] the

<sup>759</sup> Article 2, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Articles 3 and 4, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); Argentina's response to Panel question No. 110.

<sup>760</sup> Argentina's response to Panel question Nos. 110, 111 and 112. See also Argentina's response to Panel question No. 3.4 posed orally at the first substantive meeting.

<sup>761</sup> Argentina explained that the reasons for entering observations are "directly related to deficiencies or inadequacies of the information provided through a DJAI". According to Argentina, these deficiencies or inadequacies are to be detected by each agency, when assessing whether an importer is in compliance with the domestic laws that each agency administers. See Argentina's response to Panel question Nos. 110, 111 and 112.

<sup>762</sup> See Argentina's response to Panel question Nos. 110, 111 and 112.

<sup>763</sup> Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7). See also Argentina's first written submission, diagram in para. 238; European Union's first written submission, para. 48; United States' first written submission, para. 15; Japan's first written submission, para. 27.

<sup>764</sup> Argentina's response to Panel question No. 124.

<sup>765</sup> Ibid.

<sup>766</sup> Updated Annex at Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 9; Argentina's response to Panel question No. 28; Argentina's first written submission, diagram in para. 238.

<sup>767</sup> Article 4, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); Articles 2 and 4 and Updated Annex at paragraph 5 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, para. 228.

<sup>768</sup> Article 2, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's response to Panel question No. 28; Argentina's first written submission, para. 228.

<sup>769</sup> Article 2, SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15).

<sup>770</sup> Articles 2 and 5, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6). See also Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, diagram in para. 238.

<sup>771</sup> Argentina's response to Panel question No. 24; Argentina's response to Panel question Nos. 22, 110, 111 and 112.

<sup>772</sup> See paras. 6.368-6.369 above.

<sup>773</sup> Argentina's response to Panel question Nos. 22, 24, 110, 111 and 112.



observation".<sup>774</sup> Only after the additional information is provided by the declarant is the observation lifted and the DJAI can proceed to exit status.<sup>775</sup>

6.383. In the case of observations made by the AFIP's Directorate-General of Revenue (*Dirección General de Ingresos*, DGI), the reason that led to an observation is communicated through the SIM system.<sup>776</sup> In the case of observations made by other agencies, however, the precise reason that led to an observation, as well as the additional documents or information required to lift the observation are not communicated through the SIM system.<sup>777</sup> A declarant will not know the reasons for the observation, or the additional documents or information that it must provide for the observation to be lifted, until the declarant approaches the agency that entered the observation, which as explained above is sometimes not identifiable.<sup>778</sup>

6.384. Prospective importers have challenged in Argentine courts DJAI procedures in which import operations were being impeded as a result of observations made by the Secretariat of Domestic Trade. These domestic courts concluded that the challenged DJAI procedures had:

- a. unreasonably delayed the approval of DJAIs beyond the time limits indicated in the legislation;
- b. made it impossible for applicants to move the procedure forward inasmuch as observations are neither produced in hard copy nor communicated through the website portal; and,
- c. affected the applicants' right of defence "inasmuch as the circumstances give rise to a prohibition – albeit a temporary one – on the import operation, without valid legal grounds".<sup>779</sup>

#### 6.3.2.4.2 The Federal Public Revenue Administration (AFIP)

6.385. AFIP administers the DJAI procedure. AFIP General Resolution 3255/2012 recognizes AFIP's authority to enter observations on DJAIs.<sup>780</sup> Three sub-agencies within the AFIP can enter observations on DJAIs: (a) the Directorate-General of Revenue (*Dirección General de Ingresos*, DGI); (b) the Directorate-General of Customs (*Dirección General de Aduanas*, DGA); and, (c) the Directorate-General for Revenues from Social Security (*Dirección General de los Recursos de la Seguridad Social*, DGRSS).<sup>781</sup> The three AFIP sub-agencies have authority to enter observations on all DJAIs, regardless of the products covered<sup>782</sup>; each of the sub-agencies has 72 hours after a DJAI has been registered to enter observations.<sup>783</sup>

<sup>774</sup> Argentina's response to Panel question No. 23 (including Annex 4).

<sup>775</sup> Argentina's first written submission, para. 234. See also Argentina's second written submission, para. 181, where Argentina states that "[t]he action of the importer is crucial for lifting the observation. It is the private instance which conditions the action of the Administration".

<sup>776</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 25. See also Argentina's response to Panel question Nos. 22 and 23.

<sup>777</sup> Argentina has stated that: "[o]nce the importer/customs broker contacts the agency, he is informed of the reasons for the observation and given details of the supplementary information needed to conduct the risk assessment" (emphasis added). See Argentina's response to Panel question No. 22.

<sup>778</sup> See Argentina's response to Panel question No. 22. See also European Union's first written submission, paras. 303 and 317; United States' first written submission, paras. 31 and 161; Japan's first written submission, para. 28.

<sup>779</sup> See judicial decisions in National Court of Appeals for Federal Administrative Disputes, *Yudigar Argentina S.A. v. Ministry of Economy*, 16 August 2012 (Exhibit JE-59); National Court for Federal Administrative Disputes, *Zatel Adrian Ramon v. Ministry of Economy*, 23 August 2012 (Exhibit JE-57); National Court for Federal Administrative Disputes, *Wabro SA v. Ministry of Economy*, 2 October 2012 (Exhibit JE-58); and National Court of Appeals for Federal Administrative Disputes, *Fity SA v. Ministry of Economy*, 22 November 2012 (Exhibit JE-302).

<sup>780</sup> Updated Annex at paragraph 5 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>781</sup> Argentina's response to Panel question No. 23 (including Annex 4).

<sup>782</sup> Ibid.

<sup>783</sup> Article 2 and Updated Annex at paragraph 5 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's response to Panel question No. 23 (including Annex 4).

6.386. Observations made by the AFIP's DGI will be indicated in the SIM system by the code "BI30". If DGI enters an observation, the declarant may select the option "Reasons" (*Motivos*) in the SIM system, and be informed of the reason that led to the observation.<sup>784</sup> There are 13 reasons, each identified by a separate sub-code.<sup>785</sup> The reasons (with their respective sub-codes) are:

- a. The taxpayer ID code (also known as CUIT) is in passive/inactive state (BI30-F01);
- b. The CUIT is listed in the registry of unreliable taxpayers (false invoices) (BI30-F02);
- c. The CUIT is registered as bankrupt (BI30-F03);
- d. There are inconsistencies in the domicile (BI30-F04);
- e. The CUIT is not registered for the VAT (BI30-F05);
- f. The CUIT is not registered for the income tax (BI30-F06);
- g. The CUIT for one or more members of the company is not registered for the income tax (BI30-F07);
- h. No income tax return filed for the most recent period (BI30-F08);
- i. No VAT return has been filed within the 12 most recent monthly fiscal periods (BI30-F09);
- j. No personal property return has been filed for the most recent period (BI30-F10);
- k. No social security return has been filed within the 12 most recent monthly fiscal periods (BI30-F11);
- l. Inconsistencies were found in the VAT returns in the six most recent monthly fiscal periods (BI30-F12); or,
- m. The CUIT is currently being audited or verified (BI30-F13).<sup>786</sup>

6.387. In addition, AFIP's DGA can enter an observation if an importer is in violation of Argentina's Customs Code.<sup>787</sup> These observations are identified by codes "BI31" or "BI18".<sup>788</sup>

6.388. Finally, AFIP's DGRSS is entitled to enter observations if it finds inconsistencies in the Social Security record of the applicant or if the applicant is subject to an ongoing social security audit.<sup>789</sup> These observations are identified by codes "BI33-S01" or "BI33-S03".<sup>790</sup>

<sup>784</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 25.

<sup>785</sup> Ibid. See also Argentina's response to Panel question No. 23 (including Annex 4).

<sup>786</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13). See also Argentina's response to Panel question No. 23 (including Annex 4).

<sup>787</sup> Argentina's response to Panel question No. 23 (including Annex 4); Law 22,415, Customs Code, 2 March 1981 (Exhibit ARG-3).

<sup>788</sup> Argentina's response to Panel question No. 23 (including Annex 4). See also para. 6.378 above.

<sup>789</sup> Argentina's response to Panel question No. 23 (including Annex 4).

<sup>790</sup> Ibid. See also para. 6.378 above.

### 6.3.2.4.3 The Secretariat of Domestic Trade (SCI)<sup>791</sup>

6.389. The Secretariat of Domestic Trade (SCI) became part of the DJAI procedure on 11 January 2012 through SCI Resolution 1/2012.<sup>792</sup> The preamble of SCI Resolution 1/2012 indicates it is "necessary" for the SCI to have access to the information provided in the DJAI procedure in order "[to perform] analyses aimed at preventing negative effects on the domestic market, since the qualitative and/or quantitative importance of imports to be made has the effect of impacting domestic trade".<sup>793</sup>

6.390. The SCI is entitled to enter observations relating to the importation of any type of product.<sup>794</sup> These observations are identified by code "BI15".<sup>795</sup>

6.391. Argentina made the following statements concerning the role of the SCI in the DJAI procedure. First, "[t]he risks that the SCI seeks to prevent are those arising from breaches of the law governing domestic trade, for which [the SCI] is the implementing authority".<sup>796</sup> Second, the reasons by which the SCI may enter observations on DJAIs are set out in<sup>797</sup>: Decree 2085/2011<sup>798</sup>, Law 22,802 on Fair Trade, Law 19,227 on Markets of National Interest, Law 19,511 on Legal Metrology, and Law 24,240 on Consumer Protection.<sup>799</sup> Finally, intervention by the SCI is "necessary" to verify *a priori* if the declarant has complied with these laws.<sup>800</sup> Argentina explained that these laws grant the SCI authority concerning: domestic trade, internal and international economic integration, strategic trade promotion, consumer protection, metrology, internal supply and antitrust issues. Argentina also explained that the SCI 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".<sup>801</sup>

6.392. In the event the SCI enters an observation, the importer or declarant must contact the SCI to enquire about the reasons and may be required by the SCI to submit supplementary information.<sup>802</sup>

6.393. According to evidence on record<sup>803</sup>, the SCI systematically imposes on declarants requirements that are neither set out in any laws nor indicated in official publications explaining the operation of the DJAI. Such requirements include providing the following:

<sup>791</sup> In its responses to Panel questions after the second substantive meeting, Argentina informed that, by Decree 2136/2013 of 12 December 2013, the Secretariat of Domestic Trade (SCI) has been replaced by a Secretariat of Trade (*Secretaría de Comercio*). The competence to intervene in the DJAI procedure previously held by the Secretariat of Domestic Trade would henceforth be exercised by the Secretariat of Trade. See, Argentina's response to Panel questions after the second substantive meeting, 14 January 2014 (preliminary clarification).

<sup>792</sup> SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15).

<sup>793</sup> Third Recital at Preamble, SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15).

<sup>794</sup> Argentina's response to Panel question No. 23 (including Annex 4); Article 2, SCI Resolution 1/2012, 11 January 2012 (Exhibits JE-41 and ARG-15).

<sup>795</sup> Argentina's response to Panel question No. 23 (including Annex 4). See also para. 6.378 above.

<sup>796</sup> Argentina's response to Panel question No. 25.

<sup>797</sup> Argentina's response to Panel questions No. 23 (including Annex 4) and No. 110.

<sup>798</sup> National Public Administration, Decree 2085/2011, 7 December 2011 (Exhibit ARG-16).

<sup>799</sup> Law 22,802 on Fair Trade, 5 May 1983; Law 19,227 on Markets of National Interest, 9 September 1971; Law 19,511 on Legal Metrology, 2 March 1972; Law 24,240 on Consumer Protection, 22 September 1993 (Exhibit ARG-32).

<sup>800</sup> Argentina's response to Panel question 3.4 posed orally at the first substantive meeting.

<sup>801</sup> Argentina's first written submission, para. 231.

<sup>802</sup> Argentina's response to Panel question No. 24.

<sup>803</sup> This evidence includes: reports prepared by market intelligence entities or by an export promotion office to inform their clients or affiliated members of the information and requirements imposed by the SCI; letters of companies addressed to the SCI; company reports; press articles; as well as interviews and public statements by the Secretary of Domestic Trade. See Slides: Argentine Chamber of Commerce, Advance Sworn Import Declaration, DJAI (Exhibit JE-50); Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755), pp. 3-4; Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012 (Exhibit JE-52); Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012 (Exhibit JE-55); Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012 (Exhibit JE-268); Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of

- a. a formal letter addressed to Argentina's Secretary of Domestic Trade, bearing the company's letterhead and signed by the highest authority of the company or a legal representative. This letter should report the company's estimates of total imports and exports, in United States' Dollars (USD), for the ongoing year;
- b. a price list of all goods traded in the domestic market (not only of those to be imported). This list shall be provided in hard copy and CD;
- c. the contact details of the person signing the letter; and,
- d. a spread sheet (also called "request note" or "*nota de pedido*") containing the following data per item:
  - i. description of the product;
  - ii. quantity;
  - iii. unit of measure;
  - iv. price per unit;
  - v. total price;
  - vi. origin;
  - vii. tariff classification;
  - viii. expected date of shipping from exporting country; and,
  - ix. expected date of arrival in Argentina.<sup>804</sup>

an Observed DJAI, 9 May 2012 (Exhibit JE-729/EU-415); Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012 (Exhibit JE-47); Newsletter: United Logistic Company, Observed DJAI (Exhibit JE-49); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48); Information note: SIQAT SRL, Instructions on the DJAI (Exhibit JE-51); Information note: *Clément Comercio Exterior*, Procedure for Blocked DJAIs (Exhibit JE-54); Report: *Clément Comercio Exterior*, DJAI: Its Evolution, 13 December 2012 (Exhibit EU 418+), pp. 8-10; Information note: *Oklander y Asociados*, Observed DJAIs. Procedure to unblock them (Exhibit JE-730/EU-416); News item: *Juguetes y Negocios*, How to Release Import Declarations, 6 March 2012 (Exhibit JE-2); Newspaper article: *Ámbito Financiero*, What you should know about the new rules, 1 February 2012 (Exhibit JE-269); Information note: *Unión Industrial del Oeste*, Advance Sworn Import Declarations, 21 March 2012 (Exhibit JE-46); Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012 (Exhibit JE-298). In one letter addressed to the SCI, Company X commits to: (a) export merchandise in the amount of USD 1 million; (b) analyse the commercial possibility of increasing the value of its exports in order to maintain the equilibrium in its trade balance; (c) report any variations in its trade balance. See, Letter from Company X to the Secretary of Domestic Trade, 3 April 2012 (Exhibit JE-304). In one email communication, Company X refers to an "Agreement commitment" and to a price list, both presented to the SCI, which have been approved, and requests the release of observed DJAIs identified in the communication. E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012 (Exhibit JE-305); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48). See also, News item: *Página 12*, Supply has a remedy, 25 April 2012 (Exhibit JE-265); Report: *Clément Comercio Exterior*, Alternatives for exporting, 17 December 2012 (Exhibit JE-379/EU-65) (the report suggests several alternatives by which importers can comply with the export commitment imposed by the SCI); News item: *BAE Argentina*, More controls over entry of medicines (Exhibit JE-693/EU-379); News item: *Buenos Aires Económico*, Import controls will apply to one hundred companies, 31 January 2012 (Exhibit JE-3); *Debate*, Interview with the Secretary of Domestic Trade, 27 September 2012 (Exhibit JE-8); and News item: *Página 12*, If they want to import, they will have to export, 23 February 2012 (Exhibit JE-378/EU-64).

<sup>804</sup> News item: *Juguetes y Negocios*, How to Release Import Declarations, 6 March 2012 (Exhibit JE-2); Information note: *Unión Industrial del Oeste*, Advance Sworn Import Declarations, 21 March 2012 (Exhibit JE-46); Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012 (Exhibit JE-47); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48); Newsletter: United Logistic Company, Observed DJAI (Exhibit JE-49); Slides: Argentine

6.394. A hard copy of the aforementioned documents must be filed with the SCI and an electronic version of the spread sheet ("request note" or "*nota de pedido*") must be sent to: notadepedido@mecon.gov.ar (which corresponds to the domain of the Ministry of Economy and Public Finance).<sup>805</sup>

6.395. Evidence demonstrates that, as a condition to lift observations on DJAIs, in certain instances the SCI requires prospective importers to commit to increase their exports or to start exporting, so as to achieve a trade balance.<sup>806</sup>

Chamber of Commerce, Advance Sworn Import Declaration, DJAI (Exhibit JE-50); Information note: SIQAT SRL, Instructions on the DJAI (Exhibit JE-51); Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012 (Exhibit JE-52); Information note: *Clément Comercio Exterior*, Procedure for Blocked DJAIs (Exhibit JE-54); Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012 (Exhibit JE-55); Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012 (Exhibit JE-268); Newspaper article: *Ámbito Financiero*, What you should know about the new rules, 1 February 2012 (Exhibit JE-269); Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012 (Exhibit JE-298); Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI, 9 May 2012 (Exhibit JE-729/EU-415); Information note: *Oklander y Asociados*, Observed DJAIs. Procedure to unblock them (Exhibit JE-730/EU-416); Report: *Clément Comercio Exterior*, DJAI: Its Evolution, 13 December 2012 (Exhibit EU 418+), pp. 8-10; Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755), pp. 3-4.

<sup>805</sup> News item: *Juguetes y Negocios*, How to Release Import Declarations, 6 March 2012 (Exhibit JE-2); Information note: *Unión Industrial del Oeste*, Advance Sworn Import Declarations, 21 March 2012 (Exhibit JE-46); Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012 (Exhibit JE-47); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48); Newsletter: United Logistic Company, Observed DJAI (Exhibit JE-49); Slides: Argentine Chamber of Commerce, Advance Sworn Import Declaration, DJAI (Exhibit JE-50); Information note: SIQAT SRL, Instructions on the DJAI (Exhibit JE-51); Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012 (Exhibit JE-52); Information note: *Clément Comercio Exterior*, Procedure for Blocked DJAIs (Exhibit JE-54); Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012 (Exhibit JE-55); Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012 (Exhibit JE-268); Newspaper article: *Ámbito Financiero*, What you should know about the new rules, 1 February 2012 (Exhibit JE-269); Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012 (Exhibit JE-298); Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI, 9 May 2012 (Exhibit JE-729/EU-415); Information note: *Oklander y Asociados*, Observed DJAIs. Procedure to unblock them (Exhibit JE-730/EU-416); *Clément Comercio Exterior*, DJAI: its Evolution, pp. 8-10; Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755), pp. 3-4.

<sup>806</sup> News item: *Juguetes y Negocios*, How to Release Import Declarations, 6 March 2012 (Exhibit JE-2); *Buenos Aires Económico*, Import controls will apply to one hundred companies, 31 January 2012 (Exhibit JE-3); *Debate*, Interview with the Secretary of Domestic Trade, 27 September 2012 (Exhibit JE-8); Information note: *Unión Industrial del Oeste*, Advance Sworn Import Declarations, 21 March 2012 (Exhibit JE-46); Information note: GM Comex, Observed DJAI, Intervention by SCI, 22 February 2012 (Exhibit JE-47); Information note: *Consultores Industriales Asociados*, Market Defense: DJAI, 2012 (Exhibit JE-48); Newsletter: United Logistic Company, Observed DJAI (Exhibit JE-49); Slides: Argentine Chamber of Commerce, Advance Sworn Import Declaration, DJAI (Exhibit JE-50); Information note: SIQAT SRL, Instructions on the DJAI (Exhibit JE-51); Newsletter: Argentine Chamber of the Plastic Industry, Procedure for Observed DJAIs, February 2012 (Exhibit JE-52); Information note: *Clément Comercio Exterior*, Procedure for Blocked DJAIs (Exhibit JE-54); Information note: Córdoba Foreign Trade Chamber, DJAIs Observed by the Secretariat of Domestic Trade, 1 March 2012 (Exhibit JE-55); News item: *Página 12*, Supply has a remedy, 25 April 2012 (Exhibit JE-265); Information note: Argentine-Chinese Chamber, Procedure to Unblock Observed DJAIs, 11 December 2012 (Exhibit JE-268); Newspaper article: *Ámbito Financiero*, What you should know about the new rules, 1 February 2012 (Exhibit JE-269); Market study: Commercial Representation of ProChile in Mendoza, Vitiviniculture Suppliers in Argentina, May 2012 (Exhibit JE-298); Report: *Clément Comercio Exterior*, Alternatives for exporting, 17 December 2012 (Exhibit JE-379/EU-65); News item: *Página 12*, If they want to import, they will have to export, 23 February 2012 (Exhibit JE-378/EU-64); News item: *BAE Argentina*, More controls over entry of medicines (Exhibit JE-693/EU-379); Information note: Argentine Chamber of Paper and Related Goods, What to do in the case of an Observed DJAI, 9 May 2012 (Exhibit JE-729/EU-415); Information note: *Oklander y Asociados*, Observed DJAIs. Procedure to unblock them (Exhibit JE-730/EU-416); Report: *Clément Comercio Exterior*, DJAI: Its Evolution, 13 December 2012 (Exhibit EU 418+), pp. 8-10; Report: Argentine Chamber of Commerce, Rules and Experiences on Current Foreign Trade Practices, October 2013 (Exhibit JE-755), pp. 3-4. See also Letter from Company X to the Secretary of Domestic Trade, 3 April 2012 (Exhibit JE-304); E-mail communication from Company X to the Secretary of Domestic Trade, 11 April 2012 (Exhibit JE-305).

#### 6.3.2.4.4 The National Drugs, Food and Medical Technology Administration (ANMAT)

6.396. On 8 February 2012, as a result of an accession agreement signed with the AFIP pursuant to AFIP General Resolutions 3252/2012, 3255/2012 and 3256/2012, the National Drugs, Food and Medical Technology Administration (ANMAT) began participating in the DJAI procedure.<sup>807</sup>

6.397. ANMAT is entitled to review and observe DJAIs involving imports of: (a) medical technology products, including medicines; and (b) foodstuffs.<sup>808</sup> Once a DJAI is registered, ANMAT has four working days to enter observations, which will be identified by code "BI20".<sup>809</sup>

6.398. Argentina indicated that Decree 1490/92 and, in particular, paragraphs (a) and (e) of Article 3, contain the reasons for which an observation may be made by ANMAT.<sup>810</sup> These provisions state that ANMAT has the authority to: (a) implement and supervise the implementation of health and quality controls relating to any product used in human medicine; and (b) control the supply, production, elaboration, division, importation, exportation, deposit and trading of goods that are used in human medicine, food and cosmetics.<sup>811</sup>

6.399. According to the DJAI User Manual, pursuant to ANMAT's accession agreement, DJAIs concerning medical technology products must indicate the Model Name code ("NOMBRE.MODELO") and the applicable Certificate Number code ("NRO.CERTIFICADO", i.e. "PM number") for each product.<sup>812</sup>

#### 6.3.2.4.5 The Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking (SEDRONAR)

6.400. Pursuant to its accession agreement with AFIP, the Planning Secretariat for the Prevention of Drug Addiction and the Fight Against Drug Trafficking (SEDRONAR) began participating in the DJAI procedure on 22 February 2012.<sup>813</sup>

6.401. SEDRONAR is entitled to enter observations on DJAIs that involve imports of chemical precursors.<sup>814</sup> Such observations must be entered within 72 hours after a DJAI has been registered<sup>815</sup> and will be identified by code "BI32".<sup>816</sup>

6.402. Argentina indicated that SEDRONAR may enter observations if prospective importers act inconsistently with Law 23,737 (Criminal Code); Law 26,045 on the National Registry of Chemical Precursors; Decree 1095/1996 (particularly Articles 1 and 14 thereof); or Resolution SEDRONAR 213/2010.<sup>817</sup>

<sup>807</sup> ANMAT's Accession Agreement, 8 February 2012 (Exhibit ARG-48).

<sup>808</sup> List of products subject to review and observation by ANMAT (Exhibit ARG-52); ANMAT's Accession Agreement, 8 February 2012 (Exhibit ARG-48); AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 9.

<sup>809</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), pp. 9-10; Argentina's response to Panel question No. 23 (including Annex 4). See also para. 6.378 above.

<sup>810</sup> Argentina's response to Panel question No. 23 (including Annex 4); Decree 1490/92, creation of ANMAT, 20 August 1992 (Exhibit ARG-26).

<sup>811</sup> Decree 1490/92, creation of ANMAT, 20 August 1992 (Exhibit ARG-26).

<sup>812</sup> AFIP, DJAI User Manual, July 2012 (Exhibit JE-13), p. 10.

<sup>813</sup> SEDRONAR's Accession Agreement, 22 February 2012 (Exhibit ARG-47).

<sup>814</sup> Ibid. clause 2; Products subject to review and observation by SEDRONAR (Exhibit ARG-53); Argentina's response to Panel question No. 23 (including Annex 4).

<sup>815</sup> Clause 2, SEDRONAR's Accession Agreement, 22 February 2012 (Exhibit ARG-47); Argentina's response to Panel question No. 23 (including Annex 4).

<sup>816</sup> Argentina's response to Panel question No. 23 (including Annex 4). See also para. 6.378 above.

<sup>817</sup> Argentina's response to Panel question No. 23 (including Annex 4); Law 23,737, Criminal Code, 21 September 1989 (Exhibit ARG-27); Law 26,045 on the National Registry of Chemical Precursors, 8 June 2005 (Exhibit ARG-44); Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs, 26 September 1996 (Exhibit ARG-45); SEDRONAR Resolution 216/2010, National Registry of Chemical Precursors, 17 March 2010 (Exhibit ARG-46). See also Decree 623/96, Federal Plan of integral prevention of drug dependency and control of the illicit traffic of drugs, 7 June 1996; Decree 1,095/96, Control of precursors and essential chemical products for the manufacture of drugs; Decree 1119/96, Creation of a joint working group for the prevention of drug addiction and the fight against drug trafficking, 3 October

6.403. Following SEDRONAR's accession to the DJAI procedure, DJAI applications concerning the importation of chemical precursors must indicate the import or export certificate number issued by the Chemical Precursors National Registry.<sup>818</sup> In addition, within five days of arrival of the goods to the country, AFIP must send the following information to SEDRONAR: (a) DJAI number; (b) importation number; (c) description of the SIM position; (d) quantity and weight of the merchandise; (e) country of origin; (f) import certificate number issued by the Chemical Precursors National Registry; (g) customs entry; (h) tax-payer ID code or CUIT; and, (i) name of the importer.<sup>819</sup>

#### 6.3.2.4.6 The National Agriculture and Food Quality and Health Service (SENASA) and the National Grape-Growing and Wine Production Institute (INV)

6.404. The National Agriculture and Food Quality and Health Service (SENASA) and the National Grape-Growing and Wine Production Institute (INV) signed accession agreements with AFIP on 14 and 16 February 2012, respectively.<sup>820</sup> However, according to Argentina, these agencies cannot enter observations, because their accession agreements are not in operation.<sup>821</sup> Argentina explained that, for practical reasons, these agencies have not yet been integrated into the SIM system and thus can neither access the information entered into the DJAIs nor enter observations.<sup>822</sup>

6.405. SENASA's accession agreement indicates that this agency may enter observations on DJAIs that relate to products subject to phytosanitary and food security requirements.<sup>823</sup>

6.406. INV's accession agreement indicates that this agency is entitled to enter observations "on the basis of its authority".<sup>824</sup> In its first written submission, Argentina clarified that this agency will only assess imports of wine products.<sup>825</sup> In an official press release dated 27 February 2012, the Argentine Government announced that "AFIP will make available to INV information concerning the importer, the type and quantity of product – either musts, wines, or ethylic or methyl alcohols – and the alcoholic grade".<sup>826</sup> In accordance with INV's accession agreement, declarants seeking to import wine products must also indicate (a) INV registration number; (b) type of product; (c) volume (in litres for musts, wines and ethylic alcohols; and in kilos for methyl acid); and, (d) alcoholic grade and colour index (for wines in bulk).<sup>827</sup>

#### 6.3.2.5 Exit status

6.407. According to the relevant rules, if no governmental agency enters an observation within the prescribed time period, the DJAI will enter into "exit" (*salida*) status and the importer may proceed with the importation.<sup>828</sup> A DJAI will also proceed to "exit" status if an observation made by an agency is lifted within 180 calendar days from registration.<sup>829</sup> Upon request, this time-frame

1996; Decree 1161/2000, Update of the list of precursors and essential chemical products, 6 December 2000; and Resolution 216/2010, National Registry of Chemical Precursors, 17 March 2010 (Exhibit ARG-27).

<sup>818</sup> Clause 2, SEDRONAR's Accession Agreement, 22 February 2012 (Exhibit ARG-47); Argentina's response to Panel question No. 23 (including Annex 4).

<sup>819</sup> Clause 2, SEDRONAR's Accession Agreement, 22 February 2012 (Exhibit ARG-47). Argentina's response to Panel question No. 106.

<sup>820</sup> SENASA's Accession Agreement, 14 February 2012 (Exhibit ARG-49); INV's Accession Agreement, 16 February 2012 (Exhibit ARG-50). See also Argentina's first written submission, para. 227.

<sup>821</sup> Argentina's first written submission, para. 227 and fn. 113 and 114; second written submission, para. 177; and response to Panel question Nos. 113 and 114.

<sup>822</sup> Argentina's second written submission, para. 177.

<sup>823</sup> Clause 2, SENASA's Accession Agreement, 14 February 2012 (Exhibit ARG-49). See also Argentina's response to Panel question No. 23 (including Annex 4); Argentina's first written submission, para. 230.

<sup>824</sup> INV's Accession Agreement, 16 February 2012 (Exhibit ARG-50).

<sup>825</sup> Argentina's first written submission, para. 230.

<sup>826</sup> News item: *Prensa Argentina*, SEDRONAR and INV adhered to the single electronic window and the DJAI, 27 February 2012 (Exhibit JE-43).

<sup>827</sup> Clause 2, INV's Accession Agreement, 16 February 2012 (Exhibit ARG-50).

<sup>828</sup> Article 2, and Updated Annex at paragraph 12 of Section F, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7).

<sup>829</sup> Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, para. 238; Argentina's response to Panel question No. 28.



may be extended by an additional 180 calendar days.<sup>830</sup> The relevant laws and regulations do not foresee grounds upon which such an extension may be granted or denied. However, Argentina has indicated that the validity of a DJAI may be extended by an additional 180 calendar days "unless there is no reasonability in the request to extend the deadline".<sup>831</sup>

6.408. Argentina indicated that "the DJAI in 'exit' status can automatically be converted into a customs clearance procedure".<sup>832</sup> To initiate the customs clearance procedure, an importer must re-access the SIM system and formally request the importation of goods.<sup>833</sup> When this formal request is made, the SIM system will ask for the DJAI number, conduct the consistency checks agreed with the relevant agencies and verify that the DJAI has been validated by all necessary agencies.<sup>834</sup> Argentina indicated that, to clear customs, an importer must provide "the clearance declaration (confirming the data provided through the DJAI); the commercial invoice number and the bill of lading, together with the information and documents regarding the particular type of goods to be imported applicable under the tariff classification system".<sup>835</sup>

6.409. Exit status on the DJAI is also necessary for obtaining authorization from the Central Bank of Argentina to make payments in foreign currency.<sup>836</sup>

#### 6.3.2.6 Voided status

6.410. If an observation is not lifted or if a DJAI in exit status is not used within 180 calendar days from registration<sup>837</sup>, the DJAI will enter into "voided" (*anulada*) status. In cases where the 180-day period is extended, the DJAI will enter the voided status following the extension period. A DJAI will also enter into voided status if an applicant withdraws its DJAI.<sup>838</sup> Importers are not able to import under a voided DJAI.

#### 6.3.2.7 Cancelled status

6.411. When a DJAI has been used – that is, when the goods it covers clear customs – the DJAI will enter into "cancelled" (*cancelada*) status.<sup>839</sup>

### 6.3.3 Legal analysis

#### 6.3.3.1 Whether the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994

##### 6.3.3.1.1 Arguments of the parties

6.412. The European Union argues that the DJAI procedure is a non-automatic import licensing system, inconsistent with Article XI:1 of the GATT 1994.<sup>840</sup>

6.413. The European Union further argues that, even if the DJAI procedure was not considered to be an import licence, it would still be inconsistent with a number of GATT provisions, including Article XI:1. In the European Union's view, the DJAI procedure is a "quantitative restriction" since

<sup>830</sup> Updated Annex at Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's first written submission, para. 221; Argentina's response to Panel question No. 28.

<sup>831</sup> Argentina's response to Panel question No. 117.

<sup>832</sup> Argentina's oral response to Panel question No. 3.2 posed at the first substantive meeting.

<sup>833</sup> Argentina's response to Panel question No. 30.

<sup>834</sup> Article 5, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6).

<sup>835</sup> Argentina's response to Panel question No. 30.

<sup>836</sup> Paras. 4.1, 4.2 and 4.3, and section xii) of para. 8.1.3, Central Bank of the Argentine Republic, Communication "A" 5274, 30 January 2012 (Exhibit JE-40); Argentina's response to Panel question No. 3.2 posed orally at the first substantive meeting.

<sup>837</sup> Argentina's response to Panel question No. 119.

<sup>838</sup> Updated Annex at paragraph h) of Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7). See also diagram in Argentina's first written submission, para. 238.

<sup>839</sup> Updated Annex at paragraph h) of Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7). See also diagram in Argentina's first written submission, para. 238; Argentina's first written submission, para. 221; European Union's first written submission, para. 50; United States' first written submission, para. 20; Japan's first written submission, para. 23.

<sup>840</sup> European Union's first written submission, paras. 237, 281-290.

it has a "limiting effect on importation", in the sense that Argentine authorities can block an importation through the DJAI system. As long as the importation is blocked on the DJAI system, the customs authorities do not allow the release of the imported goods into the Argentine market and the Argentine Central Bank refuses to authorize the opening of letters of credit, the issuance of bank guarantees, or the payment in foreign currency for the imported goods. All these characteristics and elements in the design and structure of the DJAI procedure limit the quantity of goods that can be imported, create uncertainty and affect investment plans. At the time importers submit the sworn declaration, they do not know whether the authorities will authorise the importation (i.e. whether importers will achieve exit status on their DJAI application and thereby secure the documents necessary to obtain financing to import) and, consequently, whether the importation will be permitted to take place.<sup>841</sup>

6.414. As part of its arguments challenging the DJAI procedure, the European Union refers to the manner in which the Secretariat of Domestic Trade (SCI) uses the DJAI procedure as a tool to impose TRRs on prospective importers, including the requirement to export goods from Argentina.<sup>842</sup>

6.415. The United States submits that the DJAI requirement constitutes an import restriction made effective through an import licence within the meaning of Article XI:1 of the GATT 1994.<sup>843</sup>

6.416. The United States further argues that, irrespective of whether it is made effective through an import licence, the DJAI requirement constitutes an import restriction that is inconsistent with Argentina's obligations under Article XI:1 of the GATT 1994.<sup>844</sup> In the United States' view, the DJAI requirement is a "restriction" within the meaning of Article XI:1, for three reasons. First, because DJAI applications are not granted in all cases and the DJAI requirement leaves the various participating agencies with wide discretion to grant or deny the approval for importation.<sup>845</sup> Second, because the discretionary nature of the DJAI requirement allows Argentine authorities to impose TRRs on importers as a condition to import, including a limitation on the value of imports based on an importer's ability to export goods from Argentina.<sup>846</sup> Third, because the approval to import is only granted to importers after significant delay.<sup>847</sup>

6.417. Japan argues that the DJAI requirement, by its very design, structure and operation, as well as in practice, constitutes a non-automatic import licensing measure and therefore is a measure inconsistent with Article XI:1 of the GATT 1994. Under the DJAI procedure (a) at least six agencies have authority to suspend and prevent importation and the granting of an importation licence by entering observations; (b) the criteria for suspension or approval of importation are not specified; (c) no meaningful explanation must be provided to importers for either suspension or rejection of a DJAI application; (d) the requirement covers all or virtually all categories of goods; (e) the actual operation of the requirement results in substantial delays in or in the suspension of importation; (f) in practice, Argentine agencies and officials often make the grant of importation rights contingent on compliance with certain TRRs; and, (g) there is no indication that Argentina imposes any of these requirements for any reason other than to prevent imports and to encourage local investment, trade balancing and import substitution.<sup>848</sup>

6.418. Japan further argues that the DJAI requirement provides the relevant Argentine Government agencies with an open-ended discretion to restrict imports and, thus, leads to the type of uncertainty that the panel in *China – Raw Materials* found to be inconsistent with Article XI:1 of the GATT 1994.<sup>849</sup> In Japan's view, the open-ended discretion and uncertainty inherent in the DJAI requirement is in itself an import restriction inconsistent with Article XI:1 of the GATT 1994.<sup>850</sup>

<sup>841</sup> Ibid. paras. 237, 239-251.

<sup>842</sup> Ibid. paras. 62-68, 248; and opening statement at the first substantive meeting, paras. 30-32.

<sup>843</sup> United States' first written submission, para. 121.

<sup>844</sup> Ibid. paras. 102-120.

<sup>845</sup> Ibid. paras. 105-111.

<sup>846</sup> Ibid. paras. 112-113.

<sup>847</sup> Ibid. paras. 114-120.

<sup>848</sup> Japan's first written submission, paras. 112-119 and 165-166.

<sup>849</sup> Ibid. para. 120 (referring to Panel Report, *China – Raw Materials*, paras. 7.948 and 7.957).

<sup>850</sup> Japan's first written submission, paras. 121-123.

6.419. Argentina argues that Article XI:1 only applies to measures of a substantive nature. It does not apply to formalities or requirements that are connected with importation, which can only be examined under Article VIII of the GATT 1994.<sup>851</sup> In Argentina's view, given that the DJAI procedure is a formality connected with importation, it can only be examined under Article VIII of the GATT 1994 and not under Article XI:1 or the Import Licensing Agreement.<sup>852</sup> Argentina further argues that, even if Article XI:1 were to apply to customs or import formalities, Articles VIII and XI:1 are mutually exclusive provisions.<sup>853</sup> Due to this conflict, the more specific provisions foreseen in Article VIII should prevail.<sup>854</sup> Nevertheless, should the Panel determine that import formalities and requirements such as the DJAI procedure can be evaluated under Article XI:1 of the GATT 1994, the Panel should analyse the complainants' claims under the Import Licensing Agreement first, which constitutes *lex specialis* in relation to Article XI:1 of the GATT 1994.<sup>855</sup>

6.420. Finally, Argentina submits that, if the Panel determines that customs formalities are subject to Article XI:1 of the GATT 1994 and/or that the Import Licensing Agreement is not *lex specialis* in relation to Article XI:1 of the GATT 1994, the Panel should in any case find that the complainants have failed to establish a *prima facie* case of inconsistency under Article XI:1 of the GATT 1994 under a proper interpretation of this provision. In Argentina's view, any measure that is alleged to constitute a quantitative restriction under Article XI:1 of the GATT 1994 must be "expressed in terms of quantity" or be "quantifiable".<sup>856</sup>

6.421. In its third-party submission, Australia asserts that, "even if the Panel accepts Argentina's argument that the DJAI is a customs formality, the measure may still be evaluated under Article XI:1 [of the GATT 1994]".<sup>857</sup> Australia also notes that it "disagrees with the way in which the purpose and focus of Article VIII of GATT has been characterised in Argentina's submission". In Australia's view, Article VIII does not primarily aim to permit and govern customs formalities, but specifically mentions import and export formalities only for the purposes of stating the need for Members to minimize their incidence and complexity".<sup>858</sup> In Australia's view, if Argentina prevails in its argument that trade restrictive effects of customs formalities can *only* be evaluated under Article VIII while noting that Article VIII does not impose any specific disciplines in relation to these procedures, this "would result in a situation where the trade restrictive effects of customs formalities would effectively not be able to be evaluated at all".<sup>859</sup> Australia submits that the trade-restrictive effects of the DJAI can be analysed under both the relevant provisions of the Import Licensing Agreement and under Article XI:1 of the GATT 1994.<sup>860</sup>

6.422. Israel argues that the TRRs are broader than the DJAI. In Israel's view, the DJAI may be seen as one of several tools used by Argentina to implement its TRRs.<sup>861</sup> Israel considers that the TRRs and the DJAI are inconsistent with Articles XI:1 of the GATT 1994, either as separate measures or in connection with each other. The general restriction foreseen in Article XI:1 of the GATT 1994, as well as a careful analysis of the exceptions under this Article, do not give rise to any justification of these measures.<sup>862</sup>

6.423. Chinese Taipei argues that the scope of measures referred to in Article XI:1 of the GATT 1994 is very broad and its applicability is not only limited to substantive rules of importation.<sup>863</sup> Chinese Taipei adds that "the interpretation that Article XI:1 does not apply to a

<sup>851</sup> Argentina's first written submission, paras. 161-164, 178, and 181.

<sup>852</sup> Ibid. paras. 155, 165-167 and 299.

<sup>853</sup> Ibid. para. 176.

<sup>854</sup> Ibid. paras. 176-180.

<sup>855</sup> Ibid. paras. 300-311.

<sup>856</sup> Ibid. paras. 331 and 334. See also Argentina's opening statement at the first substantive meeting, para. 79.

<sup>857</sup> Australia's third-party submission, para. 21. See also *ibid.* para. 12.

<sup>858</sup> Ibid. para. 29.

<sup>859</sup> Ibid. para. 30.

<sup>860</sup> Ibid. paras. 34-40.

<sup>861</sup> Israel's third-party submission, p. 2.

<sup>862</sup> Israel's third-party submission, p. 3.

<sup>863</sup> Chinese Taipei's third-party submission, para. 13.

measure that is not a substantive rule of importation is inconsistent with the jurisprudence under Article XI:1 and may further diminish a Member's obligation under that provision".<sup>864</sup>

6.424. Turkey argues that a broad category of measures, including administrative procedures, either applied as a licence or not, fall within the scope of Article XI:1 of the GATT 1994. In Turkey's view, the important thing is whether a measure has a "limiting" or "restrictive" effect on imports. "In this regard, the label given or a characterization of a rule by a WTO Member as 'substantive' or 'procedural' should not change the outcome."<sup>865</sup>

### 6.3.3.1.2 The Panel's analysis

#### 6.3.3.1.2.1 Whether Article XI:1 of the GATT 1994 and the Import Licensing Agreement are applicable to the DJAI procedure

6.425. Before examining the claims raised by the complainants, the Panel will consider, as a threshold issue, whether the DJAI procedure is a customs formality subject to Article VIII of the GATT 1994 and, if so, whether this implies that Article XI:1 of the GATT 1994 and the Import Licensing Agreement are not applicable to the DJAI procedure. As described earlier<sup>866</sup>, Argentina argues that the DJAI procedure is a customs or import formality subject to Article VIII of the GATT 1994 and therefore not subject to Article XI:1 of the GATT 1994 or the Import Licensing Agreement.<sup>867</sup>

6.426. Argentina's contention raises the following three issues: (a) whether the DJAI procedure is a customs formality; (b) whether certain measures, such as customs formalities, are excluded from the scope of Article XI:1; and, (c) whether Article VIII and XI:1 are mutually exclusive. The Panel examines these issues in turn.

6.427. Argentina supports its argument that the DJAI procedure is a customs or import formality subject to Article VIII of the GATT 1994 on an alleged relationship between the DJAI procedure and the World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework).<sup>868</sup> Argentina asserts that the DJAI procedure is a "customs risk assessment tool"<sup>869</sup> by which the AFIP "collects, processes and reviews information" to assess and manage "the risk of non-compliance with Argentina's customs laws and regulations" prior to custom clearance.<sup>870</sup> According to Argentina, the DJAI procedure "implements Argentina's commitments under the WCO SAFE Framework"<sup>871</sup>; and the DJAI procedure is "specifically designed in accordance with"<sup>872</sup>, "based on"<sup>873</sup>, "aimed at bringing Argentina into line with"<sup>874</sup>, "entirely within the parameters of"<sup>875</sup>, "adopted in response to"<sup>876</sup>, "adopted in line with"<sup>877</sup>, and "aimed at implementing the standards and best practices of"<sup>878</sup>, the SAFE Framework.

6.428. On 26 November 2013, the Panel sought the assistance of the WCO Secretariat to clarify certain aspects related to the WCO SAFE Framework. The Panel sent a list of questions to the WCO Secretariat specifying the issues on which the Panel was seeking assistance. The WCO Secretariat

<sup>864</sup> Ibid. para. 14.

<sup>865</sup> Turkey's third-party submission, para. 17.

<sup>866</sup> See para. 6.419 above.

<sup>867</sup> As described in para. 6.419 above, Argentina has asserted at times that the DJAI procedure is an "import formality" and at other times that it is a "customs formality". The Panel understands that Argentina's defense has been raised on the assumption that the DJAI procedure is a customs formality, which constitutes an import formality in the sense of Article VIII of the GATT 1994.

<sup>868</sup> Argentina's first written submission, paras. 239-265.

<sup>869</sup> Ibid. para. 214.

<sup>870</sup> Ibid. para. 193. See also Argentina's response to Panel question No. 25.

<sup>871</sup> Argentina's first written submission, para. 18.

<sup>872</sup> Ibid. para. 192.

<sup>873</sup> Ibid. para. 218.

<sup>874</sup> Ibid. para. 287.

<sup>875</sup> Argentina's first written submission, para. 293.

<sup>876</sup> Ibid. para. 295.

<sup>877</sup> Ibid. para. 216.

<sup>878</sup> Ibid. para. 257. See also *ibid.* paras. 261 and 287.

replied to the Panel on 2 December 2013. In its responses to the list of questions, the WCO indicated, *inter alia*, that:

- a. The SAFE Framework focuses on security risks related to terrorism and *not* on economic risks or other threats. Some WCO members interpret the term "risk" as covering other risks that are not terrorism-related. However, Members have not reached a consensus on such interpretation.
- b. The risks that the SAFE Framework seeks to prevent do not cover breaches of internal laws and regulations governing domestic economic affairs, public health or the quality of products, as interpreted by the majority of WCO members. Some Members may, however, consider that to some extent the SAFE Framework also helps to protect citizens from security and safety concerns that go beyond terrorism and other security threats.
- c. Annex II of the SAFE Framework contains a list of data which has been agreed by the WCO members as necessary to perform a security analysis according to the SAFE Framework. Moreover, Annex II specifies the data that must be provided by exporters, importer or carriers.
- d. The following information may be necessary to make a security analysis according to the SAFE Framework: (a) volume; (b) value and condition of the merchandise; (c) tariff classification; (d) country of origin; (e) identity of importers; and, (f) estimated shipping and arrival dates.
- e. In no scenario should customs authorities require advance declarations to be submitted more than 24 hours before loading at port of departure.<sup>879</sup>

6.429. Subsequent to the responses provided by the WCO Secretariat, Argentina stated that a customs administration can use the principles and standards provided in the SAFE Framework to combat other types of risks, such as those associated with counterfeited goods and issues relating to product safety, among others. Argentina noted that it is one of those WCO members that believe "that Customs should assess risks other than the risks of terrorism referred to in the SAFE Framework".<sup>880</sup>

6.430. The responses provided by the WCO Secretariat suggest that some important elements of the DJAI procedure do not relate to the WCO SAFE Framework, in particular (a) the risks that Argentina seeks to prevent (namely, breaches of internal laws and regulations governing domestic economic affairs, public health and the quality of products) are not directly related to terrorism-related risks; (b) the type of information that may be requested by Argentina when a DJAI is observed is unrelated to the information in Annex II of the WCO SAFE Framework<sup>881</sup>; and, (c) the time at which Argentine importers are required to submit information (prior to the issuance of purchase orders) means that such information would not be useful to assess risks pursuant to the WCO SAFE Framework (according to the WCO SAFE Framework, customs should not require information for maritime cargo to be submitted more than 24 hours before loading at port of departure).

6.431. Argentina's argument is that the DJAI procedure is a "customs or import formality" in the context of Article VIII of the GATT 1994. Article VIII:4 states that:

<sup>879</sup> WCO Secretariat communication to the Panel (2 December 2013).

<sup>880</sup> Argentina's response to Panel question No. 127, para. 134.

<sup>881</sup> Annex II of the WCO SAFE Framework lists a number of data to be provided usually by the exporter, the importer and the carrier. This includes, *inter alia*: (a) the names and addresses of: exporter, consignor, carrier, importer, consignee, seller, buyer, any party to be notified, the party to whom the goods will be delivered, agents acting on behalf of another party, manufacturer, vanning party, consolidator, and container operator; (b) classification, weight, size and description of the goods; (c) country of origin; (d) place of loading, port of arrival, date and time of arrival, and place of discharge; (e) means of transport, nationality of means of transport, payment method for transport charges, and conveyance reference number; and, (f) the total invoice amount. See WCO Secretariat communication to the Panel, pp. 3-5; WCO SAFE Framework (June 2012) (Exhibit ARG-17.a).

The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (a) consular transactions, such as consular invoices and certificates;
- (b) quantitative restrictions;
- (c) licensing;
- (d) exchange control;
- (e) statistical services;
- (f) documents, documentation and certification;
- (g) analysis and inspection; and,
- (h) quarantine, sanitation and fumigation

6.432. According to the ordinary meaning of the word, a "formality" is "[a] small point of practice that, though seemingly unimportant, must [usually] be observed to achieve a particular legal result".<sup>882</sup> More generally, a "formality" is related to "[c]onformity to rules, propriety; rigid or merely conventional observance of forms".<sup>883</sup> In the context of Article VIII of the GATT 1994, a formality can be considered to include all requirements that, although in appearance directed at a mere observance of forms, must be usually observed in connection with the importation or the exportation of goods.

6.433. Even if the Panel were to accept that the DJAI procedure is used by AFIP as a "customs risk assessment tool", that is not the only manner in which the DJAI procedure is used. The Panel has noted that a DJAI in exit status is a necessary pre-requisite for importing goods into Argentina. It has also noted that a DJAI application may be subject to "observations" that will prevent the application from proceeding to exit status. In such case, the prospective importer will have to contact the agencies concerned and provide the information that may be required. In some cases, the prospective importer may have to undertake certain trade-related commitments as a condition for the agency to lift the observation and to complete the DJAI procedure. Accordingly, the DJAI procedure is not directed at a mere observance of forms; it is not a mere formality imposed by Argentina in connection with the importation of goods. Rather, it is a procedure by which Argentina determines the right to import.

6.434. Even assuming *ad arguendo* that the DJAI procedure is a customs or import formality, subject to Article VIII of the GATT 1994, the Panel would still need to determine whether this fact *per se* excludes the applicability of Article XI:1.

6.435. The Panel has already noted that the expression "or other measures" in Article XI:1 of the GATT 1994 implies that this provision covers all measures that constitute import and export prohibitions or restrictions regardless of the means by which they are made effective. The only measures that are excluded from the scope of Article XI:1 of the GATT 1994 are those that take the form of duties, taxes or other charges.<sup>884</sup> Moreover, Article XI:1 of the GATT 1994 does not distinguish among categories of import and export prohibitions or restrictions; instead, it refers to import and export prohibitions or restrictions in general. Accordingly, the Panel is unconvinced that customs or import procedures or formalities are *a priori* excluded from examination under Article XI:1 of the GATT 1994 and therefore sees no impediment to examine the measure at issue under this provision.

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<sup>882</sup> *Black's Law Dictionary*, 8<sup>th</sup> edition (2004), p. 678.

<sup>883</sup> *Shorter Oxford English Dictionary*, 5<sup>th</sup> edition (2002), Vol. 1, p. 1015.

<sup>884</sup> See para. 6.246 above.

6.436. Concerning whether Articles VIII and XI:1 of the GATT 1994 are mutually exclusive provisions, the Panel notes that previous panels have noted that:

[I]n public international law there is a presumption against conflict.<sup>649</sup> This presumption is especially relevant in the WTO context since all WTO agreements, including GATT 1994 which was modified by Understandings when judged necessary, were negotiated at the same time, by the same Members and in the same forum. In this context we recall the principle of effective interpretation pursuant to which all provisions of a treaty (and in the WTO system all agreements) must be given meaning, using the ordinary meaning of words.<sup>885</sup>

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[footnote original] <sup>649</sup> In international law for a conflict to exist between two treaties, three conditions have to be satisfied. First, the treaties concerned must have the same parties. Second, the treaties must cover the same substantive subject matter. Were it otherwise, there would be no possibility for conflict. Third, the provisions must conflict, in the sense that the provisions must impose mutually exclusive obligations. "... [T]echnically speaking, there is a conflict when two (or more) treaty instruments contain obligations which cannot be complied with simultaneously. ... Not every such divergence constitute a conflict, however. ... Incompatibility of contents is an essential condition of conflict.

6.437. In this context, the Appellate Body has repeatedly stated that all WTO agreements are part of the same treaty (i.e. the Marrakesh Agreement) and thus, in the light of the principle of effective treaty interpretation, all WTO provisions should be interpreted harmoniously and cumulatively whenever possible.<sup>886</sup> Regarding the principle of effective treaty interpretation, in *US – Gasoline* the Appellate Body noted that:

One of the corollaries of the "general rule of interpretation" in the *Vienna Convention* is that interpretation must give meaning and effect to all the terms of the treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.<sup>887</sup>

6.438. Therefore, rather than assuming that Article VIII and Article XI:1 of the GATT 1994 are mutually exclusive, the Panel should presume that the obligations contained therein apply harmoniously and cumulatively. Further, in the light of the principle of effective treaty interpretation, the interpreter should avoid adopting a reading of Articles VIII and XI of the GATT 1994 that would reduce any of these provisions to redundancy or inutility.

6.439. Consequently, there is no reason to exclude *a priori* that a measure may be subject to the disciplines of both provisions.

6.440. The Panel recalls that Article XI:1 imposes an obligation on Members not to institute or maintain import and export prohibitions or restrictions. Previous panels have interpreted this provision so as to apply to any measures instituted or maintained by a Member prohibiting or restricting the importation or exportation of goods other than measures that take the form of duties, taxes or other charges.<sup>888</sup>

6.441. In turn, Article VIII of the GATT 1994 contains disciplines regarding fees, charges, formalities, and requirements imposed by governmental authorities in connection with importation and exportation (including those relating to consular transactions, such as consular invoices and certificates; quantitative restrictions; licensing; exchange control; statistical services; documents, documentation and certification; analysis and inspection; and, quarantine, sanitation and fumigation). Article VIII provides that (a) all fees and charges of whatever character (other than

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<sup>885</sup> Panel Report, *Indonesia – Autos*, para. 14.28 and fn 649 to para. 14.28 (citing 7 *Encyclopedia of Public International Law*, North-Holland 1984, p. 468).

<sup>886</sup> Appellate Body Reports, *US – Upland Cotton*, para. 549; *Korea – Dairy*, para. 81; *Argentina – Footwear (EC)*, paras. 81 and 89; *US – Gasoline*, p. 23, DSR 1996:I, 3 at 21; *Japan – Alcoholic Beverages II*, p. 12, DSR 1996:I, 97 at 106; *India – Patents (US)*, para. 45.

<sup>887</sup> Appellate Body Report, *US – Gasoline*, p. 23, DSR 1996:I, 3 at 21.

<sup>888</sup> See para. 6.251 above.



import and export duties and other than taxes within the purview of Article III) imposed by Members on or in connection with importation or exportation shall 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; (b) a Member shall, upon request by another Member or by the Members, review the operation of its laws and regulations in the light of the provisions of this Article; (c) no Member shall impose substantial penalties for minor breaches of customs regulations or procedural requirements; in particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning. According to Article VIII, Members also recognize the need to reduce the number and diversity of fees and charges imposed by Members on or in connection with importation or exportation, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.

6.442. While the coverage of Article XI:1 of the GATT 1994 is broad (any measures instituted or maintained by a Member prohibiting or restricting the importation or exportation of goods, other than measures that take the form of duties, taxes or other charges), the coverage of Article VIII is more limited in scope (fees and charges, other than import and export duties and internal taxes; formalities, and requirements imposed by governmental authorities in connection with importation and exportation).

6.443. Accordingly, there is no indication that Article VIII and Article XI:1 of the GATT 1994 impose mutually exclusive obligations, i.e. obligations that cannot be complied with simultaneously. There is no reason to assume that complying with any of the obligations contained in Article VIII would make it impossible for a Member to comply with the obligation in Article XI:1 to refrain from instituting or maintaining import and export prohibitions or restrictions. Contrary to what Argentina asserts, formalities or requirements that are connected with importation (including customs formalities) can also be subject to Article XI:1 of the GATT 1994. In other words, the consistency of an import or customs formality or requirement could be assessed under either Article VIII or Article XI:1, or under both provisions.

6.444. In conclusion, the Panel finds that, irrespective of whether the DJAI procedure is considered to be a customs or import formality subject to the obligations contained in Article VIII of the GATT 1994, this fact *per se* does not exclude the applicability of Article XI:1 to the examination of the measure. Therefore, there is no impediment that prevents the Panel from examining the complainants' claims against the DJAI procedure under Article XI:1 of the GATT 1994.

6.445. As regards the applicability of the Import Licensing Agreement to the DJAI procedure, the Panel considers that even if it were to accept that the DJAI procedure is used as a "customs risk assessment tool", that is not the only manner in which the DJAI procedure is used.<sup>889</sup> In any case, consistent with the order of analysis in which the Panel decided to examine the complainants' claims against the DJAI procedure<sup>890</sup>, the Panel will examine the applicability of the Import Licensing Agreement to the DJAI procedure only if it considers that additional findings under the Import Licensing Agreement are necessary or useful for the resolution of the matter between the parties.

#### **6.3.3.1.2.2 Order of analysis of the complainants' claims under Article XI:1**

6.446. The complainants raise two separate lines of argument under Article XI:1 of the GATT 1994. First, the complainants challenge the DJAI procedure as a discretionary and non-automatic import licence inconsistent with Article XI:1 of the GATT 1994.<sup>891</sup> Second, they

<sup>889</sup> See para. 6.433 above.

<sup>890</sup> See para. 6.361 above.

<sup>891</sup> European Union's first written submission, paras. 237, 281-290; United States' first written submission, paras. 102, 121-125; Japan's first written submission, paras. 103, 107-119, 165-166.

argue that, irrespective of whether it constitutes an import licence, the DJAI procedure constitutes an import restriction inconsistent with Article XI:1 of the GATT 1994.<sup>892</sup>

6.447. Argentina considers that, should the Panel agree with the complainants that the DJAI procedure is a non-automatic import licensing procedure, it should analyse the complainants' claims under the Import Licensing Agreement first, which constitutes *lex specialis* in relation to Article XI:1 of the GATT 1994.

6.448. Argentina's argument that the Panel should analyse the complainants' claims under the Import Licensing Agreement before it examines their claims under Article XI:1 of the GATT 1994 rests on the assumption that the Panel considers the DJAI procedure as an import licensing procedure. The Panel previously indicated that it will commence its analysis with the arguments raised by the complainants under Article XI:1 of the GATT 1994 *irrespective* of whether the DJAI procedure constitutes an import licence.<sup>893</sup>

#### 6.3.3.1.2.3 Whether the DJAI procedure is a restriction on the importation of goods

6.449. Article XI:1 of the GATT 1994 imposes a general ban on import or export restrictions or prohibitions.<sup>894</sup> Therefore, in order to examine whether a measure is inconsistent with Article XI:1 of the GATT 1994, a panel must determine whether the measure at issue constitutes either a prohibition or a restriction on the importation or exportation of goods. In the present case, the complainants' claim is that the DJAI procedure constitutes a restriction (rather than a prohibition); and that such a restriction is on the importation of goods (rather than on the exportation). Therefore, the Panel will focus its analysis on whether the DJAI procedure constitutes a restriction on the importation of goods within the meaning of Article XI:1 of the GATT 1994.

6.450. The Panel has already noted that the scope of the term "restriction" contained in Article XI:1 of the GATT 1994 is broad and applies to *all* measures instituted or maintained by a Member prohibiting or restricting the importation, exportation, or sale for export of products other than measures that take the form of duties, taxes or other charges.<sup>895</sup>

6.451. The panel in *China – Raw Materials* indicated that, to assess whether a measure has a "limiting effect" or imposes a "limiting condition" on imports, a panel must examine the design and structure of the measure at issue. This assessment shall not be based solely on how a measure is labelled.<sup>896</sup> The panel in *Colombia – Ports of Entry* additionally noted that an analysis under Article XI:1 of the GATT 1994 must be "based on the design of the measure and its potential to adversely affect importation".<sup>897</sup>

6.452. The panel in *India – Quantitative Restrictions* also noted that the ordinary meaning of the term "restriction" is "a limitation on action, a limiting condition or regulation".<sup>898</sup> The panel in *India – Autos*<sup>899</sup> and the Appellate Body in *China – Raw Materials*<sup>900</sup> endorsed this interpretation. The Appellate Body in *China – Raw Materials* added that the term "restriction" "refers generally to something that has a limiting effect".<sup>901</sup>

6.453. Moreover, in order to determine whether the measure at issue constitutes a restriction within the meaning of Article XI:1 of the GATT 1994, it is appropriate to consider whether such a measure has negative effects on competitive opportunities for imports. The panel in *Colombia –*

<sup>892</sup> European Union's first written submission, paras. 237 and 243-251; United States' first written submission, paras. 102-120; Japan's first written submission, paras. 107 and 120-123.

<sup>893</sup> See para. 6.363 above.

<sup>894</sup> See para. 6.243 above. See also Panel Report, *India – Quantitative Restrictions*, para. 5.128.

<sup>895</sup> See para. 6.246 above. See also Panel Reports, *India – Quantitative Restrictions*, paras. 5.128-5.129; *Colombia – Ports of Entry*, para. 7.233; and *Dominican Republic – Import and Sale of Cigarettes*, para. 7.248.

<sup>896</sup> Panel Report, *China – Raw Materials*, para. 7.915.

<sup>897</sup> Panel Report, *Colombia – Ports of Entry*, para. 7.240.

<sup>898</sup> Panel Report, *India – Quantitative Restrictions*, para. 5.129.

<sup>899</sup> Panel Report, *India – Autos*, paras. 7.269-7.270.

<sup>900</sup> Appellate Body Report, *China – Raw Materials*, para. 319.

<sup>901</sup> *Ibid.*

*Ports of Entry* established that "a measure that has identifiable negative consequences on the importation of a product will result in a restriction on importation under Article XI:1".<sup>902</sup>

6.454. Some restrictions that have been found to be covered by Article XI:1 of the GATT 1994 include measures that, *inter alia* (a) restrict market access for imports<sup>903</sup>; (b) create uncertainties<sup>904</sup>; (c) make importation prohibitively costly<sup>905</sup>; and, (d) condition the right to import on trade balancing requirements.<sup>906</sup>

6.455. Finally, previous panels have made clear that Article XI:1 of the GATT 1994 protects competitive conditions available to imported products rather than actual trade flows. The panel in *Colombia – Ports of Entry* considered that an analysis under Article XI:1 of the GATT 1994 must be "based on the design of the measure and its potential to adversely affect importation, as opposed to a standalone analysis of the actual impact of the measure on trade flows".<sup>907</sup> The panel in *Argentina – Hides and Leather* recalled that "Article XI:1, like Articles I, II and III of the GATT, protects competitive opportunities of imported products not trade flows".<sup>908</sup>

6.456. The importance of protecting competitive conditions under Article XI:1 was also discussed prior to the establishment of the WTO. The GATT panel in *EEC – Oilseeds* noted that "CONTRACTING PARTIES have consistently interpreted the basic provisions of the General Agreement on restrictive trade measures as provisions establishing conditions of competition". In the light of this reasoning, that GATT panel determined that "an import quota constitutes an import restriction within the meaning of Article XI:1 whether or not it actually impede[s] imports".<sup>909</sup> The *EEC – Oilseeds* panel further recalled that "in the tariff negotiations in the framework of GATT, contracting parties [sought] tariff concessions in the hope of expanding their exports, but the commitments they exchange[d] in such negotiations [we]re commitments on conditions of competition for trade, not on volumes of trade".<sup>910</sup> In addition, the GATT panel in *US – Superfund* interpreted that "[t]he general prohibition of quantitative restrictions under Article XI ... and the national treatment obligation of Article III ... have essentially the same rationale, namely to protect expectations of the contracting parties as to the competitive relationship between their products and those of the other contracting parties. Both articles are not only to protect current trade but also to create the predictability needed to plan future trade".<sup>911</sup>

6.457. The notion of protecting competitive opportunities has been discussed extensively by the Appellate Body in the context of claims under Articles I and III of the GATT 1994.<sup>912</sup> The approach adopted in previous WTO and GATT cases reflects the idea that Article XI:1 of the GATT 1994 protects Members' expectations as to the competitive relationship between their products and those of other Members in respect of importation itself.

6.458. As to whether a restriction is "on the importation", the panel in *India – Autos* indicated that, "[i]n the context of Article XI:1 [of the GATT 1994], the expression 'restriction ... on importation' may ... be appropriately read as meaning a restriction 'with regard to' or 'in connection with' the importation of the product".<sup>913</sup> The panel in *Dominican Republic – Import and Sale of Cigarettes* noted that "not every measure affecting the opportunities for entering the

<sup>902</sup> Panel Report, *Colombia – Ports of Entry*, para. 7.243.

<sup>903</sup> Ibid. para. 7.275; GATT Panel Reports, *Canada – Provincial Liquor Boards (EEC)*, paras. 4.24-4.25; *Canada – Provincial Liquor Boards (US)*, para. 5.6; and *EEC – Minimum Import Prices*, para. 4.9.

<sup>904</sup> Panel Report, *China – Raw Materials*, paras. 7.948 and 7.957.

<sup>905</sup> Panel Report, *Brazil – Retreaded Tyres*, paras. 7.370-7.372.

<sup>906</sup> Panel Report, *India – Autos*, para. 7.277.

<sup>907</sup> Panel Report, *Colombia – Ports of Entry*, para. 7.240.

<sup>908</sup> Panel Report, *Argentina – Hides and Leather*, para. 11.20.

<sup>909</sup> GATT Panel Report, *European Economic Community – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins*, L/6627, adopted 25 January 1990, BISD 37S/86, para. 150.

<sup>910</sup> GATT Panel Report, *European Economic Community – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins*, L/6627, adopted 25 January 1990, BISD 37S/86, para. 150.

<sup>911</sup> GATT Panel Report, *United States – Taxes on Petroleum and Certain Imported Substances*, L/6175, adopted 17 June 1987, BISD 34S/136, para. 5.2.2.

<sup>912</sup> Appellate Body Reports, *Korea – Various Measures on Beef*, paras. 135-137; *Korea – Alcoholic Beverages*, paras. 119-120, 127; and *Japan – Alcoholic Beverages II*, p. 16.

<sup>913</sup> Panel Report, *India – Autos*, para. 7.257.

market would be covered by Article XI [of the GATT 1994], but only those measures that constitute a prohibition or restriction on the importation of products, i.e. those measures which affect the opportunities for importation itself".<sup>914</sup>

6.459. The Panel will now examine the facts of the case in the light of the legal background described above.

6.460. Under the relevant Argentine law, a DJAI in exit status is necessary for obtaining authorization from the Central Bank of Argentina to make payments in foreign currency<sup>915</sup> and for clearing customs.<sup>916</sup> The immediate effect of a DJAI in exit status is that it grants importers the right to import goods into Argentina.<sup>917</sup> A DJAI will attain exit status if either: (a) no agency of the Argentine Government enters an observation within the prescribed time period; or, (b) when an agency has entered an observation on a DJAI, the observation is lifted by the agency concerned following information provided by and/or action taken by the declarant or prospective importer.

6.461. Accordingly, on its face the DJAI procedure affects the opportunities for the importation of goods into Argentina. The requirement to obtain a DJAI in exit status is a necessary condition to import goods into Argentina in most cases.<sup>918</sup> The attainment of such status is not automatic. This results in a restriction on the access of imports into the Argentine market.

6.462. Moreover, the relevant legislation does not identify (a) all the agencies that may intervene in the DJAI procedure; (b) the complete list of information that must be provided to complete the DJAI procedure; or, (c) the specific criteria on which the agencies may enter and lift observations.

6.463. As noted above<sup>919</sup>, the DJAI procedure does not allow importers to know which agencies may review and enter observations on a DJAI. First, the relevant legislation does not contain a list of governmental agencies that can participate in the DJAI procedure. Second, although AFIP General Resolutions 3252/2012 and 3256/2012 seem to allow any governmental agency to participate in the DJAI procedure, provided that the agency signs an accession agreement<sup>920</sup>, these agreements have not been published or otherwise made available to importers.<sup>921</sup>

6.464. As explained above<sup>922</sup>, not all of the participating agencies are identifiable, even when a declarant files an application, because they are sometimes identified with codes that are not explained in any document that is publicly available to importers.<sup>923</sup>

6.465. As regards information necessary to complete the DJAI procedure, the Panel recalls that, although the relevant rules contain a list of information to be provided when filing a DJAI application<sup>924</sup>, there is no indication of which supplementary documents or information may be required if a DJAI is observed.<sup>925</sup> Argentina has stated that any supplementary information

<sup>914</sup> Panel Report, *Dominican Republic - Import and Sale of Cigarettes*, para. 7.261.

<sup>915</sup> Paras. 4.1, 4.2 and 4.3, and section xii) of para. 8.1.3, *Banco Central de la República Argentina* (Central Bank of the Argentine Republic), *Comunicación "A" 5274* (Central Bank Communication "A" 5274), 30 January 2012, Exhibit JE--40; Argentina's response to Panel question No. 3.2 posed orally at the first substantive meeting.

<sup>916</sup> Articles 2 and 5, AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); Updated Annex at paragraph h) of Section D, AFIP General Resolution 3255/2012, 20 January 2012 (Exhibits JE-16 and ARG-7); Argentina's response to Panel question 3.2 posed orally during the first substantive meeting; Argentina's response to Panel question No. 30. See also diagram in Argentina's first written submission, para. 238.

<sup>917</sup> See Argentina's response to Panel question 3.2 posed orally during the first substantive meeting: "the DJAI in 'exit' status can automatically be converted into a customs clearance procedure".

<sup>918</sup> Only a few limited import operations are exempted from the requirement to file a DJAI application.

<sup>919</sup> See para. 6.377 above.

<sup>920</sup> AFIP General Resolution 3252/2012, 5 January 2012 (Exhibits JE-15 and ARG-6); AFIP General Resolution 3256/2012, 26 January 2012 (Exhibits JE-14 and ARG-11).

<sup>921</sup> Argentina's response to Panel question No. 104.

<sup>922</sup> See para. 6.378 above.

<sup>923</sup> Only code BI30, corresponding to AFIP, is identified in a publicly-available document (the DJAI User Manual). See AFIP, DJAI User Manual, July 2012 (Exhibit JE-13). See also Argentina's response to Panel question No. 23.

<sup>924</sup> See para. 6.382 above.

<sup>925</sup> Argentina's response to Panel question Nos. 22, 24, 110, 111 and 112.

required will depend on "the reasons [that led to an] observation".<sup>926</sup> This creates a mismatch between the information that an importer is required to provide under the relevant rules and what may actually be required by the different participating agencies. The seriousness of this mismatch lies on the fact that, as stated by Argentina, an agency may observe a DJAI if the information provided in a DJAI application is insufficient, faulty or incomplete to demonstrate compliance with the legal instruments that are administered by the specific agency.<sup>927</sup> In addition, the respective legal instruments that are administered by the agencies that are entitled to enter observations extend to regulatory aspects that do not relate to the risk of non-compliance with Argentina's customs laws and regulations.<sup>928</sup> The laws and regulations administered by the SCI, for example, relate to matters such as the labelling and marketing of products to be sold in Argentina's domestic market, consumer protection, metrology, internal supply and antitrust issues.<sup>929</sup>

6.466. As to the conditions that importers must fulfil to have observations *lifted*, Argentina has indicated that, in the event of an observation, the importer should contact the agency concerned "to regularize the situation"; to this end the importer might be required to submit additional information.<sup>930</sup> The relevant legislation, currently applied by four participating agencies, does not foresee a list of documents or information that an importer must submit to the respective agencies in the case a DJAI is observed. Argentina has merely indicated that the specific information that is required to lift an observation depends on "the reasons [that led to] the observation".<sup>931</sup> Importers must provide the additional information, and only after they provide such information "the observation is lifted and the DJAI proceeds to 'exit' status".<sup>932</sup> The Panel notes Argentina's statement that the causes leading to an observation are breaches of the legal instruments that are administered by the participating agencies, as well as having provided insufficient, faulty or incomplete information to demonstrate compliance with the legal instruments administered by such agencies.<sup>933</sup> Argentina has also stated that the specific information required to lift an observation depends on "the reasons [that led to] the observation".<sup>934</sup> These statements imply that (a) the information or documents to be provided to secure a DJAI in exit status depend on shortcomings detected by the relevant agency in a particular case which may be unrelated to the information requested from the declarant when filing a DJAI application; and (b) the discretion granted to participating agencies to *lift* observations is as broad as that accorded on them to *enter* observations.

6.467. This discretion creates uncertainty for importers of goods, who are unable to anticipate the agencies that may intervene in the specific DJAI procedure, the requirements that should be met, or the complete list of documents that must be provided in the case of an observation, to secure a DJAI in exit status and hence their right to import. The discretion granted to participating agencies to enter and lift observations combined with the legal consequences of an observation creates uncertainty as to an applicant's ability to import goods into Argentina. This uncertainty in itself affects the opportunities for the importation of goods into Argentina.

6.468. The above reasoning and conclusion are similar to those reached by the panel in *China – Raw Materials*. That panel concluded that one of the measures at issue amounted to a quantitative restriction inconsistent with Article XI:1 of the GATT 1994 because it granted governmental agencies an "open-ended discretion" to request "an unqualified number of 'other' documents"

<sup>926</sup> Argentina's response to Panel question No. 23 (including Annex 4).

<sup>927</sup> Argentina's response to Panel question No. 110, 111 and 112. See also Argentina's response to Panel question No. 3.4 posed orally at the first substantive meeting.

<sup>928</sup> The Panel notes, in this respect, that Argentina asserted in its first written submission that "[t]he DJAI procedure does not contain any substantive rules governing the importation of goods into Argentina. On the contrary, the DJAI procedure is linked to laws and regulations contained *elsewhere* in Argentina's legal regime" (emphasis added). See Argentina's first written submission, para. 194.

<sup>929</sup> See para. 6.391 above.

<sup>930</sup> Argentina's response to Panel questions No. 22, 24, 110, 111 and 112.

<sup>931</sup> Argentina's response to Panel question No. 23 (including Annex 4).

<sup>932</sup> Argentina's first written submission, para. 234. See also Argentina's second written submission, para. 181, where Argentina states that "[t]he action of the importer is crucial for lifting the observation. It is the private instance which conditions the action of the Administration".

<sup>933</sup> Argentina's response to Panel question No. 25; Argentina's response to Panel questions Nos. 110, 111 and 112. See also Argentina's response to Panel question No. 3.4 posed orally at the first substantive meeting.

<sup>934</sup> Argentina's response to Panel question No. 23 (including Annex 4). See also para. 6.382 above.

when reviewing export licence applications.<sup>935</sup> In the view of the panel, such open-ended discretion created uncertainty as to an applicant's ability to export.<sup>936</sup> Although there are differences between the licensing requirement reviewed by the panel in *China – Raw Materials* and the DJAI procedure, both measures are similar in the sense that both create uncertainty by conditioning an applicant's ability to either export or import upon compliance with an unidentified number of requirements.

6.469. In the Panel's view, the fact that a DJAI in exit status is a necessary condition to import goods, coupled with the lack of clarity as to who the participating agencies are and the absence of specific criteria that they can apply to exercise their discretion has a limiting effect on the importation of goods. Participating agencies have a broad discretion to enter and lift observations on a DJAI, which may result in an interruption of the DJAI procedure.

6.470. Finally, as part of their arguments challenging the DJAI procedure, the complainants advanced specific arguments regarding the intervention of the SCI in the procedure and the commitments imposed by the SCI on prospective importers, including the commitment to export goods from Argentina.<sup>937</sup> As has been noted above<sup>938</sup>, the SCI imposes certain requirements on prospective importers as a condition to lift observations entered into DJAI applications.

6.471. First, the SCI requires that declarants or importers submit a number of documents that are unrelated to the prospected importation: (a) the company's estimates of imports and exports; (b) price lists of goods traded in the domestic market; and, (c) a spread sheet (also called "request note" or "*nota de pedido*") containing data such as: description of the products; quantity; units of measure; price per unit; total price; origin; tariff classification; expected date of shipping from exporting country; and, expected date of arrival to Argentina.

6.472. Second, in certain cases the SCI also requires prospective importers to commit to increase their exports or to start exporting (if they have not yet done so) as a condition to lift observations on DJAIs.<sup>939</sup> This requirement is similar to the "trade balancing condition" analysed by the panel in *India – Autos*, whereby importers were required to compensate their imports with an equivalent value of exports as part of the conditions to gain the right to import certain products. That panel concluded that the "trade balancing condition" amounted to an import restriction, since there would necessarily be a practical threshold to the amount of exports that each manufacturer could expect to make, which in turn would determine the amount of imports that could be made.<sup>940</sup> Similarly, the export commitment required by the SCI has two effects: (a) it makes the declarants' right to import conditional on their commitment to increase their exports (or to start exporting if they have not yet done so); and, (b) it limits the value of goods that can be imported to the value of their exports. In the Panel's view, these effects place an additional restriction on importation, since importers are not free to import as much as they desire or need without regard to their export performance.

6.473. In addition, the Panel recalls that increases of transaction costs caused by a governmental measure have been found to have a restrictive effect on importation in violation of Article XI:1 of the GATT 1994 when they have had the effect of discouraging importation by making it "prohibitively costly".<sup>941</sup> The Panel considers that the export commitment required by the SCI fulfills this condition, because it imposes a significant burden on importers that is unrelated to their normal importing activity, which results in higher import costs.

6.474. In sum, the Panel finds that the DJAI procedure has a limiting effect on imports, and thus constitutes an import restriction, because it: (a) restricts market access for imported products to Argentina as obtaining a DJAI in exit status is not automatic; (b) creates uncertainty as to an applicant's ability to import; (c) does not allow companies to import as much as they desire or

<sup>935</sup> Panel Report, *China – Raw Materials*, paras. 7.948.

<sup>936</sup> Panel Report, *China – Raw Materials*, paras. 7.948 and 7.957.

<sup>937</sup> European Union's first written submission, paras. 62-68, 248; European Union's opening statement at the first substantive meeting, paras. 30-32; United States' first written submission, paras. 32, 35-37, 41; Japan's first written submission, paras. 29, 104-105.

<sup>938</sup> See paras. 6.393-6.395 above.

<sup>939</sup> See para. 6.395 above.

<sup>940</sup> Panel Report, *India – Autos*, para. 7.277.

<sup>941</sup> Panel Report, *Brazil – Retreaded Tyres*, paras. 7.370-7.372.

need without regard to their export performance; and, (d) imposes a significant burden on importers that is unrelated to their normal importing activity.

#### 6.3.3.1.2.4 Whether Article XI:1 requires that a measure be expressed in terms of quantities or in a manner that is quantifiable

6.475. The Panel now turns to Argentina's argument that Article XI:1 of the GATT 1994 requires a demonstration that a measure restricts the quantity of imports or exports, either by reference to the manner in which the measure is expressed (i.e. "in terms of quantity") or in a way that is "quantifiable". In support of its argument, Argentina quotes the Appellate Body's statement in *China – Raw Materials* that "Article XI of the GATT 1994 covers those prohibitions and restrictions that have a limiting effect on the quantity or amount of product being imported or exported".<sup>942</sup> In Argentina's view, the Appellate Body's statement implies that a violation of Article XI:1 requires a demonstration that the measure at issue limits imports or exports in a quantifiable way, and that this quantitative limitation on imports or exports is a result of the measure.<sup>943</sup> Argentina asserts that the complainants have not even suggested that the DJAI procedure imposes a restriction on imports that is expressed "in terms of quantity".<sup>944</sup>

6.476. The Panel disagrees with Argentina that the Appellate Body's statement in *China – Raw Materials* implies that a *prima facie* case under Article XI:1 of the GATT 1994 can only be made "by reference to the manner in which [a] measure is expressed (i.e. 'in terms of quantity') or in a way that is 'quantifiable'". The Appellate Body's statement in that case indicates that a proper interpretation of Articles XI:1 and XI:2(a) needs to take into account the whole text of these provisions including the title of Article XI. Under such an interpretation, a measure inconsistent with Article XI:1 must have a limiting or constraining effect on the quantity of imports. Argentina reads into the statement the expressions "in terms of quantity" or "in a way that is quantifiable", which the Appellate Body did not use. Indeed, there may be situations in which an import prohibition is imposed on products that have not been previously imported. In this case, the limiting effect of the prohibition would be absolute and still not quantifiable. Accordingly, the Panel does not consider it necessary that complaining parties demonstrate, as part of a claim of violation of Article XI:1 of the GATT 1994, that the measure at issue is expressed in terms of quantity or in a way that is quantifiable.

6.477. Additionally, as described earlier<sup>945</sup>, previous panels have made clear that, rather than actual trade effects, Article XI:1 of the GATT 1994 protects Members' expectations as to the competitive relationship between their products and those of other Members in respect of importation itself.<sup>946</sup>

6.478. The Panel, therefore, disagrees with Argentina's assertion that any measure challenged under Article XI:1 of the GATT 1994 "must be shown to restrict the quantity of imports (or exports), either by reference to the manner in which the measure is expressed (i.e. 'in terms of quantity') or in a way that is 'quantifiable'".<sup>947</sup>

<sup>942</sup> Appellate Body Report, *China – Raw Materials*, para. 320.

<sup>943</sup> Argentina's first written submission, para. 334. See also Argentina's opening statement at the first substantive meeting, para. 79.

<sup>944</sup> Argentina's first written submission, paras. 336-337.

<sup>945</sup> See para. 6.455 above.

<sup>946</sup> Panel Report, *Colombia – Ports of Entry*, para. 7.240; Panel Report, *Argentina – Hides and Leather*, para. 11.20; GATT Panel Report, *European Economic Community – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins*, L/6627, adopted 25 January 1990, BISD 37S/86, para. 150; GATT Panel Report, *United States – Taxes on Petroleum and Certain Imported Substances*, L/6175, adopted 17 June 1987, BISD 34S/136, para. 5.2.2. Additionally, the notion of protecting competitive opportunities has been discussed extensively by the Appellate Body in the context of claims under Articles I and III of the GATT 1994. See Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, para. 5.141; Appellate Body Report, *Korea – Various Measures on Beef*, paras. 135-137; Appellate Body Report, *Korea – Alcoholic Beverages*, paras. 119-120, 127; Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 16.

<sup>947</sup> Argentina's opening statement at the first substantive meeting, para. 79.



### 6.3.3.1.2.5 Conclusion

6.479. For the reasons stated above, the Panel considers that the DJAI procedure, irrespective of whether it constitutes an import licence, has limiting effects on the importation of goods into Argentina. In addition to the direct effects on market access for imported products in Argentina, the DJAI procedure creates uncertainty as to an applicant's ability to import, does not allow companies to import as much as they desire or need, but conditions imports to their export performance and imposes a significant burden on importers that is unrelated to their normal importing activity. Therefore, the Panel finds that the DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994.

### 6.3.3.1.2.6 Whether the DJAI procedure amounts to a restriction on the importation made effective through an import licence

6.480. The Panel has found that the DJAI procedure, irrespective of whether it constitutes an import licence, is inconsistent with Article XI:1 of the GATT 1994. An additional finding under Article XI:1 in respect of the DJAI procedure, considered as an import licence, is not necessary or useful in resolving the matter at issue.

6.481. Accordingly, guided by the principle of judicial economy, the Panel refrains from making any findings with respect to the additional arguments raised by the complainants under Article XI:1 of the GATT 1994, by which they challenge the DJAI procedure as an import licence.

## 6.3.3.2 Whether the DJAI procedure is inconsistent with Article X:1 of the GATT 1994

### 6.3.3.2.1 Arguments of the parties

6.482. The European Union and Japan claim that Argentina has acted inconsistently with Article X:1 of the GATT 1994, by failing to publish promptly several elements relating to the operation of the DJAI procedure in such a manner as to enable governments and traders to become acquainted with them.<sup>948</sup>

6.483. According to the European Union, Argentina has failed to publish (a) a complete list of all governmental entities that have the right to inspect and block imports through the DJAI procedure, as well as the legal instruments that grant these authorities the right to review and block DJAI applications<sup>949</sup>; (b) the complete list of goods that each governmental entity can review and block through the DJAI procedure<sup>950</sup>; (c) the conditions on the basis of which several governmental entities can review and block imports through the DJAI procedure<sup>951</sup>; (d) the grounds for extending the 180-day deadline for completing the DJAI procedure<sup>952</sup>; (e) the precise reasons for which AFIP may block imports<sup>953</sup>; and, (f) the law, regulation or administrative ruling of general application that provides for the existence of request notes (*notas de pedido*).<sup>954</sup>

6.484. Japan argues that Argentina has failed to publish, in a manner consistent with Article X:1 of the GATT 1994, the criteria upon which agencies can enter and lift observations on DJAI applications, as well as the law, regulation or administrative ruling of general application that provides for the existence of request notes (*notas de pedido*).<sup>955</sup>

6.485. Argentina considers that the European Union and Japan have failed to establish that the specific aspects of the DJAI procedure which they challenge under Article X:1 of the GATT 1994 are measures "of general application". The observations that are entered on DJAIs depend on the

<sup>948</sup> European Union's first written submission, paras. 252-265; Japan's first written submission, paras. 103, 152-160.

<sup>949</sup> European Union's first written submission, paras. 254-255.

<sup>950</sup> Ibid. paras. 256-258.

<sup>951</sup> Ibid. paras. 259-260.

<sup>952</sup> Ibid. para. 261.

<sup>953</sup> Ibid. paras. 262-263.

<sup>954</sup> Ibid. paras. 264-265. See also European Union's second written submission, para. 64.

<sup>955</sup> Japan's first written submission, paras. 103, 152-160.

particular risk factors assessed by each agency, in the light of the nature of the goods concerned and the agency's regulatory authority. Therefore, the observations made by each participating agency are not measures of "general application", but rather administrative requests for supplementary information that are made on a case-by-case basis, depending on the information provided by the declarant.<sup>956</sup> Moreover, Argentina has promptly published the statutory authority of each agency that participates in the DJAI procedure, and a standardized model of the accession instrument pursuant to which each agency may adhere to the procedure. Furthermore, information concerning the agencies that participate in each DJAI is readily available to the customs broker or importer in the SIM system.<sup>957</sup>

6.486. Norway considers that a publication under Article X:1 of the GATT 1994 must contain information that provides traders with a *full* picture of the relevant regulations. In Norway's view, the publication requirement foreseen in Article X:1 of the GATT 1994 entails an obligation to make public the process importers must follow in order to import goods, including the different steps in these proceedings and the authorities involved. Furthermore, the conditions for allowing or denying importation of goods must be published, including the method used by the authorities to determine whether the conditions are met. This includes information on any exceptions and changes to the rules.<sup>958</sup> Finally, according to Norway, existing case law illustrates that Members must publish comprehensive and unambiguous information regarding the application of rules that relate to the importation of goods.<sup>959</sup>

### 6.3.3.2.2 The Panel's analysis

6.487. The Panel has already noted the text of Article X:1 of the GATT 1994. It has also noted that, as indicated by the Appellate Body, Article X relates to the publication and administration of laws, regulations, judicial decisions and administrative rulings of general application, rather than to the substantive content of such measures.<sup>960</sup>

6.488. The Panel has found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, irrespective of whether it constitutes an import licence. In making such a finding, the Panel took into account that the relevant laws and regulations do not identify (a) all the agencies that may intervene in the DJAI procedure; (b) the complete list of information that must be provided to complete a DJAI procedure successfully; and (c) the specific criteria by which participating agencies may enter and lift observations on DJAIs.<sup>961</sup> Likewise, the Panel has also found as a matter of fact that, during the stage of observations, the SCI imposes certain requirements on prospective importers that are not foreseen in the relevant laws and regulations.<sup>962</sup> An additional finding regarding the same measure under Article X:1 of the GATT 1994 is not necessary or useful in resolving the matter at issue.

6.489. Accordingly, guided by the principle of judicial economy, the Panel refrains from making any findings with respect to this particular claim.

### 6.3.3.3 Whether the administration of the DJAI procedure is inconsistent with Article X:3(a) of the GATT 1994

#### 6.3.3.3.1 Arguments of the parties

6.490. The European Union considers that Argentina has failed to administer the DJAI procedure in a uniform, impartial and reasonable manner.<sup>963</sup> It has failed to administer the DJAI procedure in a "uniform" manner by not publishing the grounds upon which the Argentine Government (and in

<sup>956</sup> Argentina's first written submission, para. 349.

<sup>957</sup> Argentina's first written submission, paras. 350 and 351.

<sup>958</sup> Norway's third-party submission, para. 16.

<sup>959</sup> Ibid. para. 23 (referring to Panel Reports, *EC – IT Products*, paras. 7.1086-7.1087; *China – Raw Materials*, para. 7.806; *Dominican Republic – Import and Sale of Cigarettes*, para. 7.414; *Thailand – Cigarettes (Philippines)*, para. 7.789).

<sup>960</sup> See paras. 6.302 and 6.303 above (including reference to Appellate Body Report, *EC – Poultry*, para. 115).

<sup>961</sup> See para. 6.462 above.

<sup>962</sup> See paras. 6.471-6.472 above.

<sup>963</sup> European Union's first written submission, paras. 266-275.

particular the Secretariat for Domestic Trade) can block imports.<sup>964</sup> Furthermore, Argentina has failed to administer the DJAI procedure in an "impartial" manner, since the DJAI procedure could be used to the advantage of some applicants and the disadvantage of others. Argentina has also failed to administer the DJAI procedure in a "reasonable" manner by requiring DJAI applicants to undertake trade-restrictive obligations and conditions, in order to allow their imports through the DJAI procedure. An administration with such characteristics is definitely not "reasonable", "proportional" or "sensible" and it is definitely "asking for too much". For these reasons, Argentina's administration of the DJAI procedure is inconsistent with Argentina's obligations under Article X:3(a) of the GATT 1994.<sup>965</sup>

6.491. The United States argues that Argentina has failed to administer its DJAI requirement in a uniform and reasonable manner, as required by Article X:3(a) of the GATT 1994.<sup>966</sup> Argentina has failed to fulfil its obligation to administer the DJAI requirement in a "reasonable" manner. It has failed to comply with the limited rules and procedures it has published with respect to the operation of the DJAI requirement. The United States alleges that Argentina's domestic courts have stated that: (a) Argentina has administered the system as a ban – albeit a temporary one – on imports, without any legal basis; (b) Argentine authorities have failed to produce the comments of the authorized agency, as required under AFIP General Resolution 3252/2012; and, (c) delays ranging from six to eight months without any response being given unreasonably exceeds the time frames established in the Resolutions.<sup>967</sup> In the United States' view, when an administrative agency acts contrary to law and violates directly relevant legal authorities, it does not act in a "reasonable" manner.<sup>968</sup> Similarly, Argentina has failed to administer the DJAI requirement in a "uniform" manner. Argentine agencies treat similar or identical import transactions in an arbitrary and varying manner, without regard to considerations of uniformity or consistency.<sup>969</sup>

6.492. Japan argues that the regulatory structure that Argentina has created results in a non-uniform, unreasonable and non-impartial administration of the DJAI requirement, contrary to Article X:3(a) of the GATT 1994.<sup>970</sup> Argentina's measures are applied by a range of different agencies or offices which are virtually unconstrained in their discretionary authority to apply the DJAI requirement and to enter observations. This leads to an unreasonable administration of the DJAI requirement.<sup>971</sup> Furthermore, the applicable legislation grants agencies an open-ended discretion to determine when to submit comments on DJAI applications and when to remove them. This makes it virtually certain that Argentina administers the DJAI requirement in a non-uniform manner.<sup>972</sup> Finally, the DJAI requirement and the specific features of the DJAI administrative process also result in the non-impartial administration of the law. Indeed, Argentina administers the DJAI requirement in a manner that systematically favours parties that comply with the TRRs. That is, while it grants DJAI applications to firms that comply with the TRRs, it rejects them when firms do not comply with these requirements.<sup>973</sup>

6.493. In response, Argentina argues that the complainants have failed to establish a *prima facie* case that Argentina has acted inconsistently with Article X:3(a) of the GATT 1994 by administering the DJAI procedure in a non-uniform, partial, and unreasonable manner. Argentina's alleged failure to publish the criteria under which each participating agency may enter observations on DJAIs could only entail an inconsistency under Article X:1, which deals with publication requirements, and not under Article X:3(a), which imposes disciplines for the administration of measures of general application. In any event, each participating agency may only review and comment on information concerning merchandise that is relevant to their specific area of authority, the bases for which have been published in Argentina.<sup>974</sup>

<sup>964</sup> Ibid. paras. 271-272.

<sup>965</sup> European Union's first written submission, paras. 273-275.

<sup>966</sup> United States' first written submission, paras. 181-191.

<sup>967</sup> United States' opening statement at the first substantive meeting of the Panel, para. 55.

<sup>968</sup> United States' first written submission, paras. 187-188.

<sup>969</sup> Ibid. paras. 189-191.

<sup>970</sup> Japan's first written submission, paras. 103, 124-151.

<sup>971</sup> Ibid. paras. 148-149.

<sup>972</sup> Ibid. para. 150.

<sup>973</sup> Ibid. para. 151.

<sup>974</sup> Argentina's first written submission, para. 356.

6.494. Argentina argues that, more importantly, the complainants' claims on Argentina's alleged imposition of TRRs on economic operators do not refer to the *administration* of rules of general application, but rather to *substantive* rules which allegedly govern the importation of goods into Argentina. As such, those claims should be examined in the light of the relevant substantive provisions rather than under Article X of the GATT 1994.<sup>975</sup>

6.495. Israel argues that Argentina is acting in breach of Article X:3(a) of the GATT 1994, because it implements and administers the TRRs in connection with the DJAI in a non-uniform, partial, and unreasonable manner, as is evident from the examples cited by the complainants. In Israel's view, the economic operators cannot rely on the legal certainty afforded by a clear and transparent import mechanism, because Argentina's measures are not published or notified to the WTO, and even if they were, the contradictory nature of some of the Argentine authorities' decisions results in non-compliance with Article X:3(a) of the GATT.<sup>976</sup>

#### 6.3.3.3.2 The Panel's analysis

6.496. According to Article X:3(a) of the GATT 1994:

Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

6.497. The Panel has already noted that, as indicated by the Appellate Body, Article X relates to the publication and administration of laws, regulations, judicial decisions and administrative rulings of general application, rather than to the substantive content of such measures.<sup>977</sup>

6.498. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 becomes irrelevant for the resolution of this dispute. Given the Panel has found that the DJAI procedure constitutes a restriction on the importation of goods, the issue of whether Argentina administers this procedure in a uniform, impartial and reasonable manner becomes unimportant. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

#### 6.3.3.4 Claims against the DJAI procedure under the Import Licensing Agreement

6.499. The complainants have raised a number of claims under the Import Licensing Agreement against the DJAI procedure. In particular, the complainants claim that (a) the DJAI procedure is administered or applied in a manner inconsistent with Argentina's obligations under Articles 1.3, 1.6, 3.2, and 3.5(f) of the Import Licensing Agreement; (b) Argentina has failed to publish promptly information relating to the operation of the DJAI procedure in the manner required by Articles 1.4(a) and 3.3 of the Import Licensing Agreement; and, (c) Argentina has failed to notify the DJAI procedure in the manner required by Articles 1.4(a), 5.1, 5.2, 5.3, and 5.4 of the Import Licensing Agreement.<sup>978</sup>

6.500. Argentina argues that, if the Panel determines that import formalities and requirements such as the DJAI procedure can be evaluated under the Import Licensing Agreement, the complainants need to prove that the procedure at issue has trade-restricting effects in addition to the trade-restricting effects of any substantive rule of importation that the procedure implements (in the complainants' view, the TRR measure), and greater than the ordinary trade-restricting effects of a formality of that nature. The complainants, however, have failed to meet this test and thus the Panel should end the analysis of the DJAI procedure.<sup>979</sup>

<sup>975</sup> Ibid. paras. 355 and 357.

<sup>976</sup> Israel's third-party submission, p. 3.

<sup>977</sup> See para. 6.303 above (including reference to Appellate Body Report, *EC – Poultry*, para. 115).

<sup>978</sup> European Union's first written submission, paras. 291-324; United States' first written submission, paras. 138-162 and 192-210; Japan's first written submission, paras. 161-184.

<sup>979</sup> Argentina's first written submission, paras. 300-311.

### **6.3.3.4.1 Claims against the administration of the DJAI procedure under Article 1.3 of the Import Licensing Agreement**

#### **6.3.3.4.1.1 Arguments of the parties**

6.501. The European Union considers that Argentina's administration of the DJAI procedure is inconsistent with Article 1.3 of the Import Licensing Agreement. The Appellate Body in *EC – Bananas III* found that Article X:3(a) of the GATT 1994 and Article 1.3 of the Import Licensing Agreement have identical coverage. Therefore, for the same reasons that, in the European Union's view, Argentina's administration of the DJAI procedure is inconsistent with Article X:3(a) of the GATT 1994, Argentina has also acted inconsistently with its obligations under Article 1.3 of the Import Licensing Agreement.<sup>980</sup>

6.502. According to Japan, the Appellate Body has described the language in Article 1.3 of the Import Licensing Agreement as interchangeable, for all practical purposes, with the requirement in Article X:3(a) of the GATT 1994 to administer the measures subject to that provision in a "uniform, impartial and reasonable manner". Japan argues that Argentina fails to administer the DJAI requirement in a uniform, impartial and reasonable manner under Article X:3(a) of the GATT 1994. Thus, for those same reasons, Japan submits that Argentina has acted inconsistently with its obligations under Article 1.3 of the Import Licensing Agreement.<sup>981</sup>

6.503. Argentina did not respond to the claims raised by the European Union and Japan under Article 1.3 of the Import Licensing Agreement.

#### **6.3.3.4.1.2 The Panel's analysis**

6.504. Article 1.3 of the Import Licensing Agreement provides that "[t]he rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner".

6.505. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article 1.3 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

### **6.3.3.4.2 Claims against the administration of the DJAI procedure under Article 1.6 of the Import Licensing Agreement**

#### **6.3.3.4.2.1 Arguments of the parties**

6.506. The European Union submits that Argentina has failed to comply with a number of obligations prescribed by Article 1.6 of the Import Licensing Agreement.<sup>982</sup> First, an application procedure which (a) involves multiple levels of applications, (b) requires additional and separate contacts and applications with numerous different governmental entities, (c) requires the submission of documents and information that are not related to the specific goods to be imported, and (d) requires the submission of documents and information on the applicant's export activities while the applicant is actually requesting the authorization to import goods, is not "as simple as possible" for the purposes of Article 1.6 of the Import Licensing Agreement.<sup>983</sup> Second, the total number of "administrative bodies" that applicants may be forced to "approach" exceeds by far the number of three provided in Article 1.6 of the Import Licensing Agreement.<sup>984</sup>

6.507. The United States considers that the DJAI requirement is inconsistent with Article 1.6 of the Import Licensing Agreement because importers must separately approach up to seven

<sup>980</sup> European Union's first written submission, paras. 291-293.

<sup>981</sup> Japan's first written submission, paras. 161-168.

<sup>982</sup> European Union's first written submission, paras. 301-308.

<sup>983</sup> Ibid. paras. 303-306.

<sup>984</sup> Ibid. para. 307.

agencies (AFIP, SCI, ANMAT, SEDRONAR, SENASA, INV, and INTI<sup>985</sup>) to resolve their observations and ultimately receive authorization to import. Taking into account that Article 1.6 of the Import Licensing Agreement provides that applicants shall have to approach only one administrative body in connection with an application, and under no circumstance more than three administrative bodies, in the United States' view, Argentina's DJAI requirement is inconsistent with Article 1.6 of the Import Licensing Agreement.<sup>986</sup>

6.508. Japan argues that Argentina administers the DJAI requirement in a manner inconsistent with the first sentence of Article 1.6 of the Import Licensing Agreement because at least six separate governmental agencies may comment on a single DJAI. In order to arrange for observations to be withdrawn, the importer must separately approach each agency that has made an observation. Thus, the DJAI procedure is not "as simple as possible."<sup>987</sup> Furthermore, the DJAI requirement is also inconsistent with the third sentence of Article 1.6 of the Import Licensing Agreement since DJAI applicants may be required to approach more than three administrative bodies. Moreover, the request note (*nota de pedido*) requires information that is partly redundant of other information that must be submitted as part of the DJAI application.<sup>988</sup>

6.509. Argentina did not respond to the claims raised by the complainants under Article 1.6 of the Import Licensing Agreement.

#### 6.3.3.4.2.2 The Panel's analysis

6.510. Article 1.6 of the Import Licensing Agreement provides that:

Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of licence applications. Where there is a closing date, this period should be at least 21 days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

6.511. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article 1.6 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

#### 6.3.3.4.3 Claims against the DJAI procedure under Article 3.2 of the Import Licensing Agreement

##### 6.3.3.4.3.1 Arguments of the parties

6.512. The European Union considers that the DJAI procedure is inconsistent with Article 3.2 of the Import Licensing Agreement.<sup>989</sup> The DJAI procedure is not used to "implement" some other "measure". Rather, the DJAI procedure itself is a measure by which Argentina restricts imports.<sup>990</sup> Additionally, the European Union considers that the DJAI procedure is more administratively burdensome than absolutely necessary to administer any alleged "underlying" measure.<sup>991</sup> In its second written submission, the European Union asserted that, since Argentina had not stated that the DJAI is used to implement any other quantitative restriction, it did not consider it necessary to

<sup>985</sup> *Instituto Nacional de Tecnología Industrial* (National Institute of Industrial Technology of the Ministry of Industry).

<sup>986</sup> United States' first written submission, paras. 202-206.

<sup>987</sup> Japan's first written submission, paras. 172-173.

<sup>988</sup> *Ibid.* para. 174.

<sup>989</sup> European Union's first written submission, para. 319.

<sup>990</sup> *Ibid.* paras. 309-315.

<sup>991</sup> *Ibid.* paras. 316-318.



discuss further the application of Article 3.2 of the Import Licensing Agreement in the present case.<sup>992</sup>

6.513. The United States submits that the DJAI requirement is inconsistent with both the first and second sentences of Article 3.2 of the Import Licensing Agreement because it has "trade-restrictive or –distortive effects on imports additional to those caused by the imposition of the restriction" and because the DJAI licensing procedures are more "administratively burdensome than is absolutely necessary to administer the measure".<sup>993</sup> In the United States' view, because the DJAI requirement does not impose an underlying restriction, it necessarily has additional trade-restrictive or trade-distortive effects.<sup>994</sup> Furthermore, the DJAI requirement imposes excessive administrative burdens on importers. Once an importer files a DJAI, it must wait up to 15 days for information on whether the application has been approved or whether further action is needed. If any of the participating agencies enters an observation, the importer must approach the agency concerned in order to determine what further information or action is required to obtain the approval of the DJAI application at issue. However, the relevant legal instruments do not explain how to contact the respective agencies and do not contain the list of additional information that must be provided to resolve observations, and so an importer is unable to prepare a response to whatever concerns may arise.<sup>995</sup>

6.514. Japan argues that the design, structure and operation of the DJAI requirement have created tremendous uncertainty for foreign exporters and Argentine importers. Argentina's failure to institute any safeguards limiting agencies' discretion to decide whether to approve DJAI applications, and the complete lack of transparency surrounding the entire process have distorted and restricted imports. Moreover, Argentina has exacerbated these effects by failing to issue DJAI approvals in a timely manner and withholding DJAI approvals from firms that have declined to comply with TRRs.<sup>996</sup>

6.515. In Argentina's view, a complainant seeking to establish a violation of Article 3.2 of the Import Licensing Agreement must demonstrate that the non-automatic import licensing procedures at issue have trade-restrictive or trade-distortive effects that are additional to the trade effects of the substantive rule of importation that the procedures seek to implement. The trade effects of the substantive rule cannot be attributed to the trade effects of the procedure, and *vice versa*. A complainant must therefore distinguish between the trade effect of the procedure at issue and the trade effect of the underlying measure that it may implement. In the present case, the complainants have failed to differentiate between the effect of the DJAI procedure, on the one hand, and the effect of the alleged RTRRs that it allegedly implements, on the other. Accordingly, their claims under Article 3.2 of the Import Licensing Agreement must fail.<sup>997</sup>

#### 6.3.3.4.3.2 The Panel's analysis

6.516. Article 3.2 of the Import Licensing Agreement reads as follows:

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

6.517. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. An additional finding regarding the same measure under Article 3.2 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

<sup>992</sup> European Union's second written submission, para. 79.

<sup>993</sup> United States' first written submission, paras. 192-193.

<sup>994</sup> Ibid. para. 196-198.

<sup>995</sup> United States' first written submission, paras. 199-201.

<sup>996</sup> Japan's first written submission, paras. 176 and 177.

<sup>997</sup> Argentina's first written submission, paras. 154, 168 and 307-311.



#### 6.3.3.4.4 Claims against the administration of the DJAI procedure under Article 3.5(f) of the Import Licensing Agreement

##### 6.3.3.4.4.1 Arguments of the parties

6.518. The European Union considers that the DJAI procedure is inconsistent with Article 3.5(f) of the Import Licensing Agreement. Each application that is submitted by a prospective importer through the DJAI procedure is considered by the Argentine authorities "as and when received". This means that the period for processing the applicant's request should not exceed 30 days. However, the DJAI procedure is designed to grant authorization after a period much longer than 30 days. Therefore, the design, structure and actual operation of the DJAI procedure demonstrate that the DJAI procedure is inconsistent with Article 3.5(f) of the Import Licensing Agreement.<sup>998</sup>

6.519. The United States considers that Argentina's DJAI requirement is subject to the 30-day time-limit foreseen in Article 3.5(f) of the Import Licensing Agreement because applications are not considered simultaneously but rather on a first-come first-serve basis. The individual agencies have up to 15 days to enter observations, and once an observation has been made, there is no time-limit for the resolution of the observation. In practice, as demonstrated by the evidence, Argentine officials frequently fail to abide by the 15-day time limit. Accordingly, Argentina administers the DJAI requirement in a manner inconsistent with Article 3.5(f) of the Import Licensing Agreement.<sup>999</sup>

6.520. Japan argues that, in the case of the DJAI requirement, the 30-day time limit to consider non-automatic licence applications applies, because applications are not considered simultaneously, nor is there an announced "application period". Rather, DJAIs are considered on a rolling basis. Therefore, the DJAI requirement is subject to the 30-day time-limit foreseen in Article 3.5(f) of the Import Licensing Agreement.<sup>1000</sup> However, Japan asserts that the evidence on record demonstrates that Argentina frequently fails to abide by the 30-day time-limit.<sup>1001</sup>

6.521. Argentina did not respond to the claims raised by the complainants under Article 3.5(f) of the Import Licensing Agreement.

##### 6.3.3.4.4.2 The Panel's analysis

6.522. Article 3.5(f) of the Import Licensing Agreement provides that:

[T]he period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than 60 days if all applications are considered simultaneously. In the latter case, the period for processing applications shall be considered to begin on the day following the closing date of the announced application period;

6.523. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

<sup>998</sup> European Union's first written submission, paras. 320-324.

<sup>999</sup> United States' first written submission, paras. 207-209.

<sup>1000</sup> Japan's first written submission, paras. 180-182.

<sup>1001</sup> Ibid. paras. 182-183.

### 6.3.3.4.5 Claims under Article 3.3 of the Import Licensing Agreement about the lack of publication of elements relating to the operation of the DJAI procedure

#### 6.3.3.4.5.1 Arguments of the parties

6.524. The European Union argues that Argentina has not published any laws or regulations imposing quantitative restrictions on imports, nor has it published any laws or regulations stating that the DJAI procedure is linked to the implementation of such quantitative restrictions on imports. Moreover, Argentina has failed to publish the grounds on the basis of which certain Argentine agencies – the SCI, the ANMAT, the SEDRONAR, the AFIP's DGRSS, the SENASA, the INV and the *Instituto Nacional de Tecnología Industrial* (INTI) – can authorize or block imports through the DJAI procedure. Consequently, Argentina has acted inconsistently with Article 3.3 of the Import Licensing Agreement.<sup>1002</sup>

6.525. The United States considers that Argentina has breached its obligations under Article 3.3 of the Import Licensing Agreement by failing to publish sufficient information regarding the bases for granting or allocating DJAI approvals. With the exception of the fiscal-related considerations that are referenced in the DJAI User Manual, the only information that has been published regarding factors considered when granting DJAI applications consists of general statements appearing in official press announcements; these statements do not contain sufficient information to allow governments and traders to know the basis for granting DJAI approvals, and are not published in a manner that would allow them to do so. As a result, it is impossible for traders and Members to know the "set of underlying principles" or the "determining principle" upon which DJAI approvals are granted.<sup>1003</sup>

6.526. Japan submits that Argentina has not imposed explicit quotas for imports of all goods subject to the DJAI requirement. Therefore, pursuant to Article 3.3 of the Import Licensing Agreement, Argentina has an obligation to publish sufficient information with respect to the DJAI requirement for other Members and traders to know the basis for granting and/or allocating DJAIs. Argentina has failed to do so. Consequently, the DJAI requirement is inconsistent with Article 3.3 of the Import Licensing Agreement.<sup>1004</sup>

6.527. Argentina did not respond to the claims raised by the complainants under Article 3.3 of the Import Licensing Agreement.

#### 6.3.3.4.5.2 The Panel's analysis

6.528. Article 3.3 of the Import Licensing Agreement provides that:

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

6.529. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. Two of the reasons why the Panel concluded that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994 are (a) that the relevant laws and regulations do not foresee specific criteria by which participating agencies may enter and lift observations on DJAIs; and (b) that these laws and regulations do not foresee a list of information and documents that importers must submit to the respective agencies in the case DJAIs are observed. An additional finding regarding the same measure under Article 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

<sup>1002</sup> European Union's first written submission, paras. 295, 298-300.

<sup>1003</sup> United States' first written submission, paras. 148-152.

<sup>1004</sup> Japan's first written submission, paras. 178-179.

#### **6.3.3.4.6 Claims under Article 1.4(a) of the Import Licensing Agreement about the lack of publication of elements relating to the operation of the DJAI procedure**

##### **6.3.3.4.6.1 Arguments of the parties**

6.530. The European Union considers that Argentina has acted inconsistently with Article 1.4(a) of the Import Licensing Agreement by failing to publish in the manner required by that provision: (a) the complete list of all Argentine governmental entities that have the right to review the DJAI applications and, eventually, block imports; and, (b) the complete list of goods, the importation of which can be reviewed and blocked by each of the governmental entities affiliated with the DJAI procedure.<sup>1005</sup>

6.531. The United States argues that Argentina has failed to publish – in a manner that would enable governments and traders to become acquainted with them – the rules and all information that relate to the process for securing consideration of, and a decision on, a DJAI application, or any exceptions, derogations or changes to such rules. For this reason, Argentina has acted inconsistently with the publication requirement prescribed by Article 1.4(a) of the Import Licensing Agreement.<sup>1006</sup>

6.532. Japan asserts that Argentina has failed to publish all of the rules and information concerning the procedures for the submission of DJAIs. In particular, Argentina has failed to publish the criteria for determining the eligibility of particular goods and/or exporters for DJAIs. As a result, neither governments nor traders are able to predict the outcome of any particular DJAI application with a reasonable degree of confidence, compounding the non-uniform nature of the restriction on importation. For this reason, in Japan's view, Argentina has acted inconsistently with Article 1.4(a) of the Import Licensing Agreement.<sup>1007</sup>

6.533. Argentina did not respond to the claims raised by the complainants under Article 1.4(a) of the Import Licensing Agreement.

##### **6.3.3.4.6.2 The Panel's analysis**

6.534. Article 1.4(a) of the Import Licensing Agreement provides that:

The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, in the sources notified to the Committee on Import Licensing provided for in Article 4 (referred to in this Agreement as "the Committee"), in such a manner as to enable governments<sup>3</sup> and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the Secretariat.

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[footnote original] <sup>3</sup> For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Communities.

6.535. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has published the DJAI procedure in a manner inconsistent with Article 1.4(a) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

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<sup>1005</sup> European Union's first written submission, paras. 294, 297, 300.

<sup>1006</sup> United States' first written submission, paras 138, 153-162.

<sup>1007</sup> Japan's first written submission, paras. 169-171.

#### **6.3.3.4.7 Claims under Article 1.4(a) of the Import Licensing Agreement about the notification of the DJAI procedure**

##### **6.3.3.4.7.1 Arguments of the parties**

6.536. The European Union argues that Argentina has acted inconsistently with Article 1.4(a) of the Import Licensing Agreement by not notifying the DJAI procedure to the WTO Committee on Import Licensing or the WTO Secretariat.<sup>1008</sup> The panel in *EC – Poultry* found a similar omission to be inconsistent with Article 1.4(a) of the Import Licensing Agreement.<sup>1009</sup>

6.537. Japan submits that Argentina has acted inconsistently with Article 1.4(a) of the Import Licensing Agreement by not notifying any publications relevant to the DJAI procedure to the WTO Committee on Import Licensing.<sup>1010</sup>

6.538. Argentina did not respond to the claims raised by the European Union and Japan under Article 1.4(a) of the Import Licensing Agreement.

##### **6.3.3.4.7.2 The Panel's analysis**

6.539. The Panel has already noted the text of Article 1.4(a) of the Import Licensing Agreement.<sup>1011</sup>

6.540. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Article 1.4(a) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

#### **6.3.3.4.8 Claims against the lack of notification under Articles 5.1, 5.2, 5.3 and 5.4 of the Import Licensing Agreement**

##### **6.3.3.4.8.1 Arguments of the parties**

6.541. The United States and Japan argue that Argentina has not notified the WTO Committee on Import Licensing of the DJAI procedure and of the changes that this procedure has suffered, including the changes made by Resolution 3255/2012 and the Updated Annex to Resolution 3255/2012. As a result, Argentina has acted inconsistently with Articles 5.1, 5.2 and 5.3 of the Import Licensing Agreement. In addition, Argentina has not notified the Committee of the publications in which the information required in Article 1.4 are published and, therefore, has also acted inconsistently with Article 5.4 of the Import Licensing Agreement.<sup>1012</sup>

6.542. Argentina did not respond to the claims raised by the United States and Japan under Articles 5.1, 5.2, 5.3 and 5.4 of the Import Licensing Agreement.

##### **6.3.3.4.8.2 The Panel's analysis**

6.543. The Panel has found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994. In the light of this finding, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 5.1, 5.2, 5.3 and 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute. Accordingly, the Panel refrains from making any findings in respect of this particular claim.

<sup>1008</sup> European Union's first written submission, paras. 294, 296, 300.

<sup>1009</sup> Ibid. para. 296 (referring to Panel Report, *EC – Poultry*, paras. 242-244, 266).

<sup>1010</sup> Japan's first written submission, paras. 169-171.

<sup>1011</sup> See para. 6.534 above.

<sup>1012</sup> United States' first written submission, para. 210; Japan's first written submission, para. 184.

## 7 CONCLUSIONS AND RECOMMENDATIONS

### 7.1 Complaint by the European Union (DS438)

7.1. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. The 23 measures described by the European Union in Section 4.2.4 of its first written submission as "specific instances" of application of alleged RTRRs were not precisely identified in the European Union's panel request as measures at issue; accordingly, those 23 measures do not constitute "measures at issue" in the present dispute;
- d. The Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina;
- e. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- f. The TRRs measure, with respect to its local content requirement, modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products; accordingly, the TRRs measure, with respect to its local content requirement, is inconsistent with Article III:4 of the GATT 1994; and
- g. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim.

7.2. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. An additional finding under Article X:1 of the GATT 1994 regarding the DJAI procedure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.3, 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;

- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.
- f. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Articles XI:1 and III:4 of the GATT 1994, it has nullified or impaired benefits accruing to the European Union under this agreement.

7.4. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.

## 7.2 Complaint by the United States (DS444)

7.5. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. The Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina;
- d. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994; and
- e. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim.

7.6. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.
- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.7. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Article XI:1 of the GATT 1994, it has nullified or impaired benefits accruing to the United States under this agreement.



7.8. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.

### 7.3 Complaint by Japan (DS445)

7.9. With respect to the single Trade-Related Requirements measure (TRRs measure), the Panel concludes that:

- a. The complainants properly identified the alleged "Restrictive Trade Related Requirements" (RTRRs) in their requests for consultations as well as in their panel requests; therefore, these actions are part of the Panel's terms of reference;
- b. The characterization of the RTRRs as a single measure in the complainants' panel requests did not expand the scope or change the essence of the dispute;
- c. The 23 measures described by the European Union in Section 4.2.4 of its first written submission as "specific instances" of application of alleged RTRRs were not precisely identified in the European Union's panel request as measures at issue; accordingly, those 23 measures do not constitute "measures at issue" in the present dispute;
- d. The Argentine authorities' imposition on economic operators of one or more of the five trade-related requirements identified by the complainants as a condition to import or to obtain certain benefits, operates as a single measure (the TRRs measure) attributable to Argentina;
- e. The TRRs measure constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- f. The TRRs measure, with respect to its local content requirement, modifies the conditions of competition in the Argentine market, so that imported products are granted less favourable treatment than like domestic products; accordingly, the TRRs measure, with respect to its local content requirement, is inconsistent with Article III:4 of the GATT 1994;
- g. An additional finding under Article X:1 of the GATT 1994 regarding the TRRs measure is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim; and
- h. Having found that the TRRs measure is inconsistent with Article XI:1 of the GATT 1994, as well as with Article III:4 of the GATT 1994 with respect to the local content requirement, and that the TRRs measure is of general and prospective application, the TRRs measure is also inconsistent with the above-mentioned provisions "as such".

7.10. With respect to the procedure for the Advance Sworn Import Declaration (DJAI), the Panel concludes that:

- a. The DJAI procedure, irrespective of whether it constitutes an import licence, constitutes a restriction on the importation of goods and is thus inconsistent with Article XI:1 of the GATT 1994;
- b. Having found that the DJAI procedure is inconsistent with Article XI:1 of the GATT 1994, an additional finding under the same provision regarding the DJAI procedure considered as an import licence, is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings with respect to this claim;
- c. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has administered the DJAI procedure in a manner inconsistent with Article X:3(a) of the GATT 1994 or with Articles 1.3, 1.4(a), 1.6, 3.5(f) of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these claims;
- d. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, an additional finding regarding the same

measure under Articles 3.2 and 3.3 of the Import Licensing Agreement is not necessary or useful in resolving the matter at issue; accordingly, the Panel refrains from making any findings in respect of this particular claim.

- e. Having found that the DJAI procedure is inconsistent with the substantive obligation prescribed by Article XI:1 of the GATT 1994, the question of whether Argentina has failed to notify the DJAI procedure in a manner inconsistent with Articles 1.4(a), 5.1, 5.2, 5.3 or 5.4 of the Import Licensing Agreement becomes irrelevant for the resolution of this dispute; accordingly, the Panel refrains from making any findings in respect of these particular claims.

7.11. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concludes that to the extent that Argentina has acted inconsistently with Articles XI:1 and III:4 of the GATT 1994, it has nullified or impaired benefits accruing to Japan under this agreement.

7.12. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request Argentina to bring the inconsistent measures into conformity with its obligations under the GATT 1994.

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