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

(DS444)

**CLOSING STATEMENT OF THE UNITED STATES
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL
WITH THE PARTIES**

September 26, 2013

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1. The United States would like to begin by thanking the Members of the Panel and the Secretariat for their work in this dispute.
 2. We expected to come here today and engage with Argentina on the evidence and hear substantive arguments regarding their measures. What we have heard instead is confirmation regarding the co-complainants' description of the advance import affidavit (or "DJAI") Requirement and silence on the Restrictive Trade-Related Requirements (or "RTRRs").
 3. With respect to the DJAIs, Argentina has confirmed in its explanations that the system allows various agencies of government to withhold permission to import for unpublished, discretionary reasons.
 4. An importer is not informed of the reasons for agencies' observations (except perhaps for AFIP). And, they cannot proceed with accessing foreign exchange and commence the import process until it approaches the agency and meets whatever demand is imposed.
 5. Why is this important? Because it demonstrates a violation of Article XI of the GATT 1994. The DJAI Requirement a non-automatic discretionary licensing system and a restriction. Argentine officials can decide at their discretion, whether or not to grant permission for the importation, and the importer cannot import until it receives the DJAI approval in the form of the "salida" status.
 6. The evidence demonstrates that Argentina, and in particular, the Secretariat of Domestic Trade (or "SCI"), in fact uses this discretion to administer trade and enforce the RTRRs.
 7. Argentina argued today that some non-automatic import licenses are exempt from the disciplines of the GATT 1994 – but the United States is unaware of the unwritten exception that Argentina refers to.
 8. Another important point that we confirmed today is that the DJAI system is not for customs

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purposes. SCI and other non-customs agencies participate in the DJAI system. And the DJAI system is specifically structured to prevent access to foreign exchange – to prevent importers from paying for prospective imports – unless and until they receive permission from these non-customs agencies. At that early point – even before the importer issues his purchase order – it is impossible to generate information for customs purposes, with any level of precision. This alone demonstrates that the DJAI system is used for purposes other than customs purposes.

9. Nor is the DJAI system for purposes of implementing the SAFE Framework. The DJAI system has nothing to do with protecting the global trading system from security vulnerabilities to terrorist exploitation and in fact, as we have discussed here today, it would be difficult, if not impossible, for Argentina to assess security risk through the DJAI system as it is designed.

10. In addition to the difficulty with obtaining the *salida* status in the DJAI, one of the big problems our exporters have faced is that Argentina doesn't publish the basis for "observations" or other core aspects of the DJAI system. And as regards the administration by Argentina's authorities, it has been neither reasonable nor uniform, with unexplained delays of eight months or more, with wide variance in the disposition of DJAI applications, and with Argentine authorities altering the demands they make of importers, even after importers fulfil the authorities' original demands. Argentina's failings abrogate core principles of transparency and administration that are central to the functioning of the multilateral trading system – namely Article X:3(a) of the GATT 1994 and Articles 3.3 and 1.4(a) of the Import Licensing Agreement (or "ILA").

11. We have not talked as much today about the second measure advanced by complainants – the RTRRs. In response to the complainants' affirmative defense with respect to this measure, Argentina asks the panel to close their eyes and ignore the evidence. That is the only way that the

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Panel could find, as Argentina requests, that complainants have failed to make their prima facie case. This because the evidence overwhelmingly demonstrates that the Argentina imposes the RTRRs and withholds permission to import until importers comply with the RTRR commitments.

12. Because importers may only import to the extent that they are able to comply with the RTRRs, this measure also restricts trade – and is inconsistent with Article XI of the GATT 1994.

13. Argentina has advanced elaborate theories that are untethered from the text of the GATT 1994 and the ILA to argue that this Panel should not examine its measures at all. But, it has presented no legitimate reason that the disciplines in the WTO Agreement do not apply to the DJAI and RTRRs.

14. Accordingly, for the reasons we have set out in our submission and explained here today, we ask the Panel to find that Argentina’s measures are inconsistent with its obligations.

15. The United States thanks the Chair and the Panel and the Secretariat staff who has been assisting the Panel and looks forward to responding to any further questions.