

*Ukraine – Definitive Safeguard Measures
on Certain Passenger Cars*

(DS468)

Third Party Submission of
the United States of America

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TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Requirements Regarding Reports Published by Competent Authorities under Articles 3.1 and 4.2 of the Safeguards Agreement	1
III.	The Relevance of the Delay Between Ukraine’s Decision to Impose Safeguard Measures and the Effective Date of Those Measures.....	3
IV.	The Obligation to Provide Adequate Opportunity for Prior Consultations under Article 12.3 of the SGA	5
V.	The Obligation to Liberalize Safeguard Measures at Regular Intervals and to Provide Notice Thereof.....	8
VI.	Conclusion	9

TABLE OF REPORTS

Short Title	Full Case Title and Citation
<i>Argentina – Footwear (EC)(AB)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000
<i>Korea – Dairy (AB)</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000
<i>US – Lamb (AB)</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001
<i>US – Line Pipe (AB)</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/AB/R, adopted 8 March 2002
<i>US – Steel Safeguards (AB)</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, adopted 10 December 2003
<i>US – Wheat Gluten (AB)</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001

I. INTRODUCTION

1. The United States welcomes the opportunity to present its views in the proceeding on *Ukraine – Definitive Safeguard Measures on Certain Passenger Cars* (DS468). The United States makes this third party submission because of its systemic interest in the correct interpretation of Articles II:1(b) and XIX:1(a) of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”), as well as the *Agreement on Safeguards* (“SGA”). This submission addresses certain important interpretive issues raised in this dispute.

II. THE REQUIREMENTS REGARDING REPORTS PUBLISHED BY COMPETENT AUTHORITIES UNDER ARTICLES 3.1 AND 4.2 OF THE SAFEGUARDS AGREEMENT

2. Article 3.1 of the SGA requires competent authorities to “publish a report setting out their findings and reasoned conclusions on all pertinent issues of fact and law,” and Article 4.2(c) requires that competent authorities “publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.” The obligations under Article 3.1 of the SGA, as elaborated by Article 4.2(c), may be broken down into five requirements: (1) the competent authorities publish a report; (2) the report contain a detailed analysis of the case; (3) the report demonstrate the relevance of the factors examined; (4) the report set forth findings and reasoned conclusions; and (5) the findings and reasoned conclusions cover all pertinent issues of fact and law prescribed in Article XIX of the GATT 1994 and SGA.¹

3. The published report² of a competent authority serves an essential role in the review of safeguard measures. As the Appellate Body has observed, “[i]t is precisely by ‘setting forth findings and reasoned conclusions on all pertinent issues of fact and law’, under Article 3.1, and by providing ‘a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined’, under Article 4.2(c), that competent authorities provide panels with the basis to ‘make an objective assessment of the matter before it’ in accordance with Article 11.”³ In other words, the published report required under Articles 3.1 (last sentence) and 4.2(c) plays a key role in allowing other Members to understand why a safeguard measure has been adopted, and—in the event of a WTO dispute settlement proceeding—the published report

¹ *US – Steel Safeguards (AB)*, para. 304 (internal quotations and citations omitted).

² The United States refers throughout this submission to the “published report” as shorthand for the report that must be published by the competent authorities pursuant to Articles 3.1 and 4.2(c) of the SGA. Japan contends that Ukraine’s March 14, 2013, notification is the only document that has been published and must be the sole basis for assessing whether Ukraine complied with its obligations pursuant to Article XIX of the GATT 1994 and pursuant to the SGA. *See* Japan First Written Submission, para. 54. Ukraine disagrees, and considers that the “published report” for Articles 3.1 and 4.2(c) purposes also includes the Key Findings of the Ministry of Economic Development and Trade of Ukraine Based on Special Investigation on Import of Motor Cars to Ukraine Regardless of Country of Origin and Export (Exhibit JPN-6). *See, e.g.*, Ukraine First Written Submission, para. 172. The United States does not take a position on this issue.

³ *US – Steel Safeguards (AB)*, para. 299.

allows a WTO panel to assess whether a safeguard action complies with the substantive obligations contained in Article XIX of the GATT 1994 and the SGA.⁴

4. Not surprisingly then, published reports must address in considerable detail a broad range of issues. For example, the Appellate Body has made clear that the published report must provide reasoned and adequate explanation of the competent authority's determination with respect to unforeseen developments under Article XIX:1(a) of the GATT 1994.⁵ The published report must also provide the rationale for finding the requisite increased imports,⁶ including a demonstration that the competent authority considered trends over the entire period of the investigation rather than simply comparing end points.⁷ The published report must also set out in equal detail the competent authority's evaluation of all relevant factors and a reasoned explanation for concluding that the domestic industry suffered serious injury or the threat thereof, that the increased imports *caused* the serious injury or threat thereof, and that factors other than the increased imports causing injury to the domestic industry are not attributed to the increased imports.⁸

5. The United States does not take a position with respect to whether Ukraine adequately set forth its findings or reasoned conclusions on any individual pertinent issue of fact or law, or adequately demonstrated the relevance of any particular factor. However, the United States observes that the report published by Ukraine is concise in the extreme.⁹ Furthermore, in many instances, Ukraine's written submission provides justifications for its determinations that appear

⁴ See *US – Line Pipe (AB)*, para. 236 (“Compliance with Articles 3.1, 4.2(b) and 4.2(c) of the *Agreement on Safeguards* should have the incidental effect of providing sufficient ‘justification’ for a measure and, as we will explain, should also provide a benchmark against which the permissible extent of the measure should be determined.”).

⁵ *US – Steel Safeguards (AB)*, paras. 297-298.

⁶ Like the Appellate Body, the United States uses the term “increased imports” as shorthand to describe the condition in Article XIX:1(a) of the GATT 1994 and Article 2.1 of the SGA—namely, that a product is being imported in such increased quantities, absolute or relative to domestic production. See *US – Steel Safeguards (AB)*, note 257.

⁷ *US – Steel Safeguards (AB)*, paras. 331, 354 (“Indeed, in cases where an examination does not demonstrate, for instance, a clear and uninterrupted upward trend in import volumes, a simple end-point-to-end-point analysis could easily be manipulated to lead to different results, depending on the choice of end points. A comparison could support either a finding of an increase or a decrease in import volumes simply by choosing different starting and ending points.”); *Argentina – Footwear (EC)(AB)*, para. 129.

⁸ See GATT 1994, art. XIX:1(a); SGA, arts. 2.1, 4.2(b); *US – Wheat Gluten (AB)*, para. 98; *US – Lamb (AB)*, para. 103; *US – Line Pipe (AB)*, paras. 215-217.

⁹ This is true even if, as Ukraine contends, its published report for the purposes of Articles 3.1 and 4.2(a) includes the Key Findings of the Ministry of Economic Development and Trade of Ukraine Based on Special Investigation on Import of Motor Cars to Ukraine Regardless of Country of Origin and Export (Exhibit JPN-6). See *infra*, note 2.

nowhere in its published report.¹⁰ In this regard, the United States notes that the Appellate Body has rejected a panel’s reliance on supplemental information provided during dispute settlement proceedings.¹¹

6. Having recognized the considerable importance of a thorough, reasoned published report, the United States notes that some conclusions and some sets of facts require more explanation than others, and the length of an explanation with respect to any single issue should not be dispositive. For example, Japan alleges that Ukraine failed to “demonstrate how the factors examined show that the domestic industry is suffering a ‘significant overall impairment,’” which is the standard for finding serious injury (separate from causation).¹² While taking no position on the merits of whether Ukraine adequately demonstrated significant overall impairment of the domestic industry, the United States considers that the examination of “impairment” factors ranging from extremely bad to worse may not require a lengthy discussion in the published report.¹³ Although panels should not be put in the position of having to infer the competent authority’s reasoning,¹⁴ they also need not ignore reality or invent ambiguity or complexity where none exists.

III. THE RELEVANCE OF THE DELAY BETWEEN UKRAINE’S DECISION TO IMPOSE SAFEGUARD MEASURES AND THE EFFECTIVE DATE OF THOSE MEASURES

7. On April 28, 2012, Ukraine rendered the decision to impose the safeguard measures at issue.¹⁵ Ukraine did not publish a notice of the decision, however, until March 14, 2013, which started the 30-day period preceding the safeguard measures’ entry into force.¹⁶ Accordingly, the safeguard measures became effective on April 14, 2013.

¹⁰ See, e.g., Ukraine First Written Submission, paras. 120-122 and Exhibit UKR-3 (providing and discussing 2009 data not included in either the Key Findings or the March 14, 2013, notification); *ibid.*, paras. 79-80 (discussing the global financial crisis and its interplay with Ukraine’s accession to the WTO).

¹¹ *US – Wheat Gluten (AB)*, paras. 161-163.

¹² Japan First Written Submission, para. 261; SGA, art. 4.1(a).

¹³ See Notification of Imposition of Safeguard Measures on Imports of Motor Cars to Ukraine Regardless of Country of Origin and Export, p. 3 (Exhibit JPN-2) (indicating that, over the period of investigation, production volume of the domestic industry decreased by 78.9 percent, capacity utilization decreased by 74.86 percent, sales volumes within the domestic market decreased by 86.33 percent, operating profit decreased by 89.9 percent, employment decreased by 51.56 percent, and productivity decreased by 46.3 percent).

¹⁴ See *US – Steel Safeguards (AB)*, para. 297.

¹⁵ Japan First Written Submission, para. 29; Ukraine First Written Submission, para. 25.

¹⁶ Japan First Written Submission, para. 30; Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification Pursuant to Article 12.1(c) of the Agreement on Safeguards, Notification Pursuant to Article 9, Footnote 2 of the Agreement on Safeguards, G/SG/N/8/UKR/3, G/SG/N/10/UKR/3, G/SG/N/11/UKR/1 (March 25, 2013) (Exhibit JPN-7). It is not clear how much the March 14, 2013, notification of the decision that was published in the “Uryadoviy Kuryer” No. 48 differs from the decision itself.

8. Many of Japan’s arguments stem from the nearly one-year delay between Ukraine’s April 28, 2012, decision and the date (April 14, 2013) when the safeguard measures entered into force. For example, Japan argues that, by relying on a period of investigation of 2008-2010 and not examining data for the period 2011-2012, Ukraine failed to seek out pertinent information and thereby failed to make a proper investigation as required by Article 3.1 of the SGA.¹⁷ Elsewhere, Japan alleges that the safeguard measures were based on outdated data, that the increase in imports underlying the safeguards decision was not sufficiently recent, and that Ukraine failed to make a determination of serious injury pertaining to the recent past.¹⁸

9. However, the United States understands the crux of Japan’s argument to be that nearly a year passed between the date the decision was taken and the date the safeguard measures entered into force.¹⁹ The SGA does not specify how soon a safeguard measure must be put into place, either relative to the data underlying the investigation or the date a decision is taken. The United States offers the following observations regarding the relevance of the nearly one-year delay between Ukraine’s decision to impose safeguard measures and the date those measures entered into force.

10. Assuming *arguendo* that all aspects of the investigation, published report, and notifications complied with the relevant provisions of the GATT 1994 and the SGA, Ukraine would have been within its rights to impose a safeguard measure for a duration of four years if necessary to remedy or prevent serious injury and to facilitate adjustment.²⁰ Such a measure, supposing it took effect on June 1, 2012,²¹ would have ended on June 1, 2016. In that light, it would be odd to suggest that delaying application of the measure for a year and putting it in place for three years in and of itself creates an inconsistency with the SGA.

11. Moreover, delay following a decision to impose safeguard measures may in some instances reflect desirable behavior. For example, a Member may be working to address

¹⁷ Japan First Written Submission, para. 162. It is worth noting that Ukraine indicates that it considered additional data from the first half of 2011. Ukraine First Written Submission, para. 20.

¹⁸ Japan First Written Submission, paras. 206, 216, 268.

¹⁹ The United States does not understand Japan to be arguing that, had publication occurred soon after the decision was taken, with the safeguard measures entering into force 30 days thereafter (perhaps in early June 2012), an otherwise valid measure would be inconsistent with the SGA due to the time gap between the end of the period of the investigation (*i.e.*, the end of 2010) and the effective date of the safeguard measures (*i.e.*, June 2012). If Japan is arguing, at least in part, that the length of the investigation caused delay resulting in inconsistencies with the SGA, the United States does not address this issue other than to note that neither Article 3 of the SGA nor Article X of the GATT 1994 prescribes a maximum length of time for conducting a safeguards investigation.

²⁰ SGA, art. 7.1.

²¹ There would still be at least some time between the April 28, 2012, decision and the measures entering into force given the need to publish the report of the decision, notify the WTO, and provide interested Members an adequate opportunity for prior consultations. *See* SGA, art. 12.3 (requiring a Member proposing to apply a safeguard measure to provide adequate opportunity for prior consultations “with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8”).

concerns raised by other Members in consultations following notification of the proposed safeguard measures. Thus, requiring a Member in all instances to choose between (1) implementing a safeguard measure during a very short window after the decision is taken, or (2) losing the right to impose it at all, could cause a Member to take more restrictive measures than it would otherwise take.

12. On the other hand, significant delay in imposing safeguard measures tends to undercut the notion that such measures constitute an “emergency action” necessary to prevent or remedy serious injury and to facilitate adjustment. This is equally true where an investigation has resulted in a finding of a threat of serious injury, which requires that the anticipated serious injury be “imminent,” or “on the very verge of occurring.”²² In addition, extended uncertainty as to the timing and degree of the final safeguard measure may disrupt trade more than actual imposition of a measure.

IV. THE OBLIGATION TO PROVIDE ADEQUATE OPPORTUNITY FOR PRIOR CONSULTATIONS UNDER ARTICLE 12.3 OF THE SGA

13. Article 12.2 of the SGA provides:

In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

14. Article 12.3 provides:

A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

15. Japan asserts that Ukraine breached its obligations under Article 12.3 by failing to provide adequate opportunity for prior consultations following Ukraine’s March 21, 2013,²³

²² SGA, art. 4.2; *US – Lamb (AB)*, para. 125.

²³ Japan refers to these notifications as Ukraine’s March 25, 2013, notifications because, although submitted to the WTO on March 21, they were circulated on March 25. See Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification Pursuant to

notifications to the Committee on Safeguards pursuant to Article 12.1(b) and (c).²⁴ Ukraine argues that it was not required to consult with Japan following its March 2013 notifications because its consultations with Japan on April 19, 2012, satisfied its Article 12.3 obligation.²⁵ Ukraine bases its argument on its position that Members having a substantial interest as exporters of the product concerned are entitled to the *information* required in the Article 12.1(c) notification—that is, the information detailed in Article 12.2—not the notification itself.²⁶ Thus, according to Ukraine, “if an interested Member has received the information that is (subsequently) covered by an Article 12.1 notification, then that is sufficient to allow proper consultations in satisfaction of the Article 12.3 obligation.”²⁷ Ukraine argues that it provided the requisite information to Japan prior to April 19, 2012, apparently through the Key Findings of the Ministry of Economic Development and Trade.²⁸ Therefore, in Ukraine’s view, the consultations with Japan on April 19, 2012, served as Japan’s opportunity to “*inter alia*, review[] the information provided under paragraph 2” and thus satisfied Ukraine’s Article 12.3 obligation.²⁹

16. Japan argues that Article 12 required Ukraine to provide an opportunity for consultations after Ukraine’s March 2013 notifications.³⁰ It is not clear to the United States that, as Ukraine suggests, a Member can hold Article 12.3 consultations after sharing the *information* that Article 12.2 requires in notifications under Article 12.1(b) and (c), even if it has not actually submitted its Article 12.1(b) and (c) notifications. Article 12.2 provides that “[t]he Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.” Thus, the “information provided under paragraph 2” presumably would include any information provided at the request of the Council for Trade in Goods or the Committee on Safeguards. However, Ukraine gives no indication of how any such request could be made in the absence of Article 12.1(b) and (c) notifications. Therefore, even if documentation provided to interested Members (such as the Key Findings) did contain all pertinent information, including the listed mandatory

Article 12.1(c) of the Agreement on Safeguards, Notification Pursuant to Article 9, Footnote 2 of the Agreement on Safeguards, G/SG/N/8/UKR/3, G/SG/N/10/UKR/3, G/SG/N/11/UKR/1 (March 25, 2013) (Exhibit JPN-7).

²⁴ Japan First Written Submission, para. 350.

²⁵ Ukraine First Written Submission, paras. 238-239.

²⁶ Ukraine First Written Submission, para. 237.

²⁷ Ukraine First Written Submission, para. 237.

²⁸ See Ukraine First Written Submission, paras. 238-239; Cover Letter and Key Findings of the Ministry of Economic Development and Trade of Ukraine Based on Special Investigation on Import of Motor Cars to Ukraine Regardless of Country of Origin and Export (Exhibit JPN-6).

²⁹ Ukraine First Written Submission, paras. 238-239.

³⁰ See Japan First Written Submission, para. 351.

components, it is still not clear that it would contain “the information provided under paragraph 2.”³¹

17. In addition, Japan argues that the information shared by Ukraine prior to April 19, 2012, (*i.e.*, the Key Findings) lacked much of what is required under Article 12.2.³² Japan seemingly implies that, given the significant deficiencies, the April 19, 2012, consultations could not be considered the consultations prescribed by Article 12.3, and therefore Ukraine failed to provide adequate opportunity for prior consultations.³³ As an initial matter, the United States observes that a Member must provide “all pertinent information,” not just the listed mandatory components in Article 12.2.³⁴ But while not sufficient, provision of the listed mandatory components is necessary. Among the mandatory components are the proposed date of introduction of the safeguard, the expected duration of the safeguard, and the timetable for progressive liberalization.³⁵ Japan appears to be correct that neither Ukraine’s written submission, nor the Key Findings that spurred the April 19, 2012, consultations, indicate that any of this information was provided to Japan in advance of those consultations.

18. The United States has concerns, however, with Japan’s challenge to the validity of the April 19, 2012, consultations on the basis of the change in one duty rate from 15.1 percent (the rate for cars with larger engines proposed prior to consultations) to 12.95 percent (the rate for those cars that was eventually applied).³⁶ The United States observes that the proposed measure on which the Members consult need not be identical in every respect to the one that is eventually applied.³⁷ As the Appellate Body has pointed out, prior consultations allow interested Members to seek, *inter alia*, modification of the measure.³⁸ Indeed, Ukraine implies that it lowered the duty rate as a result of the consultations it held with Japan.³⁹

19. Precluding modification of a measure in response to concerns expressed by interested Members (or always requiring one additional round of consultations that leads to no changes) would diminish rather than preserve or enhance the value to interested Members of Article 12.3 consultations. Because modification of a measure would subject the Member implementing the safeguard to either a finding that it breached its Article 12.3 obligations, or the delay and expense of additional consultations, Japan’s interpretation would create a significant disincentive to

³¹ SGA, art. 12.3.

³² See Japan First Written Submission, paras. 362-366.

³³ See Japan First Written Submission, paras. 350, 359-367 (including the header of section 7.3(b)(ii)).

³⁴ The Appellate Body has clarified that “all pertinent information” is assessed objectively and should include, at a minimum, the items listed in Article 12.2 as well as the factors evaluated pursuant to Article 4.2, but need not include, for example, the full content of the published report. *Korea – Dairy (AB)*, paras. 108-109.

³⁵ SGA, art. 12.3.

³⁶ See Japan First Written Submission, para. 365.

³⁷ See *US – Line Pipe (AB)*, para. 104.

³⁸ *Korea – Dairy (AB)*, para. 111.

³⁹ See Ukraine First Written Submission, paras. 231, 234, 239.

modification of measures in the interested Member's favor, including a reduction of duty rates. For these reasons, the United States considers that the modification of the duty rate should not support a finding that the April 19, 2012, consultations were inconsistent with Ukraine's obligations under Article 12.3.

V. THE OBLIGATION TO LIBERALIZE SAFEGUARD MEASURES AT REGULAR INTERVALS AND TO PROVIDE NOTICE THEREOF

20. Article 7.4 of the SGA provides, in relevant part:

In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, *the Member applying the measure shall progressively liberalize it at regular intervals during the period of application*. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. (Emphasis added.)

21. Under Article 12.2 of the SGA, the Member applying the safeguard must include in its Article 12.1 notification a timetable for the progressive liberalization:

In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and *timetable for progressive liberalization*. (Emphasis added.)

22. Ukraine applied its safeguard measures on April 13, 2013. It decided on February 12, 2014, to liberalize those measures by reducing the duty on the class of smaller engine cars from 6.46 percent to 4.31 percent 12 months after application of the measure (*i.e.*, effective April 13, 2014) and then to 2.15 percent 24 months after application of the measure (*i.e.*, effective April 13, 2015), and by reducing the duty on the class of larger engine cars from 12.95 percent to 8.63 percent 12 months after application of the measure (*i.e.*, effective April 13, 2014) and then to 4.32 percent 24 months after application of the measure (*i.e.*, effective April 13, 2015).⁴⁰ This decision was published on March 28, 2014, and notified to the WTO on the same day.⁴¹

⁴⁰ Ukraine First Written Submission, para. 38.

⁴¹ See Ukraine First Written Submission, para. 38. The liberalization plan was notified to the WTO on March 28, but was circulated on March 31, 2014. Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification Pursuant to Article 12.1(c) of the Agreement on Safeguards, Notification Pursuant to Article 9, Footnote 2 of the Agreement on Safeguards, G/SG/N/8/UKR/3/Suppl. 1, G/SG/N/10/UKR/3/Suppl.2, G/SG/N/11/UKR/1/Suppl. 1 (March 31, 2014) (Exhibit JPN-9).

23. Japan claims that Ukraine breached its obligations under Article 7.4 because it did not provide for a progressive liberalization of the measure when the safeguard was initially imposed as reflected in the March 14, 2013, published notice of the decision.⁴² Japan relies on the same facts to claim that Ukraine breached its notification obligations under Article 12.2 of the SGA.⁴³

24. Ukraine argues that the substantive obligation under Article 7.4 to progressively liberalize the safeguard measure is distinct from the procedural obligation under Article 12 to notify the timetable for liberalization.⁴⁴ Article 12.1(b) requires immediate notification to the Committee on Safeguards upon making a finding of serious injury or threat thereof caused by increased imports, and Article 12.1(c) requires the same upon taking a decision to apply or extend a safeguard measure. Ukraine maintains that it complied with its obligations under Article 12.1(b) and (c) through its March 21, 2013, notifications to the WTO Committee on Safeguards.⁴⁵ However, Ukraine acknowledges that it did not notify any timetable for progressive liberalization until March 2014.⁴⁶

25. Ukraine nonetheless argues that its March 21, 2013, notifications satisfied its Article 12 obligations with respect to a liberalization timetable, based on what Ukraine views as the overarching goals of a Member's Article 12 obligations.⁴⁷ The United States notes, however, that Article 12.2 explicitly states that notifications under Article 12.1(b) and (c) "shall include," *inter alia*, a "timetable for progressive liberalization."

26. The United States would also emphasize that the notification requirements in Article 12 serve an import transparency and information purpose.⁴⁸ For example, the information provided in these notifications—including the timetable for liberalization—informs consultations between Members and allows Members to have a meaningful exchange.⁴⁹

VI. CONCLUSION

27. The United States thanks the Panel for considering the views in this submission and hopes that these comments will be useful.

⁴² Japan First Written Submission, para. 305.

⁴³ Japan First Written Submission, paras. 347-348.

⁴⁴ See Ukraine First Written Submission, para. 189.

⁴⁵ Ukraine First Written Submission, para. 209. Ukraine also argues that it complied with the Article 7.4 substantive obligation through its liberalization plan implemented in April 2014. See Ukraine First Written Submission, para. 194. The United States does not address that issue in this submission.

⁴⁶ Ukraine First Written Submission, para. 210.

⁴⁷ See Ukraine First Written Submission, paras. 222-224, 232.

⁴⁸ *Korea – Dairy (AB)*, para. 111.

⁴⁹ See SGA, art. 12.3; *US – Wheat Gluten (AB)*, para. 136.