

**\*\*\* AS DELIVERED\*\*\***

***INDIA – MEASURES CONCERNING THE IMPORTATION  
OF CERTAIN AGRICULTURAL PRODUCTS  
FROM THE UNITED STATES***

**(DS430)**

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

**December 18, 2013**

1. Mr. Chairman and members of the Panel, I want to thank you for your thoughtful attention to this case. I also want to take the opportunity to thank the Secretariat. The United States always appreciates their dedication.
2. At the beginning of the first Panel meeting back in July, we explained to you that the core issues in this dispute are not all that complex. The United States would submit that this remains the case.
3. India is unjustifiably using an animal disease that presents real concerns – avian influenza – as a guise for WTO-inconsistent measures. As is evident from the face of the measures themselves, India imposes country-wide import bans on a list of products when there is notification of avian influenza (AI), including low pathogenicity notifiable avian influenza (LPNAI), in the exporting country. These measures are unsupported by science, by the relevant international standards of the World Organization for Animal Health (OIE), or by a risk assessment. And they reflect clear discrimination against imported products in favor of domestically produced Indian products.
4. The evidence has resolved the key issues in this dispute.
5. *First*, India's measures are not based on the OIE Code. The Code does not recommend banning imports on account of LPNAI, and it explicitly provides that products covered by India's measures can be safely traded following detections of LPNAI.
6. India, moreover, has not shown that its measures are based on a risk assessment that could justify their maintenance in clear contradiction to the OIE Code. India has had numerous opportunities to provide a risk assessment, if it exists, and the Panel has explicitly asked India three times to produce one. India has not done so. Further, India's measures are without sufficient scientific evidence to support import bans on account of LPNAI.

7. *Second*, India's measures are more trade restrictive than required to achieve its ALOP.

India, contrary to the requirements of the SPS Agreement, has not articulated anything that could logically be understood as an appropriate level of protection (ALOP). But India's measures for imports are vastly more trade restrictive than required to achieve the level of protection reflected in the regime applicable to its domestic products. Measures based on the OIE Code are a reasonably available alternative that could achieve this level of protection—and indeed, one that is much higher.

8. *Third*, the plain text of India's measures and the statements of the Government of India show that India does not recognize the concept of disease free areas as applied to AI, and is not ensuring that its AI measures are adapted to the characteristics, with respect to AI, of sub-national areas from which products originate. With respect to regionalization, moreover, what matters is what India is doing now, not whether it might develop a means to provide for sub-national application of its AI measures at some point in the future.

9. *Fourth*, as we spent much of this week discussing, India's measures unjustifiably discriminate against imported products. This is true because India restricts trade in domestic products from only a very limited area following a domestic highly pathogenic avian influenza (HPAI) outbreak, yet whenever a trading partner reports LPNAI or HPAI, India bans importation from the entire country. This is also true because India bans imports on account of LPNAI detections in the exporting country, yet does not maintain a nationwide active surveillance regime capable of reliably detecting LPNAI when it occurs in India. With respect to this second form of discrimination, the inadequacy of India's surveillance is the key point, because an infection that isn't detected will not result in any restriction on the trade of domestic products. The inadequacy of India's surveillance regime is clear from the record evidence, as the experts'

interpretation of the evidence has helped to confirm. India's measures only serve to disadvantage products from countries like the United States that do have effective LPNAI surveillance, in comparison with Indian products.

10. *Fifth*, although this is not an issue that has been discussed much at the Panel meeting, India has also breached the notification and publication requirements in Article 7 and Annex B of the SPS Agreement. India's only response to this claim is to argue that Article 7 and Annex B didn't apply because its measures conform to the OIE Code. As already discussed, this is simply incorrect.

11. In closing, I want to return to a point that the United States made the first day that we met with the Panel back in July. India's misuse of the OIE Code as a purported basis for trade bans has important systemic implications, not just for the international trading system, but for worldwide animal health. When Members like India turn a reporting system meant to promote scientific awareness into a tool that triggers unjustified import prohibitions, they give other Members incentives to cover up their outbreaks, threatening the effective control of animal diseases like avian influenza.

12. For the reasons that the United States has discussed just now and throughout this proceeding, we urge the Panel to find India in breach of its WTO obligations, including all of the claims delineated in the U.S. Panel Request. Thank you again Mr. Chairman and members of the Panel.