United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina

(DS447)

OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

January 28, 2014

1. Mr. Chairman, members of the Panel: on behalf of the United States, we would like to thank you for your ongoing work in this panel proceeding.

2. The United States has explained its positions in full in our first written submission. In our oral statement we will summarize and highlight important facts, and explain how this dispute must be framed under the relevant provisions of the SPS Agreement.

I. Key Facts and Circumstances Underlying This Dispute

3. To begin with, we would like to highlight some of the key facts and circumstances in this dispute.

4. First of all, Foot and Mouth Disease, commonly referred to as FMD, is considered widely to be one of the most infectious and economically devastating livestock diseases. The World Organization for Animal Health ("OIE") has identified the disease in more than 100 countries worldwide. FMD is contagious and can quickly spread through exposure to an infected animal's milk, semen, blood, saliva, and feces. And it can be even transmitted through the air and can survive within a wide band of temperature. One sustained outbreak can lead to the slaughter of thousands of animals and cause billions of dollars of economic loss.

5. I would like a moment to emphasize that this is not a harmless disease. The record is complete with information concerning the dangers of the disease. Statements from Argentina in this dispute downplay this, but it is a key element of what we are talking about today.

6. Second, Argentina is no stranger to FMD. FMD has been present in Argentina since the 19th century. And Argentina has struggled for decades to control the disease. Even when the disease seemingly disappeared for nearly five years in the period 1995-1999, the record shows and Argentina does not dispute that it reappeared in 2000, 2001, 2002, 2003, and 2006.

7. In Argentina's statement, it referred to this as not relevant information. However, the international community, including the United States, has indicated that these events were serious.

8. In 2000, 2001, and 2002, a total of over 2 million animals in Argentina at a minimum were exposed to the disease. This is not disputed by Argentina. When faced with this critical threat to its industry, Argentina decided not to report these outbreaks on time to the international community. Not only that, Argentine officials concealed these outbreaks. Let me be clear—these are documented facts. In doing so, Argentina put other countries at risk. This is because FMD is highly contagious and devastating.

9. Argentina claimed it was free of FMD less than one year after the end of the 2000-2002 outbreaks. While claiming to be free of FMD, Argentina sustained two more FMD outbreaks, one in 2003 and one in 2006. And each time, the OIE was compelled, after the fact, to rescind Argentina's FMD-free status. That also was not mentioned in the statement we just heard but it is also a documented fact. Documented outbreaks of this nature indicate some error by Argentina, whether a failure of controls, surveillance, or in the original claim of disease freedom.

10. Third, the United States has not had a single case of FMD for over 80 years. Today, livestock in the United States is not vaccinated against FMD. It is in this context that the U.S. Animal and Plant Health Inspection Service, or APHIS, as we say in shorthand, must consider whether a country seeking to export FMD-susceptible product to the United States has adequate controls in place so as to prevent outbreaks. APHIS must be confident that any outbreak would be quickly and clearly disclosed and not concealed. This dispute must be seen in this context.

11. Fourth, the record in this case shows that the APHIS review of Argentina's applications is active and, while the pace may not be to Argentina's liking, it is fully justified.

12. In particular, Argentina has two pending applications: one for Patagonia, and one for the remainder of Argentina. We will discuss these applications separately.

13. First, with respect to Patagonia, the United States notes that on January 23, 2014, APHIS published a proposed notice to designate the region of Patagonia as one free of foot-and-mouth disease.[1] An exhibit with this information has been provided to you. This is the region that comprises the area Patagonia South and Patagonia North B. This proposed determination by APHIS is based on a thorough examination of the science and on the most current information available.[2]

14. The United States would like to observe that this proposed determination was possible after the completion of the APHIS site visit in November 2013. APHIS proposed such a visit a year earlier, in November 2012, before this panel was established, but Argentina did not agree in principle to this offer until July of 2013, which was approximately eight months later. Argentina also specifically requested that the visit not occur until November 2013, despite the proposal by APHIS to conduct the visit as soon as possible. What that means is that the site visit took place one year after it was suggested by the United States. That is, concurrent with the ongoing WTO challenge by the United States and other Members to Argentina's sweeping import restrictions, Argentina pushed to establish and compose this panel and pursue this panel proceeding, while impeding the review of Argentina's own applications.

15. With respect to the request for authorization to import meat from the remainder of Argentina, the APHIS scientific review process is likewise ongoing. Argentina, however, has provided a slanted review of the history of this ongoing process. It is important to take a

[1] Exhibit USA- 132.

[2] Exhibit USA – 133.

comprehensive view of the chronology in which situations were evaluated. Argentina sustained outbreaks in 2000, 2001, 2002, 2003, and 2006. Yet, Argentina maintained in its 2002 applications and afterward that it was FMD free and able to control the disease.

16. Argentina asserts that the United States unreasonably delayed its applications and suggests that the review process was merely pretext for protectionism. In fact, the record shows just the opposite.

17. The United States responded quickly to Argentina's application and requested additional information.[3] The intervening FMD outbreaks in 2003 and 2006 raised additional questions, for example, with respect to Argentina's control, inspection, and surveillance systems, and the two countries were actively engaged with each other. A claim of FMD freedom is not just a claim of whether the disease empirically exists, but includes other important considerations, such as the ability of a country to notify outbreaks, among other things. In several instances, Argentina's own actions or inactions contributed to the period of time involved in this process. For example, Argentina took approximately one year to answer additional questions posed by APHIS.[4] During the process of acting on Argentina's first application, Argentina added a second application in 2003. This 2003 application requested a separate evaluation of South Patagonia. Argentina then complicated the evaluation process further by redefining the terms of its request to include Patagonia North B.

18. In sum, there has been no denial of any of Argentina's pending applications. Rather, the regulatory process is moving forward, and the time involved is reasonable in light of unstable

[3] Exhibit USA-78.

[4] Exhibit USA-84 and Exhibit USA-89.

FMD conditions in Argentina, the changes in Argentina's applications, and its history with respect to transparency and ability to control FMD.

II. The Core Legal Issue in this Dispute Relates to the Time Taken to Consider Argentina's Applications

19. As the United States explained in its first written submission, the core legal issue in this dispute relates to the time taken to consider Argentina's two pending applications. This conclusion is supported by the Argentina's own arguments, by the factual record, and the relationship between the relevant provisions of the SPS Agreement. We heard much of the tenor of that discussion, relating to timing, in the statement by Argentina today.

20. First, Argentina itself frames this issue as one involving "undue delay."

21. Second, as we have just explained, the factual record shows that there has been no denial of any application by Argentina for disease-free status. Rather, the record shows that Argentina has presented applications to APHIS, and that APHIS is considering those applications. Indeed, as we have explained, for the Patagonia application, APHIS has recently issued a proposed determination of FMD-free status.

22. Third, the legal importance of timeliness is shown by an examination of the relationship between the relevant provisions of the SPS Agreement.

23. Although there is no prescribed way for analyzing a number of inter-related SPS provisions, the United States suggests that in this instance, the most helpful approach is to start with the language of Article 6. Given that this dispute involves Argentina's pending applications for disease free status, it is Article 6 that is most directly relevant. Within Article 6, the first two sections – 6.1 and 6.2 – set out the general principles that measures must be adapted to regional

conditions, and that Members must recognize the concept of disease-free areas. And the third section, Article 6.3, sets out the process for making determinations under Article 6.

24. It is this process-focused Article 6.3 that is most instructive in establishing the proper legal framework for this dispute. Article 6.3 states in full that:

> Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

25. This provision – Article 6.3 – lays out a number of important principles that are relevant to the facts of this dispute:

A) This provision makes clear that importing Members cannot be expected to know the disease status of every Member around the world, and every region of every Member. Rather, the process of adapting a measure to possible disease free status must begin with a claim by the exporting Member of disease free status.

B) The importing Member is not expected to act immediately upon the claim, but rather is expected to evaluate the claim. And that also makes sense. That evaluation may include an on-the-site evaluation of conditions in the Member that wishes to export. And, the exporting Member, if it expects a favorable outcome on its application, must give reasonable access to the authorities of the importing Member.

C) Given that Article 6 envisions a process for considering claims of disease-free status, the importing Member is not expected to modify its SPS measure immediately upon receipt of a claim of disease free status. Rather, the SPS Agreement envisions that

there will be a period of time between the receipt of the claim of disease free status, and the importing Member's decision on the claim. During that period of review, necessarily no risk assessment has been prepared that is addressed specifically to the conditions in the country that claims disease free status. Rather, the process of reviewing a claim of disease-free status would result in a risk assessment – one that either supports the claim of disease-free status, or one that supports a denial of the claim of disease-free status. Thus, for Argentina to argue that the United States has breached the SPS Agreement by failing to have a risk assessment on conditions in Argentina does not make any sense – the SPS agreement envisions that the importing Member will review a claim of disease-free status before modifying an existing measure.

D) Article 6.3 makes clear that the question raised by a disease-free claim does not only involve a snap-shot of the presence of disease in the country that wishes to export. Rather, the question also involves an evaluation of whether the areas claimed to be disease free "are, and are likely to remain" disease free. And as we have explained, this is particularly important for FMD. The disease is so virulent that an importing Member cannot wait until after detection in order to take action.

26. Although Article 6.3 does not say that the evaluation must be completed in any particular time period, the United States does agree with the general proposition – as presented by Argentina – that an importing Member cannot take unlimited time to review an application. The SPS Agreement does contain disciplines on timeliness of decision-making, most notably in

Article 5.7 and in Annex C. The United States and Argentina, while agreeing that timeliness is addressed by the SPS Agreement, disagree on which provision applies.

27. The United States recalls that Annex C(1)(a), which is incorporated by Article 8, applies only to the application of "control, inspection and approval procedures." The provision requires Members to administer such procedures in a timely manner without undue delay. In contrast, Article 5.7 has a broader scope: it provides that Members that maintain an SPS measure while performing a risk assessment must seek information and conduct the review within a reasonable period of time.

28. Argentina acknowledges that Annex C(1)(a) applies specifically to control, inspection and approval procedures. Argentina states that APHIS determinations on animal health status are "analogous" to approval procedures, and thus fall within the scope of Annex C.[5] However, beyond the mere association by analogy, Argentina fails to demonstrate that the procedures under Annex C(1)(a) include the determinations of disease-free area status.

29. Argentina appears to dispute that Article 5.7 – the broader provision – would apply in this dispute. As the United States understands it, Argentina's main argument is that the U.S. measure is not titled "provisional."

30. This argument, however, is not compelling. The title of a measure does not, standing alone, determine how that measure is characterized under various provisions of the WTO Agreement. Moreover, Argentina fails to account for the U.S. regulatory structure as a whole. There is no question in this dispute that U.S. measures relating to FMD, including as applied to Argentina at the time its import authorization was removed, are based on an assessment of the risks posed by FMD. It is equally clear that under U.S. law, APHIS is required to evaluate an

[5] Argentina's First Written Submission, para. 610.

application by an exporting country claiming disease-free status upon receipt of that application. From the time that the regulatory authority receives a claim and evidence of disease-free status, the pre-existing measure as applied to the relevant product from that area of the exporting Member can be viewed as provisional until additional necessary information is gathered to accept or reject the application.

III. U.S. Measures Are Justified Under Article 5.7

31. The United States will now turn to address the provisions of Article 5.7 in more detail. As we will explain, the actions of the United States to verify and to ensure that foot-and-mouth disease from Argentina is not introduced and established in the United States are envisioned by Articles 5.2 and 5.3, and are fully justified under Article 5.7 of the SPS Agreement as a provisional measure.

32. The United States, in seeking to make a scientific determination of the present FMD threat from Argentina, is in the process of obtaining and analyzing scientific information related, among other things to factors including: (1) the FMD situation in the country; (2) the capacity of the country's regulatory structure to prevent and control FMD outbreaks; and (3) the reliability of those responsible agencies to implement oversight and reporting obligations, including disclosure.

33. The Appellate Body outlined, in *Japan – Agricultural Products II* and restated in *Japan-Apples*, four requirements necessary to sustain actions under Article 5.7.

34. The first two conditions go to adoption of the measure provisionally. First, the measure is adopted "in respect of a situation where 'relevant scientific evidence is insufficient.'"[6] Second, the measure "is adopted 'on the basis of available pertinent information.'"

35. With respect to these two requirements, Argentina has no basis for challenging the actions of the United States. The record is clear and beyond dispute that over the period from 2000 through 2002, Argentina experienced one of the most widespread and devastating FMD outbreaks in recent years. These outbreaks were exacerbated by an official policy of concealment and lack of transparency. Only a few months after the last apparent outbreak in 2002, Argentina requested permission to import beef into the United States.

36. At the time of Argentina's 2002 request, it was clear that: (1) FMD was highly contagious and dangerous; (2) Argentina's systems had recently failed to control FMD on a massive scale; and (3) it was not known whether Argentina had FMD and whether its internal systems could control FMD such that exports to the United States would not pose a threat.

37. On the basis of this record, the United States meets the first two requirements of the Article 5.7 test.

38. In taking the provisional measure, as the Appellate Body stated and addressed in *Japan – Apples*,[7] two additional requirements must be met.

39. First, the Member adopting the provisional measure must seek "to obtain the additional information necessary for a more objective assessment of risk." Second, the Member must review the provisional measure "accordingly" – that is, in light of any additional information necessary for a more objective assessment – "within a reasonable period of time."

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[6] *Japan – Agricultural Products II (AB)*, para. 89.

[7] *Japan – Apples (AB)*, para. 176, n. 318.

40. The record shows that the United States has continually sought information from Argentina concerning its regulatory and scientific infrastructure, FMD surveillance systems, and internal controls. Throughout this period, as the record also shows, the situation on the ground in Argentina with respect to FMD was unstable and constantly in flux.

41. For example, it was only approximately nine months after the last apparent outbreak of the 2000-2002 period, namely, in November 2002, that Argentina submitted its application for import authorization to the United States. But within four years of that first submission, Argentina suffered two additional separate incidents of FMD.

42. The record as submitted by Argentina and the United States both show that Argentina experienced FMD outbreaks in 2003 and in 2006. No matter what Argentina may suggest, no outbreak is minor or insignificant. In each instance, the outbreak compelled the OIE to reverse course and withdraw "FMD-free" status from Argentina. In fact, according to the OIE, Argentina changed FMD status no less than five times during the 2000-2007 time period.

43. In response to these FMD outbreaks, Argentina revised its regulatory regime and introduced numerous measures to attempt to prevent and control the disease. The United States published a draft risk analysis pertaining to Patagonia South in 2007; however, subsequent regulatory changes in Argentina delayed the U.S. evaluation process. As the United States advanced its evaluation process by requesting additional information and offering and conducting site visits, Argentina altered the scope of its request to include Patagonia North B.

44. Additionally, Argentina argues that Section 737 of the Omnibus Appropriations Act of 2009 evidenced unjustifiable delays in the application process by serving as an essential ban. However, Section 737 did not prevent the Secretary of Agriculture from reviewing Argentina's

animal health status. In fact, Section 737 essentially preserved the review process USDA conducts under its regulations located at Title 9, Section 92.2 of the Code of Federal Regulations.

45. In any event, Section 737 expired in September 2009. After that time, Section 737 had no legal effect, and is thus of no relevance to the issues in this dispute.

46. The Appellate Body recognized in *Japan – Agricultural Products II* that what is a "reasonable period of time" to review a provisional measure "depends on the specific circumstances of each case."[8] In this case, the Panel should look to what is reasonable given the total circumstances of the record, particularly (1) Argentina's delays in responding to requests by the United States for site visits and answers to questions, (2) Argentina's three relatively recent FMD outbreaks, and (3) the country's history of intentional concealment and delayed reporting of outbreaks. Based on this record, the pace of APHIS review and analysis is reasonable.

47. The United States would note that, after conducting site visits in 2003, 2009, and 2013, and completing its review in a reasonable period of time, APHIS has issued its proposal to recognize the region of Patagonia as free of FMD. The United States has acted consistent with Article 5.7 by conducting its review in a reasonable period of time, in a manner consistent with the international standards.

48. As we have explained, the SPS Agreement envisions that importing Members will maintain an existing measure, based on a pre-existing risk assessment, while they consider claims of disease-free status presented by a Member that wishes to export. Where the importing Member is engaged in the process of evaluating such claims within a reasonable period of time, there is no legal basis for challenging the importing Member's decision to maintain its existing

[8] *Japan – Agricultural Products II (AB)*, para. 93.

measure. In the remainder of this statement, the United States will address Argentina's remaining legal claims, with this basic structure in mind.

IV. APHIS' Regulatory Approval Process Is Based on International Standard and Consistent with Article 3

49. With regard to Argentina's claim under Article 3.1, Argentina has failed to provide any legal or factual basis. The record shows that APHIS has created and implemented a system to control FMD based on the OIE's framework, consistent with Article 3.1. Argentina has the burden to demonstrate that the APHIS system is inconsistent with Article 3.1, a burden that Argentina has failed to satisfy.[9]

50. In *EC – Hormones*, the Appellate Body addressed the obligation imposed on a Member to base its SPS measures on international standards, guidelines or recommendations. In doing so, the Appellate Body distinguished the obligations imposed by Article 3.1 and Article 3.2. Pursuant to Article 3.2, a Member defending an SPS measure may assert that its SPS measure conforms to an international standard – that is, the measure would embody the international standard completely and converts it into a municipal standard.[10] In this dispute, however, the United States is not asserting a defense under Article 3.2. Nonetheless, the concept of "conformity" remains relevant as a contrast to the different Article 3.1 language regarding the issue of whether a measure is "based on" an international standard.

51. In contrast to Article 3.2's concept of "conformity," under Article 3.1, a Member may choose to establish an SPS Measure *based on* the international standard. The Appellate Body

[9] *EC – Hormones (AB)*, para. 171.

[10] *EC – Hormones (AB)*, para. 170.

understood "based on" to arise in a situation where something stands, is founded or built upon another.[11] In other words, a Member must ensure that its SPS measure stands, is founded or built upon the relevant international standard.

52. The Appellate Body continued, stating that such a measure under Article 3.1 may embody some but not necessarily all of the elements of an international standard.[12] Thus, unlike Article 3.2, a measure that is based on an international standard does not need to conform to or embody the standard completely.

53. The record shows that the U.S. system for controlling FMD is built upon the relevant international standard established by the OIE. Three core principles common to both the OIE and the APHIS approach are the following:

- Unless a country can show it does not have FMD, it is to be treated as an FMD-infected zone.
- No decision is made about a country's FMD situation until an application is made by a country. In that application, both APHIS and the OIE consider the ability of the country in question to control and eradicate FMD as critical to the determination.
- An outbreak can result in the removal of FMD freedom.

54. The United States has acted consistently with Article 3. APHIS measures are based on the OIE standard, but APHIS conducts its own evaluation of the risk presented by the applicant country. APHIS takes the OIE's designation that Patagonia is FMD free without vaccination into consideration. Indeed, the United States is now proposing to designate Patagonia as FMD-

[11] *EC – Hormones (AB)*, para. 163.

[12] *EC – Hormones (AB)*, para. 171.

free. With respect to the rest of Argentina, the United States has not rejected the OIE designation, but is now in the process of conducting its own evaluation of Argentina's risk status, consistent with the process envisaged in Articles 5.7 and 6. The U.S. measure is still based on the international standard for trade in beef in relation to FMD.

V. APHIS Actions With Respect to Patagonia Are Consistent With Article 6.1 and Article 6.2

55. APHIS review of Argentina's application for Patagonia is consistent with Article 6.1 and Article 6.2 of the SPS Agreement.

56. Article 6.1 sets out the general principle that Members have an obligation to ensure that their measures are adapted to the conditions of the region from which products originate. When an exporting Member claims a region is disease free, Article 6.3 sets out the process for making determinations under Article 6. The exporting Member has an obligation under Article 6.3 to provide the necessary evidence to the importing Member and to permit the importing Member access into the exporting Member country to gather data to perform the necessary evaluation.

57. APHIS review of Patagonia is consistent with Article 6.1 in light of the process set out under Article 6.3. Upon Argentina's application for disease-free status for Patagonia South, APHIS began collecting the information necessary to make a determination under Article 6.1. It sought information from Argentina and the process of information exchange began. Subsequent outbreaks of FMD in 2003 and 2006 raised issues concerning the government's ability to control FMD. Moreover, Argentina began shifting sanitary conditions between Patagonia South and Patagonia North B. It then asked APHIS to expand the region under consideration for disease-free status to include Patagonia North B and Patagonia South.

58. In light of these changing circumstances, and informed by the earlier discussion of both Article 6.3 and Article 5.7, APHIS review of Argentina's application of Patagonia is consistent with Article 6.1.

59. Article 6.2 of the SPS Agreement provides that Members are required to recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. The APHIS regulation at 9 C.F.R. Section 94.1(a)(1) establishes a list of regions that the agency determines are free of FMD. 9 C.F.R. Section 94.1(a)(2) states that APHIS will add regions to this FMD-free list after it evaluates that region's disease status on the basis of an application made by a foreign country.

60. Article 6.1 and Article 6.2 set out a number of relevant factors that a Member should consider in making such a determination, such as prevalence of the disease, disease control programs, appropriate criteria or guidelines from relevant international organizations, geography, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

61. APHIS regulations at 9 C.F.R. Section 92.2 direct it to consider applications from foreign countries to determine regions to be free of FMD. Section 92.2 sets forth the factors that it will consider in its determination and for which it requires documentation from the applicant country. These factors closely match those listed in Article 6, including geography, status of the disease in the country, extent of the country's disease control program, and structure and effectiveness of veterinary services. Thus, APHIS's regulations demonstrate that the United States recognizes the concepts of disease-free areas, consistent with Article 6.2.

62. The application process described in Section 92.2 is also consistent with reading Article 6.3 together with Article 6.1 and Article 6.2. As discussed earlier, Article 6.3 requires Members

claiming that a region is free of a disease to provide necessary evidence. Section 92.2 is consistent with this understanding.

63. Further evidence that the United States recognizes the concept of disease-free areas is evident in relation to Argentina's applications. On January 23, 2014, APHIS promulgated a regulatory notice advising the public that it has determined that the Patagonia region is free of FMD, consistent with Section 94.1 of APHIS's regulations. This notice makes available for public review and comment APHIS's determination, as well as the accompanying risk analysis for Patagonia, which was based upon the November 2013 site visit APHIS conducted.

64. The risk analysis addresses the factors that the SPS Agreement asks members to "take into account" under Article 6.1—namely, the level of prevalence of FMD, the control program in Patagonia, and appropriate criteria of guidelines from the OIE. The risk analysis also considers the factors identified in Article 6.2, such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary controls.

65. For these reasons, the United States has acted consistently with Articles 6.1 and 6.2.

VI. Argentina Introduces No Scientific Evidence to Support a Claim Under Article 5.6

66. With regard to Argentina's claim under Article 5.6, Argentina fails to meet its evidentiary burden or otherwise to explain the basis for its claim. Rather, Argentina's claim is based on hypothetical factual scenario unsupported by the record in this dispute.

67. As the Appellate Body stated in *Australia – Apples*, "it is for the complainant to establish a *prima facie* case that there is an alternative measure" that satisfies the test for Article 5.6.[13] Argentina has not made this showing. It merely asserts that either the OIE guidelines or the set

[13] *Australia – Apples(AB)*, para. 360.

of measures applied to Uruguay would meet the appropriate level of sanitary protection of the United States. But Argentina has not submitted any scientific evidence in the record that establishes that the scientific analysis that applies to Uruguay is applicable to Argentina and that therefore the measure is scientifically appropriate. As the Appellate Body also stated in *Australia –Apples*, "we cannot conceive of how a complainant could satisfy its burden of demonstrating that its proposed alternative measure would meet the appropriate level of protection under Article 5.6 *without* relying on evidence that is scientific in nature."[14]

68. Moreover, as the United States stated in its first written submission, the application of OIE guidelines for FMD-free with Vaccination Status is not applicable because the appropriate level of protection for the United States is higher than that of the OIE. Specifically, the United States does not agree that a country that vaccinates for FMD is equivalent to a country that is free of FMD without vaccination because of the nature of risks raised by vaccination.[15] Again, Argentina has not made any scientific showing on these issues.

69. Because Argentina has not met its burden under Article 5.6, Argentina's claim must fail.

VII. Argentina Cannot Meet Its Burden to Support a Claim Under Article 2.3

70. Because Argentina fails to show how its FMD circumstances and FMD control systems are similar to that of Uruguay, Santa Catarina (Brazil), Japan, and the United Kingdom, Argentina's claim under Article 2.3 too must fail.

71. Just as with Argentina's claim under Article 5.6, Argentina makes broad conclusions about the similarity between it and other countries. But nowhere does Argentina rely on specific

[14] *Australia – Apples(AB)*, para. 364.

[15] U.S. First Written Submission, para. 299.

evidence that shows that its regulatory infrastructure, disease history, geographical position, and any other host of factors compel the same conclusion as reached by APHIS with respect to those countries. And in none of those countries was there shown to be a systematic failure to disclose FMD and to limit information as to its spread.

72. It is Argentina's burden to make its case, and it simply has not done so.

VIII. Conclusion

73. What this dispute comes down to is timing. Argentina's position is that the United States is taking too long. But the United States asks this panel to look comprehensively at the entire sequence of events in this case, not simply the cramped version put forward by Argentina.

74. A full examination of the record shows that during the period in question the FMD situation in Argentina was unstable, and Argentina's ability to control FMD and commitment to timely notify the international community was uncertain. And what is at stake is not simply any harmless animal disease, but is, in the words of the OIE, one of the most contagious and devastating animal diseases.

75. Mr. Chairman, members of the Panel, this concludes our opening statement. We would be pleased to respond to any questions you may have.