

***** 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 FIRST SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES**

July 25, 2013

1. Mr. Chairman, Distinguished Members of the Panel, I want to thank you for your work. I would also be remiss if I do not take this opportunity to thank the Secretariat. The United States is always appreciative of the dedicated work of the WTO Secretariat staff.

2. Yesterday, we said that this case was straightforward. While the discussions over the last two days have been lengthy, I submit that this is still so. Specifically, our discussions kept returning us to a few central facts – and these facts demonstrate that India cannot defend against the claims brought by the United States.

3. First, India's measures clearly do not conform to the OIE Code. I would understand if the Panel is reticent to consider another organization's document, the OIE Code, without speaking to that organization. But there is a point where argument and interpretations are plainly untenable and can be indulged no further. We have that situation here. This is not a case of conflicting evidence regarding how to understand the OIE Code. This is about the text and the structure of the Code – which are clear about how to apply it. India ignores this, and the result is the convulsions in logic that we have seen over the last two days. For example:

- India asserts that the Code contains alternate recommendations offering different levels of protection, but nothing in the OIE Code's text supports that proposition. Essentially, India suggests that the Code constitutes a menu from which countries can pick a recommendation based on their particular ALOP. This isn't so. The provision that applies to a situation hinges on the disease status of the exporting country and the product that is being exported.
- India interprets a recommendation not to impose import prohibitions on account of detections in wild birds to somehow also affirmatively recommend bans on imports of poultry products. As I said yesterday, a road sign instructing drivers to drive carefully when conditions are wet does not mean that one should drive recklessly when conditions are dry.

If India does not want to apply the standards in the OIE Code, that is fine. If India wants to set a high ALOP, that is fine too – but that brings me to my second fact: India lacks a risk assessment.

4. Under the SPS Agreement, if India plans to adopt measures that are not based on international standards, then India needs to conduct a risk assessment supported by science. India has not done so with respect to its avian influenza measures. During this Panel meeting, India has tried to debate the science of avian influenza transmission and to discuss risks associated with avian influenza. While the science submitted by the United States refutes India's contentions, the more important point is that these scientific questions are not relevant here. What is relevant under the SPS Agreement is the fact that India's measures are not based on the OIE Code, and India has not conducted a risk assessment.
5. Third, India has refused to recognize the applicability of the concept of regionalization to avian influenza notwithstanding requests. This has been its consistent position for years. All India has asserted today is that it has the legal capacity to create a measure permitting regionalization. India's measures place India in breach of Article 6, regardless of how much or how little information anybody might have submitted to India.
6. Finally, India's measures discriminate against imported products. India applies countrywide bans even though its restrictions on domestic trade in poultry products following an HPAI outbreak in India are much more limited. And India bans products on account of LPNAI even though it doesn't have in place measures to reliably detect domestic LPNAI, preventing imposition of trade restrictions on domestic products on account of LPNAI.
7. In short, this case goes very much to the basic obligations of the SPS Agreement. The proceedings of the past two days have only confirmed that India's measures do not comport with these obligations.