

- a. It made an incorrect interpretation and application of Article 2.2 of the SPS Agreement² and therefore committed a legal error. The Panel consequently did not analyze the independent claim under Article 2.2 of the SPS Agreement on the ground that India had acted inconsistently with Article 5.1 and 5.2 of the SPS Agreement.³
 - b. the Panel failed to make an objective assessment of the matter by disregarding arguments and evidence presented by India to establish that its AI measures are based on scientific principles and sufficient scientific evidence pursuant to Article 2.2 of the SPS Agreement.⁴
 - c. it failed to take into account that the United States arguments under Article 2.2 of the SPS Agreement were limited to the ban upon occurrence of LPNAI in fresh meat of poultry and eggs and did not include the ban upon occurrence of HPNAI. In spite of the limited nature of the claim, the Panel ruled that India's AI measures which provide for import prohibition upon occurrence of HPNAI and LPNAI are inconsistent with Article 2.2 of the SPS Agreement⁵ and therefore acted inconsistently with Article 11 of the DSU.
 - d. the Panel disregarded India's arguments under Article 5.1 of the SPS Agreement and therefore acted inconsistently with Article 11 of the DSU.⁶
6. For these reasons, India requests the Appellate Body to reverse the Panel's finding that

- a. First, the terms of reference of the Panel to the OIE were inconsistent with Article 11(2) of the SPS Agreement and Article 13 of the DSU.⁸
- b. Second, the Panel delegated the judicial function of making an objective assessment of the matter to the OIE and therefore acted inconsistently with Article 11 of the DSU.⁹ It also failed to make an objective assessment of the matter by disregarding India's arguments and evidence.¹⁰ Further, it also acted inconsistently with Article 3.2 of the DSU by not interpreting the OIE Code in accordance with the customary principles of international law as codified in Article 31 and Article 32 of the VCLT.¹¹
- c. Third, the Panel has arrived at a conclusion which is not supported by the evidence available and thus is not an objective assessment of matter.¹²

9. For these reasons, India requests the Appellate Body to reverse the Panel's finding that India's AI measures do not conform to and/or are not based upon the international standard and therefore are inconsistent with Article 3.1 and Article 3.2 of the SPS Agreement.¹³

10. Further, the Appellate Body must, where necessary, complete the legal analysis and find that:

- a. The Panel's terms of reference to the OIE were inconsistent with Article 13(2) of the DSU and Article 11(2) of the SPS Agreement.
- b. The Panel delegated the judicial function of making an objective assessment of the matter to the OIE and therefore acted inconsistently with Article 11 of the DSU.
- c. The Panel has failed to make an objective assessment of the matter pursuant to Article 11 of the DSU by completely disregarding the evidence and the arguments submitted by India with respect to Article 3.2 and Article 3.1 of the SPS Agreement.
- d. The conclusion of the Panel with respect to Article 3.1 and Article 3.2 of the SPS Agreement is not based upon the factual evidence and thus, the Panel failed to make an objective assessment of the matter.

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S.O. 1663(E) conform to the international standard and are therefore consistent with Article 3.2 of the SPS Agreement.

- h. Alternatively, Clause 1(ii)(a) of S.O. 1663(E) (live poultry) is based upon Article 10.4.1.10 and Article 10.4.5 of the OIE Code; Clause 1(ii)(b) of S.O. 1663(E) is based upon Article 10.4.1.10 and Article 10.4.7 of the OIE Code; Clause 1(ii)(c) of S.O. 1663(E) is based upon Article 10.4.1.10 and Article 10.4.19 of the OIE Code; Clause 1(ii)(d) of S.O. 1663(E) is based upon Article 10.4.1.10 and Article 10.4.10 of the OIE Code; Clause 1(ii)(e) of S.O. 1663(E) is based upon Article 10.4.1.10; Article 10.4.13 and Article 10.4.15 of the OIE Code; Clause 1(ii)(j) of S.O. 1663(E) (poultry semen) is based upon Article 10.4.1.10 and Article 10.4.16 of the OIE Code. These clauses of S.O. 1663(E) are based upon the international standard and therefore are consistent with Article 3.1 of the SPS Agreement.

C. The Panel has committed legal errors in Sections 7.9.2.3 - 7.9.2.4 of its Report and in connected findings in Section 7.9.2.6 of its Report

11. The Panel erred in its interpretation and application of Article 6.1 and 6.2 of the SPS Agreement and/or failed to make an objective assessment of the matter pursuant to Article 11 of the DSU, in so far as the Panel found that Indi

- d. Third, the Panel made a legal error by incorrectly interpreting the relationship between Article 6.1, first sentence and Article 6.3, first sentence.²³ As a result, the Panel incorrectly concluded that India's AI measures are inconsistent with Article 6.1, first sentence and consequently with Article 6.1, second sentence.²⁴

12. For these reasons, India requests the Appellate Body to reverse the Panel's finding that India's AI measures are inconsistent with Article 6.1 and Article 6.2 of the SPS Agreement.²⁵

13. Further, the Appellate Body must, where necessary, complete the legal analysis and find that:

- a. Article 6.2, first sentence of the SPS Agreement only requires recognition of the concepts of pest- or disease-free areas and areas of low pest or disease prevalence and not of implementation of these concepts. The Panel therefore committed a legal error in coming to its conclusion in Article 6.2, first sentence. Further, the Panel's conclusion was also not based upon an objective assessment of the matter as the Panel ruled on a claim not argued by the United States.
- b. The Panel also acted inconsistently with Article 11 of the DSU by disregarding evidence under Article 6.2, first sentence of the SPS Agreement which was of critical importance to India and therefore failed to make an objective assessment of the matter.
- c. Pursuant to Article 6.1, first sentence of the SPS Agreement an importing country is required to adapt its sanitary measures to the sanitary or phytosanitary characteristics of the area of the exporting country only upon receiving a formal proposal pursuant to Article 6.3 of the SPS Agreement.
- d. Since the United States has not made any formal proposal pursuant to Article 6.3 of the SPS Agreement, India has not acted inconsistently with Article 6.1, first sentence and Article 6.1, second sentence of the SPS Agreement.

D. The Panel has committed legal errors in Sections 7.8.2.1 - 7.8.2.3 of its Report and in connected findings in Sections 7.8.2.1 - 7.8.3 of its Report

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- c. the Panel did not identify the proposed alternative measure with precision²⁹ and therefore committed a legal error by concluding that the alternate measure would fulfill India's ALOP.³⁰ Further, the United States presented a *prima facie*