

**INDIA –MEASURES CONCERNING THE IMPORTATION OF
CERTAIN AGRICULTURAL PRODUCTS**

Request for the Establishment of a Panel by the United States

The following communication, dated 11 May 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On March 6, 2012, the United States requested consultations with the Government of India ("India") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"), and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), concerning measures that India imposes on the importation of various agricultural products from the United States purportedly because of concerns related to avian influenza. The United States and India held such consultations on April 16 and 17, 2012. Unfortunately, those consultations were unsuccessful in resolving this dispute.

India's avian influenza measures prohibit the importation of various agricultural products into India from those countries reporting Notifiable Avian Influenza (both Highly Pathogenic Notifiable Avian Influenza and Low Pathogenic Notifiable Avian Influenza). India maintains its avian influenza measures through the following legal instruments:

- the Indian Livestock Importation Act, 1898 (9 of 1898) ("Livestock Act"); and
- orders issued by India's Department of Animal Husbandry, Dairying, and Fisheries ("DAHD") pursuant to the Livestock Act, most recently S.O. 1663(E), which was published in the Gazette of India on July 19, 2011,

as well as amendments, related measures, or implementing measures in force as of the date of this request.

Legal instrument S.O. 1663(E) imposes import restrictions on the following products:

- (a) domestic and wild birds (including poultry and captive birds);
- (b) day old chicks, ducks, turkey, and other newly hatched avian species;
- (c) un-processed meat and meat products from Avian species, including domesticated, wild birds and poultry;
- (d) hatching eggs;

- (e) eggs and egg products (except Specific Pathogen Free eggs);
- (f) un-processed feathers;
- (g) live pigs;
- (h) pathological material and biological products from birds;
- (i) products of animal origin (from birds) intended for use in animal feeding or for agricultural or industrial use; and
- (j) semen of domestic and wild birds including poultry.

India's measures have adversely affected exports of these products from the United States to India. The United States considers that India's measures are inconsistent with India's commitments and obligations under the following provisions of the SPS Agreement and the GATT 1994:

SPS Agreement

1. Article 2.2, because India's avian influenza measures are not applied only to the extent necessary to protect human or animal life or health, are not based upon scientific principles, and are maintained without sufficient scientific evidence. Further, India's measures are not provisional measures within the scope of Article 5.7.
2. Article 2.3, because India's avian influenza measures arbitrarily or unjustifiably discriminate between Members where similar conditions prevail, including between India's own territory and that of other Members. For example, while India applies the avian influenza measures at issue here to imported products, India does not apply similar avian influenza related controls with respect to like domestic products and their internal movement within India. Further, India has applied its measures in a manner that constitutes a disguised restriction on international trade.
3. Article 3.1, because India's measures are not based on the relevant international standards, guidelines, or recommendations of the World Animal Health Organization ("OIE"), nor are India's measures in accordance with Article 3.3 of the SPS Agreement.
4. Article 5.1, because India's avian influenza measures, which are not based on the relevant international standards, are not based upon an assessment, as appropriate to the circumstances, of the risks to human, animal, or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.
5. Article 5.2, because in failing to make an assessment of risks as appropriate to the circumstances, India failed to take into account available scientific evidence; relevant processes and production methods; the prevalence of different types of avian influenza; the existence of notifiable-avian-influenza-free areas and high-pathogenic-notifiable avian-influenza-free areas; relevant ecological and environmental conditions, and other potential options besides those imposed by its measures.
6. Article 5.5, because India is maintaining arbitrary or unjustifiable distinctions in its appropriate levels of sanitary protection in different situations, and these distinctions result in discrimination or a disguised restriction on international trade. For example

– to the extent transmission of avian influenza by way of U.S. agricultural products is considered a "different situation" than the transmission of avian influenza by way of India's domestic agricultural products – India is maintaining arbitrary or unjustifiable distinctions in its appropriate levels of sanitary protection in different situations, and these distinctions result in discrimination or a disguised restriction on international trade.

7. Article 5.6, because India's avian influenza measures are more trade-restrictive than required to achieve its appropriate level of sanitary protection.
8. Articles 6.1, because India's avian influenza measures are not adapted to the sanitary characteristics of the area from which U.S. imports originated, and in failing to assess the sanitary characteristics of particular U.S. areas from which U.S. imports originated, India has not taken into account disease-free areas or areas of low disease prevalence, or the existence of eradication or control programs. Moreover, India has not taken into account the relevant guidelines of the OIE in assessing the sanitary characteristics of a region.
9. Article 6.2, because India's avian influenza measures do not recognize disease-free areas or areas of low disease prevalence.
10. Article 7, and Annex B, paragraphs 2 and 5(a)-(d), because India has not provided the information on its avian influenza measures in accordance with the provisions of Annex B. India has not notified its avian influenza measures until well after these measures have entered into force, to the extent any notification was made whatsoever, despite the fact that India's avian influenza measures are not substantially the same as the content of an international standard, guideline, or recommendation and have a significant effect on the trade of other Members.

India failed to notify other Members, through the Secretariat, of the products to be covered by the measures along with the objective and rationale of the measures, at an early stage where amendments could be introduced and comments taken in to account.

India failed to identify the parts of its avian influenza measures which in substance deviate from international standards, guidelines, or recommendations.

India failed to publish its avian influenza measures at an early stage in such manner to enable interested Members to become acquainted with the proposal.

India also failed to allow a reasonable interval between the publication of its measures and their entry into force.

Further, India's failure to comply with Annex B, paragraph 5 is not justified by any urgent problem of health protection that has arisen or threatened to arise for India, and India has in any event failed to comply with the requirements of Annex B, paragraph 6.

GATT 1994

11. Article XI, because India's measures constitute import prohibitions or restrictions other than duties, taxes, or other charges.

India's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Therefore, the United States respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU.
