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

COMMUNICATION FROM INDIA

The following communication, dated 2 March 2017, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated at the request of that delegation.

On 19 June 2015, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in *India – Measures Concerning the Importation of Certain Agricultural Products* (WT/DS430). At the following DSB meeting, India informed the DSB of its intention to implement the recommendations and rulings of the DSB with respect to this matter.

On 8 December 2015, India and the United States informed the DSB that they had agreed on a reasonable period of time up to 19 June 2016 for India to implement the recommendations and rulings of the DSB. In this respect, India notified a draft amendment notification to the SPS Committee on 20 April 2016¹ allowing a 60-day time period for interested parties to provide comments to the same. Further, India vide corrigendum dated 22 June 2016, amended item 8 of the aforesaid draft amendment notification, to appropriately reflect the relevant international standard.²

India received comments on its draft amendment notification from only one WTO Member, namely, the United States. These comments were taken into consideration by India while issuing the final notification, S.O. 2337(E), which superseded the previous notification S.O. 1663(E).³ Thereafter, India notified the DSB on 18 July 2016 that it had adopted measures necessary to comply with the recommendations of the DSB.⁴

Notification S.O. 2337(E) complies with the recommendations of the DSB in this dispute as it:

- i) allows imports of poultry and poultry products into India in accordance with the relevant international standard, i.e. the OIE Terrestrial Animal Health Code ("Terrestrial Code");
- ii) recognizes the concept of disease-free areas and areas of low pest or disease prevalence; and
- iii) provides for the process to be followed for recognition of such disease-free areas and areas of low pest or disease prevalence, zones/compartments in conformity with the Terrestrial Code and the SPS Agreement.

Further, India has also issued the relevant guidelines referred to in notification S.O. 2337(E) as well as the questionnaire for recognizing a part of a country, zone/compartment in accordance

¹ Notification of draft S.O. 2337(E) to the SPS Committee, G/SPS/N/IND/143 circulated on 20 April 2016.

² Notification of corrigendum to the SPS Committee, G/SPS/N/IND/143/Corr.1 circulated on 22 June 2016.

³ See <http://egazette.nic.in/WriteReadData/2016/170589.pdf>

⁴ Communication from India, WT/DS430/18 circulated on 19 July 2016.

with the relevant international standard, i.e. the OIE Terrestrial Code for the purpose of trade in poultry and poultry products.

After the publication of S.O. 2337(E), India and the United States entered into bilateral discussions to address further concerns of the United States, if any. Pursuant to such bilateral discussions, India amended notification S.O. 2337(E) vide notification S.O. 2998(E) dated 19 September 2016, clarifying the concerns of the United States.⁵ The amendment notification has also been notified to the SPS Committee on 21 September 2016⁶.

Further to this, India continued its efforts to bilaterally resolve the concerns of the United States. In the meantime, on the request made by the United States under Article 5.8 of the SPS Agreement⁷, India provided the relevant information to the United States. Subsequently, it was found that in paragraph 1(d) of the notification S.O. 2337 (E), while defining "pest- or disease-free areas and areas of low pest or disease prevalence" the clause "areas of low pest or disease prevalence" is inadvertently missing. Though this inadvertent omission does not have any implications in the present dispute, S.O. 2337(E) has been amended vide notification S.O. 510(E) dated 17 February 2017 to provide clarity to the Members. S.O. 510 (E) was also notified⁸ to the SPS Committee.

Notification S.O. 2337(E) dated 8 July 2016, amendment notification S.O. 2998(E) dated 19 September 2016 and S.O. 510(E) dated 17 February 2017, the guidelines, and the questionnaire, together form the "revised Avian Influenza measures". The notifications have been issued in exercise of the power conferred by sub-section (1) of Section 3 and Section 3A of the Livestock Act, 1898 (9 of 1898) and came into effect on the date of publication in the Official Gazette.

In view of the above, India strongly considers that it has complied with the recommendations of the DSB by bringing its measures into conformity with its WTO obligations. In India's opinion, it had complied with the recommendations of the DSB by promulgating S.O. 2337(E); the Guidelines and the Questionnaire. However, in good faith, and to clarify its measure, India has amended S.O. 2337(E) vide S.O. 2998(E) and S.O. 510(E). Thus, India has made all efforts to bilaterally resolve this dispute. However, in spite of the same, the United States is yet to withdraw the Article 22.6 Arbitration request and to enter into a sequencing agreement which is a standard practice among WTO members. A sequencing agreement is entered into in order to ensure that, in the event of disagreement between the parties with respect to compliance with the DSB's rulings and recommendations, recourse under Article 21.5 of the DSU should be pursued as the first option.

In India's opinion, if there is a disagreement between the parties with respect to "the consistency with a covered agreement of measures taken to comply with the recommendations and rulings", the proper course of action is first to have recourse to Article 21.5 of the DSU. In fact, this has also been the position of the United States in other disputes.⁹

In view of the fact that India has brought itself into conformity with the recommendations of the DSB, India would urge the United States to terminate the Article 22.6 proceedings in this dispute.

⁵ See <http://egazette.nic.in/WrireReadData/2016/170589.pdf>

⁶ G/SPS/N/IND/160

⁷ The United States made a request pursuant to Article 5.8 of the SPS Agreement vide its letter dated 21 December 2016. In response, India provided the relevant information to the United States vide email dated 31 January 2017.

⁸ G/SPS/N/IND/143/Add.1

⁹ US - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Recourse to Article 21.5 of the DSU by the United States, WT/DS381/32 circulated on 12 April 2016, page 3.