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Page: 1/2

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

COMMUNICATION FROM INDIA

The following communication, dated 22 September 2016, was received from the delegation of India with the request that it be circulated to the Dispute Settlement Body (DSB).

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 2016<sup>1</sup> 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.<sup>2</sup>

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 These comments were taken into consideration by India while issuing the final notification, S.O. 2337(E), which superseded the previous notification S.O. 1663(E).<sup>3</sup> Thereafter, India notified the DSB on 18 July 2016 that it had adopted measures necessary to comply with the recommendations of the DSB.<sup>4</sup>

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
- iii) provides for the process to be followed for recognition of such disease-free areas, 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/compartments in accordance 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 has further amended notification S.O. 2337(E) vide notification S.O. 2998(E) dated

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

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

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

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

19 September 2016, clarifying the concerns of the US.<sup>5</sup> The amendment notification has also been notified to the SPS Committee on 21.9.2016<sup>6</sup>.

Notification S.O. 2337(E) dated 8 July 2016, and the amendment notification S.O. 2998(E) dated 19 September 2016, 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.

Lastly, India would draw attention to the fact that despite requests from India, the United States has not entered into a sequencing agreement in this dispute which is a standard practice among the 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.<sup>7</sup> Instead, on 7 July 2016, the United States made a request pursuant to Article 22.2 of the DSU seeking authorization from the DSB to suspend concessions under the covered agreements in the amount of US\$450 million in 2016, which will be updated annually.<sup>8</sup> India objected to this request vide its communication to the DSB dated 18 July 2016 and at the DSB meeting held on 19 July 2016. Till date, the United States has not agreed to suspend the arbitration proceedings under Article 22.6 of the DSU.

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

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<sup>5</sup> See <http://egazette.nic.in/WriteReadData/2016/171799.pdf>.

<sup>6</sup> G/SPS/N/IND/160

<sup>7</sup> *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.

<sup>8</sup> Recourse to Article 22.2 of the DSU by the United States, WT/DS430/16 circulated on 8 July 2016.