

SPS Agreement and, more specifically, in its consultations with the individual experts regarding the issue of whether LPNAI is exotic to India, or by requiring India to prove that LPNAI is exotic to India. Accordingly, we uphold the Panel's finding, in paragraphs 7.472 and 8.1.c.vi of the Panel Report, that India's AI measures are inconsistent with Article 2.3, first sentence, of the SPS Agreement because they arbitrarily or unjustifiably discriminate between WTO Members where identical or similar conditions prevail.

6 FINDINGS AND CONCLUSIONS

6.1. For the reasons set out in this Report, the Appellate Body:

- a. with respect to Articles 2.2, 5.1, and 5.2 of the SPS Agreement:
 - i. finds that the Panel did not err in its interpretation of Articles 2.2, 5.1, and 5.2, and, in particular, in its understanding of the relationship between Article 2.2, on the one hand, and Articles 5.1 and 5.2, on the other hand;
 - ii. finds that, by failing to consider whether the presumption of inconsistency with Article 2.2 that flowed from its finding that India's AI measures are inconsistent with Articles 5.1 and 5.2 was rebutted by the arguments and evidence presented by India, the Panel erred in its application of Article 2.2 to India's AI measures with respect to the import prohibition on fresh meat of poultry and eggs from countries reporting LPNAI; and, therefore
 - iii. reverses, in part, the Panel's findings, in paragraphs 7.332, 7.334, and 8.1.c.v of the Panel Report, that India's AI measures are inconsistent with Article 2.2 because they are not based on scientific principles and are maintained without sufficient scientific evidence, insofar as those findings concern India's import prohibition on fresh meat of poultry and eggs from countries reporting LPNAI;
 - iv. finds that India has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter pursuant to Article 11 of the DSU;
 - v. finds that it is unable to complete the legal analysis and assess the consistency of India's AI measures with Article 2.2 with respect to the import prohibitions on fresh meat of poultry and eggs from countries reporting LPNAI; and
 - vi. upholds the Panel's findings, in paragraphs 7.318, 7.319, 7.333, 8.1.c.iii, and 8.1.c.iv of the Panel Report, that India's AI measures are inconsistent with Articles 5.1 and 5.2;
- b. with respect to Articles 3.1 and 3.2 of the SPS Agreement:
 - i. finds that the Panel did not act inconsistently with Article 11.2 of the SPS Agreement or Article 13.2 of the DSU in consulting with the OIE regarding the meaning of the OIE Code;
 - ii. finds that India has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter pursuant to Article 11 of the DSU in its assessment of the meaning of the OIE Code; and
 - iii. upholds the Panel's findings, in paragraphs 7.274, 7.275, and 8.1.c.ii of the Panel Report, that India's AI measures are inconsistent with Article 3.1, and that India is not entitled to benefit from the presumption of consistency of its AI measures with other relevant provisions of the SPS Agreement and the GATT 1994 as provided for under Article 3.2;
- c. with respect to Article 6 of the SPS Agreement:
 - i. finds that the Panel did not err in its interpretation of the relationship between Articles 6.1 and Article 6.3;

- ii. finds that the Panel did not err in its application of Article 6.2 by not relying solely on Sections 3 and 3A of the Livestock Act in assessing whether India recognizes the concepts of disease-free areas and areas of low disease prevalence in respect of AI;
 - iii. finds that India has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter pursuant to Article 11 of the DSU in its analysis of the consistency of India's AI measures with Article 6.2; and
 - iv. upholds the Panel's findings, in paragraphs 7.707-7.709, 7.712-7.715, 8.1.c.ix, and 8.1.c.x of the Panel Report, that India's AI measures are inconsistent with Articles 6.1 and 6.2;
- d. with respect to Articles 5.6 and 2.2 of the SPS Agreement:
- i. finds that the Panel did not err in finding that the United States had identified alternative measures that would achieve India's appropriate level of protection;
 - ii. finds that the Panel did not fail to identify the alternative measures with precision;
 - iii. finds that India has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter pursuant to Article 11 of the DSU in its analysis of the consistency of India's AI measures with Article 5.6; and
 - iv. upholds the Panel's finding, in paragraphs 7.616 and 8.1.c.vii of the Panel Report, that India's AI measures are inconsistent with Article 5.6 because they are significantly more trade restrictive than required to achieve India's appropriate level of protection, with respect to the products covered by Chapter 10.4 of the OIE Code; and finds it unnecessary to address India's request for reversal of the Panel's finding that India's AI measures are consequentially inconsistent with Article 2.2;
- e. with respect to Article 2.3 of the SPS Agreement:
- i. finds that India has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter pursuant to Article 11 of the DSU in its consultation with the individual experts regarding the issue of whether LPNAI is exotic to India, and by requiring India to prove that LPNAI is exotic to India; and
 - ii. upholds the Panel's finding, in paragraphs 7.472 and 8.1.c.vi of the Panel Report, that India's AI measures are inconsistent with Article 2.3, first sentence.

6.2. The Appellate Body recommends that the DSB request India to bring its measures, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the SPS Agreement, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 13th day of May 2015 by:

Yuejiao Zhang
Presiding Member

Seung Wha Chang
Member

Shree Baboo Chekitan Servansing
Member