

Report of the Appellate Body

Short Title	Full Case Title and Citation
<i>US – Steel Safeguards</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted 10 December 2003, DSR 2003:VII, p. 3117
<i>US – Tuna II (Mexico)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/AB/R, adopted 13 June 2012, DSR 2012:IV, p. 1837
<i>US – Tyres (China)</i>	Appellate Body Report, <i>United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China</i> , WT/DS399/AB/R, adopted 5 October 2011, DSR 2011:IX, p. 4811
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, p. 3
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, p. 717
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, p. 323

1. INTRODUCTION

1.1 India appeals certain issues of law and legal interpretations developed in the Panel Report, *India – Measures Concerning the Importation of Certain Agricultural Products*¹ (Panel Report). The Panel was established to consider a complaint by the United States² with respect to measures taken by India concerning the importation of certain agricultural products.

1.2 This dispute concerns measures consisting of prohibitions that India imposes on the importation of various agricultural products, primarily poultry products, because of concerns related to avian influenza (AI).³ India maintains its AI measures through two legal instruments – The Live-Stock Importation

¹ WT/DS430/R, 14 October 2014.
² Request for the Establishment of a Panel by the United States, WT/DS430/3. The Panel was established by the Dispute Settlement Body at its meeting of 25 June 2012. (Panel Report, paras. 1.3–1.4)
³ Panel Report, para. 2.1.

Act, as amended⁴ (Livestock Act), and Statutory Order 1663(E)⁵ (S.O. 1663(E)).⁶

1.3 AI, also commonly known as "avian flu" or "bird flu", is "an infectious viral disease of birds (especially wild water fowl such as ducks and geese), often causing no apparent signs of illness".⁷ AI can sometimes spread to domestic poultry and cause large-scale outbreaks of serious disease, and some AI viruses have also been reported to cause disease or subclinical infections in humans and other animals. AI has a variety of subtypes that are classified according to the two components that make up the virus – haemagglutinin (H) and neuraminidase (N). Consequently, the various subtypes of AI that have been identified are labelled as some form of the "HxNy" combination.⁸

1.4 All AI subtypes are classified into one of two groups according to their ability to cause disease, or "pathogenicity", in birds: (i) highly pathogenic avian influenza (HPAI); and (ii) low pathogenicity avian influenza (LPAI).⁹ HPAI is an extremely infectious, systemic viral disease of poultry that produces high mortality and various types of lesions in multiple visceral organs, the brain, and skin.¹⁰ By contrast, infection with LPAI may be asymptomatic or have very mild symptoms, consisting of ruffled feathers, reduced egg production, or mild effects on the respiratory system.¹¹

1.5 The World Organisation for Animal Health (formerly, Office International des Epizooties) (OIE) is the international organization responsible for establishing health standards for international trade in animals and animal products, including standards relating to AI.¹² The members of the OIE annually adopt the OIE Terrestrial Animal Health Code (OIE Code¹³), which contains

⁴ The Live-Stock Importation Act, 1898 (No. 9 of 1898), published on 12 August 1898 (Panel Exhibit US-114), as amended by The Live-Stock Importation (Amendment) Act, 2001 (No. 28 of 2001) (19 July 2001), published in *The Gazette of India* on 29 August 2001, No. 35, Part II, Section 1, pp. 1-2 (Panel Exhibit US-115).

⁵ Statutory Order 1663(E), issued by India's Department of Animal Husbandry, Dairying and Fisheries (DAHD) on 19 July 2011 pursuant to the Livestock Act and published in *The Gazette of India* on 20 July 2011, No. 1390, Part II, Section 3(ii), pp. 1-2 (Panel Exhibit US-80).

⁶ Panel Report, para. 2.22 (referring to the Livestock Act and S.O. 1663(E)).

⁷ Panel Report, para. 2.6 (referring to World Health Organization, "Avian Influenza", accessed 17 January 2014, <http://www.who.int/mediacentre/factsheets/avian_influenza/en/index.html>).

⁸ The Panel explained that sixteen H and nine N subtypes of AI have been identified to date and that new influenza viruses are constantly emerging as a result of genetic mutation and re-assortment. (Panel Report, para. 2.7)

⁹ Panel Report, para. 2.8.

¹⁰ Panel Report, para. 2.9 (referring to Panel Exhibit US-19, p. 463).

¹¹ Panel Report, para. 2.11 (referring to Panel Exhibit US-23, p. 3).

¹² Panel Report, para. 2.50.

¹³ The parties agreed that the relevant international standard for purposes of this dispute was the OIE Code. (Panel Report, para. 7.206) The Panel found that, for the purposes of its examination of the United States' claim, the relevant edition of the OIE Code was the 21st edition, adopted in May 2012, because it was the edition that was in force at the time of Panel establishment. (Panel Report, para. 7.213)

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recommendations that, when correctly applied, provide for safe trade in animals and animal products while avoiding unjustified sanitary barriers to trade.¹⁴ OIE members are required to notify the OIE of any occurrence of HPAI and of certain types of LPAI in their territories.¹⁵ To this end, the OIE Code definition of "notifiable avian influenza" (NAI) covers both highly pathogenic notifiable avian influenza (HPNAI) and low pathogenicity notifiable avian influenza (LPNAI).¹⁶ Chapter 10.4 of the OIE Code¹⁷ contains recommendations specifically addressing infection with NAI viruses.¹⁸

1.6 The factual aspects of this dispute are set forth in greater detail in paragraphs 2.1 through 2.59 of the Panel Report, and section 4 of this Report.

1.7 The Panel sought advice from experts in this dispute, consisting of a written consultation with the OIE on the interpretation of the OIE Code, and a written and oral consultation with three independent experts on the AI surveillance regime with particular respect to India's surveillance regime for LPAI and its domestic disease situation.¹⁹ The Panel sent separate written questions to the OIE and to the three individual experts, taking into account suggested questions that the Panel had solicited from the parties to the dispute.²⁰ The Panel received written responses to its questions from the OIE and all three experts, and afforded the parties an opportunity to comment on the responses.²¹ The Panel also held a hearing with the three individual experts and the parties.²²

1.8 On 4 March 2013, India submitted a request for a preliminary ruling from the Panel concerning the consistency of the United States' panel request with Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).²³ India maintained that the United States' panel request was inconsistent with Article 6.2 because it failed to identify the specific measures at issue, and failed to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly in respect of the United States' claims under Articles 2.3, 5.5, and 5.6 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).²⁴ For these reasons, India requested the Panel to: (i) limit the United States' challenge of S.O. 1663(E) to the prohibition on importation of the ten categories of products expressly listed in paragraph 3 of the panel request from countries

¹⁴ Panel Report, paras. 2.53-2.54 and 2.56 (referring to the Foreword and User's Guide to the OIE Code, and the Rights and Obligations of OIE Members).

¹⁵ Panel Report, para. 2.13.

¹⁶ Panel Report, paras. 2.13-2.15.

¹⁷ World Organisation for Animal Health, *Terrestrial Animal Health Code*, 21st edn (May 2012), Vol. II, chapter 10.4 – Infection with Viruses of Notifiable Avian Influenza (Panel Exhibit US-1).

¹⁸ Panel Report, para. 2.59.

¹⁹ Panel Report, paras. 1.23-1.30.

²⁰ Panel Report, paras. 1.32-1.33.

²¹ Panel Report, paras. 1.32-1.34.

²² Panel Report, para. 1.36.

²³ Panel Report, para. 1.14.

²⁴ WT/DS430/5, para. 1.1.

reporting HPNAI and LPNAI; (ii) rule that related measures, implementing measures, orders, and expired measures were outside the Panel's terms of reference; and (iii) refrain from considering the substance of the United States' claims under Articles 2.3, 5.5, and 5.6 of the SPS Agreement.²⁵ The Panel gave the United States and the third parties an opportunity to comment in writing on India's request. After receiving comments from the United States and certain third parties with respect to India's request²⁶, the Panel issued a preliminary ruling to the parties on 22 May 2013 (Preliminary Ruling), and requested the Chair of the Dispute Settlement Body (DSB) to circulate this ruling to the DSB.²⁷

1.9 In the Preliminary Ruling, the Panel found the United States' panel request to be sufficiently precise in identifying S.O. 1663(E) as a specific measure at issue, "insofar as S.O. 1663(E) prohibits the importation of various agricultural products into India from those countries reporting NAI (both HPNAI and LPNAI)", and that the United States' challenge to such prohibition was not limited to "the listing of the products prohibited by S.O. 1663(E) in paragraph 3 of the panel request", but encompassed all products, the importation of which is prohibited from countries reporting NAI pursuant to S.O. 1663(E).²⁸ The Panel further concluded that the United States' panel request did not fail to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly in respect of the claims under Articles 2.3, 5.5, and 5.6 of the SPS Agreement.²⁹ More specifically, with respect to each of these claims, the Panel found that: (i) the United States was challenging the treatment of imports under India's AI measures with respect to both HPNAI and LPNAI³⁰; and (ii) the United States' challenge was not limited to the ten categories of products expressly mentioned in its panel request.³¹ The Panel rejected other aspects of India's challenge to the specificity and scope of the panel request, and, in certain respects, concluded that it was premature for it to make a determination on whether certain measures not specifically listed in the panel request were within the Panel's terms of reference.³²

1.10 On 31 May 2013, as part of its first written submission, India submitted a second request for a preliminary ruling from the Panel concerning the

²⁵ India's request for a preliminary ruling, para. 79.

²⁶ WT/DS430/5, paras. 1.3-1.4.

²⁷ The Preliminary Ruling was circulated as document WT/DS430/5 on 28 June 2013. (Panel Report, paras. 1.16 and 7.2. The Preliminary Ruling forms an integral part of the Panel Report. (*Ibid.*, para. 7.4))

²⁸ Panel Report, para. 7.3 (quoting Preliminary Ruling, para. 4.1); and para. 8.1.a.i-ii. See also Preliminary Ruling, paras. 3.36-3.37 and 3.66.

²⁹ Panel Report, para. 8.1.a.v. See also para. 7.3; and Preliminary Ruling, paras. 3.94, 3.124, and 3.141.

³⁰ Preliminary Ruling, paras. 3.91, 3.115, and 3.136.

³¹ Preliminary Ruling, paras. 3.93, 3.118-3.119, and 3.140.

³² Preliminary Ruling, para. 4.1. See also Panel Report, para. 7.3.

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consistency of the United States' panel request with Article 6.2 of the DSU.³³ India argued that the United States, in its first written submission, had raised claims concerning India's National Action Plan for 2012 (NAP 2012) and health certificate requirements for products listed in S.O. 1663(E), notwithstanding the fact that these measures were not mentioned in the United States' panel request.³⁴ India requested the Panel to rule that these measures and the claims relating to them were outside the Panel's terms of reference. The Panel included its ruling on these requests in its Report.³⁵ The Panel concluded that, as a measure that applies only to India's domestic agricultural products, the NAP 2012 does not fall within the scope of India's AI measures relating to import prohibitions on products from countries reporting NAI, as identified by the United States in its panel request. Accordingly, the Panel found that the NAP 2012 is not a measure at issue within the meaning of Article 6.2 of the DSU.³⁶ The Panel further concluded that the health certificates that accompany a sanitary import permit (SIP) were not identified in the United States' panel request and are therefore not measures at issue within the meaning of Article 6.2 of the DSU.³⁷

1.11 The United States requested that the Panel find that India's AI measures are inconsistent with India's obligations under Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.5, 5.6, 6.1, 6.2, 7, and certain provisions of Annex B to the SPS Agreement, and with Article XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994).³⁸

1.12 In the Panel Report, circulated to Members of the World Trade Organization (WTO) on 14 October 2014, the Panel found that:

- a. India's AI measures are inconsistent with Article 3.1 of the SPS Agreement because they are not "based on" the relevant international standard as set out in Chapter 10.4 of the OIE Code; and that India's AI measures are not entitled to benefit from the presumption of consistency, under Article 3.2 of the SPS Agreement, with other provisions of the SPS Agreement and of the GATT 1994 because these measures do not "conform to" the relevant international standard within the meaning of Article 3.2.³⁹
- b. India's AI measures are inconsistent with Articles 5.1 and 5.2 of the SPS Agreement because they are not based on a risk assessment, appropriate to the circumstances, taking into account

³³ Panel Report, paras. 1.17 and 7.5.

³⁴ Panel Report, para. 7.5 (referring to India's first written submission to the Panel, paras. 67-68).

³⁵ Panel Report, section 7.1.2.

³⁶ Panel Report, paras. 7.104.a and 8.1.b.i. The Panel denied India's request that the United States' claim under Article 2.3 of the SPS Agreement be set aside because the NAP 2012 was not identified in the United States' panel request. (*Ibid.*, paras. 7.105 and 8.1.b.iv)

³⁷ Panel Report, paras. 7.104.b and c and 8.1.b.ii-iii.

³⁸ Panel Report, para. 3.1.

³⁹ Panel Report, para. 8.1.c.ii.

- risk assessment techniques developed by the relevant international organizations and the factors set forth in Article 5.2; and, in the light of these findings, India's AI measures are also inconsistent with Article 2.2 of the SPS Agreement because they are not based on scientific principles and are maintained without sufficient scientific evidence⁴⁰;
- c. India's AI measures are inconsistent with Article 2.3, first sentence, of the SPS Agreement because they arbitrarily and unjustifiably discriminate between Members where identical or similar conditions prevail; and India's AI measures are inconsistent with Article 2.3, second sentence, of the SPS Agreement because they are applied in a manner which constitutes a disguised restriction on international trade⁴¹;
 - d. India's AI measures are inconsistent with Article 5.6 of the SPS Agreement because they are significantly more trade restrictive than required to achieve India's appropriate level of protection (ALOP) with respect to the products covered by Chapter 10.4 of the OIE Code; and, in the light of these findings, India's AI measures are also inconsistent with Article 2.2 of the SPS Agreement because they are applied beyond the extent necessary to protect human and animal life or health⁴²;
 - e. India's AI measures are inconsistent with Article 6.2, first sentence, of the SPS Agreement because they fail to recognize the concepts of disease-free areas and areas of low disease prevalence; and, in the light of these findings, India's AI measures are also inconsistent with: (i) Article 6.2, second sentence, of the SPS Agreement because the failure to recognize the concepts of disease-free areas and areas of low disease prevalence renders impossible a determination of such areas based on the factors enumerated in Article 6.2, second sentence; (ii) Article 6.1, first sentence, of the SPS Agreement because they are therefore not adapted to the SPS characteristics of the areas from which products originate and to which they are destined; and (iii) Article 6.1, second sentence, of the SPS Agreement because India has not taken into account factors including those specified in that provision⁴³;
 - f. India acted inconsistently with various provisions of Annex B to the SPS Agreement regarding the proposal, publication, and entry into force of S.O. 1663(E) and, in the light of these findings, that

⁴⁰ Panel Report, para. 8.1.c.iii-v.
⁴¹ Panel Report, para. 8.1.c.vi.
⁴² Panel Report, para. 8.1.c.vii-viii.
⁴³ Panel Report, para. 8.1.c.ix-x.

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India also acted inconsistently with Article 7 of the SPS Agreement.⁴⁴

1.13 In the light of the above findings, the Panel declined to rule on the United States' alternative or additional claims under Article 5.5 of the SPS Agreement and Article XI of the GATT 1994.⁴⁵ The Panel also declined to rule on the United States' claim pursuant to Annex B(5)(c) to the SPS Agreement because the United States had failed to make a *prima facie* case of violation thereof.⁴⁶ The Panel found that, pursuant to Article 3.8 of the DSU, to the extent that India has acted inconsistently with the specified provisions of the SPS Agreement, it has nullified or impaired benefits accruing to the United States under that Agreement.⁴⁷ The Panel recommended, pursuant to Article 19.1 of the DSU, that the DSB request India to bring its measures into conformity with its obligations under the SPS Agreement.⁴⁸

1.14 At a meeting held on 18 November 2014, the DSB adopted a decision to extend the time period for the adoption of the Panel Report to no later than 26 January 2015.⁴⁹ The DSB adopted this decision following a joint request by India and the United States, which was filed in view of the "current workload of the Appellate Body" and in order to "provide greater flexibility in scheduling any possible appeal of the panel report in this dispute".⁵⁰

1.15 On 26 January 2015, India notified the DSB, pursuant to Articles 16.4 and 17 of the DSU, of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel and filed a Notice of Appeal⁵¹ and an appellant's submission pursuant to Rule 20 and Rule 21, respectively, of the Working Procedures for Appellate Review⁵² (Working Procedures). On 13 February 2015, the United States filed an appellee's submission.⁵³ On 18 February 2015, Argentina, Australia, Brazil, the European Union, and Japan each filed a third participant's submission.⁵⁴ On the same day, Colombia, Ecuador, and Guatemala each notified its intention to appear at the oral hearing as a third participant.⁵⁵ On 16 March 2015, China and Viet Nam

⁴⁴ Panel Report, para. 8.1.c.xi-xvi.

⁴⁵ Panel Report, paras. 8.2 and 8.4.

⁴⁶ Panel Report, para. 8.3.

⁴⁷ Panel Report, para. 8.5.

⁴⁸ Panel Report, para. 8.6.

⁴⁹ The DSB decided that it would, no later than 26 January 2015, adopt the Panel Report unless: (i) the DSB decided by consensus not to do so; or (ii) either party to the dispute notified the DSB of its decision to appeal the Panel Report pursuant to Article 16.4 of the DSU. (WT/DSB/M/352, para. 6.5)

⁵⁰ WT/DS430/7.

⁵¹ WT/DS430/8 (attached as Annex 1 to this Report).

⁵² WT/AB/WP/6, 16 August 2010.

⁵³ Pursuant to Rule 22 of the Working Procedures.

⁵⁴ Pursuant to Rule 24(1) of the Working Procedures.

⁵⁵ Pursuant to Rule 24(2) of the Working Procedures.

also each notified the Secretariat of its intention to appear at the oral hearing as a third participant.⁵⁶

1.16 On 30 January 2015, India requested authorization, pursuant to Rule 18(5) of the Working Procedures, to correct a clerical error in paragraph 9 of its Notice of Appeal. The Appellate Body Division hearing this appeal provided the United States and the third participants with an opportunity to comment in writing on India's request. On 2 February 2015, the United States provided a letter stating that it had no objection to the correction of the clerical error identified by India, and the Division received no objections to India's request from the third participants. On that same date, the Division, pursuant to Rule 18(5) of the Working Procedures, authorized India to correct the clerical error in its Notice of Appeal.⁵⁷

1.17 On 30 January 2015, the Division received a letter from Australia requesting an extension of the deadline for the filing of the third participants' submissions in these proceedings. Australia noted that the deadline for the appellee's submission was on a Friday, and that the deadline for the third participants' submissions was on the following Monday. Observing that third participants would have only one working day to incorporate the appellee's arguments into their own written submissions, Australia requested that the deadline for the filing of the third participants' submissions be extended by two days. The Division provided the participants and other third participants with an opportunity to comment in writing on Australia's request. On 2 February 2015, comments were received from India, the United States, Japan, and Viet Nam. The Division received no objections to Australia's request. On that same date, the Division, noting that India had presented arguments in its appellant's submission concerning the Panel's understanding of Australia's risk assessment, quarantine measures, and position in this dispute, decided, pursuant to Rule 16 of the Working Procedures, to extend the deadline as requested by Australia.

1.18 The oral hearing in this appeal was held on 18-20 March 2015. The participants and five of the third participants (Argentina, Australia, Brazil, the European Union, and Japan) made opening oral statements. The participants and third participants responded to questions posed by the Members of the Appellate Body Division hearing the appeal.

1.19 By letter dated 25 March 2015, the Chair of the Appellate Body notified the Chair of the DSB that the Appellate Body would not be able to circulate its Report within the 60-day period stipulated in Article 17.5 of the DSU, or within the 90-day period pursuant to the same provision, and informed the Chair of the

⁵⁶ China and Viet Nam each submitted its delegation list for the oral hearing to the Appellate Body Secretariat and the participants and third participants in this dispute. For the purposes of this appeal, we have interpreted these actions as notifications expressing the intention of China and Viet Nam to attend the oral hearing pursuant to Rule 24(4) of the Working Procedures.

⁵⁷ The document circulated as WT/DS430/8 reflects the corrected version of India's Notice of Appeal.

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DSB that the Report in this appeal would be circulated no later than 4 June 2015.⁵⁸

2. ARGUMENTS OF THE PARTICIPANTS AND THIRD PARTICIPANTS

2.1 *Claims of Error by India – Appellant*

2.1.1 Articles 2.2, 5.1, and 5.2 of the SPS Agreement

2.1 India appeals the Panel's findings under Articles 2.2, 5.1, and 5.2 of the SPS Agreement. India requests the Appellate Body to reverse the Panel's finding that India's AI measures are inconsistent with Article 2.2 of the SPS Agreement because they are not based on scientific principles and are maintained without sufficient scientific evidence.⁵⁹ India also requests the Appellate Body to reverse the Panel's finding that India's AI measures are inconsistent with Articles 5.1 and 5.2 of the SPS Agreement because they are not based on a risk assessment, appropriate to the circumstances, taking into account risk assessment techniques developed by the relevant international organizations and the factors set forth in Article 5.2.⁶⁰

2.2 India maintains that the Panel erred in its interpretation and application of Article 2.2 of the SPS Agreement by failing to distinguish between Articles 2.2 and 5.1 of the SPS Agreement as independent legal provisions setting out distinct obligations. Although Article 5.1 constitutes a specific application of the basic obligation contained in Article 2.2, the "close link" between the two provisions does not mean that they are identical. A risk assessment under Article 5.1 is "a process characterized by systematic, disciplined and objective enquiry and analysis, that is, a mode of studying and sorting out facts and opinions"; by contrast, Article 2.2 focuses on the necessary link that must exist between an SPS measure and the relevant scientific principles and evidence.⁶¹ Articles 5.1 and 5.2 still require a link, but it is an indirect link because it rests on the requirement of a risk assessment. Thus, a Member can *either* base its SPS

⁵⁸ WT/DS430/9. The Chair of the Appellate Body explained that the Appellate Body faced a substantial workload in the first half of 2015, with several appeals proceeding in parallel, and that there was overlap in the composition of the Appellate Body Divisions hearing these different appeals during this period. The Chair added that, due to the scheduling issues arising from these circumstances and the number and complexity of the issues raised in this and concurrent appeal proceedings, together with the demands that these concurrent appeals place on the WTO Secretariat's translation services, the Appellate Body would not be able to circulate its report in this dispute within the timeframe provided for in Article 17.5 of the DSU.

⁵⁹ India's appellant's submission, para. 26 (referring to Panel Report, paras. 7.331-7.332) and para. 58.

⁶⁰ India's appellant's submission, para. 63 (referring to Panel Report, paras. 7.318-7.319).

⁶¹ India's appellant's submission, para. 17 (quoting Appellate Body Report, *Australia – Apples*, para. 207; and referring to Panel Report, *Australia – Apples*, para. 7.214).

measure on Article 2.2 by directly establishing a link between the SPS measure and the scientific principles and sufficient scientific evidence, *or*, alternatively, follow the process under Article 5.1 by conducting a risk assessment and, thus, also comply with Article 2.2. The Panel correctly identified that an SPS measure which does not comply with Articles 5.1 and 5.2 is presumed to be inconsistent with Article 2.2; however, the Panel incorrectly ignored that the obligations under Article 2.2 can also be independently fulfilled without resorting to Article 5.1. By equating Article 2.2 with Articles 5.1 and 5.2 in such a manner, the Panel rendered Article 2.2 redundant and thereby acted contrary to the customary principles of treaty interpretation, which require that each word in a treaty be given meaning and effect. Noting that it had based its defence on Article 2.2, India submits that the Panel should have started its analysis with Article 2.2 and not Article 5.1, given the United States' independent claim under Article 2.2 and India's defence thereto. India asserts that the Panel's approach resulted in shifting the burden of proof onto India to establish the WTO-consistency of its measures without first requiring the establishment of a *prima facie* case by the United States.

2.3 India also claims that the Panel failed to make an objective assessment of the matter, pursuant to Article 11 of the DSU, by disregarding India's arguments and evidence that sought to establish that India's AI measures are based on scientific principles and are not maintained without sufficient scientific evidence, as required by Article 2.2 of the SPS Agreement. India recalls the three-pronged argument that it made before the Panel, namely that: (i) in the event India's AI measures are found to be consistent with Article 3.1 and/or Article 3.2 of the SPS Agreement, this would satisfy the requirements under Article 2.2; (ii) various scientific studies and a risk assessment conducted by Australia established that India's AI measures are based on scientific principles and are not maintained without sufficient evidence; and (iii) similar import restrictions upon occurrence of HPNAI and/or LPNAI as maintained by many other countries established that the risk was well founded. India argues that the Panel did not come to a reasoned conclusion on the basis of an objective assessment of these facts and evidence but, instead, limited its analysis under Article 2.2 to a single paragraph in the Panel Report. In India's view, this shows that the Panel disregarded India's arguments and evidence and failed to analyse the United States' claim under Article 2.2.

2.4 Furthermore, India highlights that its second and third arguments pursuant to Article 2.2 were made in the alternative, and that the Panel should have analysed them once it found that India's AI measures are inconsistent with Articles 3.1 and 3.2. These arguments were critical to India's defence, as they sought to establish the consistency of India's measures with Article 2.2. The Panel did not analyse any of the scientific studies provided by India, and gave no reason for disregarding this evidence. In doing so, the Panel not only failed to