visits to Japan, as well as conducting analyses of the samples of fish and sea water collected in Japan.\textsuperscript{1407} Korea explains that this Korean/Civilian Expert Group suspended its work when Japan requested consultations with Korea in this dispute.\textsuperscript{1408} It further adds that Japan’s request was discussed between the two parties in a bilateral meeting in March 2015.\textsuperscript{1409}

7.518. Firstly, the Panel is of the view that other bilateral avenues of communication cannot replace or excuse compliance with Annex B(3). Secondly, the Panel notes that Korea – in certain portions of its submissions – contests that the Korean/Civilian Expert Group is even related to the Government and that its work has no bearing on Korea’s compliance with its obligations.\textsuperscript{1410} Moreover, the Korea's SPS Enquiry Point never informed Japan that its reply would be delayed because it was awaiting the results of the Korean/Civilian Expert Group's work. Instead, Korea's SPS Enquiry Point simply ceased communicating with Japan. Thus, the Panel does not find this explanation availing. The Panel also does not agree with Korea that once consultations in this dispute had begun it no longer had an obligation to answer Japan’s request. The beginning of dispute settlement procedures, particularly the consultations phase, does not require the freezing of the status quo and should not excuse non-compliance with obligations. Indeed, one way to avoid moving forward in the dispute settlement process is for a Member to comply with its WTO obligations.

7.519. Although the initial response in August 2014 was not sufficient on its own to establish an inconsistency with Annex B(3), because Korea's SPS Enquiry Point simply did not respond at all to Japan's second query, the Panel concludes that Korea's SPS Enquiry Point did not comply with the obligation in Annex B(3).

7.10.3.3 Conclusion on Article 7 and Annex B(3)

7.520. The Panel reiterates that according to Annex B(3), the SPS enquiry point is responsible to provide answers to all reasonable questions and provide relevant documents. Compliance with Annex B(3) and Article 7 is achieved not only through the formality of creating an enquiry point, but also through providing answers to reasonable questions and the provision of relevant documents. That being said, the Panel also recognizes that correspondence between an enquiry point and an interested Member is an iterative process. Hence, the incompleteness of an answer or a failure to provide a particular document within a response is not necessarily enough to establish an inconsistency with Annex B(3). For example, in the context of this dispute, if the Panel were examining Korea's SPS Enquiry Point's response to Japan's first request in isolation, there would be insufficient evidence to establish an inconsistency. However, the Panel finds that based on both Korea's SPS Enquiry Point's failure to respond at all to Japan's second query and its earlier failure to relate the answers and documents provided to their relevance for the questions Japan had posed, Japan has established that Korea acted inconsistently with the obligation in Annex B(3), and as a consequence Article 7 of the SPS Agreement.

8 FINDINGS AND RECOMMENDATION(S)

8.1. The panel finds that Korea’s measures – the 2011 additional testing requirements, the 2012 product-specific import bans on Alaska pollock and Pacific cod from five prefectures, the 2013 additional testing requirements, and the 2013 blanket import ban – are SPS measures within the meaning of Article 1.1 and Annex A(1)(b) of the SPS Agreement and thus, are subject to the obligations therein. Furthermore, the Panel finds that the measures do not fulfil the four requirements in Article 5.7. The Panel has made the following findings on Japan’s specific requests.

8.2. With respect to the obligation not to establish or maintain SPS measures in a manner that is more trade-restrictive than required to achieve their appropriate level of protection:

\begin{itemize}
  \item a. Korea's 2011 additional testing requirements and 2012 product-specific import bans were not more trade-restrictive than required when adopted.
\end{itemize}

\textsuperscript{1407} Korea's response to Panel question No. 11.
\textsuperscript{1408} Korea's response to Panel question No. 11.
\textsuperscript{1409} Korea's response to Panel question No. 86(b).
\textsuperscript{1410} Korea's response to Panel question No. 11.
b. The Panel finds that, at the time of the establishment of the Panel, the 2011 additional testing requirements and 2012 product-specific import bans were maintained in a manner inconsistent with Article 5.6 of the SPS Agreement because they were more trade-restrictive than required.

c. The Panel finds that the 2013 additional testing requirements were adopted and maintained in a manner inconsistent with Article 5.6 of the SPS Agreement because they were and are more trade-restrictive than required.

d. The Panel finds that the blanket import ban (with the exception of the ban on Pacific cod originating from Fukushima and Ibaraki) was adopted in a manner inconsistent with Article 5.6 of the SPS Agreement because it was more trade-restrictive than required.

e. The Panel finds that the blanket import ban with respect to all 28 fishery products from all 8 prefectures is maintained in a manner inconsistent with Article 5.6 of the SPS Agreement because it is more trade-restrictive than required.

8.3. With respect to the basic obligation in Article 2.3 for Members to ensure that their SPS measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail and to not apply SPS measures in a manner which would constitute a disguised restriction on international trade:

a. The Panel finds that the 2013 additional testing requirements and the blanket import ban with respect to the 27 fishery products subject to Japan's claim from the 8 prefectures and Pacific cod from 6 prefectures, i.e. excluding Pacific cod from Fukushima and Ibaraki, were inconsistent with Article 2.3, first sentence of the SPS Agreement and, as a consequence, with Article 2.3, second sentence, when Korea adopted them.

b. The Panel finds that, by maintaining the product-specific and blanket import bans on the 28 fishery products from the 8 prefectures and the 2011 and 2013 additional testing requirements on Japanese products, Korea acted inconsistently with Article 2.3, first sentence of the SPS Agreement and, as a consequence with Article 2.3, second sentence.

c. The Panel exercises judicial economy with regard to the other grounds raised by Japan for inconsistency of Korea's measures with Article 2.3, second sentence.

8.4. With respect to the obligations in Article 8 and Annex C with respect to the operation of control, inspection and approval procedures, the Panel finds that Japan has failed to establish that Korea acted inconsistently with the provisions of Annex C(1), subparagraphs (a), (c), (e) and (g) and, as a consequence, with Article 8 of the SPS Agreement in respect of the adoption and maintenance of the 2011 and the 2013 additional testing requirements.

8.5. With respect to the transparency obligations in Article 7 and Annex B:

a. The Panel finds that Korea has acted inconsistently with Annex B(1), and as a consequence Article 7 of the SPS Agreement, with respect to the publication of all of the challenged measures.

b. The Panel finds that Korea's SPS Enquiry Point's failure to respond at all to Japan's follow-up request in conjunction with its earlier failure, is sufficient to establish that Korea acted inconsistently with the obligation in Annex B(3) and as a consequence Article 7 of the SPS Agreement.

8.6. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel finds that, to the extent that the measures at issue are inconsistent with Articles 5.6, 2.3, 7 and Annex B(1) and B(3) of the SPS Agreement, they have nullified or impaired benefits accruing to Japan under that agreement.

8.7. Pursuant to Article 19.1 of the DSU, the Panel recommends that Korea bring its measures into conformity with its obligations under the SPS Agreement.