

**JAPAN'S PROPOSED SANITARY REGULATION ON AMENDMENT  
OF ENFORCEMENT ORDINANCE OF THE PLANT PROTECTION LAW  
(G/SPS/N/JPN/37)**

Submission by the United States

1. On 23 July 1998, the Government of Japan notified the WTO of its proposed legislative changes entitled "Amendment of Enforcement Ordinance of the Plant Protection Law" (G/SPS/N/JPN/37). Japan's proposed legislative changes, based on phytosanitary considerations, have implications for trade in fruits and vegetables.

2. The United States provided written comments regarding Japan's proposed legislative changes to Japan's official Enquiry Point. While we are encouraged by certain aspects of Japan's proposal, we continue to have concerns regarding the basis and application of Japan's phytosanitary legislation.

3. In particular, Japan's legislative amendment does not appear to alter their current practice of requiring quarantine action for most non-quarantine pests (i.e., pests which are widespread in Japan). The amended legislation fails to address Japan's current practice of requiring fumigation and other costly treatments for imported commodities found with intercepted pests even though these same pests occur in Japan and are not subject to internal regulatory or quarantine controls.

Designating Quarantine Pests

4. Japan's proposed amendment to its Plant Protection Law adds 27 pests to the list of non-quarantine pests in their regulations. These additional pests, when intercepted on commodities arriving in Japan, will no longer be subject to quarantine measures. Currently, the Japanese regulations identify only 36 pests, mostly common storage pests, as non-quarantine pests.

5. Under Japan's current system, if any plant pest, other than those designated as non-quarantine pests, is found on imported plant products, quarantine action such as fumigation or destruction is required. However, many of these intercepted pests occur in Japan, and are widely distributed in that country. Under the International Plant Protection Convention (IPPC), a pest that is widely distributed in a country is not considered a quarantine pest unless official controls are in place to eliminate the pest or prevent its movement into uninfested areas.

6. The United States is encouraged by the Japanese government's effort to identify non-quarantine pests. Many pests intercepted by Japan's plant health inspectors on US commodities are widely distributed in Japan. However, many of these pests have not been included in the official list of non-quarantine pests. Moreover, interceptions of such pests result in more costly quarantine actions and measures than those applied domestically to control the same pests.

7. Instead of determining that these are not quarantine pests, based on the distribution of these pests in Japan, and releasing the cargo, Japan requires quarantine action for any pest not included on

the list of non-quarantine pests. This action severely limits trade between the United States and Japan for US lettuce, and requires unnecessary treatment of other products, including citrus, asparagus and broccoli. The lettuce, in particular, is greatly damaged by the treatments.

8. On 22 April 1998, the United States requested that Japan assess the status of ten plant pests that are commonly intercepted on US exports and which occur widely in Japan. Japan has failed to designate any of these pests as non-quarantine pests. Japan indicated that they consider the pests mentioned in our letter as quarantine pests because they are being "officially controlled". When questioned, Japanese quarantine officials said that official control consisted of the Japanese government providing information to farmers concerning the timing and size of pest appearances and outbreaks, and advice concerning control.

9. The United States does not believe that government activities, such as extension efforts that simply provide information and advice to farmers, constitute an official control program or that they can be used as the rationale for requiring costly quarantine controls imposed on imported commodities. In this regard, Japan's interpretation of "official control" is inconsistent with the meaning and intent of the IPPC definition. Furthermore, such action is discriminatory because imported products are subject to inspection and treatment while the domestic products, with the same pests, are not.

#### Conclusion

10. Japan's quarantine actions regarding non-quarantine pests, in many instances, unjustifiably discriminate against foreign imports. In considering final amendments to its plant health legislation, we urge Japan to re-evaluate its basis for defining and taking action on quarantine pests in accordance with the intent of relevant IPPC definitions and principles, including the IPPC definition of a "quarantine pest" and principle of "non-discrimination" (i.e., "... In the case of a quarantine pest within a country, measures shall be applied without discrimination between domestic and imported consignments.").

11. In addition, Japan's practice of imposing quarantine measures against all pests, if they have not been officially designated as non-quarantine pests by Japan's plant health authorities, raises the question of whether such measures are based on a pest risk assessment. While Japan's limited list of non-quarantine pests seems to be developed from a pest risk assessment procedure, Japan, nonetheless, maintains phytosanitary measures on numerous other pests without regard to the actual pest risk.

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