

**AMENDMENT OF ENFORCEMENT ORDINANCE OF
THE PLANT PROTECTION LAW (G/SPS/N/JPN/37)**

Statement by the European Communities
at the meeting of 11-12 November 1998

1. The above-mentioned notification concerning a list of non-quarantine pests was issued 23 July 1998, with a period for comment expiring 30 September 1998. With this proposal the Ministry of Agriculture, Forestry and Fisheries of Japan intends to list additional non-quarantine pests which are not subject to quarantine measures under the Enforcement Ordinance of the Plant Protection Law. The European Communities understands from Article 5(2) of this Law that all the pests which are not included in the relevant list are considered by the Japanese authorities as quarantine pests.
 2. The failure to include in the list non-harmful pests which are of general occurrence also in Japan leads regularly to products being either refused or submitted to lengthy treatment at considerable expense. This is apparently in breach of Article 2.3 of the SPS Agreement, that requires Members not to discriminate between their own territory and that of other Members, should identical or similar conditions prevail.
 3. Furthermore, Japan has established an exemption list of pests rather than a list of quarantine pests with identified risks and this approach does not appear to be in conformity with provisions of the SPS Agreement. Article 2.2 of the SPS Agreement stipulates that Members shall ensure that phytosanitary measures are applied only to the extent necessary to protect plant life or health, are based on scientific principles and are not maintained without sufficient scientific evidence.
 4. In addition, Article 3.1 of the SPS Agreement requires Members to base their measures on international standards, guidelines or recommendations where they exist. Japan indicates that international standards on which to base the relevant evaluation do not exist. However, it maintains that the relevant proposal has been developed according to guidelines for Pest Risk Analysis. Presumably, Japan refers to the relevant IPPC guidelines.
 5. In accordance with Article 5.8 of the SPS Agreement, the European Communities would be grateful to receive the scientific rationale behind the measure and the documents concerning the risk analysis carried out.
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