

JAPAN - MEASURES AFFECTING THE IMPORTATION OF APPLES

Confirmed Procedures between Japan and the United States
under Articles 21 and 22 of the DSU

The following communication, dated 30 June 2004, from the delegation of Japan and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

**Confirmed Procedures
between Japan and the United States
under Articles 21 and 22
of the Dispute Settlement Understanding
in the follow-up to the dispute in
Japan – Measures Affecting the Importation of Apples
(WT/DS245)**

The Panel and Appellate Body reports in the WTO dispute *Japan – Measures Affecting the Importation of Apples* (WT/DS245/R and WT/DS245/AB/R) between Japan and the United States were adopted by the Dispute Settlement Body (DSB) on 10 December 2003.

On 30 January 2004, pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Japan and the United States agreed on the reasonable period of time for implementation of the DSB's recommendations and rulings (WT/DS245/9) ("reasonable period of time"). According to the terms of the 30 January 2004 agreement, the reasonable period of time expires on 30 June 2004.

In response to the DSB's recommendations and rulings, Japan has undertaken certain measures replacing the measures found to be inconsistent with Japan's obligations under the WTO Agreement.

Japan and the United States (the "parties") have confirmed the following procedures:

1. After the expiration of the reasonable period of time, should the United States consider that the situation described in DSU Article 21.5 exists, it is confirmed that the United States will be entitled to request the establishment of a panel pursuant to DSU Article 21.5 (the "Article 21.5 compliance panel").

2. At the first DSB meeting at which the United States' request for the establishment of an Article 21.5 compliance panel appears as an item on the agenda, Japan will accept the establishment of that panel.
3. The parties will cooperate to enable the Article 21.5 compliance panel to circulate its report within 90 days of the panel's composition, excluding such time as the panel's work may be suspended pursuant to DSU Article 12.12.
4. The United States may request authorization to suspend concessions or other obligations pursuant to DSU Article 22.2 simultaneously with or after any United States request for the establishment of a panel pursuant to paragraph 1.
5. Under DSU Article 22.6, Japan will object to the level of suspension of concessions or other obligations and/or make a claim under DSU Article 22.3 before the date of the DSB meeting considering the United States' request and the matter will be referred to arbitration pursuant to DSU Article 22.6. The United States will not pose any objection to the referral of the matter to such arbitration.
6. Where the matter has been referred to Article 22.6 arbitration, the parties will request the Article 22.6 arbitrator, at the earliest possible moment, to suspend its work until the adoption of the Article 21.5 compliance panel report.
7. In the event that the DSB finds that the measures taken by Japan to comply with the recommendations and rulings of the DSB are inconsistent with the covered agreements as referred to in the Article 21.5 compliance panel request, the Article 22.6 arbitrator will automatically resume its work. The parties will cooperate to enable the Article 22.6 arbitrator to circulate its report within 60 days of the resumption of its work.
8. In the event that the DSB finds that the measures taken by Japan to comply with the recommendations and rulings of the DSB are not inconsistent with the covered agreements as referred to in the Article 21.5 compliance panel request, the United States will withdraw its request under DSU Article 22.2, thereby terminating the arbitration procedure.
9. The parties will cooperate to facilitate the participation of the original panelists in the Article 21.5 compliance panel and the Article 22.6 arbitration.
10. If any of the original panelists are not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration, or both, the parties will request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings in which such a replacement is required. If an original panelist is unavailable to serve in the either proceeding, the parties will further request that in making this appointment, the Director-General seek a person who will also be available to act in both proceedings.
11. Should the Article 21.5 compliance panel determine that the participation of experts is necessary, and should the panel consider the participation of the original experts appropriate, the parties will not object to the participation of the original experts.
12. The parties will continue to cooperate in all matters related to these confirmed procedures and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties consider that a procedural aspect has not been properly addressed, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps herein confirmed.

13. These confirmed procedures do not prejudice either party's rights to take any action or procedural step to protect its rights or interests, including the activation of any aspect of the provisions of the DSU.

Geneva, 30 June 2004

For Japan:

(signed)
H.E. Mr. Shotaro Oshima
Ambassador
Permanent Representative
Permanent Mission of Japan

For the United States:

(signed)
H.E. Ms Linnet F. Deily
Ambassador
Permanent Representative
Permanent Mission of the United States
