

JAPAN – MEASURES AFFECTING THE IMPORTATION OF APPLES

Recourse to Article 22.2 of the DSU by the United States

The following communication, dated 19 July 2004, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the United States requests authorization from the Dispute Settlement Body ("DSB") to suspend concessions and other obligations with respect to Japan under the covered agreements at a level of US \$ 143.4 million on an annual basis. This level of suspension is equivalent to the level of nullification or impairment of benefits accruing to the United States that results from Japan's failure to bring its phytosanitary measure concerning imported US apples into compliance, by 30 June 2004, with the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement") or to otherwise comply with the recommendations and rulings of the DSB in *Japan - Measures Affecting the Importation of Apples* (WT/DS245).

On 3 June 2002, the DSB established a panel at the request of the United States to examine Japan's phytosanitary measure concerning imported US apples. Both the Panel and the Appellate Body in this dispute found Japan's measure to be inconsistent with its obligations under the SPS Agreement. On 10 December 2003, the DSB adopted the Appellate Body report and the report of the Panel, as upheld by the Appellate Body report. The DSB recommendations and rulings include, *inter alia*, the recommendation that Japan bring its measure into conformity with its obligations under the SPS Agreement (WT/DS245/8; WT/DS245/AB/R, para. 244; WT/DS245/R, para. 9.3).

Pursuant to Article 21.3(b) of the DSU, the United States and Japan agreed that the reasonable period of time for Japan to implement the DSB's recommendations and rulings would expire on 30 June 2004 (WT/DS245/9). In the view of the United States, Japan failed to comply with the recommendations and rulings of the DSB by the end of the reasonable period of time. Therefore, the United States is entitled to redress under Article 22 of the DSU.

In considering what concessions to suspend, the United States followed the principles and procedures set forth in Article 22.3 of the DSU. As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the level of nullification or impairment of benefits accruing to the United States resulting from Japan's failure to bring its measure into compliance or otherwise comply with the DSB's recommendations and rulings.

The suspension of concessions and other obligations would occur in one or more of the following:

1. tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994* on a list of products to be drawn from the list attached to this request;
2. concessions and other obligations under the SPS Agreement; and
3. concessions and other obligations under the *Agreement on Agriculture*.

ATTACHMENT

Note: The product descriptions supplied below for the items of the Harmonized Tariff Schedule of the United States (HTSUS) are only for the convenience of the reader and are not intended to delimit in any way the scope of the products contained in the chapter specified.

Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates
Chapter 4	Dairy produce; birds eggs; natural honey; edible products of animal origin, not elsewhere specified or included
Chapter 5	Products of animal origin, not elsewhere specified or included
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of certain fruit or melons
Chapter 9	Coffee, tea, mate and spices
Chapter 10	Cereals
Chapter 11	Products of milling industry; malt, starches, inulin, wheat gluten
Chapter 12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder
Chapter 13	Lac; gums, resins and other vegetable saps and extracts
Chapter 14	Vegetable plaiting materials; vegetable products not elsewhere specified or included
Chapter 15	Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes
Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
Chapter 17	Sugars and sugar confectionery
Chapter 18	Cocoa and cocoa preparations
Chapter 19	Preparations of cereals, flour, starch or milk; bakers' wares
Chapter 20	Preparations of vegetables, fruit, nuts or other parts of plants
Chapter 21	Miscellaneous edible preparations
Chapter 22	Beverages, spirits and vinegar
Chapter 23	Residues and waste from the food industries; prepared animal feed
Chapter 24	Tobacco and manufactured tobacco substitutes
Chapter 33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations
Chapter 35	Albuminoidal substances; modified starches; glues; enzymes
Chapter 38	Miscellaneous chemical products
Chapter 41	Raw hides and skins (other than fur skins) and leather
Chapter 42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)
Chapter 43	Furskins and artificial fur; manufactures thereof
Chapter 44	Wood and articles of wood; wood charcoal
Chapter 45	Cork and articles of cork
Chapter 46	Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork
Chapter 50	Silk
Chapter 51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric
Chapter 52	Cotton