

**JAPAN – MEASURES AFFECTING THE IMPORTATION OF APPLES**

Statement by Japan

The following statement received from the delegation of Japan in relation to the adoption by the Dispute Settlement Body, at its meeting on 20 July 2005, of the report of the Panel in *Japan – Measures Affecting the Importation of Apples: Recourse to Article 21.5 of the DSU by the United States* (WT/DS245/RW), is circulated at the request of that delegation.

First of all, Japan would like to express its gratitude to the Panel as well as to the Secretariat for their efforts in tackling the highly technical and complex issues of a scientific nature involved in this case, in order to review Japan's measures which were the subject of this dispute.

Regrettably, the Panel found that Japan's revised phytosanitary measures at issue were inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). This ultimate finding of the Panel was more than disappointing to Japan.

The Panel imposed on Japan a very heavy burden of proof. In this proceeding, Japan presented its new scientific studies on fire blight bacteria, which were conducted under the proximate ecological condition. These studies demonstrate that mature, symptomless apples can harbour endophytic bacteria and that the pathway of transmission could be completed from a discarded infested or infected apple to a host plant, which would then lead to the establishment and spread of fire blight disease. These studies, proximate to the highest degree, had to be done in a laboratory, in order to prevent a potential risk of fire blight bacteria from accidentally spreading to the unique, fire blight-free natural conditions of Japan. Contrary to Japan's argument, however, the Panel, based on the opinion of the experts, ruled that these new studies did not provide sufficient scientific evidence to establish the risk of fire blight in *natural* conditions.

Elsewhere, in relation to Article 5.6 of the SPS Agreement, the Panel concluded that "the requirement that apples imported into Japan be mature and symptomless is an alternative measure that is reasonably available taking into account technical and economic feasibility". In this regard, Japan argued before the Panel that the United States export control could involve a human error and thus was not 100 per cent reliable as demonstrated by the presence of codling moth in shipments to Chinese Taipei. The Panel again did not value this argument.

Nevertheless, we would like to emphasize the fact that the Panel did not reject all the elements of Japan's revised phytosanitary measures. Significantly the Panel confirmed that Japan would be entitled to verify that only mature, symptomless apples would be actually exported to Japan from the United States.

Although we are bound to note our disappointment with the Panel's findings, Japan decided not to appeal and accept that this Report of the Panel will be adopted today. Japan has always emphasized the importance of the proper functioning of the DSU and the faithful implementation of the recommendations and rulings of the DSB. Once adopted, in view of the gravity of its obligation, Japan will sincerely address the implementation of the DSB's recommendations and rulings in a manner consistent with Japan's obligations under the WTO Agreements. Likewise we hope that other Members commit themselves to enhance the integrity of the WTO dispute settlement system.

In this regard, Japan would like to inform the DSB that it has been engaging in close consultations with the United States to explore ways to secure compliance in a mutually acceptable manner. In order to allow this process to continue and to yield a satisfactory solution, Japan and the United States have agreed to suspend the arbitration under Article 22.6 of the DSU until 31 August 2005. Japan and the United States submitted the joint request to this effect to the Chairman of the Arbitrator on 18 July.

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