WORLD TRADE ORGANIZATION

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JAPAN – MEASURES AFFECTING THE IMPORTATION OF APPLES

Request for the Establishment of a Panel by the United States

The following communication, dated 7 May 2002, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Japan currently maintains measures restricting the importation of US apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. These restrictions include: the prohibition of imported apples from US states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those apples for other destinations. The means through which Japan maintains these restrictions include the Plant Protection Law (Law No. 151; enacted 4 May 1950), as amended; the Plant Protection Regulations (Ministry of Agriculture, Forestry, and Fisheries Ordinance No. 73; enacted 30 June 1950), as amended; Ministry of Agriculture, Forestry and Fisheries Notification No. 354 (dated 10 March 1997); and related detailed rules and regulations, including Ministry of Agriculture, Forestry, and Fisheries Circular 8103.

These measures appear to be inconsistent with the commitments and obligations of Japan under Article XI of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 4.2 of the *Agreement on Agriculture*, and Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.5, 5.6, 6.1, 6.2 and 7 and paragraphs 5, 6 and 8 of Annex B of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement). Japan's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

On 1 March 2002, the United States requested consultations with Japan regarding these measures pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of the GATT 1994, Article 11 of the SPS Agreement, and Article 19 of the Agreement on Agriculture (WT/DS245/1). Consultations were held on 18 April 2002, but have failed to resolve the matter.

Accordingly, the United States respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU, with standard terms of reference as set out in Article 7.1 of the DSU.
