

JAPAN – MEASURES AFFECTING THE IMPORTATION OF APPLES

Notification of an Appeal by Japan
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 28 August 2003, sent by Japan to the Dispute Settlement Body (the "DSB"), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review, Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on Japan-Measures Affecting the Importation of Apples (WT/DS245/R, dated 15th July 2003) and certain legal interpretations developed by the Panel.

Japan seeks review by the Appellate Body of the conclusions of the Panel that Japan's phytosanitary measure on the United States apples is inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations. The Appeal relates to the following issues:

1. The Panel erred in law in finding that Japan acted inconsistently with its obligations under Article 2.2 of the SPS Agreement. This finding reflects the Panel's erroneous interpretation of the rule of burden of proof, and the Panel's failure to make an objective assessment of the matter before it under Article 11 of the DSU.
 2. The Panel erred in law in finding that Japan's phytosanitary measure was inconsistent with the requirements under Article 5.7 of the SPS Agreement. This finding is based on an erroneous interpretation of the requirements under Article 5.7.
 3. The Panel erred in law in finding that Japan's phytosanitary measure was not based on a risk assessment within the meaning of Article 5.1 of the SPS Agreement. This finding is based on an erroneous interpretation of the requirements of a risk assessment under Article 5.1.
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