

Japan – Measures Affecting the Importation of Apples (WT/DS245)
Recourse by the United States to Article 21.5 of the DSU

**Closing Statement of the United States
at the Substantive Meeting of the Panel**

October 28, 2004

1. Mr. Chairman, members of the Panel, the United States thanks you for your time in hearing this dispute. In closing, the United States hopes to focus this dispute to the following issues: (1) that mature symptomless apple fruit is an objective product specification; and (2) that the United States ships only mature symptomless apple fruit. Mature symptomless apple fruit will not harbor endophytic bacteria or be infected with fire blight; mature symptomless apple fruit will not be infested with populations of bacteria capable of transmitting fire flight; and the pathway for the introduction of fire blight will not be completed. In short, mature symptomless apple fruit, the commodity exported by the United States, does not pose a risk of introducing fire blight into Japan.
2. Japan attempts to show that a risk exists through two arguments. The first argument is that U.S. quality controls will fail. Despite the opportunity to do so in its written submission and oral statement, Japan has failed to demonstrate that there is a risk that this will occur. In short, as noted by the United States, there is no evidence that we have exported anything other than mature symptomless apple fruit.
3. The second argument is that there is such a thing as mature symptomless but latently infected apple fruit. Japan's new studies do not demonstrate that such a commodity exists under real world or orchard conditions.
4. Further on a procedural note, Japan has indicated that it intends to submit new evidence

in its answers to Panel questions. The United States is surprised that Japan intends to provide evidence at this late date. The Working Procedures are clear that evidence should be provided no later than during the substantive meeting. We are also surprised that Japan would submit its new scientific evidence in response to questions that do not yet exist. Responses to questions do not grant Japan *carte blanche* to provide new evidence. Japan should appreciate the Working Procedures in this context.

5. In addition, we would request that the Panel provide a date on which the parties will provide comments to each other's answers.

6. Also, the United States respectfully requests, pursuant to its preliminary ruling request, that the Panel find that Japan's Operational Criteria are neither a measure nor a measure taken to comply for purposes of this Article 21.5 proceeding.

7. In conclusion, it is clear that Japan's onerous revised measures are maintained in breach of Articles 2.2, 5.1, and 5.6 of the SPS Agreement.