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**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/DS-245]

**WTO Dispute Settlement Proceeding
Regarding Japanese Measures
Affecting the Importation of Apples**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on July 30, 2004, at the request of the United States, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) established a dispute settlement panel under the Marrakesh Agreement Establishing the WTO to examine whether Japan has implemented the recommendations and rulings of the DSB in a dispute involving Japanese phytosanitary measures restricting the importation of U.S. apples. Japan justifies the measures as relating to the plant disease fire blight and the fire blight-causing organism, *Erwinia amylovora*. On December 10, 2003, the DSB adopted the findings of the panel and Appellate Body in this proceeding, which found that Japan's apple import regime was maintained in breach of various provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). Japan issued revised measures on June 30, 2004 in response to the DSB's recommendations and rulings. The United States subsequently requested the establishment of the dispute settlement panel because it believes that Japan's revised measures do not comply with the DSB's recommendations and rulings or the SPS Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 1, 2004 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0438@ustr.gov, Attn: "Japan Apples" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Jay T. Taylor, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. § 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. If a dispute settlement panel is established pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within approximately three months of the date it is established.

Prior WTO Proceedings

On December 10, 2003, the WTO DSB adopted the reports of a dispute settlement panel and the WTO Appellate Body in a dispute brought by the United States challenging Japanese phytosanitary restrictions on the import of U.S. apples in connection with fire blight or the fire blight-causing organism, *Erwinia amylovora*. The panel found, and the Appellate Body confirmed, that Japan's restrictions were not consistent with its obligations under the SPS Agreement. The DSB recommended that Japan revise its measure accordingly. The dispute settlement panel and Appellate Body reports are publicly available in the USTR reading room and on the WTO Web site <http://www.wto.org>.

Article 21.5 Proceeding

The United States and Japan agreed that Japan would have until June 30, 2004 as the reasonable period of time to implement the DSB's recommendations and rulings. The United States and Japan met several times during that period in an attempt to reach an agreement regarding Japan's restrictions on U.S. apples, but were unable to agree on a satisfactory result. Japan issued revised measures on June 30, which the United States believes fail to comply with the DSB's recommendations and rulings and the SPS Agreement. Accordingly, the United States requested the establishment of an Article 21.5 compliance panel to determine the WTO-consistency of Japan's revised measures. The DSB established the panel on July 30, 2004.

The European Communities, New Zealand, Chinese Taipei, and Australia have indicated their interest to

participate in the dispute as third parties.

Japan's new measures retain almost all of the phytosanitary restrictions of the original measure, which was found by the Appellate Body and Panel to be inconsistent with Japan's obligations under the SPS Agreement. The restrictions include: the prohibition of imported apples other than those produced in designated orchards in the U.S. States of Washington and 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 in a "buffer zone" surrounding the orchard; the requirement that export orchards be inspected 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 the interior of the packing facility; post-harvest separation of apples for export to Japan from those apples for other destinations; a requirement that U.S. plant protection officials certify or declare that the apples are free of quarantine pests, not infested/infested with fire blight, and have been treated with chlorine; and a requirement that Japanese officials confirm that the certification, orchard designation and chlorine treatment have been properly administered and inspect the disinfestation and packing facilities. The United States believes that Japan's revised measures are inconsistent with Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.5, 5.6, 6.1 and 6.2 of the SPS Agreement, Article XI of the *General Agreement on Tariffs and Trade 1994* and Article 4.2 of the *Agreement on Agriculture*.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395-3640, or transmit a copy electronically to FR0438@ustr.gov, with "Japan Apples (DS245)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover

letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter.

Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of each page of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS-245, Japan—Apples) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 30, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2004-18732.

Date Filed: July 26, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA-EUR Fares 0091 dated 27 July 2004. Resolution 015h—USA Add-ons between USA and UK. Intended effective date: 1 October 2004.

Docket Number: OST-2004-18762.

Date Filed: July 29, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1165 dated 30 July 2004. Composite Expedited Resolutions 024d and 024e r1-r2. Intended effective date: 1 September 2004.

Docket Number: OST-2004-18763.

Date Filed: July 29, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1166 dated 30 July 2004. Composite Expedited Resolution 002tt r4. Intended effective date: 1 November 2004.

Docket Number: OST-2004-18767.

Date Filed: July 30, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0576 dated 30 July 2004. Mail Vote 399—Resolution 010q. TC2 Within Europe, Europe-Africa, Europe-Middle East Special. Passenger Amending Resolution from Algeria r1. Intended effective date: 15 August 2004.

Docket Number: OST-2004-18768.

Date Filed: July 30, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-AFR 0207 dated 30 July 2004. Mail Vote 399—Resolution 010q. TC2 Within Europe, Europe-Africa, Europe-Middle East Special. Passenger Amending Resolution from Algeria r1. Intended effective date 15 August 2004.

Docket Number: OST-2004-18769.

Date Filed: July 30, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-ME 0190 dated 30 July 2004. Mail Vote 399—Resolution 010q. TC2 Within Europe, Europe-Africa, Europe-Middle East Special. Passenger Amending Resolution from

Algeria r1. Intended effective date: 15 August 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Addendum to Preparation of an Environmental Impact Statement for a Proposed Transit Improvement Project in Branson, MO

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of revised public meeting date supporting the notice of intent to prepare an environmental impact statement

SUMMARY: FTA is issuing this notice to advise the public and agencies that the open-house public scoping meeting for the Environmental Impact Statement (EIS) on a proposed transit improvement project in Branson, Missouri has been rescheduled.

DATES: *Public Scoping Meeting:* A public open-house meeting is scheduled from 4 to 7 pm on Monday, August 30, 2004, at the Branson City Hall Municipal Courtroom (110 West Maddux Street, Branson, MO) in lieu of the originally scheduled June 29 open-house meeting. (The new meeting date will be advertised locally.) Oral and written comments may be made at this session. Project staff from the City of Branson will be available for informational discussion and to answer questions. The following information will be presented at the Open-house meeting: The study-area boundary; the study schedule; the public involvement plan; the problem statement; the project purpose and need; the study goals and objectives; effectiveness measures, as well as the alternatives currently proposed to be considered in the study. Input will be solicited to focus the environmental investigations. The meeting location is accessible to individuals with disabilities. Individuals with special needs should contact Cheryl Ford, Engineering Department; City of Branson, Missouri at (417) 337-8559. *Comment Due Date:* Written comments on the scope of the EIS should be sent to the Branson City Engineer as indicated in **ADDRESSES** below by September 30, 2004.