

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 Second Substantive Meeting of the Panel**

January 13, 2005

1. Mr. Chairman, members of the Panel, thank you for the opportunity to make these closing remarks. As you are aware, the United States has argued throughout these proceedings that the scientific evidence, as it relates to mature, symptomless apple fruit and fire blight, remains unchanged from when the experts first examined it over two years ago. Yesterday's meeting with the experts confirmed this. Despite the several new studies conducted by Japan, the experts, when asked by the Panel if the new evidence would cause them to change their answers to questions posed by the original panel, unanimously replied that it would not.
2. Of greatest significance to this dispute was the experts' evaluation of the two sets of studies presented by Japan, one of which purported to demonstrate the existence of mature, symptomless yet latently infected apple fruit; the other that a vector existed to transmit fire blight bacteria from apple fruit to host tissues. The experts agreed that Japan's studies failed to demonstrate that either the hypothetical commodity or pathway existed.
3. As the scientific evidence relating to mature apple fruit and fire blight remains unchanged, so should the findings of the original panel on that evidence remain unchanged. As highlighted by the United States, those findings were and should remain that the scientific evidence fails to establish that mature, symptomless apple fruit will endophytically harbor – let alone be infected with – fire blight; that mature, symptomless apple fruit will be epiphytically infested with populations of bacteria capable of transmitting the fire blight disease; or that the pathway for introduction of fire blight via apple fruit will be completed. In sum, the scientific

evidence does not demonstrate that the import of mature apple fruit will introduce fire blight into Japan.

4. In its various filings and statements, Japan did not contest the scientific evidence amassed in the decades' worth of studies evaluated in the course of the original panel proceedings. Rather, Japan suggested that its new studies somehow changed the conclusion that its measures are maintained without sufficient scientific evidence. As a result, the scientific focus of this dispute is simply to evaluate whether Japan's new studies presented the necessary scientific evidence to demonstrate that its measures are not maintained without sufficient scientific evidence within the meaning of Article 2.2 of the SPS Agreement, and whether Japan's revised PRA – heavily reliant on conclusions drawn from the new studies – reasonably supports the restrictive measures Japan put in place within the meaning of Article 5.1 of the SPS Agreement. Again, as demonstrated in the written and oral statements of the experts, Japan's new studies have accomplished neither of these goals. Japan's revised measures are therefore maintained in breach of Articles 2.2 and 5.1 of the SPS Agreement.

5. On examination of the scientific evidence relating to mature apple fruit and fire blight, it is clear that the scientific evidence does not rationally relate to Japan's nine-element revised measures and that Japan's fire blight measures are more trade-restrictive than required to achieve its appropriate level of protection. Available scientific evidence demonstrates that mature apple fruit, even when harvested from severely blighted orchards, will not be infected with fire blight. A small percentage of mature apple fruit harvested from severely blighted orchards have been reported to be epiphytically infested with fire blight bacteria. In the event that such an infested, mature fruit were harvested and exported, the scientific evidence fails to demonstrate that the

epiphytic infestation would ever lead to infection of the apple fruit or that the pathway for introduction of fire blight via the apple fruit would be completed.

6. In short, the scientific evidence points to an alternative measure that is significantly less trade-restrictive than Japan's revised measures, is reasonably available taking into account technical and economic feasibility, and achieves Japan's appropriate level of protection: a Japanese restriction of imports to mature apple fruit. In light of this less trade-restrictive alternative, Japan also maintains its revised measures in breach of Article 5.6 of the SPS Agreement.

7. In conclusion, I note again that Japan has argued that the result the United States is seeking to obtain from this proceeding is the ability to export whatever manner of apple fruit – diseased, not-diseased, immature, mature – it so desired. This is not, was not, and will never be the United States' purpose. American apple growers simply seek to be able to export to Japan the commodity they have exported world-wide for decades – mature, symptomless apple fruit – and to be able to do so without unnecessarily trade-restrictive measures blocking their shipments. The United States has participated in bilateral discussions with Japan for the past 18 years on this issue, and Japan has now been afforded several attempts to demonstrate that the scientific evidence relating to apple fruit and fire blight indeed supports its numerous phytosanitary restrictions. With each failed attempt, the issue has crystallized further. The scientific evidence is clear, and the analysis of Japan's measures relating to apple fruit and fire blight under the SPS Agreement is clear: the scientific evidence does not support any phytosanitary measure other than a requirement that the U.S. exported commodity be what it already is: a mature apple fruit.