

Subject to Legal Review for Accuracy, Clarity and Consistency

Dear Minister :

I have the honor to acknowledge your letter [of this date], which reads as follows:

In connection with the signing [on this date] of the Trans-Pacific Partnership Agreement (TPP Agreement), I have the honor to confirm the following understanding reached between representatives of the Government of Japan and the Government of the United States of America regarding the operation of the Simultaneous Buy-Sell (SBS) mechanism for Japan's country-specific tariff-rate quota under the TPP Agreement for rice from the United States (US-CSQ), which is provided for in CSQ-1 of Appendix A (Tariff-Rate Quotas) to the Schedule of Japan to Annex 2-D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement. The SBS mechanism for the US-CSQ shall be administered by the Ministry of Agriculture, Forestry and Fisheries of Japan (MAFF) in accordance with applicable laws and regulations of Japan to the extent those laws and regulations are consistent with the international obligations that apply between the United States and Japan, including those under the TPP Agreement and this letter and your letter of confirmation in reply.

I.

1. In the absence of an exceptional circumstance, MAFF shall conduct six tenders each Japanese Fiscal Year (JFY) for importation of rice under the US-CSQ.
2. MAFF shall, by April 10 of each JFY, publish on an official government website and notify to the United States the annual schedule for SBS tenders for importation of rice under the US-CSQ.
3. In the absence of an exceptional circumstance, MAFF shall conduct the first tender of each JFY for importation of rice under the US-CSQ during the second month of the JFY, and shall conduct a subsequent tender once every two months thereafter throughout the JFY.
4. Japan shall immediately notify the United States of any exceptional circumstance that Japan believes warrants a deviation from the schedule set forth in paragraphs 1 and 3.

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II.

1. Any entity which is registered in Japan and has sufficient capacity to import rice shall be eligible to sell rice through any SBS tender.
2. Any of the following, which have sufficient capacity to handle rice, shall be eligible to purchase rice through any SBS tender:
 - (a) a rice distributor (including any wholesaler or retailer);
 - (b) a processor or manufacturer of any product containing rice; or
 - (c) a participant in the food service industry.

III. Japan shall set a maximum purchase price only for each of the following three types of rice: short-grain rice, medium-grain rice and long-grain rice.¹ Japan shall set each maximum purchase price at a level that reflects conditions in the international market for that type of rice, including the free on board (FOB) price at ports in the United States, freight costs, and exchange rates. At the time that it notifies its annual schedule of SBS tenders, MAFF shall publish on the official government website referred to in paragraph I.2 all data elements and figures it used for the assessment of the international market price.

IV. During each JFY, Japan shall not change the level of minimum mark-up in SBS tenders. In improving the SBS tender system, Japan shall give due consideration to the level of minimum mark-up in order to facilitate its smooth operation.

V. Japan shall not set the percentage of broken rice in any tender under the US-CSQ at greater than seven per cent of the total quantity of the

¹ For greater certainty, Japan shall not set a maximum purchase price for any variety or subtype of rice, except that it may set a separate maximum purchase price for the brown and milled varieties of short-grain rice, medium-grain rice and long-grain rice.

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tender.

VI. Japan shall not solicit or accept bids for the sale to MAFF of rice under the US-CSQ in quantities of less than 17 metric tons.

VII. MAFF shall publish on the official government website referred to in paragraph I.2 the following information for each of two subtypes (brown and milled) of each type of rice (short-grain rice, medium-grain rice and long-grain rice) immediately after the results of each tender become final:

- (a) number of bids submitted and the total quantity represented by those bids;
- (b) number of successful bids and the total quantity represented by those bids;
- (c) weighted average purchase price paid by MAFF pursuant to bids that were successful;
- (d) highest and lowest purchase prices paid by MAFF pursuant to bids that were successful; and
- (e) weighted average purchase price paid to MAFF pursuant to bids that were successful.

VIII. If successful bids do not fill the scheduled quantity in any tender, MAFF shall conduct another round of that tender on the following day.

IX. Japan shall allow the rice sold to MAFF through the tender to:

- (a) depart from the port of exportation at any time within eleven months after the date of the tender award; and
- (b) be delivered to users at any time within twelve months after the date of the tender award.

X.

1. Japan and the United States shall discuss the operation of the US-CSQ following the first three tenders of each JFY. During any

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such discussion,

Japan and the United States shall examine the fill rates of the Rice 1² and Rice 2³ components of the US-CSQ and the proportion of each tender that Japan allots to each such component, and MAFF shall make adjustments, as mutually agreed by Japan and the United States, to the proportion of future tenders allotted to each such component.

2. If the average fill rate falls below 90 per cent for the first three tenders of any JFY:

(a) MAFF shall make available all of the remaining unallocated volume of the US-CSQ in the fourth tender and in all subsequent tenders in the JFY, until the US-CSQ volume is fully allocated.

(b) MAFF shall undertake temporary adjustments, as agreed by Japan and the United States, and which shall include adjustments to some or all of the following:

- (i) the number and frequency of tenders;
- (ii) the ratio of broken rice to unbroken rice in the future tenders;
- (iii) maximum purchase price; and
- (iv) the time period in which rice sold under tenders may be shipped.

3. Japan and the United States shall consult on an annual basis to review the operation of MAFF's SBS tendering process as applied to the US-CSQ. During this consultation, if any temporary adjustment listed in paragraph X.2(b) is in place, Japan and the United States shall consider

² HS Codes: 110290.310, 110319.510, 110320.350, 110419.250, 110429.250, 190120.122, 190120.162, 190190.142, 190190.587, 190410.211, 190420.211, 190490.120 and 210690.517.

³ HS Codes: 100610.010, 100620.010, 100630.010 and 100640.010.

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whether to continue it into the next JFY.

4. If the US-CSQ volume is not fully utilized in two out of any three consecutive JFYs, MAFF shall make such modifications to the US-CSQ as are necessary to achieve full utilization of the US-CSQ, including:

- (a) immediate, temporary reduction, for the entirety of the following JFY, of the minimum mark-up by 15 per cent from its established base level; and
- (b) such other steps as Japan and the United States agree.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, subject to dispute settlement under Chapter 28 (Dispute Settlement) of the TPP Agreement, which shall enter into force on the date of entry into force of the TPP Agreement with respect to Japan and the United States.

I have further the honor to confirm that my Government shares this understanding and that your letter and this reply shall constitute an agreement between our two Governments, subject to dispute settlement under Chapter 28 (Dispute Settlement) of the Trans-Pacific Partnership Agreement (TPP Agreement), which shall enter into force on the date of entry into force of the TPP Agreement with respect to the United States and Japan.

Sincerely,

Ambassador Michael B.G. Froman