

1-1-1996

Unlocking the Japanese Rice Market: How Far Will the Door be Opened?

James R. Moore

University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/globe>

Part of the [International Law Commons](#)

Recommended Citation

James R. Moore, *Unlocking the Japanese Rice Market: How Far Will the Door be Opened?*, 9 *TRANSNAT'L LAW* 273 (1996).

Available at: <https://scholarlycommons.pacific.edu/globe/vol9/iss1/10>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in *Global Business & Development Law Journal* by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Unlocking the Japanese Rice Market: How Far Will the Door be Opened?

TABLE OF CONTENTS

I. INTRODUCTION	273
II. INFLUENCES THAT HAVE SHAPED JAPAN'S RICE IMPORT LAW	276
A. <i>Cultural Influences</i>	276
B. <i>Public Policy Influences</i>	277
C. <i>Political Influences</i>	278
III. JAPAN'S RICE IMPORT LAW THAT LEAD TO THE GATT CONFLICT	279
A. <i>The Agricultural Basic Law</i>	279
B. <i>The Foodstuff Control Law</i>	281
IV. ARTICLE XI OF THE GATT AND HOW JAPAN'S RICE IMPORT RESTRICTIONS CONFLICT	283
V. THE AGREEMENT ACCEPTED BY JAPAN	285
VI. RECENT POST-AGREEMENT CHANGES IN JAPAN'S RICE LAW	287
A. <i>The Staple Food Law</i>	287
VII. EFFECT ON UNITED STATES RICE EXPORTERS	290
VIII. CONCLUSION	292

I. INTRODUCTION

Japan, with a population exceeding 125,000,000 people,¹ has historically banned all rice importation into its internal agricultural market.² This exceptionally strict protection of its internal rice market is an effective method that Japan has relied upon to promote the expansion and prevent the degradation of indigenous rice production and ensure reasonable income to rice producers.³ The

1. THE WORLD ALMANAC AND BOOK OF FACTS 789 (Robert Famighetti ed. 1994).

2. MITSUO MATSUSHITA, INTERNATIONAL TRADE AND COMPETITION LAW IN JAPAN 47 (1993); Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to GATT and Global Free Trade*, 24 ST. MARY'S L.J. 1165, 1180 (1993).

3. See MATSUSHITA, *supra* note 2, at 47 (describing through a broad analysis that the Japanese government, through laws specific to rice, has used import bans on rice to help meet the policy requirements of increasing rice production and maintaining rice producer income mandated under the Agricultural Basic Law).

increase of agricultural productivity and the maintenance of the income of those engaged in agriculture are specific goals that the government must meet under government objectives set out in Japan's Agricultural Basic Law.⁴

In 1987, the United States, in an effort to pressure the Japanese government into opening Japan's agricultural market, filed a formal complaint with the Contracting Parties⁵ of the General Agreement on Tariffs and Trade (GATT),⁶ highlighting Japan's protectionist policies on several agricultural products, including rice.⁷ The GATT panel found that Japan's quotas on these agricultural products, including the rice quotas, violated Article XI of the GATT.⁸ The Japanese government, under pressure from the United States, agreed to modify the quotas affecting the majority of the agricultural products highlighted, but refused to compromise on its rice policy.⁹ Japan's unwillingness to cooperate and modify its rice policy sparked heavy protest from the U.S. Rice Miller's Association and increased efforts by the United States to convince Japan to open its rice market.¹⁰ It was not until December 13, 1993, that Japan, under extreme international and U.S. pressure, made concessions in the final moments of the GATT Uruguay Round negotiations and accepted the Denis minimum access agreement that provides for gradual liberalization of Japan's internal rice market.¹¹

4. See generally *Nogyo Kihon Ho*, Law No. 127 of 1961, ch. 1, art. 1, 1961 (describing the intent and theory behind the general provision of the Agricultural Basic Law)[hereinafter *Agricultural Basic Law*].

5. See generally *General Agreement on Tariffs and Trade*, opened for signature Oct. 30, 1947, art. XXV, 61 stat., part 5, A51, T.I.A.S. 1700, reprinted in *THE TEXT OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE*, July 1986 [hereinafter *GATT*] (defining Contracting Parties as the representatives of the member countries of the General Agreement on Tariffs and Trade when meeting jointly as a committee).

6. See *GATT-GUIDE* accessed on the INTERNET through the Fletcher School of Law and Diplomacy, Tufts University (explaining that the General Agreement on Tariffs and Trade as first signed in 1947 was designed to provide an international forum to encourage free trade and resolve disputes between contracting countries which now number over 110).

7. See *MITSUO MATSUSHITA & THOMAS J. SCHOENBAUM, JAPANESE INTERNATIONAL TRADE AND INVESTMENT LAW 76* (1989) (discussing the complaint filed by the United States regarding Japan's quotas regarding importation of dairy products, beef, pork, fruit puree, pineapple, non-citrus and tomato juice, tomato ketchup, starch, glucose and miscellaneous processed foods); *MATSUSHITA*, *supra* note 2, at 180; *Schoenbaum*, *supra* note 2, at 1171.

8. See *MATSUSHITA & SCHOENBAUM*, *supra* note 7, at 76 (discussing the GATT panel decision); *MATSUSHITA*, *supra* note 2, at 180; *Schoenbaum*, *supra* note 2, at 1171.

9. *MATSUSHITA*, *supra* note 2, at 181 (discussing Japan's response to the GATT panel decision).

10. See *MATSUSHITA & SCHOENBAUM*, *supra* note 7, at 77 (explaining that Japan's refusal to compromise on its rice policy resulted in the filing of a formal petition by the U.S. Rice Miller's Association, under section 301 of the Trade Act of 1974, demanding trade retaliation against Japan which the United States said it would consider if Japan did not take steps to open its rice market); see John Burgess, *Rice Trade Dispute is Boiling Up; Japan Resisting U.S. Efforts to Open Its Market to Imports*, WASH. POST, Oct. 22, 1986, at G1 (discussing the U.S. Rice Miller's Association's filing of a complaint and their allegations that the import ban on rice is unfair trade and must stop or face U.S. retaliation)

11. *Hosokawa Announces Decision To Open Japan To Rice Imports*, Int'l Trade Rep. (BNA), Dec. 15, 1993, at 2082; see Anthony Rowley, *Keeping Those Rice Bowls Filled*, BUS. TIMES, Oct. 13, 1993, at 29 (discussing the demands made by Japan's GATT partner countries to replace import bans and quotas with tariffs on all products including rice); Teresa Watanabe, *Japanese Lawmakers Protest Rice Policy Changes*, L.A. TIMES, Dec. 1, 1993, at D1 (explaining that Japan was under extreme international pressure to lift its rice

Since accepting the Denis plan, Japan has taken major steps to liberalize its rice market.¹² Those steps include legal reforms to the laws through which the traditional rice ban has been enforced.¹³ Leading rice exporting countries are now positioning themselves to take advantage of what they hope will be a tremendous market for foreign rice.¹⁴

This Comment examines Japan's traditional rice importation policy and the potential impact that the Denis minimum access plan,¹⁵ which opens Japan's internal rice market, may have on Japan's rice policies as well as the international rice trade. Part II focuses on the policies that have influenced Japan's strict regulation of its internal rice market.¹⁶ Part III examines Japan's rice import law and the policies of the Agricultural Basic Law and the Foodstuff Control Law that lead to the GATT conflict.¹⁷ Part IV discusses and explains how Japan's laws governing rice imports conflicted with Article XI of the GATT.¹⁸ Part V analyzes the Denis minimum access plan that Japan hesitantly accepted at the Uruguay Round.¹⁹ Part VI addresses recent changes Japan has made in its rice laws.²⁰ Part VII discusses how the Uruguay Round Agreement on Agriculture and Japan's recent law changes will effect rice exporters attempting to access the Japanese rice market.²¹ Part VIII concludes that Japan has made tremendous strides to open its rice market and that the U.S. rice exporters and producers can expect to prosper by this action, but only to the extent that Japan allows free market forces to truly liberalize its market.²²

ban); *see infra* notes 111-116 and accompanying text (explaining the details of the Denis minimum access agreement).

12. *See Hosokawa Announces Decision To Open Japan To Rice Imports, supra* note 11, at 2082; T.R. Reid, *Japan Ends Ban on Rice Imports; Coalition Government Acts on Brink of Deadline for Trade Talks*, WASH. POST, Dec. 14, 1993, at A19; David Holley, *Rice No Longer Equals Life in Japan; Gradual Opening of the Market Seals the Fate of the Traditional System*, L.A. TIMES, Aug. 30, 1994, at World Report 8.

13. *See generally* JAPAN INTERNATIONAL AGRICULTURAL COUNCIL FOR THE FOOD AGENCY, AN OUTLINE FOR THE STABILIZATION OF SUPPLY-DEMAND AND PRICE OF STAPLE FOOD I (1995) (explaining that Japan has abolished earlier law and enacted new law in an attempt to conform its traditional policies on rice to new international trade rules).

14. Telephone Interview with Mathew J. Massaua, Regional Director of International Policy and Market Development, U.S.A. Rice Federation (Dec. 19, 1995) (explaining that Australia, China, Thailand, Pakistan, Uruguay and the United States are among those countries actively pursuing contracts with Japan to import rice as Japan is required to do under the Denis minimum access plan).

15. *See generally* *Japan to Allow Rice Imports*, Int'l Trade Rep. (BNA) 2077 (Dec. 15, 1993) (showing that the plan accepted by Japan's Prime Minister Morihiro Hosokawa is generally referred to or known as the Denis minimum access plan).

16. *See infra* notes 23-48 and accompanying text.

17. *See infra* notes 49-90 and accompanying text.

18. *See infra* notes 91-109 and accompanying text.

19. *See infra* notes 110-22 and accompanying text.

20. *See infra* notes 123-44 and accompanying text.

21. *See infra* notes 145-65 and accompanying text.

22. *See infra* notes 166-71 and accompanying text.

II. INFLUENCES THAT HAVE SHAPED JAPAN'S RICE IMPORT LAW

A. Cultural Influences

Rice plays a significant role in the Japanese culture and has done so since the initial development of Japanese culture.²³ The earliest pottery and sites of Japanese culture discovered in Northern Kyushu have yielded marks of rice husks and carbonized rice.²⁴ Japan's original settlements also reveal evidence of rice paddy fields, advanced irrigation systems required for the wet cultivation of rice, and raised floor structures used for rice storage.²⁵

Not only do the earliest settlements of Japan show evidence of rice playing an important role as a key source of food, but throughout Japan's history rice has also been an indicator of wealth.²⁶ For example, in Japanese Feudal society, the revenues of rice and not the direct ownership of land determined power in early Japan.²⁷ In addition, throughout Japan's history, taxes have been collected in the form of rice.²⁸ Rice has also been used as a method of payment to control and appease political forces.²⁹

Several authorities attribute Japan's societal contours of cooperation to the influences of rice cultivation.³⁰ Many traditional events and ceremonies can be traced to rice cultivation and it is well documented that rice plays a central role in Japanese religious ceremonies.³¹ Further evidence indicating how deeply rice is entrenched in the Japanese culture is that *gohan*, the word commonly used in Japan to signify "meal," is actually the Japanese word for cooked rice.³²

23. 22 THE NEW ENCYCLOPEDIA BRITANNICA, MACROPAEDIA, KNOWLEDGE IN DEPTH 277 (15th ed. (1993)).

24. *Id.*

25. *See id.* (describing how early Japanese settlements were designed while taking into account strategies that would aid in rice cultivation).

26. E.H. NORMAN, ORIGINS OF THE MODERN JAPANESE STATE 119 n.1 (John W. Dower ed. 1975).

27. *See id.* (explaining that while land in many societies determines wealth, it was the ownership of rice that was the determinant factor relating to power in early Japan).

28. THE NEW ENCYCLOPEDIA BRITANNICA, *supra* note 23, at 293.

29. *See id.* (explaining the importance of rice not only as a food source but as a valuable instrument of barter and payment).

30. *See* Kevin Rafferty, *Deadline for GATT: Japan Lifts the Lid On Rice Imports*, THE GUARDIAN, Dec. 13, 1993, at 14 (discussing the tremendous social influence that rice cultivation has had on Japan's societal traits); *see* Holley, *supra* note 12, at World Report 8 (explaining that rice cultivation has been credited with developing the cooperation that is at the foundation of Japanese society).

31. *See* Joseph LaPenta, *Japan's Food of the Gods*, THE DAILY YOMIURI, Nov. 28, 1993, at 7 (explaining that rice is involved in many Japanese religious ceremonies and that in the view on ancient Japanese cosmology every grain of rice is sacred); *see* Reid, *supra* note 12, at A19 (stating rice is central to Japan's religion).

32. *See* EDWIN O. REISCHAUER, THE JAPANESE TODAY 21 (1988) (stating that rice is such a fundamental part of the Japanese diet that the Japanese word for rice has become synonymous with the word "meal" in Japan).

B. Public Policy Influences

In Japan, the agricultural sector has traditionally employed a relatively large percentage of the working population.³³ Because rice farming in Japan continues to be done primarily on small family-owned farms, it remains an extremely labor-intensive and inefficient operation that employs a relatively large segment of the unskilled labor in Japan, particularly in the rural villages.³⁴ Maintaining employment income flow into this farming sector and preventing the demise of Japan's rural farming villages is one of the policies that justifies Japan's tight price control and overall market regulation and protection of rice.³⁵

Another primary public policy justification for Japan's tight control of its rice market is based on a "food security" rationale.³⁶ Because rice is a basic staple of the Japanese diet, the Japanese government is opposed to relying on foreign suppliers and potentially becoming politically vulnerable to those rice supplying countries.³⁷ The result is that many in Japan believe that their country is put in a stronger position by maintaining strict regulation of internal rice markets rather than risking foreign rice dependence.³⁸

An additional public policy reason stated by Japan in support of its ban on rice imports is related to Japan's dependence on foreign food imports and its

33. THE NEW ENCYCLOPEDIA BRITANNICA, *supra* note 23, at 269; see Holley, *supra* note 12, at World Report 8 (explaining that the agricultural sector employed over 41% of the population in 1955).

34. See REISCHAUER, *supra* note 32, at 302; THE NEW ENCYCLOPEDIA BRITANNICA, *supra* note 23, at 269 (explaining that rice dominates Japan's agricultural industry and the vast majority of its agricultural resources are devoted to rice cultivation); see Holley, *supra* note 12, at World Report 8 (explaining that although the agricultural sector has dropped regarding overall percentage of Japan's population it employs, it continues to employ close to 13% of Japan's population).

35. See Holley, *supra* note 12, at World Report 8 (explaining that the rice import ban, by maintaining income flow into the rural farming sector, is credited with the economic stabilization and preservation of Japan's farming regions).

36. See Burgess, *supra* note 10, at G1 (explaining that self-sufficiency in rice production is one way to protect Japanese interests regarding proper maintenance of the national food supply and protect against trade embargos); see also John M. Green, *Agriculture*, in THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY (1986-1992) 152 (Terence P. Stewart, ed., 1993) (giving Japan's general position regarding food security and the rice import ban); see also Ronald E. Yates, *Economic Miracle Fails to Materialize on Japanese Farms*, CHI. TRIB., Sept. 21, 1986, at Bus. 1 (stating that Japan is very concerned with food security and does not want to be dependant on foreign suppliers for its food).

37. See Schoenbaum, *supra* note 2, at 1180; Yates, *supra* note 36, at Bus. 1 (stating that the Japanese intense focus on food security is a result of the World War II embargos and naval blockades that resulted in severe Japanese food shortages); Burgess, *supra* note 10, at G1 (pointing out that Japan remembers the United States' soybean embargo and does not want to experience a similar situation with rice).

38. See LaPenta, *supra* note 31, at 7 (describing a common argument against allowing rice importation that emphasizes Japan's need to be self-sufficient in its staple food production); see generally Schoenbaum, *supra* note 2, at 1180 (implying that because rice is an important staple in the Japanese diet that Japan cannot afford to compromise its position, either politically or from a national standpoint, by becoming dependent on foreign rice suppliers).

position as the world's largest net importer of food.³⁹ Given its unenviable dependence on food imports, Japan justifies its ban on rice importation by pointing out that rice is the sole commodity that it is capable of producing in quantities large enough to achieve self-sufficiency and reduce overall reliance on imports.⁴⁰ Furthermore, it is only through the ban on rice imports that Japan can achieve and maintain that self-sufficiency.⁴¹

C. Political Influences

Another major influence on Japan's rice laws comes from tremendous political pressure on Japan's government to maintain the strict policies that protect its internal rice market from foreign competition.⁴² Since 1955, the ruling political party in Japan has been the Liberal Democratic Party (LDP).⁴³ The LDP obtains a disproportionate amount of its power from the support of farmers and rural voters.⁴⁴ Unquestionably, Japan's principal crop is rice;⁴⁵ thus, the rice import ban is deeply entrenched in Japan's political system.⁴⁶ Any attempt to liberalize restrictions on rice imports creates an uproar among the farmers who in turn voice concern within the Liberal Democratic Party.⁴⁷ The potential for

39. See Burgess, *supra* note 10, at G1 (explaining that Japan imports over half of its citizen's total caloric intake and in 1985 singlehandedly purchased 25% of all U.S. corn exports, 13% of all U.S. wheat exports, 26% of all U.S. soybean exports and 78% of all U.S. beef exports).

40. See MATSUSHITA, *supra* note 2, at 47 (describing reasons Japan asserts in defense of its ban on rice imports and implying that rice is the only commodity Japan's agricultural sector can produce in quantities to attain self-sufficiency).

41. See Burgess, *supra* note 10, at G1 (giving Japan's rice import ban credit for saving Japan's rice farming sector); see also Holley, *supra* note 12, at World Report 8 (implying that the survival of rice farming in Japan is tied to the rural farming villages and these villages survive in great part due to the rice import ban and the protection it affords them from foreign competition).

42. See Reid, *supra* note 12, at A19 (pointing out the tremendous political challenges to reforming the protectionist rice import policies); see Oswald Johnston, *Rice Growers Push for Japan to Open Market; Formal Complaint Asks U.S. to Insist that Import Restrictions Be Eased*, L.A. TIMES, Sept. 15, 1988, at Bus. 1 (implying that Japanese rice farmers are politically powerful and have been successful for years in convincing the government to protect them from foreign competition).

43. Schoenbaum, *supra* note 2, at 1181; see Rafferty, *supra* note 30, at 14 (stating that the Liberal Democratic Party had ruled unchallenged in Japan since 1955, until recent challenges in 1993).

44. See Schoenbaum, *supra* note 2, at 1181 (discussing the important position of farmers and rural voters in the LDP power base); Rafferty, *supra* note 30, at 14 (stating that the LDP used a political platform including high rice prices to obtain the support of farmers which helped the LDP rule Japanese politics for decades).

45. THE NEW ENCYCLOPEDIA BRITANNICA, *supra* note 23, at 269.

46. See Burgess, *supra* note 10, at G1 (explaining that very few countries have an institution so deeply entrenched in the political and economic system as Japan does with its rice import ban).

47. See Schoenbaum, *supra* note 2, at 1181 (explaining that attempts to liberalize the rice import restrictions would lead to mass demonstrations by the farmers and rural voters.).

such political disaster weighs heavy in the political arena and has effectively discouraged liberalization of rice restrictions.⁴⁸

III. JAPAN'S RICE IMPORT LAW THAT LEAD TO THE GATT CONFLICT

A. *The Agricultural Basic Law*

In Japan, the Agricultural Basic Law⁴⁹ provides the general framework for the implementation of agricultural policies.⁵⁰ The law was enacted in 1961 as a response to Japan's recognition of the difficulties facing Japanese agriculture due to the disparity between Japan's industrial and agricultural sectors, particularly in productivity and worker standard of living.⁵¹ As a result of this disparity, the viability of Japan's agricultural sector was jeopardized by the movement of the agricultural labor force to nonagricultural occupations.⁵² The purpose behind the Agricultural Basic Law was to remedy the widening gap between agriculture and industry.⁵³ This goal could be achieved through aggressive promotion, modernization, and control of the agricultural markets in order to ensure that those involved in agriculture can earn greater incomes which will enable them to make a living comparable to those engaged in other industries and provide incentive to remain in the agricultural sector.⁵⁴ It is clear, based on the purpose behind the Agricultural Basic Law, that the Japanese government believes maintaining the viability of the agricultural industry, which contributes greatly not only to the national economy but to the stability of national life as the supplier of the nation's

48. See Schoenbaum, *supra* note 2, at 1181 (recognizing that attempts to liberalize the rice import restrictions would cause major problems within the LDP party which depends on the farmers and rural voters support to maintain its power base and political position in Japanese politics); see also Green, *supra* note 37, at 153-54 (implying that farmers are a well organized political group in Japan and that they have a proportionally larger voice in political matters because rural representation did not decline despite large-scale migration from rural to urban areas); see also Rafferty, *supra* note 30, at 14 (implying that backing away from a firm stance in support of maintaining the rice import ban would significantly damage the LDP's power base).

49. Agricultural Basic Law, *supra* note 4.

50. MATSUSHITA, *supra* note 2, at 47; see generally Agricultural Basic Law.

51. Green, *supra* note 36, at 152; see MATSUSHITA, *supra* note 2; Agricultural Basic Law, *supra* note 4, at Preamble (describing the purposes and policies behind the Agricultural Basic Law).

52. See generally Agricultural Basic Law, *supra* note 4, at Preamble (describing some of the changes associated with the growing disparity between industry and agriculture).

53. See MATSUSHITA, *supra* note 2, at 46 (describing the purpose of the Agricultural Basic Law); see also Agricultural Basic Law, *supra* note 4, at Preamble and art. 1 (explaining the objectives of the Agricultural Basic Law); see also Green, *supra* note 36, at 152 (discussing the fundamental goals of the Agricultural Basic Law).

54. See Agricultural Basic Law, *supra* note 4, at Preamble and art. 1 (giving a general overview of how the government will narrow the gap between industry and agriculture).

food and other important agricultural commodities, is important to Japan's overall national well-being.⁵⁵

The Agricultural Basic Law specifically outlines eight measures that the government, in order to obtain the objectives of the law, shall attempt to further when implementing any and all government policies.⁵⁶ The first of these measures mandates that government policies promote the selective expansion of those agricultural products with growth potential, while curtailing production of other agricultural commodities that are experiencing decreases in demand.⁵⁷ The second measure requires the government to raise agricultural productivity and increase gross output through effective land and water resource management as well as through the effective utilization and exploitation of new agricultural technology.⁵⁸ Third, the Japanese government must modernize farm business through the enlargement of farm size, regrouping of farm land and the mechanization of farming in order to improve the overall agricultural structure.⁵⁹ The fourth measure mandates government management of agricultural marketing and land demand for production of agricultural commodities.⁶⁰ Measure five focuses government attention on stabilizing prices of agricultural commodities and improving agricultural income in order to offset the disadvantages of agriculture inherent in the conditions of production and terms of trade.⁶¹ Measure six emphasizes that government attention be placed on the stabilization of prices as well as production and marketing of agricultural tools and supplies.⁶² The seventh measure mandates that necessary steps be taken to train and maintain those capable of managing farm businesses as well as employ solutions to enable those engaged in agriculture to maintain and find employment according to their desires and abilities.⁶³ The final measure requires government intervention to improve the quality of life of those involved in agriculture through amelioration of environmental conditions, such as traffic and sanitation, that will help improve life in rural communities.⁶⁴

Not only does the Agriculture Basic Law set out these measures that the government must incorporate into its policies, it also grants the government

55. *See id.* at Preamble (stating the importance that the agricultural sector has played in the development of the national economy, stabilization of the Japanese food supply, conservation of national land and expansion of domestic markets).

56. *See id.* art. 2 (specifically listing the eight measures set forth in the Agricultural Basic Law); *see also* MATSUSHITA, *supra* note 2, at 46 (listing the specific means to be used under Chapter 1, art. 2 of the Agricultural Basic Law).

57. Agricultural Basic Law, *supra* note 4, art. 2, § 1; MATSUSHITA, *supra* note 2, at 46.

58. Agricultural Basic Law, *supra* note 4, art. 2, § 2; MATSUSHITA, *supra* note 2, at 46.

59. Agricultural Basic Law, *supra* note 4, art. 2, § 3; MATSUSHITA, *supra* note 2, at 46.

60. Agricultural Basic Law, *supra* note 4, art. 2, § 4; MATSUSHITA, *supra* note 2, at 46.

61. Agricultural Basic Law, *supra* note 4, art. 2, § 5; MATSUSHITA, *supra* note 2, at 46.

62. Agricultural Basic Law, *supra* note 4, art. 2, § 6; MATSUSHITA, *supra* note 2, at 46.

63. Agricultural Basic Law, *supra* note 4, art. 2, § 7; MATSUSHITA, *supra* note 2, at 46.

64. Agricultural Basic Law, *supra* note 4, art. 2, § 8; MATSUSHITA, *supra* note 2, at 46.

power to take whatever legal and financial steps it needs to follow through on implementing these measures.⁶⁵ In addition, the Agricultural Basic Law states that the government, with respect to any important agricultural commodity, shall directly take any necessary measure to stabilize prices of such a commodity.⁶⁶ Furthermore, this law provides that the government shall take necessary measures to restrain imports of agricultural products that are depressing the prices of those products through competition and may, as a result, impact internal Japanese production of that agricultural product.⁶⁷ Thus, the Japanese government retains enormous power to meet its obligation of improving agricultural income and building the agricultural sector through price stabilization of agricultural commodities while adhering to the policies mandated by the Agricultural Basic Law.⁶⁸

B. *The Foodstuff Control Law*

The measures and objectives of the Agricultural Basic Law apply to Japan's agricultural industry in general, and it is through more specific laws tailored to particular segments of the agricultural sector that Japan has actually effectuated these measures.⁶⁹ For instance, the Foodstuff Control Law⁷⁰ was one of the conduits through which the policies and measures of the Agricultural Basic Law have been applied to grains.⁷¹

For decades, the Foodstuff Control Law helped stabilize prices and maintain the income of those engaged in farming rice, wheat and barley by restricting the importation of these commodities into Japan.⁷²

The purpose of the Foodstuff Control Law was to control the price, supply, demand and distribution of rice in order to secure stable supplies of rice for Japanese consumers and ensure stability of the national economy.⁷³ As a means

65. Agricultural Basic Law, *supra* note 4, art. 4.

66. *Id.* art. 11; MATSUSHITA, *supra* note 2, at 47.

67. Agricultural Basic Law, *supra* note 4, art. 13; *see* MATSUSHITA, *supra* note 2, at 47 (discussing that the government, under Article 13 of the Agricultural Basic Law, should employ increased tariffs or strict import quotas to protect important agricultural products from foreign competition when key commodity prices are depressed); MATSUSHITA & SCHOENBAUM, *supra* note 7, at 74 (explaining Article 13 of the Agricultural Basic Law).

68. *See generally* Agricultural Basic Law, *supra* note 4, art. 5, § 2 (requiring the government to stabilize agricultural commodities and improve farming income to offset inherent farming disadvantages in production and trade); *id.* art. 11 (giving the Japanese government full flexibility to take whatever steps may be necessary to stabilize the price of agricultural products).

69. *See generally* MATSUSHITA, *supra* note 2, at 47 (explaining that the policies of the Agricultural Basic Law are put into effect through more specific laws).

70. Shokuryo Kanri Ho, Law No. 40 of 1942, as translated by the NHK Cultural Center in 1983 [hereinafter Foodstuff Control Law].

71. *See generally* MATSUSHITA, *supra* note 2, at 47 (discussing the means through which the policies of the Agricultural Basic Law are effectuated).

72. *See* Holley, *supra* note 12, at World Report 8; MATSUSHITA & SCHOENBAUM, *supra* note 7, at 75.

73. Foodstuff Control Law, *supra* note 70, art. 1.

of effectuating these objectives, the Foodstuff Control Law required the Japanese Minister for Agriculture, Forestry and Fisheries to establish yearly plans that address the prospects for the supply and demand of rice as well as the basic method to be used to control the rice supply.⁷⁴ The Minister of Agriculture, Forestry and Fisheries also received authorization to modify the yearly basic plan as necessary in order to react to changes in economic factors or supply and demand shifts.⁷⁵ As a practical matter, Japan's traditional prohibition on rice importation has helped Japan control its internal rice market and create a self-contained and more manageable internal rice market free from foreign competition.⁷⁶

In order to further control its rice market, the purchase and sale of rice within Japan's internal market has traditionally fallen completely under government control.⁷⁷ The Foodstuff Control Law stipulates that the producers of rice must sell their rice to the government.⁷⁸ The only exception to this requirement is made for quantities of rice which are sold by producers to parties, other than the government, in accordance with government regulations.⁷⁹ The sale must also be with the understanding that consumers are being supplied with rice in an efficient manner that follows the Minister of Agriculture's plans for the years involved and provides consistent inventories for consumer needs.⁸⁰

The government not only buys all of the rice from the rice producers, but it also establishes the price at which it buys the rice from those producers.⁸¹ The Foodstuff Control Law requires the government to make the purchase price determination based on four factors.⁸² Those factors include production costs, commodity prices, and other economic conditions, maintaining continuity in the production of rice and unforeseeable economic conditions that should be considered.⁸³

After buying the rice, the government is required under the Foodstuff Control Law to sell the rice to licensed rice wholesalers in accordance with the plans

74. *Id.* art. 2(2).

75. *Id.* art. 2(3).

76. MATSUSHITA, *supra* note 2, at 47; see Schoenbaum, *supra* note 2, at 1180; Green, *supra* note 36, at 152 (stating that imports constitute less than a fraction of one percent of Japan's annual rice consumption of over ten million tons of rice).

77. MATSUSHITA & SCHOENBAUM, *supra* note 7, at 75.

78. Foodstuff Control Law, *supra* note 70, art. 3.

79. See generally *id.* art. 3 (implying that rice producers may sell directly to parties in accordance with government ordinances so long as it is done exactly the way the government would have conducted the sale). This appears to make this an exception only in who will supply the rice but not how it will be accomplished or at what prices offered. *Id.*

80. *Id.* art. 3.

81. MATSUSHITA & SCHOENBAUM, *supra* note 7, at 75; see Green, *supra* note 36, at 152 (stating that the government sets the producer's prices to ensure acceptable income levels for rice farmers).

82. Foodstuff Control Law, *supra* note 70, art. 3:2.

83. *Id.* art. 3:2.

developed by the Minister of Agriculture, Forestry and Fisheries.⁸⁴ The rice is sold to distributors at a price that is also determined by the government.⁸⁵ The formula to determine the selling price to the wholesalers focuses on the prevailing level of household expenses, commodity prices and other economic conditions.⁸⁶ An important additional factor the government must consider when setting the selling price is the goal of stabilizing the general consumers ordinary household expenses.⁸⁷

The practical effect of the government's control over the rice market, in an attempt to meet the objectives of the Foodstuff Control Law, is that the government typically buys rice at ten times the world market price and sells it to distributors at a much reduced price.⁸⁸ Although this procedure may prove economically inefficient, the policy is credited with helping farmers maintain a steady income and keep rice farming viable.⁸⁹ The Foodstuff Control Law embodies the traditional method through which Japan has effectuated the general policies of the Agricultural Basic Law.⁹⁰

IV. ARTICLE XI OF THE GATT AND HOW JAPAN'S RICE IMPORT RESTRICTIONS CONFLICT

The General Agreement on Tariffs and Trade,⁹¹ of which Japan is a primary contracting country, has been referred to as the world's preeminent source of international trade law.⁹² Article XI of the GATT provides for the elimination of quantitative trade restrictions between GATT member countries.⁹³ The practical effect of Article XI is to prohibit the GATT contracting countries from imposing prohibitions and restrictions on the importation of any product from a fellow

84. *Id.* art. 4:1.

85. MATSUSHITA & SCHOENBAUM, *supra* note 7, at 75; *see* Foodstuff Control Law, *supra* note 70, art. 4:2 (explaining that rice is sold to producers at a price determined by the application of government ordinance).

86. Foodstuff Control Law, *supra* note 71, art. 4:3.

87. *Id.* art. 4:3.

88. Burgess, *supra* note 10, at G1.

89. *Id.* (explaining that it is the rice import ban that has enabled rice farming to survive in Japan and it is also the rice import ban that has produced the internationally envied income equality between farms and cities in Japan); *see* Green, *supra* note 36, at 153 (explaining that government transfers and subsidies were over three billion dollars per year during the mid-1980's); *see also* Burgess, *supra* note 10, at G1 (stating that the Japanese taxpayers subsidized the rice farmers close to four billion dollars per year as a result of government supports and services).

90. *See generally* Foodstuff Control Law, *supra* note 70 (establishing the objectives and methodology used to meet those policy requirements set forth in the Agricultural Basic Law for rice).

91. GATT *supra* note 5.

92. Schoenbaum, *supra* note 2, at 1167 (explaining that the GATT is much more than a trade organization and actually represents a tremendous amount of international trade law); *see generally* GATT *supra* note 5 (establishing the trade regulations that have been accepted by over 100 countries and which constitute much of the world's international trade law).

93. *See* GATT, *supra* note 5, art. XI.

contracting country or the exportation of any product destined for a fellow GATT contracting country.⁹⁴ However, Article XI does provide exceptions to the total elimination of quantitative restrictions.⁹⁵

Article XI:2(c) specifically excludes agricultural products from the general application of Article XI and allows the continuation of agricultural quantitative restrictions so long as the import restrictions fall into one of two categories.⁹⁶ The first category allows quantitative restrictions if the restriction is also effective against like domestic products produced in the country enforcing the restriction.⁹⁷ The second category of quantitative restriction of agricultural products not prohibited by Article XI involves restrictions that have been initiated to remove a temporary surplus of a like domestic product which is the same or similar as a product against which the restriction is enforced.⁹⁸

Historically, Japan's basic trade policy for rice has completely prohibited any importation.⁹⁹ Because Japan was not promoting a program to decrease domestic rice production or reduce a temporary rice surplus, Japan did not properly meet the criteria set forth in Article XI, section 2(c) that must be satisfied before the GATT contracting countries may utilize quantitative restrictions to limit or prohibit the importation of agricultural products.¹⁰⁰ In 1987, after intense pressure was applied by the United States through the GATT's formal complaint process,¹⁰¹ a GATT panel investigated Japan's policies concerning many agricultural products, including rice.¹⁰² The panel handed down a decision confirming that

94. GATT, *supra* note 5, art. XI:1; see Schoenbaum, *supra* note 2, at 1167; MATSUSHITA, *supra* note 2, at 178; Jeffrey J. Steidle, *The Problem Child of World Trade: Reform School For Agriculture*, 4 MINN. J. GLOBAL TRADE 333, 345 (1995).

95. See GATT, *supra* note 5, art. XI:2 (listing the exceptions to the total elimination of quantitative restrictions required under Article XI:1 which include: (a) export restrictions or prohibitions that are temporarily applied in response to critical shortages of food or other products essential to the exporting country; (b) import or export restrictions that are necessary for the proper clarification, grading or marketing of commodities in international trade; (c) import restrictions on any agricultural or fisheries product necessary to enforce government measures which operate to: (1) restrict the domestic production of the same or similar product, (2) remove temporary domestic surplus of the same or similar product, or (3) restrict the production of animal products, the production of which is dependant on the imported commodity and domestic production of that commodity is low).

96. GATT, *supra* note 5, art. XI:2(c); see Schoenbaum, *supra* note 2, at 1165, 1167; MATSUSHITA, *supra* note 2, at 181.

97. See GATT, *supra* note 5, art. XI:2(c)(i).

98. GATT, *supra* note 5, art. XI:2(c)(ii); see Schoenbaum, *supra* note 2, at 1167; MATSUSHITA, *supra* note 2, at 181.

99. MATSUSHITA, *supra* note 2, at 47; Schoenbaum, *supra* note 2, at 1180.

100. See MATSUSHITA, *supra* note 2, at 180 (discussing the reason why the GATT panel found Japan's rice importation ban violated Article XI); see generally GATT, *supra* note 5, art. XI:2(c) (listing the exceptions to the elimination of quantitative restrictions which Japan's total ban on rice fails to meet).

101. See GATT, *supra* note 5, art. XXIII (describing the process that should be followed when one contracting country believes that another contracting party is failing to meet its obligations under the GATT).

102. MATSUSHITA, *supra* note 2, at 180; see Schoenbaum, *supra* note 2, at 1171; MATSUSHITA & SCHOENBAUM, *supra* note 7, at 76.

Japan was in violation of Article XI on twelve items, one of which was rice, and holding that Japan failed to meet its obligation as a contracting country of the GATT.¹⁰³ The Japanese government accepted the panel's decision and proceeded to eliminate the import quotas on beef and pork products, fruit puree and paste, fruit pulp and canned pineapple, non-citrus juice, tomato ketchup and sauce, glucose and miscellaneous processed foods.¹⁰⁴ However, the Japanese government refused to eliminate quotas on dairy products and starch, including rice.¹⁰⁵

Japan's refusal to compromise on its rice policy hinges on the desire to maintain self-sufficiency in the production of its main staple food.¹⁰⁶ Buttressed by multi-billion dollar subsidies, government purchases and a maze of agricultural laws, Japan has successfully avoided becoming dependant on foreign rice producers.¹⁰⁷ Another factor contributing to Japan's historic refusal to eliminate its import ban on rice has been the long time political support voiced for keeping the traditional rice import ban in place.¹⁰⁸ However, on December 13, 1993, Prime Minister Morihiro, in the face of tremendous internal political opposition, decided to bend to international pressure and agreed to open Japanese markets to rice imports.¹⁰⁹

V. THE AGREEMENT ACCEPTED BY JAPAN

The agreement Japan accepted is a minimum access plan prepared by Germain Denis, head of the GATT's market opening negotiation group.¹¹⁰ The

103. MATSUSHITA, *supra* note 2, at 180; *see* Schoenbaum, *supra* note 2, at 1171; MATSUSHITA & SCHOENBAUM, *supra* note 7, at 76.

104. MATSUSHITA, *supra* note 2, at 180; MATSUSHITA & SCHOENBAUM, *supra* note 7, at 76.

105. MATSUSHITA & SCHOENBAUM, *supra* note 7, at 77.

106. *See supra* notes 36-38 and accompanying text (explaining that Japan believes maintaining self-sufficiency in rice production is a national safety issue and discussing Japan's desire to avoid falling victim to embargos).

107. *See* Burgess, *supra* note 10, at G1 (discussing the complicated system Japan has used to maintain self-sufficiency in rice production); *see generally* Green, *supra* note 36, at 153 (stating that total transfers into Japan's rice sector by the government between 1982 and 1986 were over fourteen billion dollars which represents a producer subsidy equal to eighty-eight percent).

108. *See supra* notes 42-48 and accompanying text (discussing the political influences that have greatly impacted the maintenance of Japan's rice import ban).

109. Reid, *supra* note 12, at A19; *Hosokawa Announces Decision To Open Japan To Rice Imports*, *supra* note 11, at 2082; *see generally* MATSUSHITA & SCHOENBAUM, *supra* note 7, at 77 (explaining that the United States had not acted on the U.S. Rice Miller's Association's complaint, under section 301 of the Trade Act of 1974 (demanding retaliation against Japan, and was waiting to see if Japan took steps to open its rice market). This threatening posture of U.S. trade retaliation appears to have been at least one of the factors pressuring Japan to make concessions on its rice ban. *Id.*

110. *Hosokawa Announces Decision To Open Japan To Rice Imports*, *supra* note 11, at 2082; *see generally* *Hosokawa Says Formal Announcement On Rice Imports Will Be Made This Week*, Int'l Trade Rep. (BNA), Dec. 8, 1993, at 2055 (implying that the GATT Contracting Parties employed the aid of a special group of negotiators to work with Japan on market access issues concerning rice).

Denis minimum access plan is comprised of four essential parts.¹¹¹ The first portion of the plan imposes a six year moratorium on the conversion of non-tariff trade barriers, like quotas or bans, into tariffs for farm products whose imports comprise less than three percent of domestic consumption, whose exports are not subsidized, and whose production is regulated domestically.¹¹² The second key aspect of the plan is that rice receives special treatment on the condition that Japan allows minimum access for imports of between four percent and eight percent of domestic rice consumption to imports during the six year moratorium period.¹¹³ The third element calls for negotiations one year before the end of the six year period to determine if the special treatment of rice will continue.¹¹⁴ Finally, countries wishing to restrict food exports during domestic food shortages will be required to hold consultations with importing countries.¹¹⁵

To honor the requirements of the Denis plan, Japan agreed to a six year gradual opening of its rice import market, starting in 1995, that would allow rice imports in Japan to steadily climb to eight percent of domestic rice consumption at the sixth year of the implementation of the agreement.¹¹⁶ After the sixth year, the quotas will be replaced by stiff tariffs that will gradually be reduced and further open Japan's rice market under a system of comprehensive "tariffication."¹¹⁷ The system of tariffication is an important aspect of Japan's concession because it helps protect Japan's rice farmers from an immediate and overwhelming entry of less expensive foreign rice into Japan's market.¹¹⁸

Japan's acceptance of the agreement to gradually open its rice market, at the final moments of the Uruguay Round GATT negotiations, was a crucial part of the events that lead to the passage of the Uruguay Round Agreement on Agriculture that was subsequently accepted by the GATT contracting countries.¹¹⁹ The

111. See *Hosokawa Says Formal Announcement On Rice Imports Will Be Made This Week*, *supra* note 110, at 2055 (dividing the Denis plan into four separate parts).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. See *Hosokawa Announces Decision To Open Japan To Rice Imports*, *supra* note 11, at 2082 (explaining that the Denis plan accepted by Japan requires an initial entry of imported rice equal to 4% of Japan's total rice consumption which will move up to eight percent by the year 2000); Reid, *supra* note 12, at A19; Holley, *supra* note 12, at World Report 8; Rafferty, *supra* note 30, at 14.

117. *Hosokawa Announces Decision To Open Japan To Rice Imports*, *supra* note 11, at 2082; Reid, *supra* note 12, at A19; see *Watanabe*, *supra* note 11, at D1 (explaining that the tariff portion of the agreement will be negotiated at the close of the six year period that Japan has to gradually open its rice market); Holley, *supra* note 12, at World Report 8 (describing the system of monetary penalties Japan will be able to enforce against rice imports after the six year quota period is complete); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2341 (1976) (defining tariffication as a schedule, system or scheme of duties or fees imposed by a government on imported or exported goods for the production of revenue or the artificial fostering of home industries).

118. Rowley, *supra* note 11, at 29.

119. Telephone interview with William Huffman, Director of Public Relations, Farmers Rice Cooperative (Dec. 21, 1995).

Uruguay Round Agreement on Agriculture is an important agreement because it addresses, among other things, the very market access issues that were a tremendous point of contention between Japan and rice exporting countries like the United States.¹²⁰ The Uruguay Round Agreement on Agriculture negates the agricultural exceptions originally placed in Article XI: 2(c) of the GATT and as a result applies the principles set forth in Article XI by requiring contracting countries to convert all import and market access restrictions into ordinary customs duties and tariffs.¹²¹ These measures are preferred under the GATT because they are more negotiable as compared to restrictions or prohibitions.¹²²

VI. RECENT POST-AGREEMENT CHANGES IN JAPAN'S RICE LAW

In response to what the Japanese government has declared to be the vital need of Japan to ensure a stable supply of staple food¹²³ under the new international trade rules, Japan abolished the Foodstuff Control Law and instituted The Law for Stabilization of Supply—Demand and Price of Staple Food (Staple Food Law).¹²⁴

A. *The Staple Food Law*

The general objectives of the Staple Food Law are very similar to those set forth in the Foodstuff Control Law.¹²⁵ The Staple Food Law aims to stabilize the supply and demand as well as prices of rice, wheat and barley, thereby enhancing the stability of Japanese citizen's lives as well as the national economy.¹²⁶ To meet the basic policy of the Staple Food Law and ensure the stabilization of

120. See Agreement on Agriculture, opened for signature April 15, 1994, in URUGUAY ROUND, FINAL TEXTS OF THE GATT URUGUAY ROUND AGREEMENTS INCLUDING THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION, art. 4:2 [hereinafter Agreement on Agriculture]; see also Steinle, *supra* note 94, at 344; see generally LAW AND PRACTICE OF THE WORLD TRADE ORGANIZATION, COMMENTARY (Oceana 1995) (giving a general overview of the Uruguay Round Agreement on Agriculture).

121. See Steinle, *supra* note 94, at 345; Compare Agreement on Agriculture, *supra* note 120, art. 4 with GATT, *supra* note 5, art. XI:2(c).

122. See Steinle, *supra* note 94, at 345; Compare Agreement on Agriculture, *supra* note 121, art. 4 with GATT, *supra* note 5, art. XI:2(c).

123. See JAPAN INTERNATIONAL AGRICULTURAL COUNCIL FOR THE FOOD AGENCY, AN OUTLINE FOR THE STABILIZATION OF SUPPLY-DEMAND AND PRICE OF STAPLE FOOD 8 (1995) [hereinafter OUTLINE OF THE STAPLE FOOD LAW] (defining staple foods as rice, wheat and barley or processed foods made from rice, wheat or barley).

124. Shuyo Shokuryo no Juyo oyobi Kakaku no Antei ni Kansuru Ho, Law No. 113, Dec. 14, 1994 [hereinafter Staple Food Law]; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 1 (explaining Japan's belief in the need to meet international trade rules while ensuring a stable supply of staple food and the decision to abolish the Food Control Law)

125. Compare Staple Food Law, *supra* note 124, art. 1 with Foodstuff Control Law, *supra* note 70, art.1.

126. Staple Food Law, *supra* note 124, art. 1; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 7 (discussing the purpose of the Staple Food Law and the important position that rice, wheat and barley occupy in Japanese agriculture).

supply, demand and the price of rice, the Minister of Agriculture establishes and publicly announces a yearly plan.¹²⁷ The plan focuses on the implementation of production adjustments to balance the supply and demand of rice, rice stockpile management to guard against shortages, and a rice distribution system that will meet consumer needs.¹²⁸

In order to strengthen Japan's rice farming industry through producer initiative, the government has broken away from its absolute control embodied in the Foodstuff Control Law and, under the Staple Food Law, has greatly deregulated the distribution of rice by abolishing the historic obligation of rice farmers to sell rice directly to the government.¹²⁹ Instead of requiring direct sales to the government, the government requires rice farmers to sell their rice through less restrictive, specified channels¹³⁰ that meet the government's priority of ensuring stable rice distribution.¹³¹ Rice producers now have the option of selling or consigning their rice either to registered shippers or to the government, depending on the production adjustments and quantity of rice allocated by the Minister of Agriculture to be sold to the government by each producer under the yearly plan.¹³² The Staple Food Law is flexible in that it allows rice producers to apply to the Minister of Agriculture to have their individual production adjustments modified.¹³³ So long as the proposed modifications will not hinder smooth rice distribution, the applications will be accepted.¹³⁴

The purchase price and sale price of rice flowing into and out of the government is controlled by guidelines similar to those established under the Foodstuff

127. Staple Food Law, *supra* note 124, art. 4; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 9 (describing the requirement of an annual plan concerning the stabilization of the supply, demand and price of rice).

128. See OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 2 (discussing the primary focus of the yearly plan required under the staple food law); see *supra* notes 77-90 and accompanying text (discussing the strict government control under the Foodstuff Control Law).

129. See generally OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 2 (explaining the government strategy of introducing market principles, promoting deregulation and pointing out a major move away from absolute and direct government control in the rice market).

130. See *id.* at 10 (outlining the specific channels through which rice producers may sell their rice which include sale to government registered shippers, consignment to government registered shippers and sale to the government).

131. See *id.* at 2 (pointing out the abolition of some of the governments strict policies upheld under the Foodstuff Control Law).

132. Staple Food Law, *supra* note 124, art.5; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 10 (explaining the less restrictive channels through which rice farmers may now sell their rice).

133. See OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 11 (discussing the ability of rice producers to modify the government plan).

134. See generally *id.* at 11 (pointing out that the Minister of Agriculture will accept the applications so long as the goals of stabilizing the supply and demand of rice are not jeopardized). It appears that the Minister of Agriculture must accept applications for production adjustments and authorize them if the goals of the yearly plan are not negatively impacted. *Id.*

Control Law.¹³⁵ However, under the Staple Food Law, the Minister of Agriculture determines the government purchase price of rice not only by considering production conditions and commodity prices, but also the price of rice sold to, or consigned to, registered shippers.¹³⁶ The sale price of rice sold by the government to registered wholesalers is determined after taking into account trends in the supply and demand of rice, household spending, commodity prices, and the need to stabilize consumers' household economy.¹³⁷

To help stabilize the price of rice bought and sold through registered shippers on the greatly deregulated, non-government market, the government established an agency called The Voluntary Marketed Rice Price Formation Center.¹³⁸ The Voluntary Marketed Rice Price Formation Center buys and sells quantities of rice to the degree necessary to manipulate supply and demand and create a "natural" price index in the non-government market.¹³⁹ This system allows the Japanese government to somewhat deregulate much of the market while still indirectly ensuring a stable and fair price for rice.¹⁴⁰

Another important aspect of The Staple Food Law is its treatment of rice imports and the government's ability to buy and price imported rice.¹⁴¹ The Staple Food Law provides the government with the power to import rice under a special method.¹⁴² This method requires a joint application of the entities intending to import the rice and those qualified buyers, registered wholesalers and designated government entities intending to purchase the imported rice.¹⁴³ Furthermore, the sale price for the imported rice will include duties, but the additional markups will

135. Compare Foodstuff Control Law, *supra* note 70, art. 3:2 with OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 18-19.

136. See OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 18 (describing the methods the government uses to determine the government purchase price from producers); see also Staple Food Law, *supra* note 124, art. 59 (explaining that when deciding the government purchase price a specially designated council must be consulted).

137. See OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 19 (explaining the method used to determine the price of rice sold by the government).

138. Staple Food Law, *supra* note 124, art. 48; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 2 (describing the government formation of the Voluntary Market Rice Price Formation Center in order to ensure an index upon which fair prices can be based in the non-government market).

139. Staple Food Law, *supra* note 124, arts. 48-49; see generally OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 17-18 (establishing the methods that will be used by the Voluntary Marketed Rice Price Formation Center when conducting business).

140. Staple Food Law, *supra* note 124, art. 48; see generally OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 17 (explaining that the system has been put in place to insure smooth trading and appropriate supplies of rice).

141. Staple Food Law, *supra* note 124, art. 60-61; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 19 (showing that Article 60 and Article 61 focus on the government's ability to buy imported rice and how the imported rice will be priced).

142. OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 20.

143. Staple Food Law, *supra* note 124, art. 62; see OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 20 (describing the special method to be followed concerning rice importation).

not exceed those levels determined by the Minister of Agriculture in compliance with Japan's international commitments.¹⁴⁴

VII. EFFECT ON UNITED STATES RICE EXPORTERS

The United States is a major rice producing country with exports surpassing 2,164,000 metric tons of rice annually.¹⁴⁵ The potential positive ramifications for the United States are staggering when considering the possible results of opening the rice market of a country like Japan; a country with a population exceeding 125,000,000¹⁴⁶ that traditionally eats rice with every meal.¹⁴⁷ Throughout the Denis minimum access plan negotiations, while the United States was placing intense pressure on Japan to open Japanese rice markets, the Japanese government argued that the United States would not benefit from the lowering of the rice import barriers.¹⁴⁸ Japan contended that the low cost rice producers, such as Thailand and Burma, would be the primary beneficiaries of the new business.¹⁴⁹ Although Thailand won several of the Japanese rice contract bids and has benefited from the initial opening of Japan's market, the United States secured the majority of the successful bids.¹⁵⁰ Statistics from April 1, 1995 through March 31, 1996, which is the first year of Japan's implementation of the GATT Agreement, show that the United States has captured the majority of rice bids accepted by Japan.¹⁵¹ To date, in the face of competition from Australia, China, Thailand, Pakistan and Uruguay, the United States has obtained fifty-five percent of all rice bids awarded by Japan.¹⁵²

The two biggest threats that may derail the potential boom for the United States and all other rice exporting countries, resulting from the opening of Japan's rice market, include possible delays in Japan's legal reform and potential bad

144. Staple Food Law, *supra* note 124, art. 61; *see* OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123, at 19-20 (explaining the pricing method to be used to determine the sale price of imported rice).

145. THE WORLD ALMANAC AND BOOK OF FACTS, *supra* note 1, at 202.

146. *Id.* at 789.

147. REISCHAUER, *supra* note 32, at 21; *see* Green, *supra* note 36, at 152 (stating that rice is a staple in the Japanese diet that accounts for a substantial share of the average Japanese citizen's daily caloric intake).

148. *See* Burgess, *supra* note 10, at G1 (discussing Japan's argument that the United States would not benefit due to low cost Asian producers and that the United States budget deficit will be worsened if Japan buys U.S. rice because U.S. rice is so heavily subsidized).

149. *Id.*

150. *See* Telephone Interview with Mathew J. Massaua, *supra* note 14 (explaining that the United States has won a majority of the contracts with Japan based on the quality of U.S. rice as well as the political position the United States holds as Japan's most important ally).

151. *See id.* (explaining that Japan is required to import 379,000 metric tons of rice in year one which increases to 758,000 metric tons by the year 2000 and noting that the United States has won a majority of the bids and is expecting to win more bids as the Japanese place additional orders prior to the March 31, 1996 deadline in order to meet the Denis plan's first year obligations); *see* Holley, *supra* note 12, at World Report 8 (discussing the minimum rice tonnage Japan is required to import in 1995).

152. Telephone Interview with Mathew J. Massaua, *supra* note 14.

faith tariffication.¹⁵³ Many believed that reforming Japan's Foodstuff Control Law would present tremendous problems to the implementation of the full force of the Uruguay Round Agreement.¹⁵⁴ Recent history shows that Japan, by enacting the Staple Food Law, acted quickly and did what many felt would not, or even could not, be accomplished.¹⁵⁵ By replacing the Foodstuff Control Law, Japan made major strides in its commitment to slowly deregulate its internal rice market and fulfill its international obligations under the GATT.¹⁵⁶

The second major threat is the bad faith use of tariffs.¹⁵⁷ Dirty tariffication¹⁵⁸ has been, and continues to be, a realistic concern of those countries working to open Japan's rice market.¹⁵⁹ Once the six year quota period moves into tariffication, the tariffs could easily be used to limit market liberalization of Japan's rice market, and offer, for all practical purposes, only a relatively small percent of the rice market to imports while maintaining control of the rest in an effort to ensure stable rice prices that have been an historic Japanese emphasis.¹⁶⁰ The use of tariffs to impede the dismantling of the protective effects of quotas and import bans is possible because tariffs that are set at high levels result in imported goods with artificially inflated prices that often force the imported goods out of the market.¹⁶¹ Although Article XXVIII *bis* of the GATT specifically discusses and recognizes that duties often constitute serious obstacles to trade, it does not impose a per se limit on duties.¹⁶² Instead, Article XXVIII *bis* provides the framework for negotiations to reduce tariff levels.¹⁶³ An important point to note, however, is that Article XXVIII *bis*, section 3 specifically states that all negotiations

153. See Michiyo Nakamoto, *Japan Resigned to Rice Liberalization: Even Once-vociferous Farmers Are Now Ready to Swallow Uruguay Round Reforms*, FIN. TIMES, Oct. 5, 1994, at 7 (explaining that political trouble and impediments to legal reform are a potential problem); Steinle, *supra* note 94, at 349 (discussing how tariffs that are intentionally high often nullify market opening attempts).

154. Nakamoto, *supra* note 153, at 7.

155. See Nakamoto, *supra* note 153, at 7 (addressing the difficulty Japan faces in revising the Foodstuff Control Law which may impede the impact of the Uruguay Round concessions by Japan).

156. See generally Staple Food Law, *supra* note 124; OUTLINE OF THE STAPLE FOOD LAW, *supra* note 123 (evidencing major legal reform that provides significant changes to the Foodstuff Control Law's absolute restrictions and regulations).

157. See Steinle, *supra* note 94, at 348-49 (explaining that overstated tariffs are a great impediment to trade liberalization and market access provisions).

158. See *id.* at 348 (defining "dirty tariffication" as the overstatement of tariffs to the point that they are so high that market forces cannot work and trade liberalization is, as a practical matter, thwarted).

159. See *id.* at 348-49 (implying that dirty tariffication is not uncommon and is an effective means of inhibiting trade liberalization methods).

160. See *id.* at 349 (explaining that high tariffs leave little room for the natural function of market forces and prevent significant market liberalization); see also Rafferty, *supra* note 30, at 14 (explaining that during the initial periods of tariffication, the rice import tariffs could be as high as seven hundred percent).

161. See Steinle, *supra* note 94, at 348-49 (explaining in general terms the depressing effect that high tariffs can have on market liberalization and the seeming frequency with which many countries have used tariffs to limit market access).

162. GATT, *supra* note 5, art. XXVIII *bis*.

163. *Id.*

shall be conducted while keeping in mind several factors including the strategic and particular needs of a contracting country regarding the specific industry or product at issue.¹⁶⁴ These particular GATT Article XXVIII *bis* provisions certainly appear to give Japan bargaining strength due to the strategic importance Japan places on its remaining self-sufficient in rice production.¹⁶⁵

VIII. CONCLUSION

Japan has taken tremendous strides within the past several years to liberalize and open its rice market.¹⁶⁶ Japan is progressing towards fulfilling its obligation to import 379,000 metric tons of rice in the April 1, 1995 through March 31, 1996 fiscal year.¹⁶⁷ However, it remains to be seen whether the enforcement of Article XI of the GATT and Japan's concessions to international pressure to open its rice market will actually result in anything more than a token piece of Japan's rice market being sacrificed for the sake of the survival of Japan's participation in the GATT.¹⁶⁸ It is certainly quite possible that although Japan may have been forced to unlock the door to its market, the alternative means that do not violate the GATT could be used to maintain Japanese dominance of its own rice market.¹⁶⁹ Although the opportunity developing in Japan for rice exporting countries may quickly be subsumed by Thailand, Burma and other countries that are rapidly becoming powers in the world agricultural market, there is little doubt that Japan will continue to buy rice from the United States to help maintain amicable relations with the United States.¹⁷⁰ This appears likely not only because the

164. See *id.* art. XXVIII *bis*:3 (laying out the factors that should be considered during any tariff negotiation process under Article XXVIII *bis* which include: (a) the needs of the individual country and particular industries; (b) the needs of less developed countries for flexibility in the use of tariffs to assist in economic development and (c) other relevant circumstances including fiscal, developmental and strategic needs of the country).

165. See *supra* notes 33-41 and accompanying text (discussing Japan's public policy arguments in support of maintaining its self-sufficiency in rice production).

166. *Hosokawa Announces Decision To Open Japan To Rice Imports*, *supra* note 11, at 2082; Reid, *supra* note 30, at A19; Holley, *supra* note 12, at World Report 8.

167. Telephone Interview with Mathew J. Massaua, *supra* note 14; see Holley, *supra* note 12, at World Report 8 (discussing the minimum rice volumes Japan is required to import under the agreement).

168. See Reid, *supra* note 12, at A19; Nakamoto, *supra* note 153, at 7; Steinle, *supra* note 94, at 349.

169. See *supra* notes 162-66 and accompanying text (discussing the GATT Article XXVIII and the use of tariffs under the GATT).

170. See Reid, *supra* note 12, at A19 (discussing Japan's relationship with the United States and implying that Japan needs to foster good relations with the United States).

1996 / Unlocking the Japanese Rice Market

United States is Japan's primary ally, but also because the United States is the largest market for Japanese goods.¹⁷¹ The real question that remains to be answered is how much control of its internal rice market will Japan really give up to free market forces and outside rice exporters.

James R. Moore

171. *See id.* (stating that the United States is Japan's primary export market which is evidenced by the fifty billion dollar U.S. trade deficit with Japan).

