

JAPANESE RICE PROTECTIONISM: A CHALLENGE FOR THE DEVELOPMENT OF AGRICULTURAL TRADE LAWS

CHANDLER H. UDO*

Abstract: The Japanese government has failed to contribute meaningfully to agricultural trade negotiations. Japan's extreme negotiation posture primarily stems from a disinclination to make concessions in its domestic rice market. It is also a result of the ability of Japan, and other developed nations, to take advantage of the rule structure outlined by the Agreement on Agriculture. Under current agricultural laws, Japan is able to maintain many domestic measures that provide support for rice farmers while also charging prohibitively high tariffs. Japan's reluctance to limit its support for domestic rice farmers is based on the premise that rice plays a central role in Japanese culture, and without protection, the industry would collapse. What Japan has failed to realize, however, is that the bases of its arguments have little merit today. Perhaps more importantly, Japanese resistance to agricultural trade reform seriously undermines the legitimacy of the WTO.

INTRODUCTION

On July 24, 2006, the World Trade Organization's (WTO) Director-General, Pascal Lamy, announced that trade negotiations would be suspended primarily because of a failure to reach an agreement on agriculture.¹ The United States and the European Union (EU) are generally attributed much of the blame for the impasse because of their perceived hard-line positions on agricultural protectionism.² This allocation of responsibility is not a surprise considering that the U.S. and EU agendas generally drive the negotiating process forward.³

* Chandler H. Udo is a Note Editor for the *Boston College International & Comparative Law Review*.

¹ Pascal Lamy, Director-General, World Trade Org., Informal Trade Negotiations Committee Meeting: Chairman's Introductory Remarks (July 24, 2006), available at http://www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm.

² See Cody Thacker, Note, *Agricultural Trade Liberalization in the Doha Round: The Search for a Modalities Draft*, 33 GA. J. INT'L & COMP. L. 721, 739 (2005).

³ FATOUMATA JAWARA & AILEEN KWA, BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS 50 (2003).

Given this situation, it is easy to overlook the fact that Japan has failed to play a positive role in agricultural negotiations because of a reluctance to make concessions in its domestic rice market.⁴

During an interview at the WTO's round of negotiations in Cancun, Mexico, a western diplomat was quoted as saying, "Japanese rice is seen as an icon of cultural protectionism around the world."⁵ This comment reflects a fundamental frustration in the way that many countries view Japan's disinclination to reduce its enormous rice support measures.⁶ In fact, Japanese rice farmers receive approximately \$2.8 billion dollars in domestic government assistance annually.⁷ The Japanese government's intervention, from a global perspective, is "unprecedented in its degree."⁸

The delicate balance of agricultural protectionism and the WTO's stated goal to "ensure that trade flows as smoothly, predictably and freely as possible" have coexisted since the creation of the WTO in 1994.⁹ In fact, the agreement reached in 1994 is credited with "having taken the first and most important steps forward in the process of integrating agriculture into the mainstream of rules in the international trading system."¹⁰ The 1994 agreement was certainly not a perfect resolution, and many countries were dissatisfied with its provisions throughout the negotiating process.¹¹ Perhaps this tension can be explained by the negative political implications of agricultural re-

⁴ See Yūjiro Hayami & Yoshihisa Godo, *Economics and Politics of Rice Policy in Japan: A Perspective of the Uruguay Round 1* (Nat'l Bureau of Econ. Research, Working Paper No. 5431, 1995).

⁵ *WTO on a Sticky Wicket Against Japanese Rice Farmers*, The Age, Sept. 12, 2003, available at <http://www.theage.com.au/articles/2003/09/11/1063268512176.html>.

⁶ See *id.*

⁷ U.S. DEP'T OF AGRIC., RICE SECTOR POLICIES IN JAPAN 4 (2003) [hereinafter RICE SECTOR POLICIES].

⁸ EMIKO OHNUKI-TIERNEY, RICE AS SELF: JAPANESE IDENTITIES THROUGH TIME 15 (1993).

⁹ World Trade Org., WTO in Brief, http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm (last visited Jan. 26, 2006); see, e.g., WORLD TRADE ORG., THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 39-68 (1995) [hereinafter RESULTS].

¹⁰ See Melaku Geboye Desta, *Agriculture and the Doha Development Agenda: Any Hopes for Improvement?*, in ESSAYS ON THE FUTURE OF THE WTO 149, 150 (Kim Van der Borgh et al. eds., 2003).

¹¹ See Kern Alexander, *The World Trade Organization: A Very Short Introduction* by Amrita Narlikar, 55 INT'L & COMP.L.Q. 780, 782 (2006).

form.¹² In any event, agriculture remains a vitally important issue in international trade.¹³

Part I of this Note summarizes the development of agricultural trade agreements and Japan's reasons for resisting reduction of their current protectionist policies on rice. Part II explores some of the provisions of the 1994 Agreement on Agriculture (AoA), the exceptions Japan has used to avoid its obligations within the AoA, and Japan's domestic rice policies. Part III focuses on potential revisions to the AoA and offers reasons why Japan should change its current negotiating position.

I. BACKGROUND

The rules governing the international trading system were originally codified in the 1947 General Agreement on Tariffs and Trade (GATT).¹⁴ This multilateral treaty sought to create a system that established core principles in international trade.¹⁵ A series of successive rounds of trade negotiations followed, focusing on the reform of import tariffs and quotas.¹⁶ These negotiations, however, had limited participation and avoided significant agricultural reform.¹⁷ The Uruguay Round of negotiations, which lasted from 1986–1994, was the first to adopt a comprehensive set of reform measures in international trade since the inception of the GATT.¹⁸ Arguably the most important result of this historic event was the Marrakesh agreement creating the WTO.¹⁹

The AoA, contained within the Marrakesh agreement, focused on achieving binding commitments in multiple areas, including promoting market access and limiting domestic support.²⁰ The combination of market access restrictions and domestic support measures was considered to distort the free trade of agricultural goods.²¹ While rec-

¹² See Wyn Grant, *The Politics of Agricultural Trade*, in AGRICULTURE AND INTERNATIONAL TRADE LAW, POLICY AND THE WTO 49, 49 (Michael Cardwell et al. eds., 2003) [hereinafter AGRICULTURE AND INTERNATIONAL TRADE LAW].

¹³ See *id.*

¹⁴ JAWARA & KWA, *supra* note 3, at 5.

¹⁵ See *id.* at 7.

¹⁶ See *id.* at 8.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See JAWARA & KWA, *supra* note 3, at 9.

²⁰ See RESULTS, *supra* note 9, at 39.

²¹ See *id.*

ognized as a significant step, the conclusion of the AoA was but one stage in the process of trade reform.²²

Although many countries considered the AoA to be a significant accomplishment, developing countries have viewed it as one of the most inequitable agreements in the WTO.²³ In effect, the AoA provides preferential treatment for developed countries that use their superior bargaining power to push their own agendas.²⁴ The most developed countries in the world successfully incorporated “loopholes” into the agreement that significantly reduced its potential impact on international trade reform.²⁵ One such loophole is the “green box” measures that allow countries to classify broad swaths of agricultural support as having no trade distorting effects, when they in fact impact trade significantly.²⁶

In signing the AoA, developed countries were interested in producing a carefully designed agreement that would minimize the number of changes required in their overall agricultural support policies.²⁷ In these developed nations, farmers are highly reliant on subsidies, tariffs, and other support measures.²⁸ Thus, these farm interests lobby vigorously for the maintenance of government support.²⁹ Therefore, loopholes such as the “green box” measures allow developed countries to satisfy their agricultural industry while appearing to support global trade.³⁰

On the other hand, developing nations were primarily concerned with fair competition that allows them to gain access to developed countries’ markets, and prevent cheaper subsidized goods from entering their own countries.³¹ Under the current system, farmers in developing nations “cannot compete and go out of business” with the influx of foreign goods, often destroying overall agricultural production.³² In particular, agricultural subsidies in developed countries lead to overproduction of certain agricultural goods on the world market, thereby

²² Christopher Rodgers & Michael Cardwell, *The WTO, International Trade and Agricultural Policy Reform*, in AGRICULTURE AND INTERNATIONAL TRADE LAW, *supra* note 12, 1.

²³ JAWARA & KWA, *supra* note 3, at 26.

²⁴ *See id.* at 50.

²⁵ *Id.* at 27.

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See* Grant, *supra* note 12, at 49.

²⁹ *Id.* at 50.

³⁰ *See id.*

³¹ *See* JAWARA & KWA, *supra* note 3, at 29.

³² *See id.*

depressing prices.³³ Thus, given this situation, developing nations were in favor of eliminating subsidies and promoting market access.³⁴

The most recent round of multilateral negotiations began in Doha, Qatar in 2001 with a comprehensive set of goals.³⁵ To date, no agreement has been reached because of a stark contrast in the positions of the participants.³⁶ Most developing countries came to the negotiating table unwilling to support further agricultural trade reform, but preferred to focus on implementation of issues from the previous round.³⁷ Developed countries, on the other hand, have continued to cling to arguments relating to food supply, stable farm income, political influence and cultural values to justify giving agriculture special treatment.³⁸ Two of these arguments have particular significance in the case of Japanese rice: (1) culture and (2) self-sufficiency.

A. Culture

Domestically produced rice has occupied a central place in Japanese culture for centuries.³⁹ Although rice might not be considered “the staple food” of the Japanese diet since its introduction to Japan, it has maintained crucial symbolic significance.⁴⁰ Of all grains, rice alone was believed to have a soul and it alone required ritual performances.⁴¹ Core imperial rituals in ancient Japan were officiated by the emperor and all related to rice harvesting.⁴² In addition, rice has had significance in issues of wealth, power, and aesthetics.⁴³ Most citizens in contemporary Japan would not claim that rice has a soul or is a deity, but its significance in Japanese history is still recognized.⁴⁴ A statement made by a Japanese agricultural union embodied this belief: “[r]ice farming in Japan, with a history of 2300 years behind it, has greatly influenced all areas of national life, including social order

³³ See *id.* at 27.

³⁴ See *id.*

³⁵ See Thacker, *supra* note 2, at 722.

³⁶ See JAWARA & KWA, *supra* note 3, at 53–56.

³⁷ See *id.* at 54.

³⁸ Margaret Rosso Grossman, *The Uruguay Round Agreement on Agriculture and Domestic Support*, in AGRICULTURE AND INTERNATIONAL TRADE LAW, *supra* note 12, 27, 29.

³⁹ See OHNUKI-TIERNEY, *supra* note 8, at 109.

⁴⁰ See *id.* at 4.

⁴¹ *Id.* at 44.

⁴² See *id.* at 46.

⁴³ See *id.* at 63.

⁴⁴ See OHNUKI-TIERNEY, *supra* note 8, at 108.

[and] religious worship . . . thus molding the prototype of Japanese culture."⁴⁵

Japanese citizens insist that locally grown short-grain rice is superior to the long-grain version grown in places such as California and Southeast Asia.⁴⁶ Many Japanese cite the widespread use of chemicals and pesticides as evidence of the impurity of California rice.⁴⁷ Thus, there has traditionally been a great deal of domestic tolerance for the artificially high price of rice within Japan.⁴⁸ As one commentator has noted, "Despite the massive transfer of funds from consumer to rice producer, there has not been a serious consumer movement in Japan to force the removal of rice subsidies."⁴⁹

B. *Self-Sufficiency*

Japanese statesmen have consistently advanced the argument that rice protectionist measures are necessary to ensure that Japan can feed its own population.⁵⁰ A prevailing view is that Japan should remain self-sufficient in the production of rice because it plays such an important role in the Japanese diet.⁵¹ The Japanese also emphasize the necessity of rice subsidies by claiming that their domestic rice industry is on the verge of collapsing in spite of governmental support.⁵² Japan's shrinking rural population and aging farmers exacerbate the problem.⁵³ In contemporary Japan, the older generation farms rice part-time while the younger generation primarily works in Japanese cities.⁵⁴

Japan has asserted that food security is one of the most serious concerns among Japanese consumers because it is the largest net-importer of food in the world.⁵⁵ Given this situation, Japan claims,

⁴⁵ See *id.* at 109.

⁴⁶ See *id.* at 110. Japonica rice, or short grain type, has shorter, rounder, more translucent grains than long-grain rice and becomes sticky when cooked. See *id.* at 13.

⁴⁷ See *id.* at 110.

⁴⁸ See *id.* at 22.

⁴⁹ Peter Jegi Gordon, *Rice Policy of Japan's LDP: Domestic Trends Toward Agreement*, 30 ASIAN SURV. 943, 951 (1990).

⁵⁰ See, e.g., Min. of Agric., Forestry, & Fisheries, *Negotiating Proposal by Japan on WTO Agricultural Negotiations*, available at http://www.maff.go.jp/wto/wto_nihon_teian_e.htm [hereinafter *Negotiating Proposal*].

⁵¹ Gordon, *supra* note 49, at 951.

⁵² See Duncan Bartlett, *Japan Fights to Protect Rice Farming*, BBC WORLD NEWS, Apr. 17, 2006, <http://news.bbc.co.uk/1/hi/business/4907742.stm>.

⁵³ See OHNUKI-TIERNEY, *supra* note 8, at 17.

⁵⁴ See *id.*

⁵⁵ See *Negotiating Proposal*, *supra* note 50.

“[W]e should gain as much food as possible that one can produce in one’s country, giving thanks to the blessing of the earth.”⁵⁶ Furthermore, Japan has continued to emphasize the importance of securing a stable food supply in their WTO negotiating proposals.⁵⁷

The weight of this argument has lessened as an influx of foreign dishes has consistently diminished the demand for rice.⁵⁸ In 1990, rice production could have far exceeded consumption if all agricultural land was used for rice cultivation.⁵⁹

II. DISCUSSION

The AoA embodied the culmination of years of arduous negotiations between multiple countries.⁶⁰ Despite its perceived shortcomings, the AoA established a comprehensive legal framework to promote the liberalization⁶¹ of agricultural trade.⁶² The AoA begins by stating, “[The parties’] long-term objective . . . is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support”⁶³ In order to achieve this objective, members agreed to binding commitments in market access, export competition, and domestic support.⁶⁴ These commitments were not absolute and took into consideration non-trade concerns such as food security and environmental protection.⁶⁵ In addition, members recognized “that trade reform was an ongoing process” and agreed that negotiations for continued agricultural reform would begin in 2000.⁶⁶

The scope of the AoA was unique in that it recognized domestic policies should be regulated in addition to policies governing international trade such as tariffs and quotas.⁶⁷ The members signing the agreement were aware that domestic agricultural policies are closely

⁵⁶ See Min. of Agric., Forestry, & Fisheries, Food Security, http://www.maff.go.jp/soshiki/kambou/joutai/onepoint/public/ta_8e.html (last visited on Jan. 25, 2008).

⁵⁷ See *Negotiating Proposal*, *supra* note 50.

⁵⁸ See OHNUKI-TIERNEY, *supra* note 8, at 16.

⁵⁹ See *id.*

⁶⁰ See Rodgers & Cardwell, *supra* note 22, at 3.

⁶¹ RESULTS, *supra* note 9. The concept of liberalization refers to reductions in domestic subsidies and protectionist measures such as tariffs in order to create a system that conforms more closely with market forces. See Grossman, *supra* note 38, at 30.

⁶² See Rodgers & Cardwell, *supra* note 22, at 1.

⁶³ RESULTS, *supra* note 9, at 39.

⁶⁴ *Id.*

⁶⁵ Grossman, *supra* note 38, at 30.

⁶⁶ *Id.* at 31.

⁶⁷ See *id.* at 33.

linked to international trade.⁶⁸ Thus, the AoA covered both border measures and domestic policies.⁶⁹ Border measures refer to the set of policies which are crafted to specifically target trade flows and prices by the use of import quotas and tariffs.⁷⁰ “Domestic support policies include all other agricultural measures within a country that aim to influence farm incomes, resource use, production, consumption, or environmental impacts.”⁷¹

Under the AoA, domestic agricultural support is divided into two categories: those that distort trade and those that do not.⁷² By moving domestic agricultural support to categories exempt from reduction, WTO members have successfully met their reduction commitments without actually reducing overall domestic support.⁷³

A. *The Agreement on Agriculture: Provisions*

The AoA provides different rule structures for different types of domestic agricultural support.⁷⁴ Domestic measures are generally classified within “boxes.”⁷⁵ As described by one scholar, “The ‘amber box’ contains policies that are trade distorting and are subject to reduction; the ‘green box’ contains policies that have a minimal effect on trade; and the ‘blue box’ provides for an exemption for payments that would otherwise fit within the ‘amber box.’”⁷⁶ Amber box support measures are reported within each country’s “Aggregate Measurement of Support” (AMS), which is defined in article (1)(a).⁷⁷ Beginning in 1999, Japan has consistently met its obligation under the AoA by reporting an AMS of zero.⁷⁸ This result is misleading because Japan continues to subsidize its domestic rice market by classifying many support policies

⁶⁸ *See id.*

⁶⁹ Betina Demarandan et al., *OECD Domestic Support and Developing Countries*, in *THE WTO, DEVELOPING COUNTRIES AND THE DOHA DEVELOPMENT AGENDA* 63, 63 (Basudeb Guha-Kasnobis ed., 2004) [hereinafter *DOHA DEVELOPMENT AGENDA*].

⁷⁰ *See* Grossman, *supra* note 38, at 33.

⁷¹ *Id.* at 33.

⁷² *See id.* at 34.

⁷³ *See id.* at 33.

⁷⁴ *See id.* at 34.

⁷⁵ Grossman, *supra* note 38, at 34.

⁷⁶ *Id.*

⁷⁷ *See* RESULTS, *supra* note 9, at 40. Aggregate Measurement of Support and “AMS” refer to the annual level of support, expressed in monetary terms, provided for an agricultural product in favor of the producers in general, other than the support provided under the programmes that qualify as exempt from reduction under Annex 2. *See id.*

⁷⁸ *See* RICE SECTOR POLICIES, *supra* note 7, at 11.

as non-trade distorting “green box” measures.⁷⁹ Japan also protects its domestic rice industry by erecting substantial tariff barriers for imported rice contrary to the AoA’s stated objectives.⁸⁰

1. The Green Box

A country may avoid reporting its domestic agricultural support under the AMS by classifying it as a “green box” measure.⁸¹ There are numerous exemptions allowed as long as they meet the requirements of Annex 2 of the agreement.⁸² According to Annex 2(1): “[d]omestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at least minimal, trade distorting effects on production.”⁸³ Under Annex 2, a country may provide domestic subsidies for: food security, domestic food aid, environmental preservation, research, pest control, structural adjustment assistance, and many other reasons.⁸⁴ As long as Japan meets the requirements set out in Annex 2, it is free to classify broad swaths of domestic agricultural support as trade-neutral “green box” measures.⁸⁵

One “green box” policy that Japan employs is rice paddy diversion payments.⁸⁶ Rice farmers are offered payments if they use their land for purposes other than growing rice.⁸⁷ Although Japan’s main purpose in enacting this policy is to reduce supply, it is reported as a “green box” measure based on preservation of the land in an environmentally useful condition.⁸⁸ Japan also classifies payments for relief during natural disasters, land consolidation, and interest concessions for agricultural loans as “green box” measures.⁸⁹ Although these measures are justified under Annex 2 of the AoA, they serve to subsidize Japanese farmers.⁹⁰ This reveals a basic flaw with the “green box” in general: countries are able to continue to manipulate their domes-

⁷⁹ See *id.* at 6.

⁸⁰ See RESULTS, *supra* note 9, at 39; *WTO on a Sticky Wicket Against Japan’s Rice Bowlers*, *supra* note 5.

⁸¹ See RESULTS, *supra* note 9, at 40.

⁸² See *id.* at 56–62.

⁸³ *Id.* at 56.

⁸⁴ See *id.* at 56–62.

⁸⁵ See Desta, *supra*, note 10, at 177.

⁸⁶ See RICE SECTOR POLICIES, *supra* note 7, at 6.

⁸⁷ See *id.* at 5, 7.

⁸⁸ See *id.* at 7.

⁸⁹ See *id.*

⁹⁰ See *id.*

tic agriculture market through direct payments and disguised financial transfers.⁹¹ Furthermore, most economists agree that no domestic support can ever be trade-neutral.⁹²

2. Market Access

The AoA took significant strides in promoting market access by limiting ways that countries can protect their agricultural producers from foreign competition.⁹³ According to articles 4, 5 and Annex 5, countries are prohibited from assessing non-tariff barriers to trade in agricultural products.⁹⁴ The AoA requires that member countries convert preexisting non-tariff barriers into tariffs through a process known as “tariffication.”⁹⁵ The AoA then called for tariffs to be reduced by an average of thirty-six percent worldwide during the course of a six year implementation period.⁹⁶ This process was left at the discretion of member nations and many tariffs remain substantial.⁹⁷

Japan, like other developed countries, has continued to maintain incredibly high tariffs in particular agricultural sectors.⁹⁸ For instance, Japan’s tariffs for rice remain around five times the overall price of rice.⁹⁹ Under the AoA, Japan is required to import a certain amount of foreign rice each year under what is known as the Tariff Rate Quota (TRQ).¹⁰⁰ In 2001, Japan’s import quota for rice and rice products was 682,000 tons.¹⁰¹ Within this quota, rice imports are not subject to tariffs.¹⁰² Any amount outside of the quota was assessed a tariff of \$2819/ton in 2001.¹⁰³ This prohibitively high amount essentially eliminated the possibility that foreign rice would enter the Japanese market.¹⁰⁴ Furthermore, a large percentage of imported rice within the TRQ is not sold within Japan’s domestic market, as the AoA intended,

⁹¹ See RICE SECTOR POLICIES, *supra* note 7, at 6.

⁹² See Desta, *supra* note 10, at 177.

⁹³ *Id.*

⁹⁴ See RESULTS, *supra* note 9, at 42–45, 65–68.

⁹⁵ See Desta, *supra* note 10, at 156.

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See RICE SECTOR POLICIES, *supra* note 7, at 13.

⁹⁹ See WTO on a Sticky Wicket Against Japan’s Rice Bowlers, *supra* note 5.

¹⁰⁰ See RICE SECTOR POLICIES, *supra* note 7, at 12.

¹⁰¹ See *id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *id.*

but is donated as food aid.¹⁰⁵ Thus, Japanese rice farmers are shielded from all foreign competition.¹⁰⁶

B. Japanese Domestic Laws

The legal foundation for Japan's domestic agricultural policies was originally codified in the 1961 Basic Law on Food, Agriculture and Rural Areas (Basic Law).¹⁰⁷ The Basic Law specifically sought to promote agricultural productivity and provide income support for Japanese farmers.¹⁰⁸

The stated objective of the Basic Law is found in article 1: "[t]he objective of this law is to improve people's lifestyle and to develop the natural economy through comprehensively and systematically implementing policies on food . . . by means of establishing basic principles and basic matters for realizing them"¹⁰⁹ The Basic law gives broad authority to the government to manage the Japanese agricultural industry through environmental measures, direct subsidies, and payments during times of emergencies.¹¹⁰ The driving force behind the Basic Law was to address the substantial difference in income between agriculture and industry.¹¹¹ The Japanese government was expected to control agricultural markets in order to guarantee that farmers could make an income similar to those employed in other industries and to provide an incentive for them to remain in the agricultural sector.¹¹²

Under the new rules set out in the AoA, Japan instituted the Law for Stabilization of Supply-Demand and Price of Staple Food (Staple Food Law).¹¹³ This law still allows the Japanese government to ensure the stabilization of supply, demand, and the price of rice.¹¹⁴ One major change initiated by the Staple Food Law was the increased deregulation of the distribution of rice.¹¹⁵ The government no longer re-

¹⁰⁵ See RICE SECTOR POLICIES, *supra* note 7, at 2–3.

¹⁰⁶ See *id.*

¹⁰⁷ See Basic Law on Food, Agriculture, and Rural Areas, available at <http://www.aff.go.jp/soshiki/kambou/kikaku/NewBLaw/BasicLaw.html> [hereinafter Basic Law] (last visited Jan. 25, 2008).

¹⁰⁸ See James R. Moore, *Unlocking the Japanese Rice Market: How Far Will the Door Be Opened?*, 9 TRANSNAT'L. LAW. 273, 274 (1996).

¹⁰⁹ See Basic Law, *supra* note 107.

¹¹⁰ See *id.*

¹¹¹ See Moore, *supra* note 108, at 279.

¹¹² *Id.*

¹¹³ See *id.* at 287.

¹¹⁴ *Id.* at 288.

¹¹⁵ See *id.*

quires rice farmers to sell their rice directly to the government but allows them in certain cases to sell rice to registered shippers.¹¹⁶ The Minister of Agriculture determines the government purchase price of rice by taking into account production conditions, commodity prices, and rice sold on the free market.¹¹⁷ This system allows the Japanese government to partially deregulate the rice market while still guaranteeing that rice farmers receive a fair price.¹¹⁸

III. ANALYSIS

Any future changes in the WTO rule structure will necessarily require unanimous agreement of all member nations.¹¹⁹ This consensus is exceedingly difficult to achieve when there are well over a hundred ministers present at the negotiating table with conflicting interests and agendas.¹²⁰ The highly politicized issue of agriculture compounds the problem of consensus-building.¹²¹ Despite these difficulties, Japan's ability to circumvent its obligations through the "green box" and tariff loopholes is overwhelming evidence of a need for change.¹²² In order to address these deficiencies, the loopholes built into the AoA will have to be limited or eliminated.¹²³ This will require Japan to be more conciliatory in its negotiating position by asserting a willingness to consider reducing its rice protectionist measures.¹²⁴

There are currently no limits on the amount of subsidies that can fall within the "green box."¹²⁵ In fact, between 1986 and 1995, "green box" support measures increased by fifty-four percent worldwide.¹²⁶ One commentator notes that various proposals have been presented to amend the "green box" including: (1) abolish the box altogether; (2) place a cap on the amount of money that can be spent within the box; and (3) narrow the scope of the measures covered.¹²⁷ It is unlikely that the box will be eliminated altogether considering that it serves important goals such as improving sustainable agricul-

¹¹⁶ See Moore, *supra* note 108, at 288.

¹¹⁷ See *id.* at 289.

¹¹⁸ See *id.*

¹¹⁹ See JAWARA & KWA, *supra* note 3, at 50.

¹²⁰ See *id.*

¹²¹ See Grant, *supra* note 12, at 49.

¹²² See, e.g., RICE SECTOR POLICIES, *supra* note 7.

¹²³ See *id.*

¹²⁴ See *Negotiating Proposal*, *supra* note 50.

¹²⁵ See Grossman, *supra* note 38, at 39.

¹²⁶ See *id.*

¹²⁷ Desta, *supra* note 10, at 177.

ture and supporting rural development.¹²⁸ In addition, the European Union and Japan have been opposed to the imposition of a cap on “green box” expenditures.¹²⁹ Thus, as one commentator notes, “[T]he most important issue is whether the exemptions should be tightened.”¹³⁰

The most logical approach for tightening the “green box” would be to minimize the near exhaustive list of exceptions left to the judgment of individual nations.¹³¹ For example, Japan pays rice farmers diversion payments when they use part of their land for growing crops other than rice.¹³² These payments are justified by the preservation of Japan’s paddies in an environmentally useful condition.¹³³ In effect, this provides Japanese rice farmers with a subsidy while allowing the Japanese government to control the supply of rice.¹³⁴ Thus, the “green box” should be restructured to limit the ability of governments to justify domestic support by resorting to the “green box.”¹³⁵

Any future changes to the market access provisions of the AoA will be concerned with the extent of tariff reduction and the process used to achieve the reduction targets.¹³⁶ The European Union has recommended a similar approach to that taken in the Uruguay Round of negotiations, which called for a thirty-six percent reduction per tariff.¹³⁷ The United States even went so far as to suggest that the parties set a date for the eventual elimination of all tariffs.¹³⁸ Japan has been much more cautious in its approach.¹³⁹ It has stated that, “[I]t is essential that an appropriate tariff level be determined, considering the situation surrounding each product and the negotiating history, thereby providing flexibility for each product.”¹⁴⁰ Given this negotiat-

¹²⁸ See *id.*; Grossman, *supra* note 38, at 41.

¹²⁹ See Grossman, *supra* note 38, at 43. In a proposal submitted in July of 2002, the United States advocated for significant reforms for “non-exempt support” while leaving the “green box” criteria unchanged. See *id.*

¹³⁰ See Desta, *supra* note 10, at 178.

¹³¹ See RESULTS, *supra* note 9, at 56–62.

¹³² See RICE SECTOR POLICIES, *supra* note 7, at 7 (explaining how diversion payments are calculated based on several factors including the type of commodity grown).

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ See Desta, *supra* note 10, at 157.

¹³⁷ See *id.* at 158.

¹³⁸ See *id.*

¹³⁹ See *Negotiating Proposal*, *supra* note 50.

¹⁴⁰ See *id.*

ing posture, it is reasonable to infer that Japan is unwilling to allow rice tariffs to become subject to major reduction.¹⁴¹

It is in Japan's best interest to rethink this strategy by allowing rice to become part of the market access dialogue.¹⁴² Once Japan abandons the notion that rice is exempt from tariff reduction, it can gradually become integrated into a long term reform process.¹⁴³ One can argue that Japan's domestic rice producers would be able to survive tariff reductions by carefully considering the initial tariff rates and controlling the speed of their reduction.¹⁴⁴ The case of Japanese beef is illustrative.¹⁴⁵ Japanese beef became subject to tariffication as a result of bilateral United States-Japanese negotiations in 1991.¹⁴⁶ This agreement did not result in rapid importation of beef, as many people fear will happen in the case of rice, but rather beef imports decreased overall compared to previous years.¹⁴⁷ Additionally, domestic beef production remained stable.¹⁴⁸ Thus, the process of tariffication of rice, as mandated by the AoA, could have similar results in the case of Japanese rice.¹⁴⁹

Notwithstanding the cultural significance of rice in Japanese history, there is evidence to suggest that Japanese consumers are becoming increasingly ambivalent toward its cultural role.¹⁵⁰ Japan's formal trade policy appears to presuppose that the Japanese citizenry is starkly opposed to an open market for their rice.¹⁵¹ Even before the signing of the original AoA, however, there were indications that Japanese citizens no longer support a hard-line approach toward rice protectionism.¹⁵² A poll conducted by a major Japanese newspaper in April of 1990, found that public support for partial liberalization of the rice market was up to sixty-five percent; while twenty-one percent favored full liberalization, only thirty percent thought Conversely,

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ *See id.*

¹⁴⁴ *See* Hayami & Godo, *supra* note 4, at 7.

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *See id.* at 5, 7. Over five years that quotas were in effect, beef imports grew at a rate of approximately twenty-percent while the annual growth rate averaged under thirteen-percent during the four years after tariffication. *See id.* at 7.

¹⁴⁸ *See id.* at 7.

¹⁴⁹ *See* Hayami & Godo, *supra* note 4, at 7.

¹⁵⁰ *See* Gordon, *supra* note 49, at 949.

¹⁵¹ *See Negotiating Proposal*, *supra* note 50 (arguing that the international community should respect each country's values and cultural backgrounds).

¹⁵² *See* Gordon, *supra* note 49, at 952.

land titling programs would unlock more capital than can be given in foreign aid, empower the poor, and reinforce democratic participation the rice market should maintain the same level of protection.¹⁵³

Japan should also consider that their current position on rice protectionism could imperil agreements on non-agricultural issues.¹⁵⁴ Market access of non-agricultural products is often referred to as “the core business” of the WTO, since the original tariff negotiations forming the basis of the GATT were on non-agricultural products.¹⁵⁵ Additionally, agriculture has significantly declined as an economic industry in developed countries.¹⁵⁶ Thus, with the declining significance of agriculture, and the wide range of non-agricultural issues the WTO addresses, it is difficult to justify the fact that agriculture remains one of the main issues dividing countries.¹⁵⁷ Yet, ironically, the failure to reach an agreement on agriculture has been the main reason for the overall failure of recent WTO negotiations.¹⁵⁸

Japan can make significant progress in reaching an agreement on their overall trade goals by recognizing that their rice protectionist policies cripple the negotiating process.¹⁵⁹ Indeed, it will be necessary for both the European Union and the United States to offer similar concessions for a new agreement to be successful.¹⁶⁰ Both have presented agricultural proposals that are much more conciliatory than Japan’s.¹⁶¹ In order for Japan to endorse these proposals, it will have to be both willing to initiate broad reforms in its domestic rice policies and subject imported rice to meaningful tariff reduction.¹⁶²

CONCLUSION

The future legitimacy of the WTO may rest on the ability of the member nations to reach a new agreement on agriculture. Japan’s rice protectionist measures have, in large part, driven it away from the negotiating table and thwarted a possible resolution to agricultural reform. The foregoing analysis has shown how multilateral negotiations

¹⁵³ *Id.*

¹⁵⁴ See *Negotiating Proposal*, *supra* note 50.

¹⁵⁵ Mark Bacchetta & Bijit Bora, *Industrial Tariffs, LDCs and the Doha Development Agenda*, in DOHA DEVELOPMENT AGENDA, *supra* note 69, at 161.

¹⁵⁶ *Id.* at 49.

¹⁵⁷ See *id.* at 49.

¹⁵⁸ See Thacker, *supra* note 2, at 722.

¹⁵⁹ See *Negotiating Proposal*, *supra* note 50.

¹⁶⁰ See *id.*

¹⁶¹ See Desta, *supra* note 10, at 158.

¹⁶² See *Negotiating Proposal*, *supra* note 50.

involving multiple issues and parties are difficult processes. Nonetheless, there is a great deal of potential for significant changes to be made in the current AoA in terms of domestic support and market access. Japan's protectionist rice policies no longer have the cultural significance they once did and subjecting the rice market to external competition would be unlikely to destroy domestic Japanese rice production. Finally, it will be important for Japan to consider that their hard-line position on rice protectionism could seriously undermine the entire process of trade reform for both agricultural and non-agricultural products.