

Subject to Legal Review for Accuracy, Clarity and Consistency

In connection with the signing [on this date] of the Trans-Pacific Partnership Agreement (TPP Agreement) , I have the honor to confirm the following understanding reached between representatives of the Government of Japan and the Government of the United States of America with respect to implementation of paragraph 5(a) of Section D of Appendix B-1 (Agricultural Safeguard Measures) to the Schedule of Japan to Annex 2-D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement. Japan shall implement paragraph 5(a) in accordance with applicable laws and regulations of Japan to the extent those laws and regulations are consistent with the international obligations that apply between Japan and the United States of America, including those under the TPP Agreement and this letter and your letter of confirmation in reply.

1. Prior to imposing any agricultural safeguard measure under Section D of Appendix B-1 (Agricultural Safeguard Measures) to the Schedule of Japan to Annex 2- D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement, Japan shall undertake an assessment of whether either condition specified in paragraph 5(a) of Section D of Appendix B-1 (Agricultural Safeguard Measures) to the Schedule of Japan to Annex 2-D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement has been satisfied.

2. The importation or projected importation by any Japanese state owned enterprise of skimmed milk powder other than that under:

- (i) Japan's World Trade Organization quota for "designated dairy products for general use"; or
- (ii) a quota established under another free trade agreement to which Japan is a party

shall be deemed to demonstrate conclusively the existence of a domestic shortage of skimmed milk powder in Japan for the remainder of the Japanese fiscal year for the purposes of paragraph 5(a)(i) of Section D of Appendix B-1 (Agricultural Safeguard Measures) to the Schedule of Japan to Annex 2-D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement.

3. To ascertain whether the condition specified in paragraph 5(a)(ii) of Section D of Appendix B-1 (Agricultural Safeguard Measures) to the Schedule of Japan to Annex 2-D (Tariff Elimination Schedule) to Chapter 2 (National Treatment and Market Access for Goods) of the TPP Agreement exists, Japan shall undertake a comprehensive assessment of the market in Japan for skimmed milk powder, and in so doing shall consider, among other factors:

- (a) historical records of and trends in Japanese production and stocks of skimmed milk powder;

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- (b) historical records of and trends in Japanese wholesale prices of skimmed milk powder; and
- (c) any recent natural disaster or prolonged weather anomaly producing a demonstrable effect on the Japanese market for skimmed milk powder.

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