

**POSSIBLE NEW ARTICLE TO REPLACE THE CURRENT ARTICLE 10.2 OF THE
AGREEMENT ON AGRICULTURE**

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

Definition

1. Members undertake not to provide export credits, export credit guarantees or insurance programmes otherwise than in conformity with this Article. These export credits, export credit guarantees and insurance programmes (hereinafter referred to as “export financing support”) shall have the same meaning as is provided under Article 10.2 of the Uruguay Round Agreement on Agriculture and, within that meaning, comprise:

- (a) direct financing support, comprising direct credits/financing, refinancing, and interest rate support;
- (b) risk cover, comprising export credit insurance or reinsurance and export credit guarantees;
- (c) government-to-government credit agreements covering the imports of agricultural products exclusively from the creditor country under which some or all of the risk is undertaken by the government of the exporting country; and
- (d) any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

2. The provisions of this Article shall apply to export financing support provided by or on behalf of the following entities, hereinafter referred to as "export financing entities", whether such entities are established at the national or at the sub-national level:

- (a) government departments, agencies, or statutory bodies;
- (b) any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of loans or underwriting of losses;
- (c) agricultural export state trading enterprises; and
- (d) any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.

Terms and Conditions

3. Export financing support shall be provided in conformity with the terms and conditions set out below.

- (a) **Maximum repayment term:** The maximum repayment term for export financing support under this Agreement, this being the period beginning at the starting point of

credit¹ and ending on the contractual date of the final payment, shall be no more than 180 days².

- (b) **Self-Financing:** Export financing support programmes or parts thereof which are subject to the provisions of this Article shall be self-financing. Self-financing shall be considered as the ability of such programmes, or parts thereof, to operate in a manner by which all operating costs, losses and any other form of export contingent financial contribution otherwise provided³ under such programmes are recovered in due course to a commercially viable standard over a (rolling) period of [4][5] years.⁴

Non-conforming Export Financing Support

4. Export financing support, which does not conform with the provisions of paragraph 3 of this Article constitute export subsidies for the purposes of this Agreement and are therefore, to be eliminated within the binding levels of Members' export subsidies elimination Schedules.

Special and Differential Treatment

5. Developing countries providers of export financing support shall be eligible to benefit from the following elements:

- (a) the maximum repayment term may be up to [360] days.;

¹ The "starting point of a credit" shall be no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period.

² Exceptions will be made for seeds ([12] months) and breeding cattle ([24] months). In case of non-payment within the agreed re-payment period the exporter shall be entitled to claim indemnification from the export credit agency only within a fixed period of time which shall not exceed [] months.

³ In regard to the terms "export contingency" and "financial contribution" under this provision, these terms are to be interpreted as having the same meaning as they do under this Agreement and the Agreement on Subsidies and Countervailing Measures for the purpose of determining whether, *as a factual matter*, at particular times within the period concerned, such export contingency or financial contribution has occurred. Under this provision, the factual determination that such situations have arisen does not, in and of itself, constitute a determination of lack of conformity with this provision of the Agreement. Conformity with the provision is determined, rather, by means of a gross evaluation as to whether – despite any such situations having arisen – there has been a recovery to a commercially viable standard over the period: viz [4][5] years, rather than any particular and isolated moment therein. It should also be emphasised that this standard is applicable only to measures that do in fact meet the definition under Article 1 above. This provision cannot be used to shelter or circumvent obligations or commitments in respect of any other measure that is otherwise inconsistent with other provisions of the Agreement on Agriculture.

⁴ It is recognized that catastrophic situations (i.e. war, extensive climatic upheaval, wide scale natural disaster such as Tsunami) can and do arise. It is also recognized that such contingencies can and shall be presumed to be factored into the terms and conditions of measures offered under these programmes reflecting e.g. risk assessments made. Thus, the overall assessment to be made at the end of the [4][5] year period would normally make no special allowance for such matters. They would, in the same way as everything else, enter into the gross assessment to be made over that period under the normal "commercial viability" standard. If, however, there was a rare instance where an unforeseeable catastrophic event of particular severity, *in and of itself caused* an extraordinary default within the last eighteen months of any given [four][five] year period, strictly proportionate allowance could be made for this loss if it alone meant the return to commercial viability standard was not met. This would only be permissible where the default concerned was solely attributable to the catastrophic event and where it could not have been reasonably foreseen or allowed for by the entity concerned or by what a normal commercial operator would have been expected to foresee or make allowance for. The programme concerned would, furthermore, still have to return to a commercial viability standard taking account of this default within no more than two years of the event itself or twelve months after the end of the normal [4][5] year period, whichever elapses first.

- (b) the self-financing period contained in paragraph 3(b) for developing countries shall be at least [6][7.5] years. [However, in the case of direct export credits only, developing country Members shall be entitled to have recourse to certain adjustments in conformity with the specific provisions in footnote x below];
6. Least-developed countries and net food-importing developing countries as listed in G/AG/5/Rev.8 shall be accorded differential and more favourable treatment comprising allowance for a repayment term in respect of them of [360] days.
7. In exceptional circumstances which cannot be adequately covered otherwise by international financing facilities, international food aid or export financing support consistent with the terms of this Agreement, Members may be permitted to provide *ad hoc* temporary export financing support not otherwise in conformity with the terms and conditions of paragraphs 3 (a) and 5(a).
8. In such cases, a written request shall be made to the Member from whom such export financing is sought, together with a copy of that request to the Committee on Agriculture for the information of all Members. Where a Member recipient of such a request considers that such exceptional circumstances exist, it, together with the requesting Member, shall jointly notify the WTO Committee on Agriculture, of the intention to proceed. Such a notification shall specify in writing all the circumstances which justify a variation from the terms permitted under the relevant provisions of this Article, together with details of the product(s) concerned so that interested exporting Members shall have the opportunity to respond. To this end, the Committee on Agriculture shall review the notification at a Special Session of the Committee on Agriculture to be called within 30 days of the receipt of notification, or at its next scheduled meeting if it occurs sooner. In the event that some Members do not object to the transaction, following the review, the Member recipient of the request may proceed accordingly. Members shall, however, provide *ex ante* notifications on all of the more favourable terms provided for in such exceptional circumstances.
9. In the event that some Members do object to the transaction, but both Members involved still wish to proceed and it is a case where the essential character of the proposed transaction has been declared to be in response to humanitarian need for basic foodstuffs, they shall be permitted to do so⁵. However, the matter shall be referred immediately to a standing panel of experts which shall render their judgement on the transaction within thirty days. This judgement will be binding on the Members and, in the event that it is negative, shall include recommendations that effectively restore the status quo ante. In any other situation where objections remain and the initiating Members wish to proceed, resort may be taken to the standing panel of experts for their judgement, and any proposed transaction will be stayed pending that judgement.
10. In any case, the maximum repayment term for exceptional circumstances temporary government financing arrangements shall not exceed 360 days in the case of paragraph 3(a), and [540] days in the case of paragraph 5(a).

⁵ Where the transaction is declared to be of this character, it is not precluded that this transaction may actually be initiated prior to the actual meeting of the Committee itself, but this would be permissible only where such prior action is itself warranted on the grounds of humanitarian need in relation to basic foodstuff needs: i.e. that delay would jeopardize achievement of these objectives.

POSSIBLE NEW ARTICLE 10 BIS OF THE AGREEMENT ON AGRICULTURE

AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

1. Members shall ensure that agricultural exporting state trading enterprises are operated in conformity with the provisions specified below and, subject to these provisions, in accordance with Article XVII, the Understanding on the Interpretation of Article XVII and other relevant provisions of GATT 1994, the Agreement on Agriculture and other WTO agreements.

Entities

2. For the purpose of the disciplines set out hereunder in this Article, an agricultural exporting state trading enterprise shall be any enterprise which meets the working definition provided for in the Understanding on the Interpretation of Article XVII of the GATT 1994¹ [insofar as, and solely to the extent that, such an enterprise is engaged in export sales of agricultural products].

Disciplines

3. In order to ensure the elimination of trade-distorting practices with respect to agricultural exporting state trading enterprises as described above, Members shall:

- (a) eliminate, in parallel and in proportion to the elimination of all forms of export subsidies including those related to food aid and export credits:
 - (i) export subsidies, defined by Article 1(e) of the Uruguay Round Agreement on Agriculture, which are currently provided, consistently with existing obligations under Article 3.3 of the Uruguay Round Agreement on Agriculture, to or by an agricultural exporting state trading enterprise;
 - (ii) government financing of agricultural exporting state trading enterprises, preferential access to capital or other special privileges with respect to government financing or re-financing facilities, borrowing, lending or government guarantees for commercial borrowing or lending, at below market rates; and
 - (iii) government underwriting of losses, either directly or indirectly, losses or reimbursement of the costs or write-downs or write-offs of debts owed to, or by agricultural export state trading enterprises on their export sales.
 - (iv) [by 2013, the use of agricultural export monopoly powers for such enterprises.]
- (b) ensure that any use of agricultural export monopoly powers by such enterprises is not exercised in a manner which, either *de jure* or *de facto* effectively circumvents the provisions set out in sub-paragraphs (i) to (iii) above.

¹ “Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.”

Special and Differential Treatment

4. Notwithstanding paragraph[s 3(a)(iv) and] 3(b) above, agricultural exporting state trading enterprises in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security shall be permitted to maintain or use export monopoly powers to the extent that they would not be otherwise inconsistent with other provisions of this Agreement and other WTO Agreements.

5. Where a developing country Member has an agricultural exporting state trading enterprise with export monopoly powers, that enterprise may continue also to maintain or use those powers, even if the purpose for which that enterprise has such privileges could not be deemed to be characterised by the objective: "to preserve domestic consumer price stability and to ensure food security". Such an entitlement, however, would be permissible only for such an enterprise whose share of world exports of the agricultural product or products concerned is less than 5 per cent, such that the entity's share of world exports of the product or products concerned does not exceed that level in 3 consecutive years, and to the extent that the exercise of those monopoly powers is not otherwise inconsistent with other provisions of this Agreement and other WTO Agreements.

6. In any case, agricultural exporting state trading enterprises in least-developed country Members and Members, small, vulnerable economies, whether or not they enjoy such special privileges to preserve domestic consumer price stability and to ensure food security, shall be permitted to maintain or use monopoly powers for agricultural exports to the extent that they would not be otherwise inconsistent with other provisions of this Agreement and other WTO Agreements.

Monitoring and Surveillance

7. Any Member that maintains an agricultural exporting state trading enterprise shall notify to the Committee on Agriculture, on an annual basis, relevant information regarding the enterprise's nature and operations. This will, consistent with standard WTO practice and normal commercial confidentiality considerations, require timely and transparent provision of information on any and all exclusive or special rights or privileges granted to such enterprises within the meaning of paragraph 1 above sufficient to ensure effective transparency. Members shall notify any benefits, not otherwise notified under other WTO disciplines, that accrue to a state trading export enterprise from any special rights and privileges including those that are of a financial nature. At the request of any Member, a Member maintaining a state trading export enterprise shall provide, subject to normal considerations of commercial confidentiality, information requested concerning the enterprise's export sales of agricultural products, the product exported, the volume of the product exported, the export price and the export destination.

POSSIBLE NEW ARTICLE 10.4 OF THE AGREEMENT ON AGRICULTURE**INTERNATIONAL FOOD AID**

1. Members reaffirm their commitment to maintain an adequate level of international food aid (hereinafter referred to as food aid¹), to take account of the interests of food aid recipients² and to ensure that the disciplines contained hereafter do not unintentionally impede the delivery of food aid provided to deal with emergency situations. Members shall ensure that food aid is provided in full conformity with the disciplines below, thereby securing the objective of preventing commercial displacement.

General Disciplines Applicable to Food Aid Transactions

2. Members shall ensure that all food aid transactions are provided in conformity with the following provisions:

- (a) they are needs-driven;
- (b) they are provided in fully grant form;
- (c) they are not tied directly or indirectly to commercial exports of agricultural products or of other goods and services;
- (d) they are not linked to the market development objectives of donor Members; and
- (e) agricultural products provided as food aid shall not be re-exported. However, re-exportation for emergency food aid purposes only is permissible, but only where, for logistical reasons and in order to expedite the provision of emergency food aid for another country in an emergency situation, this occurs as an integral part of an emergency food aid transaction that is itself otherwise in conformity with the provisions of this Agreement.

3. The provision of food aid shall take fully into account local market conditions of the same or substitute products. Members shall refrain from providing in-kind food aid in situations where this would cause, or would be reasonably foreseen to cause, an adverse effect on local or regional production of the same or substitute products³. Members are encouraged to procure food aid from local or regional sources to the extent possible, provided that the availability and prices of basic

¹ Unless otherwise specified, the term food aid is used to refer to both in-kind and cash-based food aid donations.

² It should be emphasised that the recipient government has a primary role and responsibility for the organisation, coordination and implementation of food aid activities within its territory.

³ It is conceivable that there could be circumstances where strict application of this obligation would have the effect of acting as an unintended impediment to the capacity of Members to respond fully and effectively to genuine need with in-kind food aid in an emergency situation envisaged under paragraphs 4 to 8 below. It is recognised therefore that, in such an emergency situation, Members may be permitted to depart from the strict application of this obligation, but only and strictly to the extent that this is a necessary and unavoidable consequence of the nature of the emergency itself such that to act in strict conformity would manifestly compromise the capacity of a Member to respond effectively to meet humanitarian need. Furthermore a Member shall in any case be obliged to avoid or, if this is not possible in the circumstances, to minimise, any adverse effects on local or regional production through the provision of in-kind food aid otherwise in conformity with the provisions of paragraphs 4 to 8 below.

foodstuffs in these markets are not unduly compromised. Members commit to making their best efforts to move increasingly towards more cash-based food aid.

Further Disciplines for Food Aid Transactions in Emergency Situations (Safe Box)

4. To ensure that there is no unintended impediment to the provision of food aid during an emergency situation, food aid provided under such circumstances (whether cash or in-kind) shall be in the ambit of the Safe Box and, therefore, deemed to be in conformity with this Agreement, provided that:

- (a) there has been a declaration of an emergency by the recipient country, or, the Secretary-General of the United Nations; or
- (b) there has been an emergency appeal from a country⁴, a relevant United Nations agency, including the World Food Programme and the United Nations Consolidated Appeals Process; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; [a relevant regional or international intergovernmental agency, a non-governmental humanitarian organisation of recognised standing traditionally working in conjunction with the former bodies]; and

in either case, there is an assessment of need undertaken by a relevant United Nations agency, including the World Food Programme; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies⁵.

5. Following the emergency declaration or appeal as provided for in paragraph 4 above, there may well be a period where the needs assessment outcome is pending. For the purposes of this agreement, this period will be deemed to be 3 months in duration. Should any Member consider that the food aid concerned would fail to satisfy the conditions provided for under paragraph 4 above, no initiation of dispute settlement on these grounds may occur until that period has elapsed (provided that the relevant United Nations agency responsible for the needs assessment has not, within this period, given a negative assessment). Where, within or by the end of this period, the relevant UN agency has carried out a positive needs assessment and the other conditions of paragraph 4 have been satisfied, the food aid concerned will remain in the Safe Box thereafter provided it is also in conformity with all the other relevant provisions of this Agreement.

6. [There shall be no monetization for food aid inside the Safe Box.]

7. A notification will be required on an *ex-post* basis by donors at six month intervals in order to ensure transparency.

8. Subject to its continued conformity with other provisions of this Agreement, food aid that is in conformity with paragraph 4 may be provided for as long as the emergency lasts subject to an assessment of continued genuine need as a result of the initial onset of the emergency. It is for the relevant United Nations agency to make such determination.

⁴ [It is understood that an NGO can be involved in this triggering whether by working with a donor or recipient country.]

⁵ Needs assessment should be done with the involvement of the recipient government and may involve a relevant regional intergovernmental organization or an NGO, but while the latter bodies may be so involved, it shall be the relevant United Nations agency that is responsible for initial authorization and ultimate approval of the needs assessment.

Further Disciplines for Food Aid Transactions in Non-emergency Situations

9. Further to the disciplines applicable under paragraphs 1 to 3 above, food aid in non-emergency situations outside the Safe Box shall be:

- (a) based on an assessment of need by an identified multilateral third party organization, which may include humanitarian non-governmental organizations working in partnership with specialized United Nations agencies;
- (b) targeted to the need as identified in that assessment;
- (c) provided to address specific developmental objectives or nutritional requirements as identified in the needs assessment; and
- (d) [provided consistently with the objective of preventing commercial displacement. Commercial displacement shall arise where: (text to be provided).]

10. Monetisation of in-kind food aid shall be [prohibited except][permissible, but Members will endeavour to constrain it to situations] where it is necessary to fund activities that are directly related to the delivery of the food aid to the recipient, or for the procurement of agricultural inputs. Such monetisation shall be carried out under the authority of and in accordance with the criteria established by a relevant United Nations agency working in partnership with the recipient government such that commercial displacement is avoided or, if not possible, at least minimised.⁶

Monitoring and Surveillance

11. Food aid donor Members shall be required to notify to the Committee on Agriculture, on an annual basis, the following data:

⁶ [Where a Member seeks to provide food aid involving monetisation not carried out as provided for under this provision, a written notification on the proposed transaction (or programme of transactions) shall be forwarded to the Committee on Agriculture for its consideration and review. Such a notification shall specify in writing all the circumstances applicable including the rationale for the proposed transaction, all details of the proposed transaction and how it is proposed that commercial displacement will be avoided or, if not possible, at least minimised. The Committee on Agriculture shall review the notification at a Special Session of the Committee on Agriculture to be called within 30 days of the receipt of notification, or at its next scheduled meeting if it occurs sooner. In the event that Members do not object to the transaction, following the review, the proposing Member may proceed accordingly. In the event that some Members do object to or seek modifications to the transaction, and the proposing Member still wishes to proceed, the matter shall be referred immediately to a standing panel of experts which shall render their judgement on the proposed transaction within thirty days. Any proposed transaction will be stayed pending that judgement, which shall be binding.]