Analytical Note
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WTO's MC10:
Agriculture Negotiations – Export Competition

This note provides a brief on Export Competition and the four issues that it covers:

With respect to export subsidies, the EU, the Member with the largest export subsidy entitlements applies zero export subsidies under its Common Agricultural Policy 2014-2020. Commitments to bind export subsidies at zero are therefore a step in the right direction but the extent of its value is limited. The Green Box remains undisciplined - this is a major loophole not just in the pillar of 'domestic supports' but also in the export competition pillar as EU's domestic supports do subsidise exports.

The proposed disciplines on export credits focus on two elements in export financing support – maximum repayment period and the self-financing requirement. In both cases, the US does not want to be bound by what is contained in the Rev.4 text (the December 2008 draft agriculture modalities).

In the area of agricultural exporting State Trading Enterprises (STEs), the US proposes to expand the scope and strengthen the prohibition on STEs with export monopoly powers. At the same time, US proposes to reduce considerably the S&D provisions in Rev.4 in that area. Such language is likely to impact on developing countries' agricultural STEs.

On food aid, the EU, Brazil and others aim to harvest in Nairobi a text along the lines of Rev.4 but with weaker disciplines on monetisation. The rules are already quite flexible in Rev.4 as monetisation is allowed in various circumstances. In response, the US has put forward a proposal allowing for greater flexibility. Displacement of local and regional production has been a problem caused by food aid that has not been well targeted. This problem is not likely to be resolved with the watered down proposals.

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Contents

INTRODUCTION

The four main issues in agriculture that are being carried to Nairobi for possible deliverables are Export Competition; Public Stockholding; the Special Safeguard Mechanism; and Cotton.

This note provides a brief on Export Competition.

Advancement on Export Competition in Nairobi may also depend on what happens in the other agriculture issues on the table– the Special Safeguard for developing countries, and Public Stockholding. In and of themselves, and fact that texts are being watered down in export competition, for a large number of developing countries, these two issues – safeguards and public stockholding - have the potential to be of much more meaningful value and importance.

EXPORT COMPETITION

There are 4 issues within the Export Competition pillar of the agriculture negotiations. Days before the Nairobi Ministerial, the situation is still unclear – all, some or none of them may be completed in Nairobi. The texts transmitted to Nairobi contain many brackets.

At the Hong Kong Ministerial (2005), there was agreement to ensure the *'parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect'* by the end of 2013. However, this promise was never carried out because of the condition also agreed to in Hong Kong that *'The date above for the elimination of all forms of export subsidies... will be confirmed only upon the completion of the modalities'*. I.e. only when the Doha agriculture negotiations are completed.

Subsequently, the TN/AG/W/4/Rev.4 text (which is the last version of the modalities text for the Doha negotiations, 6 December 2008), more commonly known as the 'Rev.4' contained disciplines on four areas under this pillar:

- Elimination of export subsidies;
- Disciplines on export credits and export credit guarantees or insurance programmes;
- Disciplines on Agricultural Exporting State Trading Enterprises;
- Food Aid disciplines.

JOB/AG/63 provides the latest version of the Export Competition text as has been negotiated in the past weeks by Members. This is the text that consensus is sought to be achieved for Nairobi. Just days before Nairobi, however, the negotiations remain contentious.

EXPORT SUBSIDIES

In the area of export subsidies, the main disciplines that are being discussed in the JOB/AG/63 text are:

- Elimination of export subsidies. The date by which the elimination for developed countries needs to take place is still in brackets. The Rev. 4 text fixes this period at the end of 2013, which is 5 years after agreement on the agriculture modalities.
- The date for developing countries that have export subsidies, in accordance with Rev. 4, is 3 additional years after the elimination for developed countries.
- Developing countries that have bound themselves in the Uruguay Round at zero export subsidies (the majority), can under the rules of the Uruguay Round provide export subsidies during the implementation period in the area of costs for marketing exports of agricultural products and internal transport and freight charges (often referred to as Art 9.4 export subsidies).

Under the Rev.4, Article 9.4 export subsidies can be provided till 13 years after agreement on the modalities (5 years after end-date for elimination of all forms of export subsidies).

There are some flexibilities that some developing countries have inserted ahead of Nairobi: Tunisia is asking for Art 9.4 to be available for least developed countries (LDCs) and net-food importing developing countries (NFIDCs). India has inserted an option for Art 9.4 subsidies for *'products which are largely produced by small and resource poor producers in developing countries'*.

Key Points about Export Subsidies

1. **Only 25 Members at the WTO can provide export subsidies in Agriculture, most developing countries cannot**

Almost all developed countries can provide export subsidies under their Uruguay Round commitments for the products which they have scheduled. Most developing countries have bound themselves at zero export subsidies. They can only provide Art 9.4 export subsidies in marketing and transport.

The 25 Members that can provide export subsidies are shown in the table below. In brackets are the numbers of products allowed for each country.

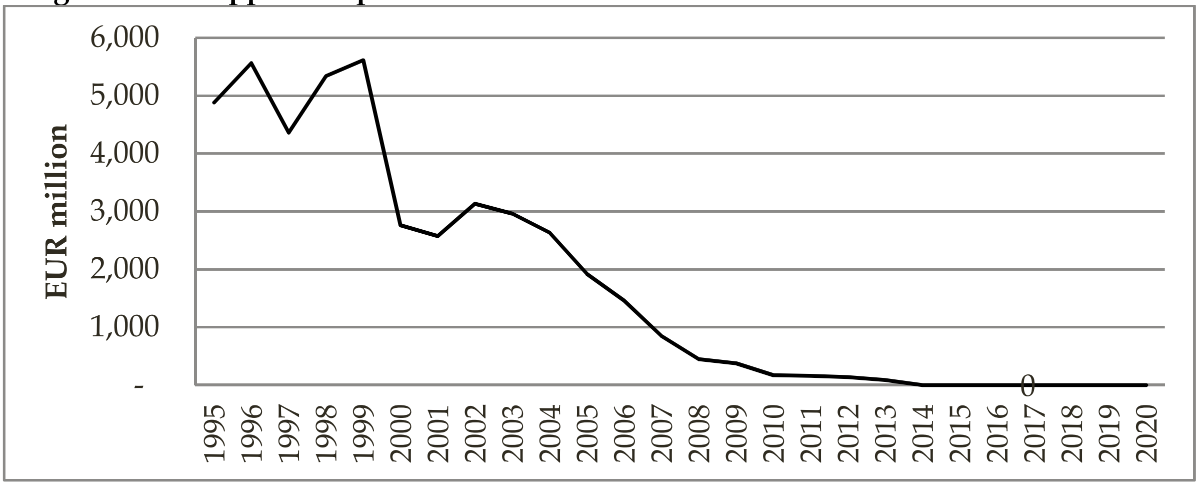
Australia (5)	Iceland (2)	Romania (13)
Brazil (16)	Indonesia (1)	Slovak Rep (17)
Bulgaria (44)	Israel (6)	South Africa (62)
Canada (11)	Mexico (5)	Switzerland-Liechtenstein (5)
Colombia (18)	New Zealand (1)	Turkey (44)
Cyprus (9)	Norway (11)	United States (13)
Czech Rep (16)	Panama (1)	Uruguay (3)
EU (20)	Poland (17)	Venezuela (72)
Hungary (16)		

https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd08_export_e.htm

2. EU Now Applies Zero Export Subsidies

The main issue with regards to export subsidies is that the EU, the Member with the largest scheduled export subsidy entitlements and which in the past also provided the most export subsidies, hence distorting markets in developing countries, is now applying **zero export subsidies.** This is in accordance with the EU Common Agricultural Policy 2014-2020. However, their export subsidies are not bound at zero.

Diagram: EU's Applied Export Subsidies



Source: EU WTO notifications; EU Common Agricultural Policy 2014-2020

Hence binding export subsidies at zero would provide some benefit but it is not a really major benefit. For Africa for example, EU has already taken the commitment not to provide export subsidies in the context of the Economic Partnership Agreements (EPAs). This commitment at the WTO would therefore give many African countries no additional real benefit. They should not have to pay for this.

3. Other Members do continue to provide export subsidies, but the amounts are small

As of 2011, Norway's export subsidies amount to about USD 34 million; Switzerland's export subsidies are less than 100 million Swiss Francs; Canada's are about 90 million Canadian dollars. These are small amounts.

4. (i) It is not that exports are no longer being subsidised in the EU, but that domestic supports are now subsidising exports

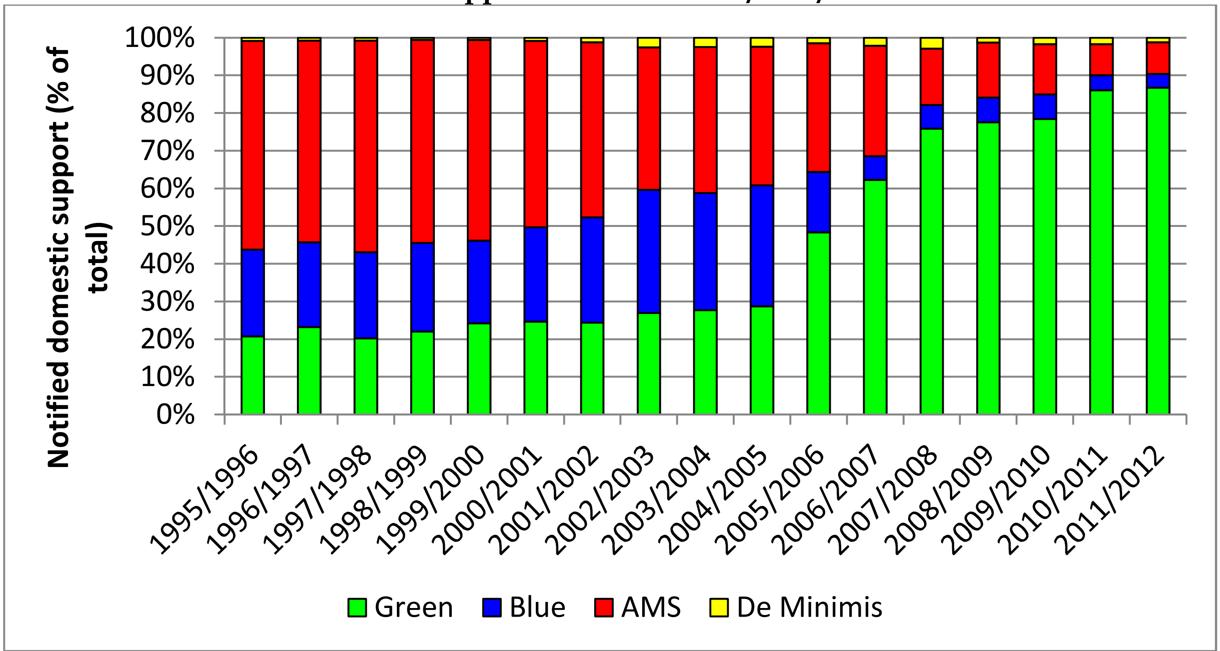
It is not the case that the EU's exports are no longer trade-distorting. Instead, EU has found other ways to subsidise their exports – primarily through the route of domestic supports. Instead of export subsidies, EU has brought domestic prices closer to international prices, and in turn has compensated EU producers through 'decoupled income supports' notified under the 'Green Box' (Agreement on Agriculture's Annex 2). There are currently no caps on the amounts that can be provided in the Green Box. The table below, based on EU's own WTO notifications illustrates that EU's Green Box supports have increased from 18.8 billion Euros in 1995/ 1996 to 71 billion Euros by 2011/2012.

Table: EU domestic support (based on EU's WTO notifications)
Figures in EUR million

Year	Green	Blue	AMS	De Minimis	OTDS (Blue, AMS, De Minimis)	Total notified domestic support
1995/1996	18,779	20,846	50,181	825	71,852	90,631
1996/1997	22,130	21,521	51,163	761	73,445	95,576
1997/1998	18,167	20,443	50,346	733	71,521	89,688
1998/1999	19,168	20,504	46,947	525	67,975	87,143
1999/2000	21,916	19,792	48,157	554	68,502	90,419
2000/2001	21,848	22,223	43,909	745	66,876	88,724
2001/2002	20,661	23,726	39,391	1,012	64,128	84,790
2002/2003	20,404	24,727	28,598	1,942	55,266	75,670
2003/2004	22,074	24,782	30,891	1,954	57,626	79,700
2004/2005	24,391	27,237	31,214	2,042	60,493	84,884
2005/2006	40,280	13,445	28,427	1,251	43,123	83,404
2006/2007	56,530	5,697	26,632	1,975	34,304	90,833
2007/2008	62,610	5,166	12,354	2,389	19,909	82,519
2008/2009	62,825	5,348	11,796	1,083	18,226	81,051
2009/2010	63,798	5,324	10,883	1,393	17,600	81,398
2010/2011	68,052	3,142	6,502	1,393	11,037	79,088
2011/2012	70,977	2,981	<u>**6,859**</u>	1,003	<u>**10,843**</u>	81,820

Source: Figures based on EU's notification to the WTO

Table: Distribution of domestic support between Green/Blue/Amber and de-minimis



Source: Figures based on EU's notification to the WTO

(ii) The fact that the Green Box remains undisciplined is a major loophole not just in the pillar of 'domestic supports' but also in the export competition pillar.

According to the Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products case (2001), the Appellate Body noted that

'However, we consider that the distinction between the domestic support and export subsidies disciplines in the *Agreement on Agriculture* would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products. Broadly stated, domestic support provisions of that Agreement, coupled with high levels of tariff protection, allow extensive support to producers, as compared with the limitations imposed through the export subsidies disciplines. Consequently, if domestic support could be used, without limit, to provide support for exports, it would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments.' (para 91, WT/DS133/AB/RW).

In Conclusion

For all the above reasons, the disciplines on export subsidies that may be harvested, are not in commercial terms very meaningful for developing countries. The only real value is that EU must bind their export subsidies at zero, and cannot after the implementation period decide to increase them. This is quite minimal given the entire change in the way the EU has currently organised its support policies for producers, and has no value for African countries which have already been given this promise in the context of their Economic Partnership Agreements (EPAs) with the EU.

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

Why Export Financing?

In the ordinary course of business, goods that are bought are paid for upon delivery of the goods, or when the title of the goods passes from seller to the buyer. However, due to competitive conditions, exporting firms are willing to enter into arrangements where payment by the importer is deferred and such an arrangement is underwritten either by private companies or by governments. For the most part, private companies do not have the wherewithal to provide repayment terms that are medium to long-term. These are normally only provided by government-run export credit agencies (ECAs).

OECD governments have been providing export credits to their national exporters competing for export markets since after World War I. Post World War II, even more of these programmes came to the fore and according to the OECD, governments' Export Credit Agencies (ECAs) provided supports in the forms of '*"official financing support", such as direct credits to foreign buyers, refinancing or interest-rate support, or of "pure cover support", such as export credits insurance or guarantee cover for credits provided by private financial institutions.'*

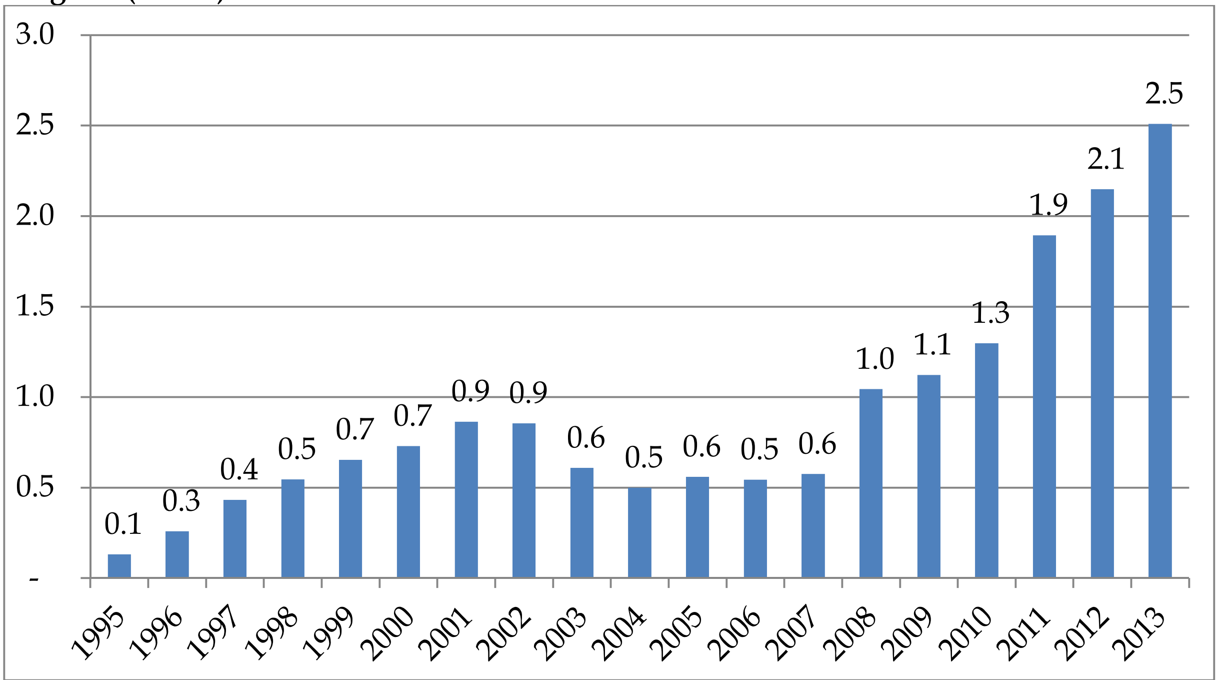
These ECAs can be government institutions or private companies operating on behalf of governments. [1]

Usage of Export Financing Instruments

Instead of export subsidies, the United States has been utilising export financing instruments, especially in terms of export guarantees and insurance programmes. These financing programmes are widely seen to have a trade-distorting impact, equivalent to export subsidisation.

In recent years, some major exporters have increased their export credit programmes e.g. Canada and the US.

Canada - Value of export of agricultural products subject to export financing support (short term insurance) /excludes Agri-Food Credit Facility (ACF) and Credit Grain Sales Program (CGSP)



Source: Information reported by Canada to WTO Secretariat in context of the annual examination process in export competition

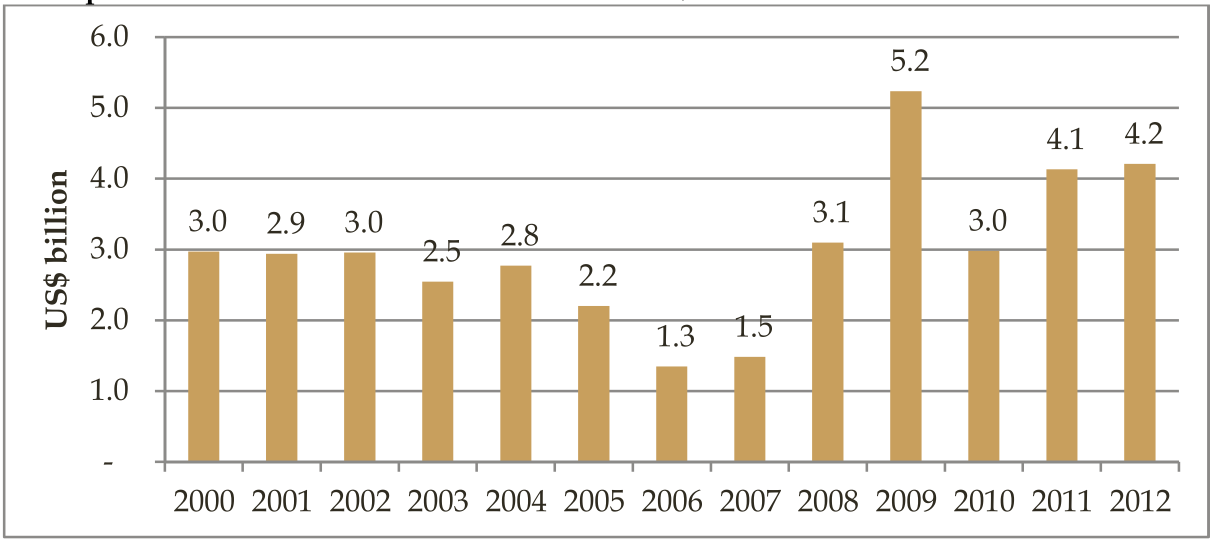
The increase in Canada's export credit programmes seems to have risen as reforms to the Canadian Wheat Board as a monopoly exporter have kicked in.

The WTO Secretariat reports that Canada's export credit programmes have reached 3 billion by 2014 (G/AG/W/144, 2015).

[1] West J 2011 'Export Credits and the OECD', in Smart Rules for Fair Trade : 50 Years of Export Credits, OECD.

US support for export credit programmes increased by 45% between 2000 and 2012, but according to their last notification, has dropped recently to 2 billion USD (G/AG/W/144, 2015).

US Export Credit Guarantee – insured value in US$ billion



Source: US notifications to WTO in context of annual examination process on export competition

Is Export Financing Good for Developing Countries?

Export financing programmes by developing countries for their exporters can certainly support exports. Brazil for example is providing export financing support. Export credit programmes therefore help make national exporters competitive vis-à-vis other exporters.

However, research as shown that it does little to support importers. In fact, it could have negative impacts in the long run. The dated but still relevant OECD study of 2000 'An Analysis of Officially Supported Export Credits in Agriculture' notes:

'The second fact which undermines the justification that officially supported export credits may help developing importers is that the ***benefits to importers,*** *as estimated in this study,* ***are very small --*** *perhaps only sufficient to gain a competitive advantage for the exporter –* ***and unlikely to be of much help to countries which are truly in need of financial assistance and food.*** *These ...facts ...make it more difficult to support this justification for officially supported export credits.' (Para 5, Executive Summary, OECD 2000)*

There is literature highlighting that the huge **drawbacks of export credit programmes** (in general, not only in agriculture) **in developed countries for low-income countries is the creation of debt**. According to one report, almost 80% of poor countries' debts to European governments come from export credits, not development loans.[2] (This refers to all sectors, not just agriculture).

[2] European Network on Debt and Development (Eurodad) 2011 *'Exporting Goods or Exporting Debts? Export Credit Agencies and the Roots of Developing Country Debt'*.

A commentator, former Australian negotiator at the OECD's Arrangement, notes that '*agriculture export credits is the worst kind of debt as the goods involved are consumer-oriented with no beneficial infrastructural or industrial development effects to service the debt*'.[3] Old school economic logic in the area of repayment periods is that the natural repayment period for the purchase of a product is directly related to the useful economic life of the good concerned. Whilst an agricultural export product would only have a shelf life of only weeks, a capital good used as an input into a production process for many years.[4] Hence it would make economic sense that the capital good could have an export credit programme where repayment is stretched over many years, but not so for the agricultural product.

Current WTO Rules on Export Financing (Under the Agreement on Subsidies and Countervailing Measures (ASCM))

The current WTO body of law - the Agreement on Subsidies and Countervailing Measures (ASCM) - have some, though arguable quite flexible, rules on export financing:

Annex I of the ASCM, the Illustrative List of Export Subsidies which the ASCM prohibits under Art 3.1a, says that
(j) export credit guarantee or insurance programmes provided by governments at premium rates 'which are inadequate to cover the long-term operating costs and losses of the programmes' are prohibited.

(k) government grants of export credits at rates below those which government have to pay for the funds employed or the payment by governments of all or part of the costs incurred by exporters or financial institutions in obtaining credits – if used to secure material advantage in export credit terms – is prohibited.

(A caveat in item k is made for countries that are in conformity with the OECD 'Arrangement' – however, this 'Arrangement' to date only exists for non-agricultural products).

The Doha Negotiations on Export Financing

The result of negotiations during the Doha Round on Export Financing captured in Annex J of Rev.4 covers 2 areas:

1. **Maximum repayment period:** The maximum repayment period for export financing support shall be no more than 180 days for developed and developing countries.

Special and Different Treatment (S&D): There is a 4 year transition period to comply with the repayment term of 180 days. LDCs and NFIDCs have a repayment term of 360-540 days. In exceptional circumstances, a further extension shall be provided.

[3] Roberts M 2011 *'OECD and Agricultural Export Credits: A Singular Failure'*, in Smart Rules for Fair Trade: 50 years of Export Credits, OECD.
[4] Roberts M 2011 ibid.

2. **Self-financing:** export credit guarantees, insurance and reinsurance programmes and other risk cover programmes shall be self-financing. This clause goes slightly beyond Annex I(j) of the ASCM which speaks about the need for governments to cover the *'long-term operating costs and losses of the programme'*, by defining this as a 4-year rolling period.

Special and Different Treatment (S&D): The self-financing period (4 years for developed countries) shall be 6 years for developing countries.

US' Position before Nairobi

As illustrated in JOB/AG/63 (8 December 2015), the US wants to water down the Rev.4 text in the following ways:

i) Instead of a repayment period of 180 days (6 months), US wants to extend this to 24 months or 720 days. In their export credit guarantee programmes (GSM 102), the repayment period is up to 18 months (540 days). **Any agreement by the Membership to extend the 180 days to 540 days or more will effectively be legalising the export dumping effect of these programmes.**

ii) **US wants to remove the limit of the 4-year rolling period under the item of 'self-financing'** and revert back to the language already provided in the ASCM's Annex 1(k), that premiums and /or interest rates provided by governments *'shall be adequate to cover long term operating costs and losses'*.

iii) In para 3b, US is also proposing to insert
'Export financing support that meets the terms and conditions set out in paragraph 3 and paragraph 6 shall be found to be in conformity with this agreement and shall not constitute export subsidies within the meaning of article 3.1(a) of the ASCM.' (under para 3b in JOB/AG/63).[5]

Paragraph 3 in JOB/AG/63 is on the Maximum repayment term, and Self-financing. Para 6 is on Monitoring and Surveillance.

This is a major carve out that the US is asking for. Instead of all export financing support being prohibited, except those that meet the conditions of the maximum repayment period and self-financing, this paragraph allows US to legally provide all kinds of export financing support as long as they meet the terms of para 3 and 6: maximum repayment period and self-financing; and the monitoring and surveillance requirements.

[5] Article 10.1 of the AoA says the following: *'Export subsidies not listed in paragraph 1 of Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments; nor shall non-commercial transactions be used to circumvent such commitments'*. Article 10.2 says: *'Members undertake to work toward the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith.'* Read together, these two articles imply that other forms of export financing support cannot be provided if they circumvent a Member's export subsidy commitment. US' proposal attempts to overturn this discipline.

There are many other aspects in the area of export financing that are not dealt with in Rev.4 - risk sharing; foreign exchange risk; down payment; official support for local costs; repayment of principal; repayment of interest. Rather than these being prohibited, they would be allowed if US' language is agreed to.

In conclusion, the US does not seem interested in taking on disciplines which would challenge their existing practices. Instead, they seem to be seeking to legitimise the export financing programmes they currently have.

AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

When the Agreement on Agriculture was agreed upon, aside from export subsidies which were covered by the AoA, rules of two more areas were mentioned under Art 10 on 'Prevention of Circumvention of Export Subsidy Commitments'. These were disciplines to govern export credits, export credit guarantees or insurance programmes (Art 10.2) and broad rules in relation got food aid (Art 10.4). There is actually no mention of State Trading Enterprises (STEs).

The assumption therefore is that disciplines on STEs are governed by GATT Article XVII and the 'Understanding on the Interpretation of Article XVII of the GATT'. The latter is mainly about notifications.

How did STEs come into the export competition picture? In the OECD 'Arrangement' negotiations, when the export financing rules on agriculture were attempted to be negotiated (which did not conclude successfully), the US did not want their export credit guarantee programmes to be disciplined without disciplines on Canada and Australia's STEs (e.g.. the Canadian Wheat Board). Both Canada and Australia have now reformed their exporting STEs. Perhaps the rules now are targeted towards developing countries with exporting STEs?

Rev.4 Disciplines in STEs

The STE disciplines in the GATT are probably deliberately vague. In Art XVII, there is a delicate balance regarding how STEs operate: having to act in accordance with the principles of 'non-discrimination' (XVII.1a) and conducting purchases or sales in accordance with 'commercial considerations' (XVII.1b); and the recognition that STES *'might be operated so as to create serious obstacles to trade'* (XVII.3).

Up till today, these ambiguities have remained. Given this, Annex K on STEs is a big and major step in terms of limiting the scope and policy space of exporting STEs. Whilst Annex K is on the *exporting* function of STEs, many developing countries' STEs are simultaneously importing and exporting.

Rev.4's Annex K on Exporting STEs has the following disciplines in para 3 involving elimination of

(i) export subsidies to or by an agricultural STE;

(ii) government financing of agricultural exporting STEs, preferential access to capital or other special privileges;
(iii) government underwriting of losses, either directly or indirectly;
(iv) the use of agricultural export monopoly powers.

Rev.4 contains no S&D provisions on (i) – (iii). There are only S&D provisions on the issue of agricultural export monopoly powers: An STE may continue to use its exporting monopoly power only if its share of world exports of the agricultural product or products concerned is less than 5% (para 5, Annex K of Rev.4). STEs of LDCs and SVEs may enjoy monopoly powers if they are related to preserving *'domestic consumer price stability and to ensure food security'.*

Developing Country Concerns

Many developing countries have state trading enterprises that have a range of functions - imports and exports. Whilst the Rev.4 disciplines only touch on the exporting function, the delineation at the level of the STE may not be very clear-cut. To the extent that such disciplines might impact on countries' policy space and supports to state trading enterprises in general, this could have negative implications.

The S&D elements in Rev.4 could be expanded to also cover not only monopoly powers, but also government financing including preferential access to capital and other privileges; and government underwriting of losses for an STE if these functions are in relation to the preservation of *'domestic price stability and to ensure food security'* (language from para 5, Annex K, Rev.4).

US Proposal (in JOB/AG/63) and Implications for Developing Countries

The US proposal in the STE discussions ahead of Nairobi has been very problematic. US is suggesting

i) expansion of the scope of coverage of these disciplines from 'agriculture exporting STEs' to 'agricultural exports of state trading enterprises'.

This means '*STEs...which have been granted exclusive or special rights or privileges... in the exercise of which they influence through their purposes or sales the level or direction of exports'.*

This will cover all STEs, as long as they are able to 'influence' the level or direction of exports. The world 'influence' is very broad. This definition captures a much broader set of STEs than the Rev.4 definition.

ii) US has also substantially reduced the already limited S&D provisions in the Rev.4 text. Only STEs in LDCs may use export monopoly powers.

Many developing countries exporting STEs, even if they have monopoly powers, do not have an impact on the world market. The Rev.4 S&D on agricultural export monopoly powers recognises this and takes this into account. The US' suggestion to eliminate the S&D

for all developing countries except LDCs in this area imposes conditions that are tighter than are necessary.

(iii) US also seems to be suggesting to have rules only on item (iv) – agricultural export monopoly power, and not to have disciplines on the other 3 areas covered in Rev.4 – export subsidies, government financing and government underwriting of losses in relation to exporting STEs.

INTERNATIONAL FOOD AID

Food Aid and the Agreement on Agriculture

Article 10 of the Agreement on Agriculture (AoA) deals with "Prevention of Circumvention of Export Subsidy Commitments". Food aid is partially addressed under Article 10.4 of the Agreement on Agriculture:

> 4. Members donors of international food aid shall ensure:
> (a) that the provision of international food aid is not tied directly or indirectly to commercial exports of agricultural products to recipient countries;
> (b) that international food aid transactions, including bilateral food aid which is monetized, shall be carried out in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations", including, where appropriate, the system of Usual Marketing Requirements (UMRs); and
> (c) that such aid shall be provided to the extent possible in fully grant form or on terms no less concessional than those provided for in Article IV of the Food Aid Convention 1986.

Doha Negotiations – Hong Kong Ministerial Conference on Food Aid

The food aid disciplines in Rev.4 have been crafted on the basis of the mandate given in Hong Kong by Ministers. In paragraph 6 of the 2005 Hong Kong Ministerial Declaration, Ministers agreed on the following:

> On food aid, we reconfirm our commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement**.** To this end, we will agree effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loop-hole for continuing export subsidization.[6]

Key Concerns in Food Aid

The African Group and the LDC Group have been proponents to further develop disciplines on food aid. Sub Saharan Africa accounts consistently for around 60-65% of food aid flows.[7] In 2012, the top 8 recipient countries accounting for 49 percent of food aid deliveries were Ethiopia (16 percent), the Democratic People's Republic of Korea (8 percent),

[6] https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm
[7] WFP report on Food Aid Flows 2012, page 8, https://www.wfp.org/content/food-aid-flows-2012-report

Yemen (5 percent) and Bangladesh, Kenya, Pakistan, Somalia and Sudan (each 4 percent). The bulk of international food aid consists of cereals such as wheat and maize flour (86% in 2012 according the figures from the World Food Programme). In 2012, the United States of America, Japan, Brazil, Canada and China provided 70 percent of food aid deliveries.

The main concern to be addressed by food aid disciplines is the potential for food aid to displace domestic and regional production. Food aid increases the amount of cheap foods in recipient countries, which can lead to reduction of domestic prices of agricultural products and the income of farmers in those countries. This not only decreases agricultural incomes but also increases income inequality between urban and rural workers. Studies have shown that the depression of domestic prices have had negative impacts on countries' capacity to develop.

The main existing international instruments do not have binding rules to prevent and eliminate commercial displacement. The main instruments in this field are FAO's "Principles of surplus disposal and consultative obligations" (also referred to in Article 10.4(b) of the Agreement on Agriculture) and the Food Assistance Convention, the successor to the Food Aid Convention, which entered into force on 1 January 2013.[8]

The *FAO Surplus Principles* set out detailed procedures for reporting food aid to the Consultative Subcommittee on Surplus Disposal (CSSD) by aid-supplying countries including notification of the various categories of food aid, prior consultation with other exporters and the establishment of usual marketing requirements (UMRs). The CSSD is located in Washington D.C. and is serviced by the staff of FAO's liaison office. Notifications over the last 10 years have covered only 2-4 per cent of global food aid. The system of 'Universal Marketing Requirements' (UMRs) under these FAO Principles, also referred to in Article 10.4(b) of the Agreement of the Agriculture, totally misses the point in relation to prevention/elimination of commercial displacement: <u>UMRs are meant to ensure that food exported as food aid is **additional** to the amount of food a recipient country would have bought commercially in the absence of food aid</u>. It does **NOT** ensure that distribution of food aid in the recipient country does not interfere with domestic production or marketing in that recipient country.

The *Food Assistance Convention (FAC)* formulates some principles for food assistance under Article 2; "The Parties, in providing and delivering food assistance to the most vulnerable populations, <u>should</u> always adhere to the following principles:
(..)
(iii) purchase food and other components of food assistance locally or regionally, <u>whenever possible and appropriate</u>;
(iv) increasingly provide untied cash-based food assistance, <u>whenever possible</u> and based on needs;
(v) only monetise food aid where there is an identified need to do so, and to improve the food security of vulnerable populations; base monetisation on transparent and objective market analysis and avoid commercial displacement.

[8] Currently it has 14 Parties – Australia, Austria, Canada, Denmark, European Union, Finland, Japan, Luxembourg, Russia, Slovenia, Spain, Sweden, Switzerland, and United States of America. See http://www.foodassistanceconvention.org/about.aspx

These principles are on a best endeavour basis ('should') and subject to other qualifications such as 'whenever possible (and appropriate)'.

FAC also contains minimal reporting requirements. Article 6 requires Parties to provide annual reports which shall contain a narrative component that may include information on how the Party's food assistance policies, programs and operations contribute to the objectives and principles of the Food Assistance Convention.

Food aid disciplines in Rev.4 are stabilized and reflect to some degree African/LDC concerns

FAO has said that the Rev.4 text was the first to be stabilized within agriculture and achieves a balance. According to a 2014 report by FAO 's Committee on Commodity Problems:[9]

> (..) **policy developments under the Doha Round have been successful in clarifying several issues and in providing reassurance on displacement and disincentive risks in the provision of food aid**. The negotiated texts on food aid were among the first to be "stabilized" within the overall modalities texts on agriculture. The compromises struck at the WTO were fairly close to the balance achievable between the humanitarian imperative of food aid and the need to avoid market displacement, reflecting a good measure of practicality and proportionality by the negotiating parties on the concerns surrounding food aid. This was also reflected in discussions in the CSSD (*Subcommittee on Surplus Disposal*) and the FAC (*Food Assistance Convention*) where the WTO negotiations were seen as an opportunity to achieve policy coherence in this area.

Annex L of Rev.4 reflects to some extent the original proposal by the African Group/LDC Group submitted in 2006 (see Annex I)[10]. It makes a distinction between a strictly delineated 'Safe Box' for which no disciplines would apply (termed 'emergency food aid') and all other food aid ('non-emergency food aid'). Food aid would be considered in the 'Safe Box' if provided in response to emergency situations as defined by a relevant UN agency; based on declaration of an emergency by recipient country and based on independent assessments of genuine food needs of people in immediate distress. In their proposal, all other food aid outside the Safe Box is subject to disciplines in order to prevent and eliminate commercial displacement.

The original proposal by African/LDC Group is reflected to some degree in Annex L of Rev.4; however, there are some areas where the Rev.4 is weaker than the original African Group language, in particular with respect to monetisation, re-export and transparency requirements.

[9] http://www.fao.org/3/a-mk965e.pdf
[10] WTO document TN/AG/GEN/13 of 6 March 2006

Areas where Annex L of Rev.4 (food aid) is weaker than original African Group/LDC Group proposal

African Group / LDC group	**Annex L of Rev.4**
Monetisation:	
Under exceptional circumstances, to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary by the final recipients. Monetisation should only be carried out under the auspices of a UN agency and the recipient governmental authority, to ensure that there is minimal risk of commercial displacement and disincentive to local production;	In Safe Box: There shall be no monetization for food aid inside the Safe Box, except for least-developed countries where there is a demonstrable need to do so for the sole purpose of transport and delivery. Such monetization shall be carried out solely within the territory of the recipient least-developed country[11] such that commercial displacement is avoided or, if not feasible, at least minimized. (para 8) Outside Safe Box: Monetization of in-kind food aid in non-emergency situations shall be prohibited except where it is in conformity with the provisions of paragraph 11 above and, as a means to meet direct nutritional requirements of least-developed and net food-importing developing country members, it is necessary to fund the internal transportation and delivery of the food aid to, or the procurement of agricultural inputs to low-income or resource-poor producers in, those Members. Monetization shall be carried out within the territory of the recipient least-developed or net food-importing developing country. Additionally, commercial displacement shall be avoided. (para 12)
Re-exportation:	
No re-exportation	Agricultural products provided as food aid shall not be re-exported in any form, except where, for logistical reasons and in order to expedite the provision of food aid for another country in an emergency situation, such re-exportation occurs as an integral part of an emergency food aid transaction that is itself otherwise in conformity with the provisions of this Article.
Transparency requirements:	
Ex-ante and ex-post	Ex-post (after delivery of food aid)

[11] In the case of a landlocked Member, additionally for the transport/delivery from the extra-territorial continentally contiguous port of final unloading to the destination territorial border.

MC10 proposals – overview and commentary

In the uprun to MC10, three submissions have been put forward regarding food aid:

(1) A text submitted by Brazil, EU, Argentina, New Zealand, Paraguay, Peru and Uruguay which bases itself on Rev.4. It is a compromised text, taking into account some Members' concerns. It also covers food aid. (JOB/AG/48 of 17 November 2015)
(2) A Philippine proposal on Export Competition with two proposals on food aid
(3) The US put forward another proposal on food aid that does not take Rev.4 as a basis (JOB/AG/51 of 19 November 2015).

The key issues in the EU, Brazil et al and Philippines proposals and the negotiations in the COA-SS in relation to food aid have been monetisation and transparency. In the CO-ASS, India also proposed that *"the food aid provided by a Member shall not distort trade or adversely affect the food security of others".* The US food aid proposal is a complete divergence from Rev.4 which would essentially allow an exporting country to ship food to any country as 'food aid'; this proposal is discussed separately below.

Monetisation
In the area of food aid the EU, Brazil et al propose to weaken the disciplines on monetisation of food aid, in a bid to satisfy concerns of the United States. Monetisation is the sale of a donor country's food in a food aid recipient country by NGOs from the donor country. Such sales are usually not targeted - therefore the food does not necessarily go to people in need of the aid. Such practices have had the impact of affecting local markets and displacing locally produced products, and also reducing domestic prices. The United States is the main country that practices monetisation..

The EU, Brazil et al proposal contains footnotes to paragraphs 8 and 12 which deal with monetisation. The proposed footnote to paragraph 12 states *"However, a Member may monetize in-kind food aid in non-emergency situations not in conformity with the provisions of paragraph 12 provided that the monetized in-kind food aid constitute not more than [X%] of the total in-kind food aid donations."*

Paragraph 12 of Annex L/Rev.4 already defines a host of situations where monetization is allowed, as shown in the table above ('Areas where Annex L of Rev.4 (food aid) is weaker than original African Group/LDC Group proposal'). Essentially paragraph 12 defines "Green Box" monetisation of non-emergency food aid. The proposed footnote puts a cap on paragraph 12-**inconsistent** monetization - i.e. it is ADDITIONAL to what is already allowed under paragraph 12 and paragraph 8 (monetisation allowed in LDCs 'for the sole purpose of transport and delivery').

The Philippines' proposal on monetisation is to keep the text on paragraph 8 (monetisation of emergency food aid) as per Rev.4 and to put a cap on monetisation of non-emergency while allowing monetisation also beyond LDCs and NFIDCs:
"<u>Paragraph 12 of Annex L of Rev.4</u>: Monetization of in-kind food aid in non-emergency situations shall be prohibited except where it is in conformity with the provisions of paragraph 11 of Annex L and, as a means for meeting direct nutritional requirements of least-developed countries, the net-importing developing countries, the 2015 FAO list of low income food-deficit countries, and the listed

Members in Annex __ of the Decision, provided the monetized aid shall constitute not more than 15% of the total donations." (Philippines proposal).

Transparency
At MC9 on Bali, Ministers agreed that the following elements would be part of an annual questionnaire on export competition in the area of food aid:

- Product description
- Quantity and/or value of food aid provided
- Description of whether food aid is provided on in-kind, untied cash-based basis and whether monetisation was permitted
- Description of whether in fully grant form or concessional terms
- Description of relevant needs assessment (and by whom) and whether food aid is responding to a declaration of emergency or an emergency appeal (and by whom)
- Description of whether re-export of food aid is an option under the terms of the provision of food aid

(Bali Ministerial Decision on Export Competition, WT/L/915, Annex: Elements for Enhanced Transparency on Export Competition)

The proposal by EU, Brazil, Argentina and others (JOB/AG/48) proposes that *"Members shall continue to provide information on International Food Aid within the context of an annual examination process"* with the same elements as listed above and with the addition of 3 new elements:

- Any food aid provided in-kind, quantity and/or value broken down by food aid provided for emergency needs and for non-emergency needs.
- Total value of any monetised food aid and the use of funds raised through monetization, broken down by different costs and activities.
- Cost recovery rate of any monetisation (the sale price of commodities as a share of procurement and shipment costs), broken down by product category.

Egypt proposed to fine-tune the language in this area by requiring information on quality and/or value of food aid provided by recipient country (instead of totals only) as well as the information on the percentage/share of monetisation.

With respect to transparency, Philippines supports the EU, Brazil et al proposal, but additionally proposes that donor Members are required to provide information necessary for demonstrating that the food aid did not cause trade distortion and commercial displacement in recipient and third countries.

The US proposal (JOB/AG/51)

The US proposal is weakening almost all elements of food aid discipline contained in Rev.4 (the table below shows some examples). It allows monetisation in many situations, downgrades the commitment to maintain an adequate level of international food aid, and proposes very flexible and non-enforceable (best endeavour) disciplines on re-exports, local procurement, the role of need assessments, untied food aid, and the role of recipient governments in coordinating food aid. It also does not comply with the objective of food aid disciplines, elimination of commercial displacement, as agreed by Ministers in Hong Kong.

Para 8 of the US proposal says that *'Members commit to allowing maximum flexibility to provide all types of international food aid in order to maintain needed levels while making efforts to move toward more untied cash-based international food aid'*.

Taken together, the US proposal could well allow their current practices to continue. Displacement of local and regional production could easily take place.

Examples of differences between Rev.4 and US proposal – food aid

Issue	**Rev.4**	**US**
Monetisation	*Safe Box* - There shall be no monetization for food aid inside the Safe Box, except for least-developed countries where there is a demonstrable need to do so for the sole purpose of transport and delivery. (..) *Outside Safe Box/non-emergency food aid* - Monetization of in-kind food aid in non-emergency situations shall be prohibited except where it is in conformity with the provisions of paragraph 11 above and, as a means to meet direct nutritional requirements of least-developed and net food-importing developing country members, it is necessary to fund the internal transportation and delivery of the food aid to, or the procurement of agricultural inputs to low-income or resource-poor producers in, those Members.	Members shall endeavour to monetize international food aid only where there is a demonstrable need for monetization for the purpose of transport and delivery of the food assistance, or the monetization of food aid is used to redress short and/or long term food deficit requirements or insufficient agricultural production situations which give rise to chronic hunger and malnutrition in least-developed and net food-importing developing countries.
Re-exportation	Agricultural products provided as food aid shall not be re-exported in any form, except where, for logistical reasons and in order to expedite the provision of food aid for another country in an emergency situation, such re-exportation occurs as an	Members shall ensure that agricultural products provided as international food aid shall not be re-exported in any form, except where the agricultural products were not permitted entry into the recipient country, the agricultural

Issue	Rev.4	US
	integral part of an emergency food aid transaction that is itself otherwise in conformity with the provisions of this Article.	products were determined inappropriate or no longer needed for the purpose for which they were received in the recipient country, or re-exportation is necessary for logistical reasons to expedite the provision of food aid for another country in an emergency situation.
Untying of food aid	Members commit to making their best efforts to move increasingly towards more untied cash-based food aid.	Members commit to allowing maximum flexibility to provide for all types of international food aid in order to maintain needed levels while making efforts to move toward more untied cash based international food aid.
Needs assessment (in non-emergency situation)	(a) based on a targeted assessment of need whether carried out by an international or regional intergovernmental organization , including the UN, or, where such a targeted assessment is not reasonably obtainable, by a donor government or a humanitarian non-governmental organisation of recognized standing, working in partnership with a recipient country government. That assessment would incorporate and reflect objective and verifiable poverty and hunger data published by an international or regional intergovernmental organisation or by a recipient country that objectively identifies the food insecurity needs of the target populations described in sub-paragraph (b) below	Members shall strive to ensure that international food aid will be directed toward countries or regions that are objectively verified to have instances of severe poverty, hunger, food insecurity and/or long term food assistance development needs.

ANNEX I – SUBMISSION BY THE AFRICAN AND LDC GROUPS ON FOOD AID

WORLD TRADE ORGANIZATION

TN/AG/GEN/13
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Committee on Agriculture
Special Session

Original: English

JOINT SUBMISSION BY THE AFRICAN AND LDC GROUPS ON FOOD AID

Communication by the African and LDC Groups on Food Aid

Introduction

It is underscored that food insecure countries and countries susceptible to natural disasters including drought and famine, and floods still need food aid. In recognition of this fact, Ministers reaffirmed, in the Hong Kong Ministerial Declaration, their "… *commitment to maintain an adequate level* [of food aid] *and to take into account the interests of food aid recipient countries. To this end, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement. To this end, we will agree effective disciplines on in-kind food aid, monetisation and re-exports so that there can be no loop-hole for continuing export subsidisation."*

Any disciplines on food aid should not have the effect of hindering the delivery of food aid to needy countries and communities. It is therefore important to have commitment by *cooperating* partners in the context of the Food Aid *Convention* to make food aid available at all times. In proposing these disciplines, the African and least developed countries, while being among the beneficiaries of the aid, wish to ensure that food aid does not, advertently or inadvertently, abet dumping of food or encourage commercial displacement in recipient countries.

This submission is without prejudice to the outcome of discussions on food aid nor the positions that would be advanced in the course of negotiations, and any other mandate including the mandate contained in the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net- Food Importing Developing Countries.

The following is therefore proposed:

1. Emergency Food Aid

1.1 The "Safe Box" will be used for emergency food aid and shall not be subject to any disciplines.

1.2 The "Safe Box" shall include food aid that meets the following criteria:

i) Is provided in response to emergency situations as defined by a relevant UN agency;

ii) Is based on declaration of an emergency subject to what is mentioned in paragraph 1.3;

iii) Is based on independent assessments of genuine food needs of people in immediate distress;

iv) Is provided in adequate quantities for as long as the emergency lasts.

1.3 A declaration of an emergency situation and assessment of genuine food needs of people in immediate distress as mentioned above can only be done by a recipient country authority concerned, whether local, regional or central government in collaboration with a relevant international humanitarian assistance body, or by a relevant international humanitarian assistance body in collaboration with the recipient country authority concerned.

1.4 A notification will be required on an ex-post basis by donors and the relevant international humanitarian assistance bodies, in order to ensure transparency.

2 Non-emergency Food Aid

2.1 Non-emergency food aid includes all food aid that does not fall under the Safe Box category. In order to ensure that it does not displace commercial trade and does not adversely affect local production, non-emergency food aid shall be subject to the following disciplines:

i) shall be demand driven;
ii) shall be provided in fully grant form;
iii) shall not be tied either directly or indirectly to commercial exports of goods or services to the recipient country;
iv) shall take fully into account local market conditions of the same or substitute commodities and, as much as possible, be sourced locally, sub-regionally or regionally;
v) shall be aimed at addressing developmental objectives, including through targeted delivery to well-identified vulnerable population groups to address specific nutritional needs;
vi) shall not be contingent on advancing market development objectives of the donor country;
vii) may be monetised, under exceptional circumstances, to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary by the final recipients. Monetisation should only be carried out under the auspices of a UN agency and the recipient governmental authority, to ensure that there is minimal risk of commercial displacement and disincentive to local production;

viii) There shall be no re-exportation of food aid .

2.2 Transparency shall be paramount in any food aid operation. Therefore, all non-emergency food aid shall be subject to monitoring, notification and reporting requirements, both ex-ante and ex-post, ensuring full transparency and compliance with the above disciplines.