



# Agriculture - Export competition

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# Export competition

- Export subsidies
  - Export credits, export credit guarantees or insurance programmes (Export financing)
  - Agricultural Exporting State Trade Enterprises (STEs)
  - International Food Aid
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# Right to use export subsidies to agricultural products

- The right to use export subsidies to agricultural products is limited to
  - export subsidies subject to product-specific reduction commitments within the limits specified in the schedule of the WTO Member concerned; (**Part IV**: Specific commitments on domestic support and export subsidies on agricultural products)
  - export subsidies consistent with the S&D provision for developing country Members (Article 9.4 AoA) - covering marketing and transport costs for agricultural exports
  - export subsidies other than those subject to reduction commitments provided that they are in conformity with the anti-circumvention disciplines of Article 10 AoA

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# Article 10 AoA

- 1. 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.
  - 10.2 – negotiation of export financing disciplines
  - 10.4 – some disciplines on food aid (3 subparas)
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# Interface between Dom and ExpSubsidies

- WT/DS113/AB/RW : Canada – Measures affecting the importation of milk and the exportation of dairy products
  - 91. 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.**

## Bali Ministerial Declaration on Export competition: best endeavour standstill on export subsidies

- 8. With the objective on export competition set out in the 2005 HK Ministerial Declaration in mind and with a view to maintaining the positive trend noted previously, **we shall exercise utmost restraint with regard to any recourse to all forms of export subsidies and all export measures with equivalent effect.** To this end, we undertake to ensure to the maximum extent possible that:
  - The progress towards the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect will be maintained;
  - The level of export subsidies will remain significantly below the Members' export subsidy commitments ;
  - **A similar level of discipline will be maintained on the use of all export measures with equivalent effect.**

# Nairobi Ministerial Decision on export competition – export subsidies (1)

- Developed countries - immediately (by end of 2015) remove export subsidies, except for processed products, dairy products, and swine meat (under conditions)
- Developing countries – elimination by end of 2018
  - By end of 2022 for products or groups of products for which it has notified export subsidies in one of its three latest export subsidy notifications examined by COA before the date of adoption of Nairobi Decision. Important for CA and CH.
- Developing countries – elimination by end of 2023 for Art 9.4 subsidies.
  - LDCs and NFIDCs by end of 2030
  - HK 2005 para 6: ‘five years after the end-date for elimination of all forms of export subsidies’

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# Nairobi Ministerial Decision on export competition – export subsidies (2)

- Standstill clause applied to all export subsidies, including Art 9.4 subsidies
  - Para 10 Nairobi MD: ‘Members shall not seek to raise their export subsidies beyond the average of the past 5 years on a product basis’





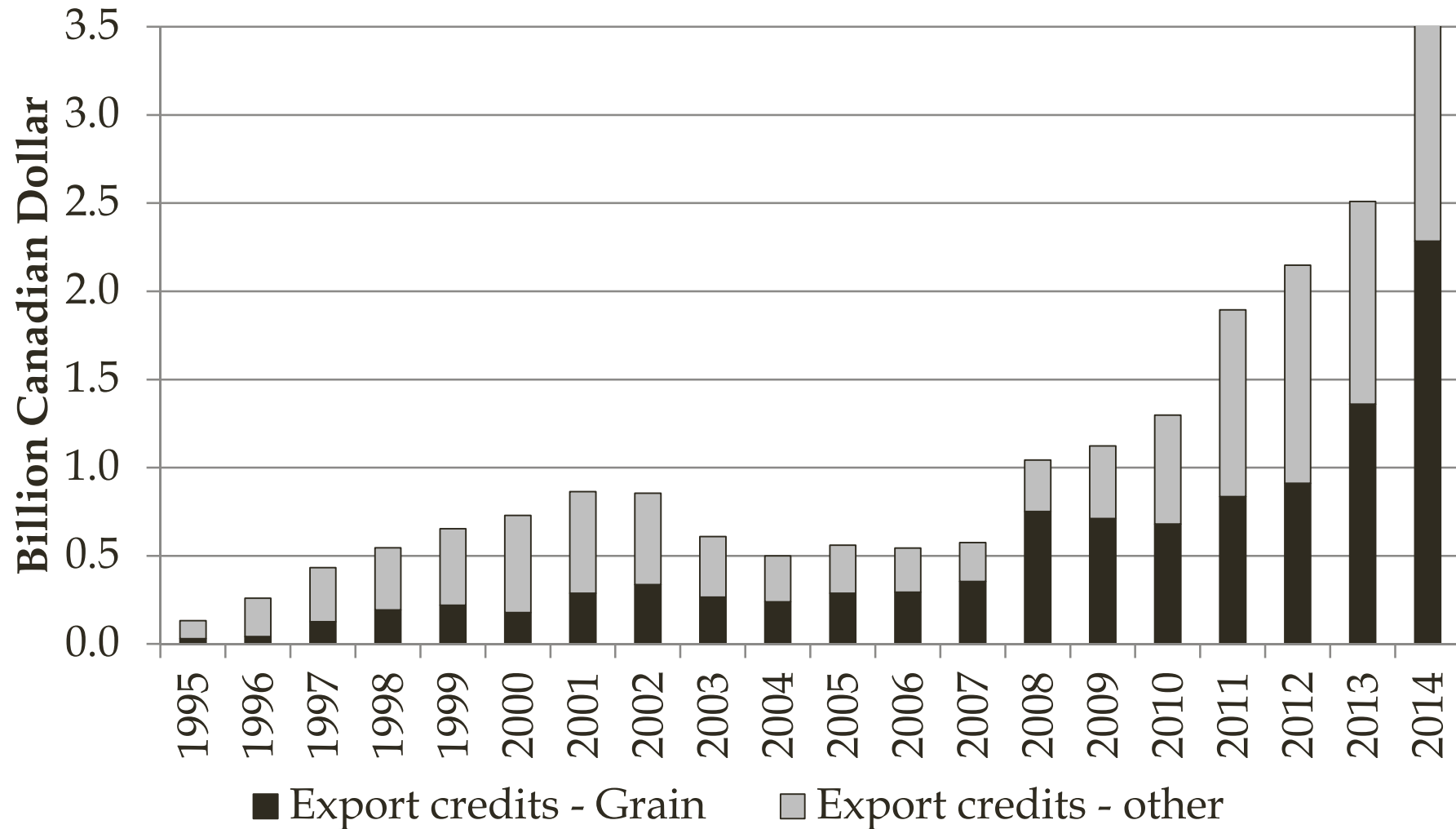
# Nairobi Ministerial Decision on export competition – export financing

- More limited agreement compared to Rev.4
- Maximum repayment period – 18 months (540 days); Rev.4: 180 days
- ‘Self-financing’ – 4 year rolling period vs premiums and-or interest rates provided ‘shall be adequate to cover long term operating costs and losses’ (ASCM Annex 1(k))
- Working capital financing to suppliers **excluded** from disciplines
  - E.g. US Export Working Capital Program (EWCP) maintained by US Small Business Administration (SBA) – max repayment term 36 months. Provided for advances of up to USD 5 million
- Types of entities covered by export financing disciplines aligned with ASCM (public body)
- No commitment to minimize trade-distorting effects

# Nairobi MD & commitments to minimize trade distorting effects on other WTO Members

<b>Export competition discipline</b>	<b>Commitment to minimize trade-distorting effects and/or impact on third-party exports?</b>
<b>Export subsidies</b>	'Hard' commitment: "Members <u>shall ensure</u> that any export subsidies have at most minimal trade distorting effects and do not displace or impede the exports of another Member. (..)" (para 11)
<b><u>Export financing support</u></b>	<u>No commitment</u>
<b>Agricultural state trading STEs</b>	Best-endeavour commitment: "Members <u>shall make their best efforts</u> to ensure that the use of export monopoly powers by agricultural exporting state trading enterprises is exercised in a manner that minimizes trade distorting effects and does not result in displacing or impeding the exports of another Member." (para 20)
<b>International food aid</b>	Some form of Best-endeavour commitment: "Members <u>shall refrain</u> from providing in-kind international food aid in situations where this would be reasonably foreseen to cause an adverse effect on local or regional production of the same or substitute products. In addition, Members shall ensure that international food aid <u>does not unduly</u> impact established, functioning commercial markets of agricultural commodities.

# Canada: Value of export of agricultural products subject to export financing support



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# Nairobi Ministerial Decision on export competition – agricultural exporting STEs

- Definition of Agricultural exporting STE
  - Anti circumvention obligation (para 20)
  - ‘Members shall make their best efforts to ensure that the use of export monopoly powers by Ag exp STE is exercised in a manner that minimizes trade distorting effects and does not result in displacing or impeding the exports of another Member’ (para 21)
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# Nairobi Ministerial Decision on export competition – food aid

- Rev.4 took largely from African Group proposal
- 2014 report by FAO's Committee on Commodity

Problems: Rev.4 text on food aid achieved a balance:

- (..) 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.

<http://www.fao.org/3/a-mk965e.pdf>

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# Nairobi Ministerial Decision on export competition – food aid

- Nairobi MD watered down version of Rev.4
  - Issues
    - Re-exports allowed in many circumstances
    - Needs/impact assessment prior to providing food aid – can be determined by food aid suppliers themselves
    - Monetization of food aid
    - Tying of food aid (also addressed in 10.4 AoA)
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# Contestability of Nairobi Decision on Export Competition in WTO Dispute Settlement

- Ministerial Decision does not follow amendment
- **Export subsidies** – changes effected through Members- Schedules – legally binding
- **Export financing** – might be regarded as subsequent agreement or practice to Article 10.2
  - 2. 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.
- → However WTO dispute settlement has set quite strict parameters for agreements to constitute a subsequent agreement

# Contestability of Nairobi Decision on Export Competition in WTO Dispute Settlement

- Agricultural exporting STEs
  - Rev.4 – insertion of a new article into AoA
  - Now selfstanding decision
- International food aid
  - Text of Nairobi decision not directly linked to Art 10.4
    - Article 10.4 ‘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.



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# Contestability of Nairobi Decision. Example in area of Food aid – ‘fully grant form’

- AoA, Art 10.4(c):
    - 4. Members donors of international food aid shall ensure: 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.
  - Nairobi Ministerial Decision on Export Competition
    - 23. Members shall ensure that all international food aid is:  
(..) b. in fully grant form;  
→ This language goes further than the AoA. However the text in the AoA has not been changed.
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# Submissions on export competition post-Nairobi (1)

- Proposed language for MC11 in Buenos Aires (Canada, Chile, Switzerland
  - To build upon the results of the *Nairobi Ministerial Decision on Export Competition* to further enhance disciplines on export competition to ensure that the elimination of export subsidies is preserved and to prevent non-commercial transactions from being used to circumvent the Ministerial Decision.
  - In this regard, Members shall continue negotiations on export competition in the Committee on Agriculture, Special Session and strive towards achieving enhanced disciplines on export credits, export credit guarantees or insurance programmes, agricultural exporting state trading enterprises and international food aid.

(‘Continuation of agriculture reform in export competition’, RD/AG/61 of 10 November 2017)

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# Submissions on export competition post-Nairobi (2)

- Cairns Group has interest in the implementation of the Nairobi Ministerial Decision on Export Competition (annual examination process)
  - G/AG/W/180 of 7 June 2018
  - G/AG/W/180/Add.1 of 21 September 2018



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# Review of Nairobi MD on EC

- Para 5 (General Provisions) – Ministers gave a mandate to the regular sessions of the Committee on Agriculture to ‘review every three years the disciplines contained in the Decision with the aim of enhancing disciplines to ensure that no circumvention threatens export subsidy elimination commitments and to prevent non-commercial transactions from being used to circumvent such commitments
  - Additionally, food aid has a review clause – ‘Ministers agree to review the provisions on international food aid contained the preceding paragraphs within the regular COA monitoring of the implementation of Marrakesh LFC/NFIDC decision’
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# First triennial review

- The Chairperson reported on the informal meeting held on 20 February 2018 on the review of the Nairobi Decision on Export Competition. The Chairperson noted that the Nairobi Decision requires that the Committee conducted a review of the Decisions' disciplines to be held every three years. The Chairperson informed that the Committee held its second informal discussion on the review of the Nairobi Decision on Export Competition on 11 June 2018. Since the Chair's report on informal discussions held on 20 February 2018 had not attracted any additional comment by Members, she suggested to conclude the review at the September 2018 CoA meeting.

(G/AG/R/88 of 18 July 2018, section 3.3.2)

- Report of first triennial review of MD on EC – G/AG/28 of 26 September 2018
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# Annual examination process since Bali

- Bali Ministerial Declaration on Export Competition
  - Agree to hold dedicated discussions on an annual basis in the Committee on Agriculture (para 11)
  - This examination process shall be undertaken on the basis of
    - Timely notifications under the relevant provisions of the AoA and related decisions
    - Complemented by information compiled by the WTO Secretariat on the basis of Members' responses to a questionnaire as illustrated in the Annex



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# Annual examination process since Nairobi

- Nairobi Ministerial Decision on Export Competition
    - COA shall monitor the implementation of this Decision by Members in accordance with existing notification requirements under the AoA, as complemented by the provisions set in the Annex
    - Annex to Nairobi Decision – Members shall continue to provide information on export subsidies / export financing / food aid / agricultural exporting STEs within the context of an annual examination process based on the structure of the Annex
    - Developing country Members shall implement Annex to Nairobi Decision by December 2020 (unless in a position to do so at an earlier date)
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# Annual examination process

- Post-Bali: 5 June 2015 / 4 June 2015
  - Post-Nairobi: 7 June 2016 / 7 June 2017 / 11-12 June 2018
  
  - Questionnaire usually sent in November
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# WTO secretariat report

- G/AG/W/125/Rev. (Rev.9 latest)
- In absence of reply or new notification – information remains the same



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# Observations on Export subsidies

- Several Members with scheduled export subsidy reduction commitments / entitlements have taken steps to modify their schedules, implementing the 2015 Nairobi Ministerial Decision on Export Competition
  - Certified: Australia (22 May 2017), Norway (28 Feb 2018), Israel (11 March 2018), Switzerland (2 Aug 2018), Colombia (22 Sep 2018), Uruguay (26 Sep 2018)
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# Modification of schedules – pending implementation

- **Canada** - its proposed modification (G/MA/TAR/RS/512) has not yet been certified
  - **South Africa** - its proposed modification has not yet been certified
  - **United States, Brazil, EU member states (Bulgaria, Cyprus, Czech Republic, Poland, Romania, Slovak Republic), Mexico, Indonesia, Turkey, Venezuela** – did not send proposed modification of schedules
  - **EU's** elimination of export subsidies in its schedule is pending since it is part of other modifications (EU enlargement, ITA2) (G/MA/TAR/RS/506)
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# Export financing - Some observations from annual examination process

- Not all Members are notifying (not yet obligation for developing countries not a position to do so), not all programmes reported by Members, level of detail varies,
  - Some Members report programme with maximum repayment period > 540 days/18 months (most seem allowed under Nairobi MD but some perhaps not)
  - Some Members (implicitly) define 'self-sustaining'
  - Some Members report fish as agricultural product
    - Under ASCM, LDCs and Annex VII countries have exemption from prohibition to provide export subsidies
  - Working capital financing appears on the increase
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## Australia: Total value of export of agricultural products covered by export financing programmes (mln AUD)

Export Programme	2014	2015	2016	2017
Export Contract Loan	0	5.73	47.67	3.35
<b>Small Business Export Loan</b>	<b>0</b>	<b>0</b>	<b>1.13</b>	<b>17.92</b>
<b>Export Working Capital Guarantee</b>	<b>16.49</b>	<b>16.27</b>	<b>44.67</b>	<b>14.43</b>
<b>Export Line of Credit</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8.44</b>
Bond	0	0	0	0
Risk Participation Agreements	7.72	11.24	3.83	0
Export Finance Guarantee	21.44	0	99.17	0
Documentary Credit Guarantee	0	0	0.17	0
Foreign Exchange Facility Guarantee	1.43	1.33	n/a	n/a
<b>Totals</b>	<b>47.08</b>	<b>34.57</b>	<b>196.64</b>	<b>44.15</b>

# Australia's main export financing programmes

Programme Title	Category of Support	Description of Programme
Export Line of Credit	Direct Financing Support	A <b>revolving working capital facility where the borrower is the exporter</b> . The individual repayment periods of each drawdown are dependent upon exporters' working capital needs. This 'line of credit' will generally be drawn down and repaid multiple times over the availability period, as the exporter requires additional working capital to meet export contracts. The availability period is usually 12 months, but can be extended depending upon the exporter's expected future working capital needs.
Small Business Export Loan	Direct Financing Support	A <b>working capital loan to Australian exporters</b> that can be applied for online. The loan allows the Australian company to deliver on contract(s) with overseas buyer(s). Loans are between AUD 20,000 and AUD 350,000.
Export Working Capital Guarantee	Risk cover	A <b>guarantee to an exporter's bank for the exporter's payment obligations under a working capital loan facility</b> . The Export Working Capital Guarantee can support a single export contract or multiple contracts with different buyers.

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# Food aid – some observations from annual examination process

- All food aid donors report that their food aid is in fully grant form
  - Cash-based vs in-kind
  - Re-export of 'in-kind' food aid is not permitted by most
  - Monetization of food aid not permitted except US and Japan
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# Annual examination process – areas not addressed

- No monitoring of Bali commitment that ‘a similar level of discipline will be maintained on the use of all export measures with equivalent effect’
  - Operationalisation. Eg what does “The level of export subsidies will remain significantly below the Members' export subsidy commitments” mean in the context of export financing
    - E.g. self-financiability should not decrease, level of tied food aid should not increase etc?
  - For developing countries, export financing can also be an important tool to boost exports and in principle a standstill would not be favourable.



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# Annual examination process – areas not addressed

- No monitoring that could whether domestic support that goes into exported agricultural products effectively circumvent the export subsidy elimination commitments, e.g. to assess effect of domestic support on export prices.
    - Under ASCM trade effects of (specific) subsidies needs to be notified (however, both non-specific & specific are regularly notified)
    - What about Domestic Support? This has been an issue of discussion in the context of PSH but it is much more important for direct payments to agricultural producers
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# Annual examination process in export competition and discussions about transparency / WTO reforms

- Annex to Nairobi Ministerial Decision can be regarded as a regular notification obligation
- However it is not part of Agreement on Agriculture and not included in G/L/224/Rev.24 (listing of notification obligations)
- This notification obligation not covered by EU-JP-US-AR-CR proposal
- Information provided in most cases not complete, including by developed countries
- Consequence of non-provision of information in response to questionnaire sent by WTO Secretariat in annual examination exercise? Particularly relevant in the area of export financing where there are no existing related notification obligations under the AoA



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# Export restrictions

- Issue discussed at MC11, might be an issue for MC12
  - Export restrictions can be important to deliver on food security, but some countries are also dependent on food imports – i.e. balance in the rules
  - 2 main topics – i) transparency and ii) disciplining the export restrictions (duration etc) – focus has been on transparency
  - Rules already exist – Article 12 AoA . S&D: Disciplines do not apply to developing countries, unless net-food exporter of the specific foodstuff concerned.
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# Export restrictions (2)

- Rev.4 has been basis for negotiations; para 172 of Rev.4 contains an ambiguity:
    - 172. Prohibitions or restrictions under Article XI.2(a) of GATT 1994 in Members' territories shall be notified to the Committee on Agriculture within 90 days of the coming into force of these provisions.
      - 'Within' 90 days can be before and after the implementation date of the measure
  - Almost no country has notified an export restriction before the implementation of the measure.
-