

subsidies. However, as we have seen, the FSC measure allows for the provision of an

apply to export subsidies not listed in Article 9.1. A plain reading of Article 10.1 indicates that the only export subsidies that are excluded from its scope are those 'listed in paragraph 1 of Article 9'. The United States and Brazil agreed that export credit guarantees are not listed in Article 9.1. Thus, to the extent that an export credit guarantee meets the definition of an 'export subsidy' under the *Agreement on Agriculture*, it would be covered by Article 10.1. Article 1(e) of the *Agreement on Agriculture* defines 'export subsidies' as 'subsidies contingent upon export performance, *including* the export subsidies listed in Article 9 of this Agreement'. (emphasis added) The use of the word 'including' suggests that the term 'export subsidies' should be interpreted broadly and that the list of export subsidies in Article 9 is not exhaustive. Even though an export credit guarantee may not necessarily include a subsidy component, there is nothing inherent about export credit guarantees that precludes such measures from falling within the definition of a subsidy. An export credit guarantee that meets the definition of an export subsidy would be covered by Article 10.1 of the *Agreement on Agriculture* because it is not an export subsidy listed in Article 9.1 of that Agreement."⁹

1.4 Article 10.3

1.4.1 Partial reversal of burden of proof

11. In *Canada – Dairy (Article 21.5 – New Zealand and US II)*, the Appellate Body explained that Article 10.3 provides a special rule for proof of export subsidies that applies in certain disputes under Articles 3, 8, 9 and 10. Article 10.3 partially reverses the usual rules on burden of proof as follows:

"Pursuant to Article 3 of the *Agreement on Agriculture*, a Member is *entitled* to grant export subsidies within the limits of the reduction commitment specified in its Schedule. Where a Member claims that another Member has acted inconsistently with Article

