

**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)

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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

- (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.

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

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

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,

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