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Food and Agriculture
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Продовольственная и
сельскохозяйственная организация
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Organización de las
Naciones Unidas para la
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منظمة
الغذية والزراعة
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COMMITTEE ON COMMODITY PROBLEMS

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**DISCIPLINES ON FOOD AID UNDER THE DOHA ROUND DRAFT
MODALITIES (REVISED DRAFT MODALITIES FOR AGRICULTURE
TN/AG/W/4/REV.4, WTO 6 DECEMBER 2008)**

ANNEX L

POSSIBLE NEW ARTICLE 10.4 TO REPLACE THE CURRENT 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 aid"¹), to take account of the interests of food aid recipients 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 contributing to the objective of preventing commercial displacement.

General disciplines applicable to all 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 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

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



- e) 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.

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 products.² Members are encouraged to procure food aid from local or regional sources to the extent possible, provided that the availability and prices of basic foodstuffs in these markets are not unduly compromised. Members commit to making their best efforts to move increasingly towards more untied cash-based food aid.

4. Untied cash-based food aid that is in conformity with the provisions of paragraph 2 above shall be presumed to be in conformity with this Article.

5. The recipient government has a primary role and responsibility for the organization, coordination and implementation of food aid activities within its territory.

Further disciplines for food aid transactions in emergency situations (Safe Box)

6. 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 Article, provided that:

- a) there has been a declaration of an emergency by the recipient country or by the Secretary-General of the United Nations; or
- b) there has been an emergency appeal from a country; a relevant United Nations agency, including the World Food Programme and the United Nations Consolidated Appeals Process; the International Committee of the Red Cross or the International Federation of Red Cross and Red Crescent Societies; a relevant regional or international intergovernmental agency; a non-governmental humanitarian organization of recognized standing traditionally working in conjunction with the former bodies; and in either case, there is an assessment of need coordinated under the auspices of a relevant United Nations agency, including the World Food Programme; the International Committee of the Red Cross or the International Federation of Red Cross and Red Crescent Societies.³

² 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 6 to 10 below. Therefore it is recognized 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 food aid needs. Furthermore, a Member shall in any case be obliged to avoid or, if this is not possible in the circumstances, to minimize, any adverse effects on local or regional production through the provision of in-kind food aid otherwise in conformity with the provisions of paragraphs 6 to 10 below.

³ 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, this is in a context where they are in coordination with the relevant United Nations agency or ICRC/IFRCRCS as the case may be. A needs assessment shall not have standing for the purposes of access to the safe box under these provisions unless it has been conducted in such a coordinated manner, and has obtained the demonstrable consent or approval of the latter multilateral agencies.

7. Following the emergency declaration or appeal as provided for in paragraph 6 above, there may well be a period where the needs assessment outcome is pending. For the purposes of this Agreement, this period shall be deemed to be three months in duration. Should any Member consider that the food aid concerned would fail to satisfy the conditions provided for under paragraph 6 above, no initiation of dispute settlement on these grounds may occur until that period has elapsed (provided that the relevant multilateral agency referred to in paragraph 6 above has not, within this period, given a negative assessment or has otherwise demonstrably not consented to a needs assessment). Where, within or by the end of this period, the relevant multilateral agency has either itself carried out a positive needs assessment or has demonstrably provided its consent or approval pursuant to footnote 3, and the other conditions of paragraph 6 have been satisfied, the food aid concerned shall remain in the Safe Box hereafter provided it is also in conformity with all the other relevant provisions of this Article.

8. 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 country⁴ such that commercial displacement is avoided or, if not feasible, at least minimized.

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

10. Subject to its continued conformity with other provisions of this Article, food aid that is in conformity with paragraph 6 may be provided as long as the emergency lasts subject to an assessment of continued genuine need as a result of the initial onset of the emergency. The relevant multilateral agency shall be responsible to make or convey such determination.

Further disciplines for food aid transactions in non-emergency situations

11. Further to the disciplines set out in paragraphs 1 to 5 above, in-kind food aid in non-emergency situations outside the Safe Box shall be:

- a) based on a targeted assessment of need whether carried out by an international or regional intergovernmental organization⁵, 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;
- b) provided to redress food deficit situations which give rise to chronic hunger and malnutrition and, accordingly, such food aid shall be targeted to meet the nutritional requirements of identified food insecure groups; and
- c) be provided consistently with the objective of preventing, or at the very least minimizing, commercial displacement. Commercial displacement in this context shall arise where the provision of in-kind food aid by a Member materially displaces commercial transactions that would otherwise have occurred in or into a normally functioning market in the recipient country for the same product or directly competitive products.

⁴ 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.

⁵ This should involve the recipient country government and may involve humanitarian non-governmental organisations working in partnership with the recipient country government.

12. 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.⁶ Additionally, commercial displacement shall be avoided.

Monitoring and surveillance

13. Food aid donor Members shall be required to notify to the Committee on Agriculture, on an annual basis, all relevant data.

⁶ In the case of a landlocked Member, additionally for the transit transport/delivery from the extra-territorial continentally contiguous port of final unloading to the destination territorial border.