

**Chair's Reference Paper<sup>1</sup>**

**Rev.1<sup>2</sup>**

**FOOD AID<sup>3</sup>**

**Structure for Discussion**

***Introduction***

In the General Council Decision of 1 August 2004, the Agreed Framework, Members agreed that the objective of disciplines on food aid is to prevent commercial displacement. Furthermore, Ministers at the Sixth Ministerial Conference in Hong Kong reaffirmed their commitment to maintain an adequate level of food aid, to take into account the interests of food aid recipients, and to ensure that the disciplines contained hereafter do not unintentionally impede food aid provided to deal with emergency situations.

***General Provisions***

1. Notwithstanding the provisions of the Agreement on Agriculture, Members shall ensure that all food aid transactions are provided in conformity with the following provisions:

- (i) is needs-driven and results in additional consumption;
- (ii) is provided in [fully] grant form;
- (iii) is not tied directly or indirectly to commercial exports of agricultural products or of other goods and services;
- (iv) is not linked to the market development objectives of donor Members; and
- (v) shall not be re-exported, except during an emergency situation where it is an integral part of a food aid transaction initiated by a relevant United Nations agency.

2. When providing food aid, donor Members shall take fully into account local market conditions of the same or substitute products and are encouraged to procure food aid from local or regional sources to the extent possible.

*As I noted in my previous Reference Paper on food aid, the issue of general provisions has been raised and there has been an openness to examine this possibility, such that any general disciplines do not impede the provision of food aid during emergency situations. Although some proposals have suggested that there be no conditions attached to emergency food aid provided under the Safe Box, mention has been made of that food aid should be needs-driven and not re-exported except under certain conditions for example. Thus there does seem to be some appetite that some basic conditions should apply to all food aid transactions, including food aid provided under the Safe Box. The question is whether all or some, or any other conditions in addition to those listed in paragraph 1 should apply and whether such provisions would have the effect of impeding the delivery of food aid?*

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<sup>1</sup> The headings used in this reference paper are indicative only.

<sup>2</sup> This is a revision of the Chair's Reference Paper issued on 11 April 2006, under n°2743.

<sup>3</sup> Article 10.4 of the Agreement on Agriculture refers to international food aid.

*There appears to be general acceptance that "cash-based" aid should always be allowed under the same conditions as would be granted for food aid within the Safe Box. However, there is one slight quirk to that inasmuch as, technically, the Safe Box is meant to be for emergency situations. But this, it seems to me, is a more formal issue. The important operational issue is that cash-based aid should also be subject to other operational conditions. By making that clear it seems to me structurally sensible to place it in the Safe Box with that conditionality spelt out.*

*There doesn't appear to be any dissension, at least not in non-emergency situations, that donor Members should take into consideration in their food aid deliveries the prevailing market conditions, including the possible impact on substitute products, and where feasible, source their food aid donations locally or regionally. The question is should such provisions also apply to emergency situations? I have it in-mind that, especially in the case where cash-based aid occurs, commodities must be purchased from somewhere. Therefore, does it make sense that during both emergency and non-emergency situations donors are encouraged to source commodities locally or regionally?*

### ***Safe Box for Emergency Food Aid***

3. To ensure that there is no unintended impediment to the provision of food aid necessary for an emergency humanitarian situation, including natural or manmade disasters, crop failures or humanitarian crises, in-kind food aid transactions shall be exempt from the provisions of paragraphs [1.] 7 and 8, where such aid is provided in response to an emergency appeal from:

(i) a relevant United Nations agency, including the World Food Programme; the United Nations Consolidated Appeals Process; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; other relevant international intergovernmental or regional humanitarian organisation; or

(ii) a recipient government, non-governmental organisation, or private charitable body, working in collaboration with a relevant international humanitarian agency as set out in paragraph 3(i).

4. Food aid, provided in the form of direct monetary donations (i.e. cash-based aid), shall be, when provided in conformity with the other relevant provisions of this Agreement [precise reference when defined], presumed to be in conformity with the Agreement on Agriculture and thereby in the Safe Box.

5. It is recognised that there can be exceptional circumstances where the urgency of the food aid need is such that to wait for an appeal as set out in paragraph 3(i) or (ii) would result in an undue delay in the provision of food aid. In-kind food aid provided in response to an urgent ministerial request in such exceptional circumstances shall not be precluded by the provisions above. However, in such a case, both the donor country and recipient government shall notify the Committee on Agriculture which shall review the specific case concerned within [...] days and recommend (*to be developed*).

6. The provision of in-kind food aid in conformity with paragraph 3 or 5 may be provided for as long as necessary based on an assessment of the continued need for such aid as a result of the initial emergency situation. The assessment of continued genuine food needs shall be conducted by (*to be developed*).

*It is my sense that we are now getting close on finalising the issue of who can trigger an appeal for in-kind food aid that would be provided under the Safe Box. From recent discussions on this issue, it appears that the vast majority of support is for a "multilateral" trigger. That said, there are some Members who are still attracted to the notion of having an explicit definition of what would constitute*

*an emergency situation. But it is my view that if we agree that certain "multilateral or international agencies" are best placed to determine and assess an emergency situation based on their own knowledge, expertise and standards, what is the benefit of the WTO trying to determine when an emergency situation exists? Would this simply be cutting across the expertise of relevant agencies and/or, possibly constraining some of their activities?*

*Moreover, one question that remains is the role, if any, of non-governmental humanitarian organisation (NGHO's) and recipient governments themselves. I did not detect a strong sense during the last discussion on this issue, that NGHO's or recipient governments working in collaboration with relevant "multilateral" partner(s) would cause a problem. Indeed, there exists already collaboration between inter-governmental agencies and NGO's, including with respect to some of the "multilateral" triggering avenues that Member's have argued should be the basis for a trigger. Therefore, if such collaboration already exists, where does the problem lay in terms of providing for such collaboration? If Members are concerned with such collaboration, why are we in a position to entrust the triggering of an emergency to certain "multilateral agencies" but not trust them when they are working in collaboration with a NGHO?*

*One issue that does present a potential problem with a multilateral trigger, and which has been raised in the negotiations, is the question of timing. If we are to be faithful to the mandate that Ministers provided us at Hong Kong, that the Safe Box will ensure that there is no unintended impediment to dealing with emergency situations, we need to recognise that situations may arise where there is a delay in the initiation of a multilateral appeal such that it would cause undue delay in the provision of necessary food aid. Therefore it is important that we provide for such exceptional circumstances while being conscious at the same time not to create an unintended loophole, which is, a concern for some Members. To provide some comfort that such provisions would not be abused, in situations where food aid is being provided on the understanding that an emergency declaration will be forthcoming, this could be addressed through a notification and review procedure.*

*With respect to the duration of an emergency, I am getting the sense that we are slowly narrowing the differences that remain. There is strong support that the WTO should not be imposing arbitrary duration periods under which in-kind food aid would be permissible under the Safe Box. That is not to say that we have reached total convergence on this issue. As I noted in my previous Reference Paper, I remain of the view that it seems inherently implausible that the WTO, as a trade body, could be considered to have some superior comprehension of when an emergency has ended (before it has even occurred) than relevant international bodies working in the field. That said, I do believe that Members are not seeking to limit outright the duration of an emergency, but rather wish to ensure that in-kind food aid provided under the Safe Box is only provided for as long as is truly necessary. Furthermore, I do not believe that international humanitarian agencies themselves wish to provide food aid for any period of time other than is necessary. Therefore, to ensure there is no impediment to dealing with emergency situations, if we agree on the legitimacy of relevant organisations to declare an emergency, what is it about their food aid operations and assessment of need techniques that causes concern that relying on their assessments (should that be agreed) would create a loophole? As I noted in my previous Reference Paper, one option or variant of solely relying on an assessment by relevant international bodies would be to seek advice from them as to the possible prolongation of an emergency situation.*

### ***Disciplines for Food Aid in Non-Emergency Situations***

7. In-kind food aid provided in situations other than defined in paragraphs 3, 5 and 6 above, shall, in addition to the provisions of paragraph 1, [be:

- (i) based on an assessment of need (*to be developed*);
- (ii) targeted to an identified vulnerable population group; and
- (iii) provided to address specific developmental objectives or nutritional requirements]

Or

[be phased out over the implementation period].

8. The monetisation of in-kind food aid shall [be subject to disciplines to be agreed] [phased-out over the implementation period].

9. Food aid provided in conformity with the provisions of paragraphs 1, 7 and 8 shall not be considered to cause commercial displacement and therefore not circumvent Members' export subsidy commitments.

*The issue of disciplines for non-emergency situations appears at this point to be the area of greatest divergence between Members. The Hong Kong Ministerial Declaration is clear that we are to agree on effective disciplines on in-kind food aid, monetisation and re-exports. Of these three issues I believe we are close to agreement on the disciplines on re-export. As such, I have included this issue in paragraph 1(v) as there seems to be general agreement to prohibit re-exports except in emergency situations and where it is an integral part of a food aid transaction initiated by a relevant United Nations agency.*

*With respect to in-kind food aid and monetisation we seem to have two very opposite positions within the Membership on these issues. One view is that both in-kind food aid and monetisation should remain permissible subject to certain conditions, while the other view is that both should be phased-out over the implementation period. With respect to the latter, such operations would be replaced by untied cash-based contributions. Clearly we need further discussion on both issues to narrow the differences.*

*The phasing-out of in-kind food aid does raise one issue related to Members commitment to maintain an adequate levels of food aid, as agreed by Ministers at Hong Kong. The issue in question is the ability of developing countries who are currently in a position to provide in-kind commodities, but would not necessarily be in a position to provide an equivalent cash-based contribution due to fiscal constraints. Should Members wish to pursue this phasing-out option, it may be necessary to consider what, if any, special and differential treatment provisions may be appropriate.*

#### **Other Issues**

10. Notification, consultation, monitoring and transparency procedures (*to be developed*).

11. Phasing of commitments to ensure the parallel elimination of all forms of export subsidies (*to be developed*).

*The issue of notification, monitoring and surveillance procedures etc is an important area of the food aid disciplines that Members need to give further consideration.*

*With respect to the phasing of commitments, this is also an important area to ensure the parallel phase out of all forms of export subsidies. However I believe, as some Members have noted, that it is best to leave this issue to one side until we have finalised the provisions and disciplines to be agreed and then determine how best to ensure full parallelism of commitments.*