

Negotiations on Agriculture**Revised Consolidated Reference Paper on Possible Modalities on Export Competition*****Introduction***

1. You will find attached, as I foreshadowed, the same kind of document that I have provided already for the market access pillar. There is some editorial comment in the body of the text, albeit of a somewhat more technical nature than in the market access document. There is a straightforward enough reason for that. Unlike with the case of a consolidated approach for market access, this pillar has had already – via the reference papers – a pretty clear set of editorial comments on all aspects already. More importantly, that reflects the fact that the previous reference papers on the export competition pillar were already in an essentially textual form. Thus, what you see before you now is not, in fact, much removed from what you had had before you already, and which has been discussed comparatively intensively in that form. Indeed, in some instances, there has been serious text-based discussion going back well over a year. Even more fundamentally, the present situation does reflect a reality of this pillar – particularly post Hong Kong: that politically there does not remain the degree of divergence over this pillar as there is on the other two.

2. But that does not mean this part of our negotiation is in the bag. It is not, and we still have some politically heavy lifting to do here. Indeed, I believe there is some risk – if we are not alive to it – that we could slip into something that could be described as almost bordering on complacency over certain elements of this pillar – with Members perhaps feeling that so much progress has been made that we can "take it easy" here. If so, that would be a mistake in my view.

3. First and foremost, it is undeniably true that we have before us the prospect of consolidating the historic elimination of export subsidies. But that will still have to be made operationally effective. We have not done that and, indeed, we have scarcely started negotiating over it yet in concrete terms of phase-out steps. The attached draft does provide a formal vehicle for that – but that is a mere formality at this stage. What it needs are numbers – and those have yet to be filled in. That is, of course, not some kind of negotiating oversight. It reflects as much as anything the fact that we have to this point still fallen short of getting into the serious deal-making zone on the important issue of "parallelism".

4. Clearly there is a negotiating linkage. Whatever view one takes in the abstract of the appropriateness or otherwise of this, the reality is that we will not consolidate those concrete year by year commitments on "classic" export subsidies in isolation from the creation of a balanced and meaningful package covering the other elements within this pillar (leaving aside analytically whatever more over-arching linkages may be made as regards the total package).

5. All Members will have to play their part, and certainly there will need to be further decisions made on the concrete phase-out schedule of classic export subsidies. That cannot be sidestepped, and needs to be dealt with directly and specifically. But it is also true that we need to progress the other elements in a balanced way. In that regard, it seems to me that we cannot realistically expect to get this pillar of the negotiation finalised if all we do on food aid, state trading enterprises and export credits is nothing more than inventive repackaging of the status quo. Of course, whatever happens on all of those issues must faithfully respect the mandate and nobody can be obliged to go to outcomes that are outside the mandate. But, I don't for a minute believe that the mandate on these matters can be credibly portrayed to be – albeit implicitly – an elaborate exercise in textual invention with the object and purpose of not doing very much in particular. As I mentioned in my market access paper

on the issue of how all of this is seen in the real world, the same test is just as applicable here: this has to make a difference. The phase-out of export restitutions will make a real world tangible difference at whatever pace is finally agreed by end-2013. It is inconceivable that we could get an outcome where, in respect of the "parallel" issues, real world operators would be hard put to see any real difference whatsoever.

6. Now, I am not saying that, to this point, we are doing nothing. On the contrary, I see some signs of very real progress. We have been more "textual" on this pillar earlier than any other. Indeed we have spent virtually all our post Hong Kong time and attention on these matters as opposed to scheduling of subsidy phase-out. And that has yielded some tangible dividends: I see food aid progressing – particularly on the "Safe Box". It is clear to me that nobody is intending to interfere in the slightest with genuine food aid emergencies and we are on the cusp of nailing that down textually. We have got some concrete disciplines sorted out already on STE's. We have made technical advances on export credits.

7. But what I think I am reasonable in describing as the "larger" issues are still not resolved. Outside the Safe Box on food aid I do not see much sign of any real willingness yet for Members to do anything "much differently" than is taking place now. Of course, that position is held resting on the view that what is taking place now is not problematic. But is this realistic?

8. In the area of export credits, we actually have proposals on the table, for instance, to cover a series of situations that would effectively permit export credit payments beyond 180 days. As Chair I have included those in here as square brackets because it is my task to reflect the view of delegations. But I do think one is at least entitled to ask the question bluntly: how does one seriously reconcile such an approach with the plain language of the July 2004 framework – "the following will be eliminated by the end date to be agreed export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days"?

9. On STE's, whatever view one takes of how far precisely it was that Ministers in Hong Kong agreed to go in terms of the future use of monopoly powers of those enterprises, they presumably meant at least something. Yet it is by no means clear what it is that developed Members operating these are actually ready to concretely say they would do differently from what they are doing now which is, implicitly at least, tantamount to taking the view that Ministers were directing no operational change to the status quo on this issue. Is this really credible?

10. None of that would change my sense – which I have expressed often over the past few months – that the deal here is tangibly in reach in a way that is not paralleled in the other pillars. Indeed, I would probably go so far as to say that it would take extraordinary negotiating virtuosity on the part of Members to fail to close the deal here! So I am not going to try to pretend that there are more problems here than there really are. But that does not mean we can be complacent. Nor does it mean that there are not things that need to be done which are not yet done. Yes, we have good prospects of balance within this pillar, but we have to make that happen. We are not there yet. Of course, I am well aware that the basis for closure here cannot exist in isolation from what happens on the other two pillars (and, on the rest of the negotiations I do not comment). But, that does not mean that closure here is a pure function of closure in those other two pillars. There is still an intrinsic balance in this pillar which is lacking and has yet to be finalised.

I. EXPORT COMPETITION

A. GENERAL PROVISIONS ON EXPORT COMPETITION

1. Nothing in the modalities on export competition can be construed to give any Member the right to provide, directly or indirectly, support to exports of agricultural products in excess of the commitments set out in Members' Schedules or in conflict with the terms of Article 8. Furthermore, nothing can be construed to imply any change to the obligations and rights under Article 10.1 or other provisions of the Agreement on Agriculture or other WTO Agreements.

B. EXPORT SUBSIDY COMMITMENTS

2. Developed country Members shall eliminate, by the end of 2013, their export subsidy commitments in accordance with the following formula:

- (a) in 2008, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent];
- (b) for 2009, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent];
- (c) in 2010, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent].¹
- (d) in 2011, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent];
- (e) in 2012, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent]
- (f) in 2013, budgetary outlay and quantity commitments shall be reduced to zero.

3. Developing countries shall eliminate their export subsidy commitments, as scheduled, according to the following timetable:

- (a) in 2008, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent];
- (b) in 2009, budgetary outlay commitments shall be reduced by [] per cent [and quantity commitments by [] per cent];
- (c)²
- (d)
- (e) in the final year of implementation, budgetary outlay and quantity commitments shall be reduced to zero.

¹ The combination of reductions under (a), (b) and (c) above will ensure a substantial part of the elimination of export subsidy commitments is achieved by end-2010, the mid-point of implementation for developed country Members;

² The combination of reductions under (a), (b), (c) ... above will ensure a substantial part of the elimination of export subsidy commitments is achieved by end-[], the mid-point of implementation for developing country Members;

4. Developing country Members shall continue to have recourse to the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end-date for the elimination of export subsidies. Accordingly, Article 9.4 of the Agreement on Agriculture will be amended as follows

Article 9.4

Until the end of 2018, developing country Members shall not be required to undertake commitments in respect of the export subsidies listed in subparagraphs (d) and (e) of paragraph 1 of Article 9 of the Agreement on Agriculture, provided that these are not applied in a manner that would circumvent reduction commitments.

C. EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

5. Export credit, export credit guarantees or insurance programmes shall comply with the detailed disciplines set out in Annex A.

D. AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

6. Agricultural exporting state trading enterprises shall comply with the detailed disciplines set out in Annex B.

E. INTERNATIONAL FOOD AID

7. International food aid shall comply with the detailed disciplines set out in Annex C.

F. COTTON

8. All forms of export subsidies for cotton shall be eliminated by developed countries in 2006 [and developed countries concerned shall provide information on measures they have taken to implement this.]

9. [The extent to which disciplines and commitments for the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect for export credits, agricultural exporting state trading enterprises and international food aid, apply to cotton and their scheduling shall be specified in the lists of commitments.]

POSSIBLE NEW ARTICLE 10.2 OF THE AGREEMENT ON AGRICULTURE

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

1. General Provisions

1. Subject to the provisions of this Article, Members shall not, directly or indirectly, provide support or enable support to be provided for, or in connection with, the financing of exports of agricultural products, including the credit and other risks associated therewith [, otherwise than on market related terms and conditions]. Each Member accordingly undertakes not to provide export financing support otherwise than in conformity with this Article [and with the commitments as specified in Members schedules].

2. Forms and Providers of Export Financing Support Subject to Discipline

2. For the purpose of this Article, the term "export financing support" includes any of the following forms of support for, or in connection with, the financing of exports of agricultural products:

- (a) direct financing support, comprising direct credits/financing, refinancing, and interest rate support;
- (b) risk cover, comprising export credit insurance or reinsurance and export credit guarantees;
- (c) government-to-government credit agreements covering the imports of agricultural products exclusively from the creditor country under which some or all of the risk is undertaken by the government of the exporting country; and
- (d) any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

3. The provisions of this Article shall apply to export financing support provided by or on behalf of the following entities, hereinafter referred to as "export financing entities", whether such entities are established at the national or at the sub-national level:

- (a) government departments, agencies, or statutory bodies;
- (b) any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of loans or underwriting of losses; [and]
- (c) [agricultural export state trading enterprises; and]
- (d) any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.

3. Terms and Conditions

4. Export financing support shall be provided in conformity with terms and conditions set out below. Such conforming export financing support [shall be deemed to comply with paragraph 1.1 above.] [shall not be deemed not to be an export subsidy for the purposes of this Agreement or of any

of the WTO Agreements nor shall such support be deemed a non-commercial transaction for the purposes of Article 10.1 of the Agreement on Agriculture.]

- (a) **Maximum repayment term:** The maximum repayment term of a supported export credit, the period beginning at the starting point of credit¹ and ending on the contractual date of the final payment, shall be no more than 180 days² [without exception.][except for:
- (i) breeding stock; for which the maximum repayment period shall be [36] months;
 - (ii) agricultural vegetable reproduction material, for which the maximum repayment period shall be [12] months;
 - (iii) all agricultural products exported to least-developed and net food-importing developing countries (as set out in paragraph 10), for which the maximum repayment period shall be [36] months; and
 - (iv) all agricultural products to developing country Members experiencing emergency situations (as set out in paragraph 11), in which case the maximum repayment period shall be [36] months.]
- (b) **Payment of interest:** Interest shall be payable. "Interest" excludes premiums and other charges for insuring or guaranteeing supplier or financial credits, banking fees or commissions relating to the export credit, and withholding taxes imposed by the importing country.
- (c) **Minimum interest rate:** The applicable Libor (London Interbank Offered Rate) for the currency in which the credit is denominated (not inclusive of and separate from risk-premium reflective of, as the case may be, the buyer/commercial, country/political and sovereign credit risks covered) plus [a fixed margin of [] basis points] [an appropriate margin sufficient] to cover the cost of extending such financing (e.g. administrative or transaction costs) shall be applicable in respect of [direct financing support] [export financing support] and in respect of invoiced amounts benefiting from deferred payment under an export contract.
- (d) **Premiums in respect of coverage of risks of non-repayment under direct financing support, export credit guarantees or export credit insurance/reinsurance:** Premiums³ shall be charged, shall [be market-based] [or] [be risk-based], [not undercut private market pricing], [and shall be adequate to cover operating costs⁴ and losses⁵ over a period of []] [shall ensure that the programme or part of the programme which is subject to the provisions of these disciplines is self-financing as defined in paragraph 4(g)]. Premiums shall be expressed in percentages of the outstanding principal value of the credit and shall be payable in full [at the date of issuance of cover] [or] [no later than the end of the month following the month in

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] [the date of the contract of sale for the purposes of export] [the date of export].

² [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 Premiums shall be defined as []

⁴ Operating costs shall be defined as []

⁵ Operating losses shall be defined as []

which the exports are made]. Premium rebates shall not be accorded. Furthermore, support in the form of export credit insurance, reinsurance or guarantees shall not be provided in respect of export financing contracts whose terms and conditions are not otherwise in conformity with the provisions of this paragraph.

- (e) **Risk sharing:** [Cover provided in the form of export credit insurance, reinsurance or export credit guarantees] [Export financing support] shall not exceed [] per cent of the value of a transaction.
- (f) **Foreign exchange risk:** Export credits, export credit insurance, export credit guarantees, and related financial support shall be provided in freely traded currencies. Foreign exchange exposure deriving from credit that is repayable in the currency of the importer shall be fully hedged, such that the market risk and credit risk of the transaction to the supplier/lender/guarantor is not increased. The cost of the hedge shall be incorporated into and be in addition to the premium rate determined in accordance with this paragraph.
- (g) **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 the premiums charged cover all operating costs and losses over a period of [1][5][15] years. [For this purpose, the providers of export financing support shall keep separate accounting of the programmes covered by this Article according to appropriate accounting standards [set out in Annex ...].] [The self-financing period for developing countries shall be [] years.]
- (h) **[Loss preventative measures:** In the event of an impending or actual default, the export credit financing entity may employ loss preventative measures to minimize losses. Immediate debt recovery efforts are preferred. Where immediate debt recoveries are not practicable, other loss preventative measures may include a multilateral *pari passu*, rescheduling of debt or a bilateral restructuring of debt. Other than as may be agreed in multilateral *pari passu*, rescheduled debt, debts with respect to which less than [] per cent of principal has been recovered in [] years shall be considered as unrecoverable to the extent of such unrecovered amount. Such unrecovered amounts and any debt forgiveness provided to the obligor shall be considered a loss to the export credit financing entity.]
- (i) **[Financing calculations:** For the purpose of determining whether a loan guarantee by a government in connection with an agricultural export confers a benefit, any comparison of the amount that the firm receiving the government guaranteed loan and the amount that the firm would pay on a comparable commercial loan absent the government guarantee or insured loans must be made on a direct one-to-one comparison basis. The terms and conditions must be for the same or equal for each of: tenor; form of repayment obligation; credit rating of obligor; risk rating of country; and the time period within which the loan is offered. In addition, the difference between the two amounts shall be adjusted for any difference in fees.]

4. Non-conforming Financing Support

5. Export financing support which does not conform with the provisions of paragraph 3.4 of this Article or in the circumstances as may otherwise be allowable under Article 9 of this Agreement, hereinafter referred to as "non-conforming export financing", constitute export subsidies for the purposes of this Agreement and are therefore, [subject to specific export financing elimination commitments contained in Members' Schedules] [to be prohibited by []].

5. Implementation

6. [The following additional and specific disciplines shall be phased in from the first day of the implementation period of the Doha Round: [].]

7. [Non-conforming export credits, export credit guarantees and insurance programmes shall be eliminated within the binding levels of Members' export subsidies elimination Schedules.]

8. [Over the implementation period the scope of permitted export financing instruments shall be gradually narrowed down to only pure risk cover comprising export credit insurance or reinsurance and export credit guarantees.]

6. Other Issues

9. Members who operate export financing programmes in accordance with the provisions of this Article [, excluding least-developed country Members,] shall comply with the following transparency requirements:

- (a) [on the day of the entry into force of these provisions, Members concerned shall submit a notification concerning that Member's export financing programmes, export financing bodies and other related matters in the years [] to [] in accordance with the format specified in Annex [] hereto;
 - (b) After the entry into force of this Agreement the notification under (a) shall be updated at the beginning of each subsequent year;
 - (c) At not less than [] monthly intervals Members shall submit a notification to the Committee on Agriculture in which details are provided of export financing commitments entered into in accordance with the format specified in Annex [] hereto. For each export financing programme, the notification shall include accounting information referred to under the self-financing provisions indicating whether the programme was self-financing during the previous year;
 - (d) A Member whose export financing programmes are not in conformity with the disciplines and the self-financing principle shall provide the Committee on Agriculture information on any corrective action taken or envisaged to bring the programme back into conformity.]
- (a) [no later than three months after the entry into force of this Article each Member shall notify the Committee on Agriculture of any export financing support entity that exceeds the maximum repayment term of 180 days and is not covered by the exceptions in paragraph 4(a). Failure to notify shall result in prohibition of use of such programmes;
 - (b) Each Member operating a non-conforming export financing support entity shall annually notify the Committee on Agriculture, at the beginning of each subsequent year, all relevant data;
 - (c) Each Member shall annually notify the Committee on Agriculture, at the beginning of each subsequent year, of the following information for each entity providing export financing support. If funds are provided in a foreign currency other than the Member's national currency, then the repayment and interest shall be converted to the

Member's national currency using prevailing market exchange rates at the time funds are received. The notifications shall include the following data:

- (i) the value of all direct financing support comprising direct credits, refinancing and interest rate support granted, including any government-to-government transactions the value of all risk cover extended in the form of export credit insurances, reinsurance and export credit guarantees, including any government-to-government transactions; and the value of all other support, including, but not limited to, deferred invoicing and foreign exchange risk hedging;
 - (ii) the total amount of funds from all sources including national accounts used to pay claims and the total amount of reimbursements of funds to such sources including national accounts in respect of such claims;
 - (iii) the total amount of revenue earned from premiums charged and interest earned; and
 - (iv) the total amount of operating costs, losses, and the amount of debt forgiven and written off.
- (d) If a Member's annual notification for any export financing support entity, for three consecutive years, reflects that the total amount of revenue earned from premiums charged and interest earned on premium revenue is less than the total of operating costs and losses, then the Member shall provide a narrative statement to explain the progress towards self-sustaining activity in the next year's report including specific actions to increase premiums, reduce risk exposure, reduce operating costs and/or recover losses.]

7. Special and Differential Treatment

10. 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: [].

11. In exceptional circumstances,

[in respect of exports to developing and least-developed country Members, where it has been confirmed by [] that commercial export credits are not available, and where the absence of export credits would preclude trade, Members may provide ad hoc temporary government financing arrangements to underwrite agricultural export credits that shall comply with the terms and conditions in paragraph 4, notwithstanding that they [may charge risk-based premiums, rather than market-based premiums], [and need not be self-financing]. Members shall provide ex ante notifications [to be developed] for such government financing]

[more favourable terms for export financing support in respect of exports to developing country Members experiencing emergency situations may be provided in accordance with this paragraph. Notwithstanding the terms and conditions of paragraph 4, export financing support provided pursuant to this paragraph shall be deemed conforming export financing support. An emergency is defined as a sudden, significant and unusual deterioration in a developing country Member's economy and in its ability to finance current imports of basic foodstuffs, and which may have far reaching consequences such as social deprivation or unrest. In the event of such an emergency the importing developing country Member concerned may request

exporting Members to provide more favourable export financing terms than are otherwise permissible under this Article. The importing developing country Member concerned shall notify the Committee on Agriculture in writing of the circumstances which are considered to justify more favourable terms than are permitted under the relevant provisions of this Article, together with details of the products concerned, so as to provide an opportunity for other interested exporting Members to consider responding to the request. Where commitments are made to provide more favourable credit terms and conditions in response to such a request, details of the committed terms and conditions shall be notified by the exporting Member or Members concerned to the Committee on Agriculture. The maximum repayment term permitted under this exception shall not exceed [36] months].

POSSIBLE NEW ARTICLE 10 BIS OF THE AGREEMENT ON AGRICULTURE

AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

1. Members shall ensure that agricultural exporting state trading enterprises are operated in conformity with the provisions specified below and, subject to these provisions, in accordance with Article XVII, the Understanding on the Interpretation of Article XVII and other relevant provisions of GATT 1994, the Agreement on Agriculture and other WTO agreements.

1. Entities

2. For the purpose of this Article, an agricultural exporting state trading enterprise shall be considered to be:

Any governmental or non-governmental enterprise, including a marketing board, which has been granted [or which enjoys *de facto* as a result of its governmental or quasi-governmental status] exclusive or special rights [or] privileges [or advantages with respect to exports of agricultural products], including statutory or constitutional powers, in the exercise of which the enterprise influences through their export sales the level or direction of agricultural exports.

2. Disciplines

3. In order to ensure the elimination of trade-distorting practices with respect to agricultural exporting state trading enterprises as described above, Members shall:

- (a) Eliminate by [] [the end of 2013]:
 - (i) those export subsidies, defined by Article 1(e) of the Agreement on Agriculture, which are currently provided to or by an agricultural exporting state trading enterprise, consistent with Members export subsidy commitments and the provisions of Article 9.4 of the Agreement on Agriculture;
 - (ii) government financing of exporting state trading enterprises, [including, *inter alia*], preferential access to capital or other special privileges with respect to government financing or re-financing facilities, borrowing, lending or government guarantees for commercial borrowing or lending, at below market rates; [and]
 - (iii) government underwriting of losses, either directly or indirectly, [including] losses or reimbursement of the costs or write-downs or write-offs of debts owed [to, or] by export state trading enterprises on their export sales.
- (b) Ensure that the use of monopoly powers by such enterprises is not exercised in a manner which, either *de jure* or *de facto*, effectively circumvents, or threatens to circumvent, the provisions set out in paragraphs 1 and 3(a) above, it being understood also that where the use of such powers would, to all practical intents and purposes, amount to a difference in form rather than substance from introduction or maintenance of an export subsidy per se, such use is prohibited. [[Prohibit] [Phase-out] by [] [the end of 2013] the use of monopoly powers for such enterprises, after

which Members shall not restrict the right of any interested entity to export, or to purchase for export, agricultural products.]

3. Special and Differential Treatment

4. [Notwithstanding paragraph 3 (b) above ¹:

- (a) developing country Members which have agricultural exporting state trading enterprises which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will be permitted to maintain or use monopoly powers for agricultural exporting [until []] to the extent that they would not be otherwise inconsistent with other provisions of this Agreement and other WTO Agreements; [and]
- (b) [where a developing Member has an agricultural exporting state trading enterprise with export monopoly powers, that enterprise may continue also to maintain or use those powers [until []] 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 [] per cent, such that the entity's share of world exports of the product or products concerned does not exceed that level in [] 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.]

4. Monitoring and Surveillance

5. 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 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 [or advantages] granted to such enterprises within the meaning of paragraph 1 above sufficient to ensure effective transparency. This will include [acquisition costs and export sales on a transaction-by-transaction basis. Members shall notify any benefits, not otherwise notified under other WTO disciplines, that accrue to a state trading export enterprise from any special financial privileges. At the request of any Member, a Member maintaining a state trading export enterprise shall provide any specific information requested concerning all operations relating to the enterprise's export sales of agricultural products.] [the exported product, the volume exported, the export price and the export destination.].

¹ This would only apply in the event that the second option in that sub-paragraph was agreed. Otherwise this foreshadowed provision would be redundant.

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 recipients and to ensure that the disciplines contained hereafter do not unintentionally impede the delivery of food aid provided to deal with emergency situations.

1. General Provisions

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 [or, in the event of an exceptional situation, less than 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 [commercially] re-exported [except during an emergency situation where this occurs as an integral part of a food aid transaction initiated by a relevant United Nations agency, [relevant regional or international intergovernmental agency or organization,] [or non-governmental humanitarian organization or private charitable body]].

3. The provision of food aid shall take fully into account local market conditions of the same or substitute products and Members are encouraged to procure food aid from local or regional sources to the extent possible.

2. Safe Box for Emergency Food Aid

4. To ensure that there is no unintended impediment to the provision of food aid during an emergency [humanitarian] situation², food aid provided under such circumstances shall be exempt from the provisions of paragraph[s] [] [to []], provided that there has been:

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

² [For the purpose of this Article, an emergency [humanitarian] situation is defined as an urgent situation in which there is clear evidence that an event or series of events has occurred which causes human suffering or imminently threatens human lives or livelihoods and which the government concerned has not the means to remedy: and it is a demonstrably abnormal event or series of events which products dislocation in the life of a community on an exceptional scale. The event or series of events may comprise one or a combination of the following:

- (i) sudden calamities such as earthquakes, floods, locust infestations and similar unforeseen disasters;

- (a) a declaration of an emergency by the [affected] [recipient] [Member] [country][, or, the Secretary-General of the United Nations]; and
- (b) an assessment of need undertaken by [the Member] [a country][,] a re 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 or organization, a non-governmental humanitarian organization or private charitable body working in collaboration with the recipient government]; and
- (c) an emergency appeal from [the Member] [a country][,] a re 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 or organization, a non-governmental humanitarian organization or private charitable body working in collaboration with the recipient government].

There is a bit of a change here from the language I offered in the last reference paper – in particular as regards distinguishing between declaration of an emergency and declaration of an appeal. There is a reason for this. Proponents of a multilateral trigger as the effective authorisation for access to the "safe box" have expressed this in terms of the actual declaration of an "Emergency". However, based on advice provided to me by the Executive Director of the World Food Programme, it would appear to be difficult to reconcile that terminology with how things actually happen: *"From a legal perspective, only a recipient country, or, under very exceptional circumstances, the Secretary-General, may declare a food emergency triggering appeals for food aid. The World Food Programme, FAO and OCHA do not have the right to do so; nor do NGO's. Processes like OCHA's Consolidated Appeal are merely coordinated fundraising mechanisms and are not, in any event, universally applied in all emergencies. The current food emergencies in Sudan, the DPRK and Congo are, for example, not covered by Consolidated Appeals but by other appeal mechanisms such as work plans."*

It is, indeed, also consistent with what I detected in our last meeting as a certain degree of perplexity on the part of a number of delegations – particularly developing country Members - over the implicit suggestion that the declaration of an emergency was something that can only come from a UN Agency/OCHA etc, as opposed to the act of the sovereign government concerned.

As Chair, I do appreciate, however, that Members which are proponents of this "multilateral trigger" concept for Safe Box disciplines do not want to lose this concept even if the precise terminology presents a legal/technical problem. The obvious solution is that the "multilateral trigger" could be saved if it is employed consistent with actual practice. As I understand it that would mean that the so-called "multilateral trigger" would not relate to the "definition" or "declaration" of Emergency (that remains the sovereign act of a Government) but to the status of the fundraising in relation to emergency. If so, what would be being proposed as best I can express

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- (ii) human-made emergencies resulting in an influx of refugees, or the internal displacement of populations, or in the suffering of otherwise affected populations;
 - (iii) food scarcity conditions owing to slow-onset events such as drought, crop failures, pests and diseases that result in an erosion of the capacity of communities and vulnerable populations to meet their food needs;
 - (iv) severe food access or availability conditions resulting from sudden economic shocks, market failure or economic collapse that result in an erosion of the capacity of communities and vulnerable populations to meet their food needs; and
 - (v) a complex emergency for which the government of the affected country or the Secretary-General of the United Nations has requested the support of the World Food Programme.]

it (it not having been expressed this way by proponents themselves) is that emergency in kind food aid would qualify for the Safe Box where it is provided in situations where there has been a consolidated fundraising programme through OCHA. Beyond that, I think we still need to reflect further and urgently on the options on the table for what counts as the relevant bodies for providing that "multilateral" trigger. I know that there is a considerable centre of gravity for OCHA. But, as Chair I feel I have to draw your attention to the point made in the letter to me from the Executive Director of the World Food Programme as regards what is going on at the moment. Are Members unambiguously and expressly comfortable with the idea that the food emergencies, for instance, in the Sudan, DPRK and the Democratic Republic of Congo should NOT be in the safe box on the grounds that they are not operating under "consolidated appeals" while others are? If the answer is yes, so be it. If there is equivocation or unease on the point, we obviously need to find a better expression of the trigger coverage.

5. [A notification will be required on an ex-post basis by donors [and the relevant international agency or organization] in order to ensure transparency.]

6. [Recognising that there can be exceptional circumstances such that to wait for an emergency appeal as described in paragraph 4 above would result in an unacceptable delay in the provision of food aid, food aid may be provided in response to an urgent request. In such cases, the donor Member shall notify the Committee on Agriculture no later than [] after the provision of such aid. In such circumstances, an ex-post declaration of appeal by an organization or agency listed in paragraph 3 shall be deemed to be in conformity with paragraph 4.]

This paragraph is clearly intrinsically linked to paragraph 4. It would be simply superfluous if it was to be agreed in paragraph 4 that the declaration could be made by a member or country. It would have relevance only if it is to be agreed that the existence of multilateral appeal *only* gives access to the safe box. That said, I do think there needs to be a bit more focussed discussion on this to ensure that these options are in fact tailored in a realistic way. In particular I have the feeling that Members have yet to wrestle fully with the issue of timing. Are we really sure that this is properly characterised as being a situation that will only arise "exceptionally" i.e. that there would be a gap between the need to act and the time of a multilateral endorsement only "exceptionally". Some have asserted that this would not at all be an exceptional situation but may be the case not infrequently. We really need, I would suggest, to be sure of the facts before committing ourselves to print. What do the experts tell us on this? If they say it is exceptional, fine-and the language in square brackets above would make sense. If not, would we not need to recalibrate the language at least?

7. [Based on an assessment of continued genuine need as a result of the initial onset of the emergency,] [T][t]he provision of food aid in conformity with paragraph 4 [, 5 and 6] may be provided for as long [as necessary] [as the emergency lasts]. [The assessment of continued need shall be conducted by the triggering organization or agency.]

8. ["Cash-based" food aid that is conformity with the other provisions of this Agreement will be included in the safe box and be presumed to be in conformity with Art. 10.1 of the Agreement on Agriculture].

This paragraph has been included because it is a view that has been firmly held that this form of food aid should be expressly defined to be in the safe box per se. Technically, it is not so clear to me that this gives any additionality. If it is the view of the Members concerned that cash-based food aid should be freed from other potential disciplines (such as are in this section regarding triggering and such others as may end up in e.g paragraph 2 above and paragraph 11 below), it would, indeed, have real force. But I must say that I have not in fact heard that view expressed in such terms. Absent such view, however, it is hard to avoid the impression that this provision could be technically redundant.

3. Disciplines for Food Aid in Non-emergency Situations

9. [In addition to the provisions of paragraph 2, in-kind food aid provided in situations other than defined in paragraphs 4 [, 5 and 6], shall be:

- (a) [based on an assessment of need [in accordance with the following []];
- (b) targeted to an identified vulnerable population group; and
- (c) provided to address specific developmental objectives or nutritional requirements.]

[phased out by the end of 2013 [according to the following timetable []] [in parallel with the elimination of export subsidies].]

10. [The monetisation of in-kind food aid shall be phased-out by the end of 2013 [in accordance with the following conditions[]].] [The monetisation of in-kind food aid shall be prohibited except where is it necessary to fund activities that are directly related to the delivery of the food aid to the recipient, or for the procurement of agricultural inputs. Such monetisation shall be carried out under the auspices of a relevant United Nations agency and the recipient government.] [Food aid may be monetised to implement food security activities, targeted to chronic and acute food insecure populations. For this purpose, Member donors shall prepare for those recipients in which monetisation will occur a commercial import requirement (CIR). The CIR shall include a market analysis to show that the monetisation of the commodity in the recipient country will not result in a disincentive to or interference with the commercial import trends or create a disincentive to domestic production. The CIR shall include:

- (a) rationale for monetisation;
- (b) proposed mechanics of the monetisation – commodity selection and methods of sales;
- (c) utilisation of monetised proceeds; and
- (d) plan for safeguarding the monetised proceeds.]

11. [Non-emergency in-kind food aid provided in conformity with the provisions of paragraphs 2, 8 and 9 shall not be considered to cause commercial displacement and therefore not circumvent Members' export subsidy commitments.]

12. Food aid donor Members shall be required to notify to the Committee on Agriculture, on an annual basis, the following data [].
