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PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES

PROPOSAL BY THE AFRICAN GROUP, THE ACP, AND G33*

The following proposal, dated 6 June 2022, is being circulated on behalf of members of the African Group, the ACP, and G33.

MINISTERIAL DECISION ON PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES FOR DEVELOPING COUNTRY MEMBERS^{1,2}

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Taking note of the Ministerial Decision of 7 December 2013 (WT/MIN(13)/38 - WT/L/913), the General Council Decision of 27 November 2014 (WT/L/939) and the Ministerial Decision of 21 December 2015 (WT/MIN(15)/44 - WT/L/979);

Recognizing the importance of public stockholding for food security purposes for developing country Members, including Least-Developed and Net Food-Importing Developing Countries (NFIDCs);

Decides:

1. Members agree to a permanent solution as set out in this Decision, for the use of public stockholding for food security purposes by developing country Members.
2. Notwithstanding any provision of the Agreement on Agriculture (AoA), domestic support provided by a developing country Member pursuant to public stockholding programmes for food security purposes, shall be deemed to be in compliance with Articles 3.2, 6.3 and 7.2(b) of the Agreement on Agriculture (AoA), provided that the conditions set out in paragraphs 5 to 9 of this Decision are met.
3. Where public stockholding programmes for food security purposes of a developing country Member include programmes under which stocks of foodstuffs are acquired and released at administered prices, then, for the purposes of footnote 5 of Annex 2, the Aggregate

* Co-sponsoring Members: Antigua and Barbuda; Barbados; Belize; Benin; Bolivia, Plurinational State of; Botswana; China; Congo; Côte d'Ivoire; Cuba; Dominica; Dominican Republic; Grenada; Guyana; Haiti; Honduras; India; Indonesia; Jamaica; Kenya; Madagascar; Mauritius; Mongolia; Mozambique; Nicaragua; Nigeria; Pakistan; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Senegal; Sri Lanka; Suriname; Tanzania; Trinidad and Tobago; Turkey; Uganda; Venezuela, Bolivarian Republic of; Zambia and Zimbabwe.

¹ For greater certainty the term "developing country Members" includes least-developed country Members.

² This Decision is an integral part of the Agreement on Agriculture.

Measurement of Support (AMS) shall be calculated based on the actual quantity of foodstuffs acquired at administered prices, and the external reference price in this regard shall be either of the following:

- (a) the three-year average price (f.o.b for a net exporter or c.i.f for a net importer) based on the preceding five-year period excluding the highest and the lowest entry for that product; or
- (b) adjusted for excessive inflation as per the methodology given in Annex Z.

- 4.1 This Decision does not preclude developing country Members from introducing public stockholding programmes for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture.
- 4.2 For greater clarity, paragraph 5 to 9 of this Decision applies when a developing country Member concerned exceeds the applicable Aggregate Measurement of Support (AMS) limits under the AoA, i.e., the Member's Bound Total AMS or the *de minimis* level, as applicable, as a result of the public stockholding programmes for food security purposes covered under paragraph 2 of this Decision.

ANTI-CIRCUMVENTION/SAFEGUARDS

- 5.1 Stocks acquired under public stockholding programmes for food security purposes covered under paragraph 2 of this Decision shall not substantially distort trade or adversely affect the food security of other Members.
- 5.2 Upon reference to the Understanding on rules and procedures governing the settlement of disputes (DSU), subparagraph 5.1. shall be applied only in accordance in full conformity with the meanings provided under relevant provisions of Part III, Part VIII and Article 31 of the Agreement on Subsidies and Countervailing Measures.
6. A developing country Member shall endeavor not to export from acquired stocks, except for the purposes of international food aid, or for non-commercial humanitarian purposes, or when requested by Net Food-Importing Developing Countries and least developed countries in the same geographic region or in any other region, or any member facing food shortages and higher food inflation during international food crisis.

NOTIFICATION AND TRANSPARENCY

7. The operation of programmes referred to in paragraph 2 above shall be transparent and conducted in accordance with officially published criteria.
8. A developing country Member shall notify domestic support under these programmes on an annual basis in accordance with their domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995. Supporting Table DS:5 shall be notified in accordance with paragraph 3 above.
9. Any public stockholding programmes for food security purposes covered under paragraph 2, or modification thereof, shall be notified promptly under Article 18.3 as a DS:2 notification in accordance with document G/AG/2 of 30 June 1995.

CONSULTATIONS AND DISPUTE SETTLEMENT

10. Any Member who has reason to believe that a developing country Member benefitting from this Decision has not met the conditions set out in paragraphs 5 to 9 of this Decision, may request consultations. The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to such consultations and consequent settlement of disputes under this Decision. The consulted developing country Member shall use the Annex to this Decision to provide information which shall serve as the basis for consultations.

FINAL PROVISIONS

- 11.1 The Agreement on Agriculture shall be amended by inserting a new Annex 6 as provided in Attachment 1 to this Decision and for consistency purposes amendments as provided in attachment 2.
- 11.2 The Protocol of Amendment contained in Attachment 3 to this Decision is hereby adopted.
- 11.3 The Protocol of Amendment shall remain open for acceptance until [XXXX].
- 11.4 The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.
- 11.5 Pending entry into force of the Protocol and the amendment, developing country Members may use the provisions under Attachment 1 to this Decision and Members shall not challenge through the WTO Dispute Settlement Mechanism the compliance of a developing country Member with its obligations under Articles 3.2, 6.3 and 7.2(b) of the Agreement on Agriculture with respect to any use by that Member of these provisions.
12. In the event of a conflict between a provision of this Decision and any other instrument of the Multilateral Trade Agreements of the WTO or any other decision of the Members, the provisions of this Decision shall prevail to the extent of the conflict.

ANNEX

NAME OF MEMBER

I. ENUMERATION OF THE PROGRAMME(S)

- A. Name of the programme(s):
- B. Foodstuff covered:
- C. Relevant laws, regulations or guidelines:

II. DESCRIPTION OF THE FUNCTIONING OF THE PROGRAMME(S)

- A. Agency in charge of implementation:
- B. Date of commencement of the programme:
- C. Factual description of how the programmes operate in respect of purchase of food stocks, accumulation of food stocks and release of food stocks:

III. STATISTICAL INFORMATION (SEE ATTACHED TABLES I-II)**IV. ADDITIONAL INFORMATION (AS APPROPRIATE)**

Period:

TABLE I - STATISTICAL INFORMATION, DOMESTIC ACTIVITIES

Name of the crop	Annual purchases under the programme (quantity)	Annual releases under the programme (quantity)	Administered prices	Released prices	Total production (quantity)	Estimated quantities released to the beneficiaries
1	2	3	4	5	6	7

TABLE II - STATISTICAL INFORMATION, EXPORTS & IMPORTS

Name of the crop	Total imports (quantity)	Total imports (value)	Total exports (quantity)	Total exports (value)
1	2	3	4	5

ANNEX Z: Adjusting the external reference price for excessive inflation

- a. Rates of inflation as determined by the relevant national authority of a Member shall be the basis for considering excessive inflation.
- b. After due consideration by a national authority:
 - i. For any year, using the actual rate of inflation an index would be determined, taking 1986-88 as the base period. In parallel, for each year a comparator index for the normal level of inflation would be determined using **X** % as the rate of inflation on 1986-88 as the base period.
 - ii. A Member would be considered to have faced excessive rate of inflation in a particular year, if the index based on the actual rate of inflation (with base year 1986-88) exceeds the comparator index for the normal rate of inflation (with base year 1986-88) for the particular year.
 - iii. For a given year, the difference between the indices for the actual rate of inflation and the comparator normal rate of inflation would be calculated.
 - iv. The concerned Member would have the flexibility to adjust the external reference price by a factor based to the difference between the indices for the actual rate of inflation and the comparator normal rate of inflation.
 - v. The adjusted external reference price (ERP) = ERP in base year $\times (100 + \{\text{index for actual inflation} - \text{index for comparator normal inflation}\}) / 100$.

ATTACHMENT 1

ANNEX 6

*Domestic Support Measures by Developing Country Members:
Public Stockholding for Food Security Purposes*

Notwithstanding any other provision contained in this Agreement, developing country Members, including Least Developed Country Members shall be eligible to implement programmes in respect of public stockholding for food security purposes that are consistent with the criteria set forth in this Annex.

Programmes for public stockholding for food security purposes

1. Programmes for public stockholding for food security purposes shall include, but not be limited to:
 - a. programmes for the acquisition of foodstuffs at administered prices by the Government in developing country Members/Least Developed Country Members with the objective of supporting low income or resource poor producers;
 - b. programmes for the acquisition of foodstuffs at administered prices by the Government in developing country Members/Least Developed Country Members and its subsequent distribution at subsidized prices with the objective of meeting food security requirements of urban and rural poor, and of maintaining adequate availability of foodstuff and/or ensuring food price stability.
2. The operation of programmes referred to in paragraph 1 above shall be transparent and conducted in accordance with officially published objective criteria or guidelines.

Notification

3. Members shall notify domestic support provided under programmes referred to under paragraph 1 of this Annex to the Committee on Agriculture on an annual basis in accordance with their domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995.

Other Provisions

4. Stocks acquired under programmes referred to in paragraph 1 shall not substantially distort trade or adversely affect the food security of other Members.
5. A developing country Member shall endeavor not to export from acquired stocks, except for the purposes of international food aid, or for non-commercial humanitarian purposes, or when requested by Net Food-Importing Developing Countries and least developed countries in the same geographic region or in any other region, or any member facing food shortages and higher food inflation during international food crisis.
6. Programmes referred to in paragraph 1 shall be implemented in accordance with the conditions set out in paragraphs 2 to 5 of this Annex.
7. Where programmes referred to in paragraph 1 include programmes under which stocks of foodstuffs are acquired and released at administered prices, then, for the purposes of footnote 5 of Annex 2, the Aggregate Measurement of Support (AMS) shall be calculated based on the actual quantity of foodstuffs acquired at administered prices, and the external reference price in this regard shall be either of the following:

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- i. the three-year average price (f.o.b for a net exporter or c.i.f for a net importer) based on the preceding five-year period excluding the highest and the lowest entry for that product; or
 - ii. adjusted for excessive inflation as per the methodology provided in paragraph 8 below.
 8. The external reference price shall be adjusted for excessive inflation in accordance with the following principles:
 - a. Rates of inflation as determined by the relevant national authority of a Member shall be the basis for considering excessive inflation.
 - b. After due consideration by a national authority:
 - i. For any year, using the actual rate of inflation an index would be determined, taking 1986-88 as the base period. In parallel, for each year a comparator index for the normal level of inflation would be determined using X % as the rate of inflation on 1986-88 as the base period.
 - ii. A Member would be considered to have faced excessive rate of inflation in a particular year, if the index based on the actual rate of inflation (with base year 1986-88) exceeds the comparator index for the normal rate of inflation (with base year 1986-88) for the particular year.
 - iii. For a given year, the difference between the indices for the actual rate of inflation and the comparator normal rate of inflation would be calculated.
 - iv. The concerned Member would have the flexibility to adjust the external reference price by a factor based to the difference between the indices for the actual rate of inflation and the comparator normal rate of inflation.
 - v. The adjusted external reference price (ERP) = $ERP \text{ in base year } * (100 + \{\text{index for actual inflation} - \text{index for comparator normal inflation}\}) / 100$
 9. This Annex shall not preclude developing country Members, including Least Developed Country Members, from introducing public stockholding programmes for food security purposes in accordance with the other applicable provisions of this Agreement.
 10. For greater clarity, paragraphs 2 to 5 of this Annex shall apply only when the concerned developing country Member exceeds the applicable Aggregate Measurement of Support (AMS) limits under this Agreement, i.e., the Member's Bound Total AMS or the *de minimis* level, as applicable, as a result of the public stockholding programmes for food security purposes covered under paragraph 1 of this Annex.

ATTACHMENT 2

For consistency the following amendments shall be made to the Agreement on Agriculture:

1. **Article 6:1**: A sentence to be added at the end of the Article that "Exceptions to domestic support measures specified in Annex 6 will apply to developing country Members, *notwithstanding anything stated in this Agreement*".
2. **Article 7:1**: Words "and Annex 6" to be added after reference to Annex 2.
3. **Article 7:2(a)**: Words "and Annex 6" to be added after reference to Annex 2.
4. **Article 7.2(b)**: A sentence to be added that "This provision shall not apply to programmes listed in Annex 6 of the AoA".
5. **Article 18.3**: Words "or in Annex 6" to be added after reference to Annex 2.
6. **Article 19**: The following shall be added at the end of Article 19:
 7. "Provided however that Article XXIII of the GATT 1994, and Article 3.8 of the Dispute Settlement Understanding, shall not apply to any disputes arising from operation of programmes referred to in Annex 6 of this Agreement;
 8. Provided further that upon reference to paragraph 4 of the Understanding on rules and procedures governing the settlement of disputes (DSU), paragraph 4 of Annex 6 shall be applied in accordance with the relevant provisions of Part III, Part VIII and Article 31 of the Agreement on Subsidies and Countervailing Measures."
9. **Annex 3**: Opening sentence to be revised to "Subject to the provisions of Article 6 and Annex 6 ...".
10. **Footnote 5 of Annex 2**: shall be revised in accordance with paragraph 7 and 8 of Annex 6.

ATTACHMENT 3

PROTOCOL OF AMENDMENT

The Ministerial Conference,

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Decides as follows: ...

1. The Agreement on Agriculture shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of Annex 6 as set out in the Annex to this Protocol.
2. Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
3. This Protocol is hereby open for acceptance by Members [until _].
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this (date) day of (month) (year), in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X.3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its member States shall be counted as acceptance by a number of Members equal to the number of member States of the European Union which are Members to the WTO.