



**Ministerial Conference
Tenth Session
Nairobi, 15-18 December 2015**

EXPORT COMPETITION

DRAFT MINISTERIAL DECISION OF 19 DECEMBER 2015

The Ministerial Conference,

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

Decides as follows:

General

1. Members reaffirm their commitment, pursuant to the 2013 Bali Ministerial Declaration on Export Competition¹, to exercise utmost restraint with regard to any recourse to all forms of export subsidies and all export measures with equivalent effect.
2. Nothing in this Decision can be construed to give any Member the right to provide, directly or indirectly, export subsidies in excess of the commitments specified in Members' Schedules, or to otherwise detract from the obligations of Article 8 of the Agreement on Agriculture. Furthermore, nothing can be construed to imply any change to the obligations and rights under Article 10.1 of the Agreement on Agriculture or to diminish in any way existing obligations under other provisions of the Agreement on Agriculture or other WTO Agreements.
3. Nor can anything in this Decision be construed to diminish in any way the existing commitments contained in the Marrakesh Ministerial Decision of April 1994 on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-importing Developing Countries and the Ministerial Decision of 14 November 2001 on Implementation-related Issues and Concerns² on, *inter alia*, commitment levels of food aid, provision of food aid by donors, technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure, and financing normal levels of commercial imports of basic foodstuffs. Nor could it be understood to alter the regular review of these decisions by the Ministerial Conference and monitoring by the Committee on Agriculture.
4. The Committee on Agriculture shall monitor the implementation of this Decision by Members in accordance with existing notification requirements under the Agreement on Agriculture, as complemented by the provisions set out in the Annex to this Decision.
5. The regular sessions of the Committee on Agriculture shall review every three years the disciplines contained in this Decision, with the aim of enhancing disciplines to ensure that no circumvention threatens export subsidy elimination commitments and to prevent non-commercial transactions from being used to circumvent such commitments.

¹ Document WT/MIN(13)/40 and WT/L/915.

² Document WT/MIN(01)/17.

Export Subsidies

6. Developed Members shall immediately eliminate their remaining scheduled export subsidy entitlements as of the date of adoption of this Decision.^{3,4}
7. Developing country Members shall eliminate their export subsidy entitlements by the end of 2018.⁵
8. Developing country Members shall continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2023, i.e. five years after the end-date for elimination of all forms of export subsidies. Least developed countries and net food-importing developing countries listed in G/AG/5/Rev.10 shall continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2030.
9. Members shall not apply export subsidies in a manner that circumvents the requirement to reduce and eliminate all export subsidies.
10. Members shall seek not to raise their export subsidies beyond the average level of the past five years on a product basis.
11. Members shall ensure that any export subsidies have at most minimal trade distorting effects and do not displace or impede the exports of another Member. To that effect, Members using export subsidies shall give due consideration to the effects of any such export subsidies on other Members, and shall consult, upon request, with any other Member having a substantial interest as an exporter with respect to any matter related to the export subsidies in question. The Member applying such export subsidies shall provide, upon request, such a Member with necessary information.

Cotton

12. With regard to cotton, the disciplines and commitments contained in this Decision shall be immediately implemented as of the date of adoption of this Decision by developed country Members, and not later than 1 January 2017 by developing country Members.

³ This paragraph shall not cover quantities counted against export subsidy reduction commitments found to exist by the Dispute Settlement Body in its recommendations and rulings adopted in disputes DS265, DS266, and DS283, with respect to the existing programme, which expires on 30 September 2017, for the product concerned by those disputes.

⁴ This paragraph shall not cover processed products, dairy products, and swine meat of a developed Member that agrees to eliminate as of 1 January 2016 all export subsidies on products destined for least developed countries, and that has notified export subsidies for such products or categories of products in one of its three latest export subsidy notifications examined by the Committee on Agriculture before the date of adoption of this Decision. For these products, scheduled export subsidies shall be eliminated by the end of 2020, and quantity commitment levels shall be applied as a standstill until the end of 2020 at the actual average of quantity levels of the 2003-05 base period. Furthermore, there shall be no export subsidies applied either to new markets or to new products.

⁵ Notwithstanding this paragraph, a developing country Member shall eliminate its export subsidy entitlements by the end of 2022 for products or groups of products for which it has notified export subsidies in in one of its three latest export subsidy notifications examined by the Committee on Agriculture before the date of adoption of this Decision.

Export Credits, Export Credit Guarantees or Insurance Programmes

Definition

13. In addition to complying with all other export subsidy obligations under the Agreement on Agriculture and any other covered Agreements⁶, Members undertake not to provide export credits⁷, export credit guarantees or insurance programmes for exports of products listed in Annex 1 of the Agreement on Agriculture (hereafter "agricultural products") other than in conformity with this Decision. These export credits, export credit guarantees and insurance programmes (hereafter "export financing support") comprise:
- (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 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.
14. The provisions of this Decision shall apply to export financing support as defined in paragraph 13 provided by a government or any public body as referred to in Article 1.1(a)1 of the Agreement on Subsidies and Countervailing Measures.

Terms and Conditions

15. Export financing support shall be provided in conformity with the terms and conditions set out below:
- (a) **Maximum repayment term:** the maximum repayment term for export financing support under this Decision, this being the period beginning at the starting point of credit⁸ and ending on the contractual date of the final payment, shall be no more than 18 months. For developed Members, this shall apply from the last day of 2017. Existing contracts which have been entered into prior to the adoption of this Decision, are still in place, and are operating on a longer timeframe than that defined in the preceding sentence, shall run their course until the end of their contractual date, provided that they are notified to the Committee on Agriculture and are not modified;
 - (b) **Self-financing:** Export credit guarantee, insurance and reinsurance programmes and other risk cover programmes included within sub-paragraphs 13(b), (c) and (d) above shall be self-financing and cover the long-term operating costs and losses of a programme in the sense of item (j) of the Illustrative List of Annex I of the Agreement on Subsidies and Countervailing Measures. For the operations covered in the previous sentence, premiums shall be charged and be risk-based.

⁶ However, the second paragraph of item (k) of Annex I to the Agreement on Subsidies and Countervailing Measures (hereafter "Illustrative List") shall not be applicable in the case of agricultural products.

⁷ The export credits defined in this paragraph do not include working capital financing to the suppliers.

⁸ The "starting point of 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.

Special and Differential Treatment

16. Developing country Member providers of export financing support shall be eligible to benefit from the following:

Maximum repayment terms: the developing country Members concerned shall have a phase-in period of four years after the first day of the implementation period⁹ by the end of which to fully implement the maximum repayment term of 18 months. This shall be achieved as follows:

- (a) on the first day of implementation, the maximum repayment term for any new support entered into shall be 36 months;
- (b) two years after implementation, the maximum repayment term for any new support to be entered into shall be 27 months;
- (c) four years after implementation, the maximum repayment term of 18 months shall apply.

It is understood that where there are, after any of the relevant dates, pre-existing support arrangements entered into under the limits established in the sub-paragraphs (a)-(c) above, they shall run their original term.

17. Notwithstanding the terms of paragraphs 15(a) and 16 above, least-developed and net food-importing developing countries listed in G/AG/5/Rev.10 shall be accorded differential and more favourable treatment comprising allowance for a repayment term in respect of them of between 36 and 54 months, for the acquisition of basic foodstuffs.¹⁰ Should one of these Members face exceptional circumstances which still preclude financing normal levels of commercial imports of basic foodstuffs and/or in accessing loans granted by multilateral and/or regional financial institutions within these timeframes, it shall have an extension of such a time-frame. The standard monitoring and surveillance provisions, as resulting from this Decision, shall apply to these cases.¹¹

⁹ For the purposes of this paragraph, implementation period shall be defined as the period commencing in the year 2016 and ending on 31 December 2020.

¹⁰ Belize, the Plurinational State of Bolivia, Ecuador, Fiji, Guatemala, Guyana, Nicaragua, Papua New Guinea and Suriname shall also have access to this provision.

¹¹ In the event that Cuba is a recipient Member in this situation, the time-frame can be greater than 54 months and any such monitoring and surveillance shall not apply without the prior express consent of Cuba.

Agricultural Exporting State Trading Enterprises

18. Members shall ensure that agricultural exporting state trading enterprises are operated in conformity with the provisions specified in paragraphs 20 and 21, 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.
19. For the purpose of the disciplines set out hereunder in this Decision, an agricultural exporting state trading enterprise shall be any enterprise which meets the working definition provided for in the Understanding on the Interpretation of Article XVII of the GATT 1994 and is engaged in exports of products listed in Annex 1 of the Agreement on Agriculture.¹²
20. Members shall ensure that agricultural exporting state trading enterprises do not operate in a manner that circumvents any other disciplines contained in this Decision.
21. Members shall make their best efforts to ensure that the use of export monopoly powers by agricultural exporting state trading enterprises is exercised in a manner that minimizes trade distorting effects and does not result in displacing or impeding the exports of another Member.

¹² "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports." It is understood that where there is reference to the "rights and privileges" that "influence ... the level or direction of imports" in the preceding sentence, this matter of imports is not per se a matter falling under the disciplines of this Decision which relates, rather, solely to the matter of exports under that working definition.

International Food Aid

22. Members reaffirm their commitment to maintain an adequate level of international food aid, 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. To meet the objective of preventing or minimizing commercial displacement, Members shall ensure that international food aid is provided in full conformity with the disciplines specified in paragraphs 23 to 32, thereby contributing to the objective of preventing commercial displacement.
23. Members shall ensure that all international food aid is:
- a. needs-driven;
 - b. in fully grant form;
 - c. not tied directly or indirectly to commercial exports of agricultural products or other goods and services;
 - d. not linked to the market development objectives of donor Members;
- and that
- e. agricultural products provided as international food aid shall not be re-exported in any form, except where the agricultural products were not permitted entry into the recipient country, the agricultural products were determined inappropriate or no longer needed for the purpose for which they were received in the recipient country, or re-exportation is necessary for logistical reasons to expedite the provision of food aid for another country in an emergency situation. Any re-exportation in accordance with this subparagraph shall be conducted in a manner that does not unduly impact established, functioning commercial markets of agricultural commodities in the countries to which the food aid is re-exported.
24. The provision of food aid shall take into account local market conditions of the same or substitute products. Members shall refrain from providing in-kind international food aid in situations where this would be reasonably foreseen to cause an adverse effect on local¹³ or regional production of the same or substitute products. In addition, Members shall ensure that international food aid does not unduly impact established, functioning commercial markets of agricultural commodities.
25. Where Members provide exclusively cash-based food aid, they are encouraged to continue to do so. Other Members are encouraged to provide cash-based or in-kind international food aid in emergency situations, protracted crises (as defined by the FAO¹⁴), or non-emergency development/capacity building food assistance environments where recipient countries or recognized international humanitarian/food entities, such as the United Nations, have requested food assistance.
26. Members are also encouraged to seek to increasingly procure international 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.
27. Members shall monetize international food aid only where there is a demonstrable need for monetization for the purpose of transport and delivery of the food assistance, or the monetization of international food aid is used to redress short and/or long term food deficit requirements or insufficient agricultural production situations which give rise to

¹³ The term "local" may be understood to mean at the national or subnational level.

¹⁴ FAO defines protracted crises as follows: "*Protracted crises refer to situations in which a significant portion of a population is facing a heightened risk of death, disease, and breakdown of their livelihoods.*"

chronic hunger and malnutrition in least-developed and net food-importing developing countries.¹⁵

28. Local or regional market analysis shall be completed before monetization occurs for all monetized international food aid, including consideration of the recipient country's nutritional needs, local United Nations Agencies' market data and normal import and consumption levels of the commodity to be monetized, and consistent with Food Assistance Convention reporting. Independent third party commercial or non-profit entities will be employed to monetize in-kind international food aid to ensure open market competition for the sale of in-kind international food aid.
29. In employing these independent third party commercial or non-profit entities for the purposes of the preceding paragraph, Members shall ensure that such entities minimize or eliminate disruptions to the local or regional markets, which may include impacts on production, when international food aid is monetized. They shall ensure that the sale of commodities for food assistance purposes is conducted in a transparent, competitive and open process and through a public tender.¹⁶
30. Members commit to allowing maximum flexibility to provide for all types of international food aid in order to maintain needed levels while making efforts to move toward more untied cash-based international food aid in accordance with the Food Assistance Convention.
31. Members recognize the role of government in decision-making on international food aid in their jurisdictions. Members recognize that the government of a recipient country of international food aid can opt out of the usage of monetized international food aid.
32. Members agree to review the provisions on international food aid contained in the preceding paragraphs within the regular Committee on Agriculture monitoring of the implementation of the Marrakesh Ministerial Decision of April 1994 on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and net food-importing developing countries.

¹⁵ Belize, the Plurinational State of Bolivia, Ecuador, Fiji, Guatemala, Guyana, Nicaragua, Papua New Guinea and Suriname shall also have access to this provision.

¹⁶ In the instance where it is not feasible to complete a sale through a public tender, a negotiated sale can be used.

ANNEX¹⁷**EXPORT SUBSIDIES**

Consistent with the Bali Ministerial Declaration on Export Competition¹⁸ and in addition to annual notifications requirements under the relevant provisions of the Agreement on Agriculture and related decisions, Members shall continue to provide information on export subsidies within the context of an annual examination process, based on the following structure:

1. Provide information on operational changes in measures

EXPORT CREDIT, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMS (EXPORT FINANCING)

Consistent with the Bali Ministerial Declaration on Export Competition, Members shall continue to provide information on Export Credit, Export Credit Guarantees or Insurance Programs within the context of an annual examination process, based on the following structure:

1. Description of the program (classification within the following categories: direct financing support, risk cover, government to government credit agreements or any other form of governmental export credit support) and relevant legislation
2. Description of Export Financing Entity
3. Total value of export of agricultural products covered by export credits, export credit guarantees or insurance programs and use per program
4. Annual average premium rates/fees per program
5. Maximum repayment terms per program
6. Annual average repayment periods per program
7. Export destination or group of destinations per program
8. Program use by product or product group

FOOD AID

Consistent with the Bali Ministerial Declaration on Export Competition, Members shall continue to provide information on International Food Aid within the context of an annual examination process, based on the following structure:

1. Product description
2. Quantity and/or value of food aid provided
3. Description of whether food aid is provided on in-kind, untied cash-based basis and whether monetisation was permitted
4. Description of whether in fully grant form or concessional terms
5. Description of relevant needs assessment (and by whom) and whether food aid is responding to a declaration of emergency or an emergency appeal (and by whom)
6. Description of whether re-export of food aid is an option under the terms of the provision of food aid

AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

Consistent with the Bali Ministerial Declaration on Export Competition, Members shall continue to provide information on Agricultural Exporting State Trading Enterprises within the context of an annual examination process, based on the following structure:

1. Enumeration of State Trading Enterprises
 - Identification of state trading enterprises
 - Description of products affected (*Including tariff item number(s) encompassed in product description*)

¹⁷ Notwithstanding paragraph 4 of this Decision, developing country Members, unless they are in a position to do so at an earlier date, shall implement this Annex no later than five years following the date of adoption of this Decision.

¹⁸ Decision WT/MIN(13)/40 and WT/L/915.

2. Reason and purpose
 - Reason or purpose for establishing and/or maintaining state trading enterprise
 - Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers
3. Description of the functioning of the State Trading Enterprise
 - Summary statement providing overview of operations of the state trading enterprise
 - Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise

Additional information subject to normal commercial confidentiality considerations

1. Exports (value/volume)
 2. Export prices
 3. Export destination
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