

The Post Hong Kong Challenge: Building on Developing Country Proposals for a Future Food Aid Regime

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So far this year there have been intensive, more focused negotiations to try to agree a text on food aid to be included in the draft Doha Agreement on Agriculture. This paper takes the joint contribution to this process made by African and other least developed countries, as its framework for reviewing progress directed to ensuring that genuine food aid is not impeded whilst disciplines are put in place on other food aid to minimise trade displacement. New issues have emerged, and there are still outstanding issues on which there is so far no agreement. Some suggestions are made for addressing both sets of issues in a constructive way including proposals for a joint-statement on matters to be addressed in other international bodies apart from the WTO.

The Doha Development Round negotiations offer a once in 12–15 year opportunity to disentangle food aid from the agricultural trade policies of rich countries that compromise both its effectiveness and efficiency. Instead, as explained in a companion *ODI Background Paper*,² food aid became one of the key unresolved issues in the Doha Round before the Hong Kong Ministerial meeting in December 2005.

The Hong Kong Declaration made an important step towards a potential agreement on food aid by focusing attention on two areas for negotiation.³ It provided for the creation of a ‘safe box’ for *bona fide* food aid to ensure that there is no unintended impediment to dealing with emergency situations. Members were mandated to develop disciplines on other food aid, including in-kind food aid, monetisation (sale of imported commodities for budgetary support) and re-exportation so that it cannot serve as a loophole for export subsidisation, which is slated to be eliminated by 2013. Both the US and the EU formally abandoned their long-sustained, diametrically opposed negotiating positions: that food aid should continue to be exempt from WTO disciplines on export subsidies; and that there should be complete untying in parallel with the reduction in other export subsidies, respectively. Of course, both parties are continuing to seek an outcome that most closely approximates to their negotiating goal.

So the *post-Hong Kong challenge* is: can this food aid question be resolved along with other key issues, practically and pragmatically, to maintain the momentum of the Doha process? Can the trade displacement effects of food aid be significantly reduced, if not entirely eliminated? Can this be achieved without compromising humanitarian and food security aspirations or wasting aid money?

Since January 2006, there have been more intensive negotiations to try and achieve agreement within the Declaration’s tight deadline of 30 April 2006. The process has been constructive and more focused than a simple restating of competing, inconsistent views of the envisaged new framework. This is clearest in the way WTO members have tabled new proposals that elaborate previous proposals. The paper from African and LDC Groups on the categorisation of food aid, the ‘African Group Proposal’, (Box 1) has been especially

Box 1 Joint Submission to the WTO Doha Round Negotiating Committee on Agriculture by the African and LDC groups on Food Aid

Introduction

It is underscored that food insecure countries and countries susceptible to natural disasters including drought and famine, and floods still need food aid. In recognition of this fact, Ministers reaffirmed, in the Hong Kong Ministerial Declaration, their '... commitment to maintain an adequate level [of food aid] and to take into account the interests of food aid recipient countries. To this end, a 'safe box' for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement. To this end, we will agree effective disciplines on in-kind food aid, monetisation and re-exports so that there can be no loop-hole for continuing export subsidisation.'

Any disciplines on food aid should not have the effect of hindering the delivery of food aid to needy countries and communities. It is therefore important to have commitment by cooperating partners in the context of the Food Aid Convention to make food aid available at all times. In proposing these disciplines, the African and least developed countries, while being among the beneficiaries of the aid, wish to ensure that food aid does not, advertently or inadvertently, abet dumping of food or encourage commercial displacement in recipient countries.

This submission is without prejudice to the outcome of discussions on food aid nor the positions that would be advanced in the course of negotiations, and any other mandate including the mandate contained in the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net- Food Importing Developing Countries. The following is therefore proposed:

1. Emergency Food Aid

1.1 The 'safe box' will be used for emergency food aid and shall not be subject to any disciplines.

2.2 The 'safe box' shall include food aid that meets the following criteria:

- i) Is provided in response to emergency situations as defined by a relevant UN agency
- ii) Is based on declaration of an emergency subject to what is mentioned in paragraph 1.3
- iii) Is based on independent assessments of genuine food needs of people in immediate distress
- iv) Is provided in adequate quantities for as long as the emergency lasts.

2.2 A declaration of an emergency situation and assessment of genuine food needs of people in immediate distress as mentioned above can only be done by a recipient country authority concerned, whether local, regional or central government in collaboration with a relevant international humanitarian assistance body, or by a relevant international humanitarian assistance body in collaboration with the recipient country authority concerned.

2.3 A notification will be required on an ex-post basis by donors and the relevant international humanitarian assistance bodies, in order to ensure transparency.

2. Non-emergency Food Aid

2.1 Non-emergency food aid includes all food aid that does not fall under the 'safe box' category. In order to ensure that it does not displace commercial trade and does not adversely affect local production, non-emergency food aid shall be subject to the following disciplines:

- i) shall be demand driven
- ii) shall be provided in fully grant form
- iii) shall not be tied either directly or indirectly to commercial exports of goods or services to the recipient country
- iv) shall take fully into account local market conditions of the same or substitute commodities and, as much as possible, be sourced locally, sub-regionally or regionally
- v) shall be aimed at addressing developmental objectives, including through targeted delivery to well-identified vulnerable population groups to address specific nutritional needs
- vi) shall not be contingent on advancing market development objectives of the donor country
- vii) may be monetised, under exceptional circumstances, to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary by the final recipients. Monetisation should only be carried out under the auspices of a UN agency and the recipient governmental authority, to ensure that there is minimal risk of commercial displacement and disincentive to local production
- viii) There shall be no re-exportation of food aid.

2.2 Transparency shall be paramount in any food aid operation. Therefore, all non-emergency food aid shall be subject to monitoring, notification and reporting requirements, both ex-ante and ex-post, ensuring full transparency and compliance with the above disciplines.

significant as a statement of priorities coming from most of the major potential recipients of food aid, and also many other developing countries whose trade may be affected by food aid actions. In subsequent communications, members generally, including the US and the EU, have welcomed this proposal, which a background reference paper by the Chairman of the negotiating Committee envisages as providing a framework for further negotiations.⁴ So the categories in the African Group Proposal provide a convenient and generally accepted basis for this review of the unresolved issues and more concrete ideas emerging from recent discussions addressing outstanding issues in the negotiations. There are still, as an analysis of the African Group paper demonstrates, significant areas of disagreement on the specifics of the ‘safe box’ and future disciplines that could have major implications for the shape of global food aid.

Category 1 ‘Safe Box’ for Emergency Aid

What is a legitimate emergency? The definition adopted by WFP, the major humanitarian food agency, has been a starting point for recent discussions, and it would be logical to adopt this definition in clarifying what are the international humanitarian actions to which the WTO wishes to ensure new rules on trade are no impediment. However, the current WFP definition includes not only natural disasters and humanitarian crises but also food insecurity resulting from ‘sudden economic shocks’. Some donors have argued that these kinds of situations (which are essentially financial crises) are emergency-like and therefore required some form of humanitarian intervention. So it would be useful to clarify those criteria an economic emergency might need to meet in order to merit humanitarian intervention. This suggests a more general point: matters of concern are being legitimately raised in the negotiations, but these are outside the WTO competency, and might be resolved by members agreeing that they should be considered elsewhere, for example by the WFP’s Executive Board.

Box 2 What is an emergency?

The World Food Programme (WFP) defines an emergency situation as follows:

‘Food aid provided in response to humanitarian crisis or natural/climatic disasters, and based on an assessment of needs.

‘For WFP, emergencies are defined as urgent situations 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 produces 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:

- a) sudden calamities such as earthquakes, floods and locust infestations;
- b) human-made emergencies resulting in an influx of refugees or in the suffering of otherwise affected populations;
- c) food scarcity owing to slow-onset events such as drought, crop failures, pests, and diseases that result in an erosion of communities’ and vulnerable populations’ capacity to meet their food needs;
- d) severe food access or availability conditions resulting from sudden economic shocks, market failure, or economic collapse – and that result in an erosion of communities’ and vulnerable populations’ capacity to meet their food needs; and
- e) a complex emergency for which the Government of the affected country or the Secretary-General of the United Nations has requested the support of WFP.’ (see JOB(05)/178)

Who declares an emergency? The African Group envisages that emergency food aid would require official sanction by both a relevant international body and the recipient government,

or vice versa. This formulation, which would include a UN body or the Red Cross, risks creating too cumbersome a process before an emergency can be declared. The term ‘collaboration’ in 1.3 suggests that a declaration would explicitly require both parties to agree that an emergency has in fact begun, which might hamper humanitarian efforts and cost lives.

Some WTO members strongly object to the inclusion of private charitable bodies (NGOs, for example) in the list of collaborating bodies. It might be important to allow a role for NGOs, while finding ways to ensure members are comfortable that national governments are not thereby undermined. The need to define a list of the relevant humanitarian agencies could be addressed in the Food Aid Convention (FAC) renegotiation. This would be more likely to happen if the WTO provides a specific mandate for the FAC negotiators to do so. This could be addressed in the same way export credits were handled under the Uruguay Round, where the OECD was requested to pursue the matter.

Awkward and critically important cases will be those humanitarian crises that arise before a UN assessment recognises the problem and/or where there are questions about government intentions with regard to the affected population (sadly, there are cases where the state has chosen not to recognise an emergency within its borders until it’s too late). Experience suggests that NGOs, many of which are on the ground where food emergencies are developing, can play a vital role in sounding the alarm when food aid is needed. In this case it would be important to ensure that the rules for Category 2 food aid allow the Red Cross and NGOs to respond with a minimum of regulation and reporting where there is no official assessment or a formal declaration of an emergency. Relatively unrestricted use of untied and partially untied food aid (as defined in the earlier ODI paper), whether for emergencies or not, would help in this regard.

Bilateral government-to-government ‘emergency’ or crisis-related, but usually tied, commodity aid has a rationale from the viewpoint of the contracting parties. However, this category includes some of the most problematic food aid transactions from a trade perspective since the Uruguay Agreement and surely the African Group proposal correctly implies these should be outside of the ‘safe box’.

Presumably, genuine emergency food aid would be provided only in fully grant form and for direct distribution as food-based relief. Otherwise the lack of an explicit exclusion, as in the African proposal, gives donors a legal loop-hole to provide concessional food sales and other forms of financed and non-grant food aid in emergencies.

Assessments of needs There are strenuous well-supported efforts underway and endorsed by the G7 to strengthen the ways in which the requirements of affected people are assessed. Agreement is needed on the institutions responsible for providing an authoritative assessment. The idea that such assessments will be ‘independent’ is perhaps aspirational, but the WFP and other international agencies are seeking to improve methodologies and ensure greater transparency in application.

Emergency duration Another difficult issue is the length of time food aid would be exempt from disciplines after the declaration of an emergency. How long will it be legitimate to continue to respond with aid in-kind or tied aid within the emergency ‘safe box’? Six months, or a year? Aid in-kind typically requires 4–5 months to arrive in country. The longer a relief

operation continues, the higher the risk of trade displacement and local market distortion effects, but also the greater the opportunity to source food through normal domestic market channels and imports – therefore, multi-annual commitments of in-kind aid are inappropriate. It would be important to get the views of those with practical experience on the issue to get further clarity. The WFP envisages that, if continuing assistance is required, an Emergency Operation would normally be replaced within at most two years by a Protracted Relief and Recovery Operation (PRRO) that presupposes thorough preparation based on an in-depth analysis of the situation, collaboration with development-oriented partners, and an appropriate level of community/beneficiary participation in planning as well as implementation.

An alternative approach is to address the issue of the duration through assessment rather than by setting possibly arbitrary time limits to an emergency within the ‘safe box’. First, building on efforts to strengthen assessment, there could be a requirement that a local market and trade analysis covering local and regional sourcing possibilities and potential impacts of imported food aid is incorporated before an international appeal. Second, there could be a requirement for periodic reassessment, perhaps every six months, of recipient needs and of the implications of a potentially rapidly changing market situation as a condition for continuation of an international emergency operation. Then, without such a revalidation the emergency would lapse. A proposal along these lines by the Chair merits technical development.⁴

The direction of the negotiations, as reflected, for example, in Paragraph 1.3 of the African Proposal, raises a broader issue as to whether it is desirable for a WTO agreement to create a parallel international legal framework concerning what are essentially humanitarian matters. What are the legal/jurisdictional implications of such clauses being located in a trade agreement? For example, how would such provisions apply to international organisations such as UN bodies, which are not WTO members and which are therefore not subject to WTO law? How would the rules apply to non-WTO member recipients of food aid?

Category 2 Other Food Aid

The WTO Agreement on Agriculture (AoA) is concerned with food aid, only because of trade displacement and market distortion risks. It is not directly concerned with establishing procedures for good or even best humanitarian and developmental practice. The African proposal on ‘disciplines’ mixes together different types of statement. First, there are aspirational statements about desirable practice such as food aid only being demand-driven. Second, there are specific conditions that might provide the basis for a complaint by one member about a transaction of another member before the WTO Committee on Agriculture (CoA), for example that it was tied to other exports of goods or services to the recipient country. Questions of good practice in aid are perhaps more appropriately a matter to draw to the attention of other competent bodies. The trade issue is still challenging and perhaps there is scope for narrowing further the range of transactions that would be potentially subject to disciplines in the sense of formalised restrictions on allowable practices. One way to do this could be to divide Category 2 food aid into two sub-categories, A and B.

A. Wholly untied or partially untied food aid This would be when the food aid donated is sourced in the recipient country or from a list of eligible developing countries. Allocations made on this basis could be regarded as having met a sufficient standard to merit an

exemption from further WTO disciplines. If Canada, for example, wanted to make such an allocation to the Canadian Foodgrains Bank, or Norway to the Red Cross for a humanitarian operation, then so long as the aid was untied or partially untied, nothing further would be required. There would be no need for a formal justification under a UN-government assessment or for the recipient government to declare an emergency. The donor would only have to report retrospectively on this transaction to whatever body is nominated in the AoA to receive information on food aid transactions, perhaps the FAC or a revamped CSSD (Consultative Sub-Committee on Surplus Disposal).

This proposal is based on the presumption that complete or partial untying carries minimal risks of export displacement. Simplifying the procedures for untied and partially untied aid should encourage donors to move further in this direction, making greater use of local and regional sources of food and so offer large potential benefits to developing country suppliers and service providers.⁵

B. In-kind or tied food aid This is the least efficient and most criticised form of food aid. Therefore, disciplines could include a series of necessary conditions and arrangements for use outside of the WTO under the FAC or CSSD and which permit but do not encourage such aid. The African Group Proposal contains two new conditions: fully grant aid and no re-exportation. The proposal that there be no links to export promotion is only a continuation of the current AoA prohibition on linking food aid to other export promotion and is not adequate on its own.

Monetisation The African Group Proposal indicates importantly that most potential recipients prefer to restrict this practice to ‘exceptional circumstances’ and not to be, as it has become, a normal part of many NGO operations. Allowing monetisation by an international agency or government for delivery-related costs highlights an unsatisfactory practice made necessary by inadequate donor funding. Should donors be expected to include delivery costs in emergency commitments? Allowing monetisation to finance agricultural inputs in an emergency context similarly implies a problem that should be addressed through non-food assistance. Outside that emergency context there is an issue of fungibility, because input supply is widely subsidised. Overall, there is a near consensus among food aid practitioners and independent analysts that monetisation of bilateral aid, especially programme food aid, has a poor track record. The exceptions also pose problems of monitoring; once the door is opened to exemptions, it is much harder to ensure that other exceptions do not creep in.

The supply of commodities for monetisation is indisputably driven by domestic agricultural objectives; in-kind food aid is used to ease pressure created by limits on export subsidy use and over-production, in part fuelled by domestic policies. It may not be possible to eliminate the monetisation of food aid in the WTO at this time, but it should never be forgotten that monetisation is an inefficient resource transfer that has significant potential to disrupt commercial markets, most importantly those of poor farmers in the recipient and neighbouring regions. Further thought seems necessary to refine the criteria for the exceptional circumstances in which monetisation could be allowed, but not actively encouraged. Another implication of the restriction is that more general monetisation, for example, as part of multi-annual food security and development projects would be phased out by 2013 in phase with other limitations on export competition measures.

The other conditions to be placed on Category 2 aid in the Africa Group and LDC proposal (food

aid should be demand-driven, sensitive to local market conditions, have developmental objectives, etc.) are aspirational and so more difficult to realise. They imply assessment procedures that could be costly and may not be so effective where a donor and its clients choose to treat these conditions as window dressing. They could also be unattractive to donors who do not want to be drawn into additional complex bureaucratic procedures. US agencies are already used to such procedures, such as the Bellmon determination to ensure that a projected commitment of food is not expected to disrupt local markets. The lesson from the US food aid experience is that the determinations do not work well enough to provide a sufficiently robust international standard that all parties can trust. Those envisaging such complex assessment and reporting procedures as part of the disciplines for all Category 2 food aid may also be underestimating the discouraging effect on donors who are providing cash for food.

Rules that apply to all food aid

Some aspects of the new rules proposed by the African Group, and for which there is already near consensus support, are in fact common to food aid within the 'safe box' and 'other food aid' These include: provision in a wholly grant form; not being tied to other commercial exports of goods and services; and usually disallowing re-export. For food aid to be on a wholly grant basis would be a clear positive outcome of the negotiations. Food loans invariably tied to goods and services from the donor country are effectively a form of concessional export credit. Developmentally, it is also preferable to avoid either humanitarian relief or support to food insecure people resulting in additional recipient country indebtedness.

There is a presumption that notification and reporting requirements will be mandatory and better integrated for reasons of transparency and to encourage good practice. From a WTO trade perspective, information should be consolidated in a single database that allows any member with concerns about the conduct of another member to access information about any food aid transaction.

Good practice

The negotiations have drawn attention to issues of good humanitarian and developmental practice which are widely recognised as beyond competence of the WTO. Such issues should not be directly addressed in a new AoA. To facilitate the completion of the negotiation process, instead of putting aside these issues, perhaps a document should be prepared on behalf of the membership acknowledging such issues, drawing them to the attention of competent bodies and asking them to communicate back to the CoA on a periodic basis. In other competent bodies such as the FAC and WFP Executive Board, there is similarly a case for making fresh statements on good practice. But to have more credibility in the future, such statements have to be combined with a responsibility to monitor more closely and jointly evaluate actual practice.

Resource implications

The Hong Kong declaration intended to assure existing levels of food aid. It would be tempting to see this as a matter to be referred to a renegotiated FAC which might set new levels of commitments in commodities and/or cash. But, bearing in mind the lack of precise correspondence between FAC commitments and actual sharply fluctuating levels of food aid, it is also important to consider the likely food aid resource implications of the proposed new rules. The US, as the major donor, would be able to continue to provide food aid in-kind, sourced on its own markets with all the other tying conditions on pre-shipment value added

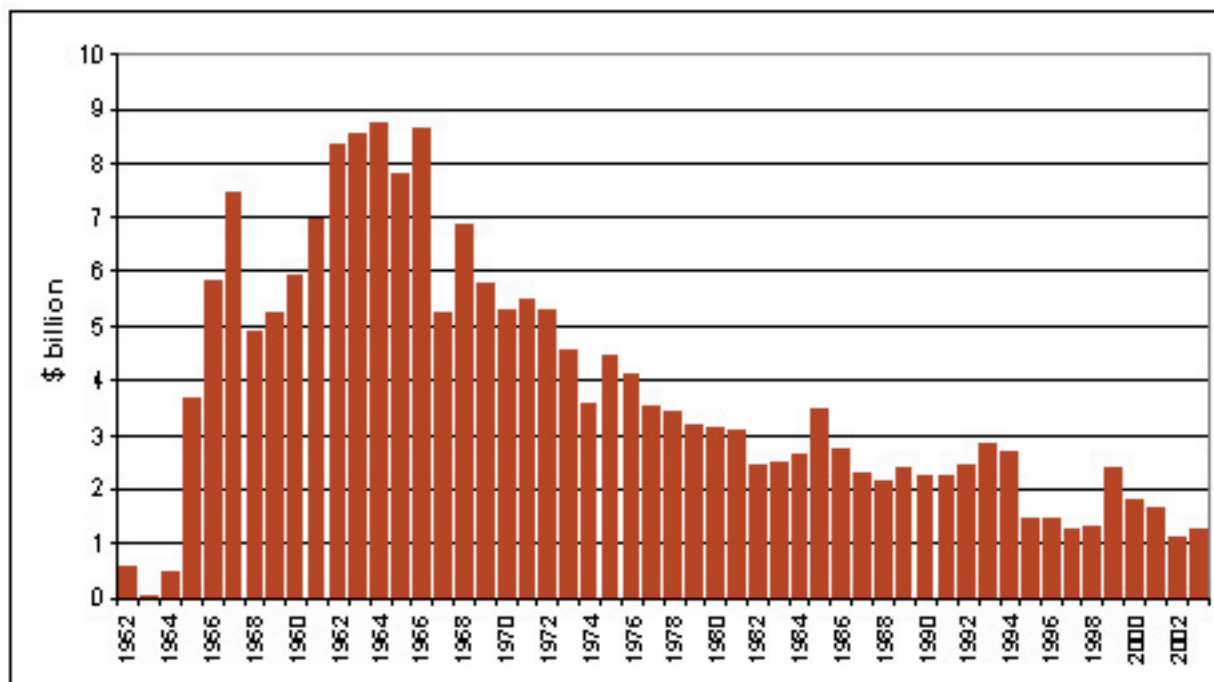
and use of American registered vessels. However, the lack of a food aid credit sales window could, on balance, reduce flows in periods when there are transient, exceptionally large surpluses, as occurred during 1998–99. There are likely to be domestic pressures to provide more commodities through the emergency ‘safe box’ that could have a distorting effect on humanitarian assistance. Supply side pressures to sustain funding would be competing with federal level fiscal pressures to reduce an expensive form of foreign assistance. Overall, a continuation of the long-term downward trend in the real value of US food aid would seem likely (Figure 1).

Exempting untied and partially untied aid from the Category 2 disciplines would make it likely that non-US flows would remain close to present levels. A continuation should be expected in the upward trend to developing country sourcing, already more than half of non-US food aid in 2004. These trends are likely for a combination of both broader humanitarian and aid efficiency reasons. A key issue is whether donors should reaffirm their commodity and financial commitments under the successor to the current FAC. The growing donor and agency interest in use of cash in humanitarian relief and for supporting food security may lead to a relative or absolute decline in food-based relief and safety net activities, as exemplified by the decline in European Commission food aid since the 1996 reform. But these may be desirable developments that merit discussion outside of the WTO process. Exempting developing country sourcing from disciplines also makes it likely that non-traditional donors would provide more food aid. Set against the rapidly growing levels of aid overall, it would seem likely during the decade of a Doha Round Agreement that food aid will become relatively less important as an aid option and as a trade issue.

The approach adopted in the Doha process, and reconfirmed at Hong Kong, has been to develop rules for the uses of categories of food aid as a way of minimising distortions that result from the aid tying practices of donors who seek to combine humanitarian and development objectives with export subsidy goals. The inherent weakness of this approach is that it addresses the consequences of tying practices indirectly. So, it will be necessary to continuously subject every amendment to a proposed text of agreement to a test of usefulness. What will be different? Is it worthwhile from a humanitarian or developmental viewpoint? Will altered and potentially complex rules achieve something substantive? There has been progress since Hong Kong on establishing a ‘safe box’ for emergency aid. But issues, such as the duration of an emergency and monetisation on which there is a range of views, are complex and require further careful consideration. Others, in particular a commitment to food aid only on a fully grant basis, are a matter of political commitment. The task of the negotiators will continue to be difficult, and the likely outcome a pragmatic compromise.

The WTO negotiations have served to highlight concerns about the adequacy, dependability, and even legitimacy of humanitarian assistance, implying a substantive reform agenda for food aid, but one that lies largely within the mandate of other international bodies. Is a Humanitarian Aid Convention required now in place of a Food Aid Convention that dates from 1967? Perhaps, in bringing the Doha Round negotiations on food aid to a constructive conclusion, a fuller statement on these issues should be attempted, indicating what is required to complement new AoA disciplines and exemptions, where responsibilities lie and what the expectations of the international community are.

Figure 1: Trend in U.S. Food Aid Levels, 1952–2003
(U.S. \$ billion, constant 2002 dollars)



Source: OECD, 2005, Figure 1.2

Endnotes

1. This paper draws extensively on an electronic discussion on the African and LDC Groups Submission initiated by Gawain Kripke, Oxfam America GKripke@oxfamamerica.org and included Stuart Clark, Canadian Foodgrains Bank, s_clark@foodgrainsbank.ca; Matias E. Margulis, McMasters University, matiasmargulis@hotmail.com; Chris Barrett, Cornell University, cbb2@cornell.edu; Sophia Murphy, Institute for Agriculture and Trade Policy, smurphy@iatp.org and Edward Clay, ODI, e.clay@odi.org.uk These contributions are gratefully acknowledged, but final responsibility for this paper rests with Dr Ed Clay who is a Senior Research Associate with the Overseas Development Institute, London and the lead author of the OECD 2005 study, *The Development Effectiveness of Food Aid: Does Tying Matter?* (Paris, ISBN: 9264013474).
2. Clay, Edward, *Food Aid and the Doha Development Round: Building on the Positive*, ODI Background Paper February 2006. Overseas Development Institute, London. http://www.odi.org.uk/wto_portal/post_wto/food_aid.pdf
3. World Trade Organisation, Doha Work Programme, Draft Ministerial Declaration, Ministerial Conference, Sixth Session, Hong Kong, 13 - 18 December 2005 (http://www.wto.org/english/thewto_e/minist_e/mino5_e/final_text_e.htm)
4. WTO, Committee on Agriculture, Special Session, Export Competition. 11 April 2006. Chair's Reference Paper: Food Aid. Geneva (http://www.wto.org/english/tratop_e/agric_e/ref_paper_foodaid_e.doc)
5. What might be the financial implications for developing countries of further moves to full or partial untying of food aid? In the absence of more fully developed scenarios, here

is a first rough approximation. At present, there are FAC, WFP pledges and other de facto budgetary commitments to provide on average approximately 8 million tonnes of food aid a year costing around US\$ 3.5–4 billion including commodity acquisition and international transport. There are other transitory uses of surpluses as food aid, which it is assumed will become subject to disciplines. Partial untying so far results in about 25% – approximately 2 million tonnes of food aid – being sourced in developing countries. However, because most of this food is grains in less processed form, this probably amounts to only around US\$ 750 million of donor expenditure. If all donors who have not done so already were to become more flexible, then by say 2010 on average perhaps half of food aid might be sourced in developing countries. Then this could amount to around a further 2 million tonnes and another US\$ 750 million a year in extra expenditure directed to developing country farmers, processors, transporters and other services. This figure would rise as more valued is added in recipient and exporting developing countries.

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