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**LOOKING AHEAD: IMPLICATIONS OF THE GLOBAL ECONOMIC CRISIS ON THE TRADE
ACTIVITY PATH FOR DEVELOPING COUNTRIES**

Conference Paper

**The Global Food Crisis –
Where is Africa’s Voice in the International Legal Regime for Food
Aid?**

By

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This paper draws on a larger research initiative commissioned by the Southern African Confederation of Agricultural Unions (SACAU) which was drafted in response to the need for African farmers to influence the manner in which food aid is introduced into African markets, especially in the wake of the global financial crisis. The authors acknowledge the valuable inputs gleaned from the SACAU 2009 Policy Conference and the SACAU CEO's permission to share these results. However, the overall responsibility for the work remains that of the authors. The authors can be contacted at: <hilton@tradelawchambers.co.za> and <ferdi.meyer@up.ac.za>.

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List of Acronyms

ACP:	African Caribbean and Pacific
ACTESA:	Alliance for Commodity Trade in Eastern and Southern Africa
AU:	African Union
BFAP:	Bureau for Food and Policy Research
CAADP:	Comprehensive African Agricultural Development Plan
COMESA:	Common Market for East and Southern Africa
CSSD:	Consultative Subcommittee on Surplus Disposal
DDA:	Doha Development Agenda
DFID:	Department for International Development
EAC:	East African Community
EASCOM:	East African Seed Committee
EC:	European Community
ECHO:	European Union Relief Operations Office
EDF:	European Development Fund
EIF:	Enhanced Integrated Framework
EPA:	Economic Partnership Agreement
ESA:	Eastern and Southern Africa
EU:	European Union
FA:	Food Aid
FAC:	Food Aid Convention
Fac:	Food Aid Committee
FANRPAN:	Food Agriculture & Natural Resources Policy Analysis Network
FAO:	Food & Agriculture Organization of the United Nations
FAPRI:	Food and Agricultural Policy Research Institute
GATS:	General Agreement on Trade in Services
GATT:	General Agreement on Tariffs and Trade
GDP:	Gross Domestic Product
GFAC:	Global Food Aid Compact
GIEWS:	Global Integrated Early Warning System (of the FAO)
GM:	Genetically Modified
GMO:	Genetically Modified Organism
GPAFS:	Global Partnership for Agriculture and Food Security
GTC:	Grain Trade Convention
HIPC:	Highly Indebted Poor Countries
IGA:	International Grains Agreement
IGC:	International Grains Council / International Grain Convention
IF:	Integrated Framework
IFAP:	International Federation of Agricultural Producers
IFPRI:	International Food Policy Research Institute
IMF:	International Monetary Fund
ITC:	International Trade Centre
LDC:	Least Developed Country
LMO:	Live Modified Organism
MT:	Metric tons
MMT:	Million metric tons
NAFU:	National African Farmers Union
NASFAM:	National Smallholder Farmers' Association of Malawi
NEPAD:	New Partnership for African Development
NFIDC:	Net Food Importing Developing Country
NFRA:	National Food Reserve Agency
NGO:	Non Governmental Organization

NIP & RIP:	National or Regional Indicative Programmes
ODA:	Overseas Development Assistance
ODI:	Overseas Development Institute
OECD:	Organization for Economic Cooperation and Development
P4P:	Purchase for Progress
PVO:	Private Voluntary Organization
RFRF:	Regional Food Reserve Facility (SADC)
RTFP:	Regional Trade Facilitation Programme
SACAU:	Southern African Confederation of Agricultural Unions
SACU:	Southern African Customs Union
SADC:	Southern African Development Community
SPS:	Sanitary and Phytosanitary
TBT:	Technical Barriers to Trade
TIFI:	SADC Secretariat Trade Investment and Finance
TIM:	Trade Integration Mechanism
TRA:	Trade Related Assistance
UK:	United Kingdom
UMR:	Usual Marketing Requirements
UN:	United Nations
UNCTAD:	UN Conference on Trade and Development
UNDP:	UN Development Programme
US:	United States of America
USAID:	United States Agency for International Development
USDA:	United States Department of Agriculture
WFP:	World Food Programme
WHO:	World Health Organization
WTO:	World Trade Organization

Abstract Summary

The Global Food Crisis – Where is Africa’s Voice in the International Legal Regime for Food Aid?

This paper draws on a larger research initiative commissioned by the Southern African Confederation of Agricultural Unions (SACAU) in response to the need for African farmers to influence the manner in which food aid destined for Africa is dealt with internationally, especially in the wake of the global financial crisis. The work served as a catalyst to facilitate a policy formulation process on the topic of Food Aid for Southern African farmers. This paper is a synopsis of the SACAU work and thus incorporates the inputs from a SACAU Policy Conference held in April 2009 together with inputs from expert interviews and research of relevant literature and international legal documents.

Food Aid can be described as the transfer of commodities (mainly grain) or payments close in nature, to developing countries as a form of development assistance for the provision of food. Three broad categories of food aid can be distinguished under this description being Emergency food aid (humanitarian/crisis purposes); Project food aid (linked to development projects) Programme food aid (government to government budget). In the broader context, food aid is related to the wider concept of ‘food security’.

It is crucial to prevent food aid from weakening the agricultural sector, but rather seizing the opportunity of making food aid a tool that contributes to unlocking the agricultural potential of the region to produce enough food for its people, enhancing its commercialisation capacities as well as creating jobs for rural people. The importance of food aid has declined over the past decade, with quantities decreasing from 15.1 million tons in 1999 to 5.9 million tons in 2007. This is a record low for food aid deliveries. Over the years it has been found that the availability of food aid is high when there have been good harvests and low prices. In contrast, availability of food aid is low when prices are high, which critically compromises the compensating role of food aid in times of food shortages. This is indicative of the link between food aid and surplus disposal policies. In recent years the majority of food aid deliveries were provided as grants, about 97%, and the remainder on concessional terms. In 2007 the United States provided 44% of global food aid, while the European Union provided 25%. Sub-Saharan Africa received 65% of all food aid. In looking at the two largest international donors it seemed that the European Union has a milder, development orientated approach, where the United States still suffers from a legacy of politics linked to food aid and surplus disposals; admittedly having changed substantially in its approach. The reality is that no engagement on food aid can be considered a worthy engagement, absent of the US as they remain the biggest food aid donor. Regional agriculture will have to be attuned to this in their strategies.

In the international architecture of food aid, the Food Aid Convention (FAC) is structurally sound as a treaty to administer international food aid. The participation and transparency under the treaty does however require attention. The objectives of the FAC are firstly to contribute to global food security and only secondly to improve the ability of the international community to respond to food emergencies. Given the area of impact of the undertakings under the FAC, African countries are glaringly absent in their participation under the International Grains Agreement (IGA), both in the FAC and in the Grains Trade Convention (GTC).

In the FAO context the Consultative Sub-Committee on Surplus Disposal (CSSD) looks to ensure that agricultural commodities which are exported on concessionary terms result in additional consumption for the recipient country and do not displace normal commercial imports. Likewise domestic production should not be discouraged or otherwise adversely affected. Its principles are not a binding instrument. They do not represent a commitment but only intent by signatory countries. Africans are present here although seemingly inputs are low. This again is potentially an opportunity for greater 'voice' by African countries. In addition the question may be asked whether there is a valid role for the CSSD as the notion of 'surplus disposal' and food aid is out of vogue.

The most interesting activity on food aid internationally is within the realm of the WTO. In essence there is consensus among WTO Members that the WTO shall not stand in the way of the provision of genuine food aid. There is also consensus that what is to be eliminated is commercial displacement. The African contingent has been rather successful in having their views reflected in the negotiating texts. The African proposal distinguishes between emergency food aid and other non-emergency food aid. In emergencies they support the 'Safe Box' concept arguing that as it will be used for emergency food aid, it should not be subject to any disciplines at all. With regards other forms of food aid, the African aim is to ensure that food aid does not displace commercial trade or adversely affects local agricultural production. In addition, the WTO Decision on Net Food Importing Developing Countries (NFIDCs) allows for poor countries to ask for assistance to improve productivity and infrastructure. Commentators say that it is unclear that any least developed countries (LDCs) or NFIDCs have really made serious requests under the Decision. Again this might be an opportunity for better voicing of African needs.

From a regional perspective it was evident from both the SADC and COMESA Secretariats and from certain donors that the New Partnership for African Development (NEPAD) Comprehensive African Agricultural Development Plan (CAADP) initiative holds much promise in regional coordination and development action for food aid, and agricultural development in general. In short the top drivers that will influence food aid flows over the next decade are; the production of biofuels from food crops, the global economic crisis and climate change. These factors exist in tandem with developments in international law to reform the global institutional regime for food aid.

From a policy perspective the farmers of Southern Africa have recognized that Food Aid cannot be a replacement for the benefits that a long term food security strategy and related system will provide. They acknowledge the necessity for and benefits of Food Aid to augment their productive activities in providing human relief in times when circumstances outside of the control of farmers lead to a shortage of food in the region to the extent that some people do not have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. However, they also wish to guard against the introduction of ill-timed and poorly targeted market disrupting food aid into their home and regional markets.

The policy response on Food Aid should focus on making the international legal architecture for food aid more friendly and participative for recipient countries, but also encourage a more proactive and participative role from regional agriculture. Regional farmers can also strongly support the African initiatives on food aid in the Doha negotiations to date.

1. Introduction

The food aid issue has been controversial in recent years particularly with regard to its impacts on the local food crop production and trade in the recipient countries. The food crisis that hit the developing world in 2008 reflected a breakdown in the global food system that threatens to worsen poverty, hunger and insecurity. This has brought the question of whether the international food aid regime should be reformed back to the top of the international agenda.

In a world prone to natural and human disasters, where more than 800 million people² are suffering from acute and chronic hunger, food aid can be life saving. However food aid has been challenged as not always being the most appropriate response to food insecurity, whether chronic or emergency. One life affecting consideration is that of timeliness, ensuring the quickest response to emergencies. Other considerations include market impact, and particularly whether the food aid serves as an incentive or disincentive to local or regional food production and commerce in the recipient countries. The efficiency of food aid delivery has also been questioned whereas shipment from donor countries is extremely costly, and the people that are the most food insecure are effectively not reached. New challenges laid down by climate change as well as increased commodity prices (whereas food aid quanta are countercyclical with respect to prices) will also impact on the food aid regime.

Specialists, researchers and civil society activists, have called for a reform of the international food aid system, and some donor countries have been considering it. However, because of the links between food aid and the WTO Doha agriculture negotiations, the food aid reform process has been protracted. The question of whether the WTO should impose disciplines on food aid is a key point of disagreement between the US and the EU in the current Doha round of trade talks. The outcome of the WTO dispute over trade in genetically modified organisms (GMOs) may also affect food aid policies, as many countries have in recent years rejected GM food aid from the US on the grounds, in particular, that it would harm their export markets in Europe. Current debates about food aid are therefore linked to a much larger discussion about international trade and agricultural subsidies.

Since 2002 Southern Africa has been severely affected by natural disasters such as droughts, floods and cyclones, which all affected the production of food crops. The situation has been aggravated by several structural, chronic and political problems such as high prevalence of HIV/AIDS, lack of public financial resources, low purchasing power of the population, poor management of strategic grain reserves, land degradation, and land reform activities.

As many as 12 million people were estimated to be threatened by severe food shortages across region in 2005/2006. At least 40% of the region's population is said to be suffering from chronic food insecurity. As a result, food aid has started flowing into countries hit by food shortages in the region, and hence started interacting with local food production and trading systems. The SADC food situation has also been influenced negatively by the recent global food price crisis.

Agriculture is a key sector in the economy of the Southern African region in terms of both share of GDP, employment and trade. It is the primary source of livelihood

² See: http://www.usaid.gov/our_work/humanitarian_assistance/ffp/ visited 12 August 2009.

for the majority of poor people who reside in the rural areas. It is a major source of government revenue for most countries. The agricultural sector is thus critical to the region as it plays a significant role in food security, job creation, poverty reduction, export revenue and rural development. It is crucial to prevent food aid from weakening it. On the contrary, the opportunity of making food aid a tool that contributes to unlocking the agricultural potential of the region to produce enough food for its people, enhancing its commercialisation capacities as well as creating jobs for rural poor people should be explored and promoted. It would then allow for truly building sustainable food security and reducing poverty.

The majority of farmers in Southern Africa are ill-equipped to address the issues relating to food aid despite the existence of a body of knowledge and information on the subject. This lack of knowledge and awareness prevents them from participating in the on-going discussions and to adopt positions that ensure them maximum benefit from the global reforms. Thus it is imperative that farmers in Southern Africa are first brought up to speed on these issues and secondly develop positions with respect to a food aid mechanisms addressing food needs without compromising local food production systems and trade in the region, and, on the contrary, promoting them. This paper aims to make a modest contribution in pursuing that end.

2. The Legal Basis for International Food Aid

“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.”
(Africa Group Submission to the WTO 2006)

2.1. The concept of Food Aid internationally

Food Aid can be described as having originated in the agricultural surplus disposal programmes of the Organization for Economic Cooperation and Development (OECD) countries in the post second world war period. It is described as the transfer of commodities (mainly grain) or payments close in nature, to developing countries as a form of development assistance³ for the provision of food. Three broad categories of food aid can be distinguished under this description:

1. Emergency food aid: This is food aid used for humanitarian purposes in the wake of crises caused primarily by natural disasters or conflict.
2. Project food aid: This food aid is linked to specific development projects and is most often disbursed through NGOs. It may support initiatives like school feeding programmes or food provision in return for work schemes.
3. Programme food aid: This form of food aid is provided by donor governments to other recipient governments who then sell it on local markets or to NGO's and use the proceeds for funding development projects. This procedure is also known as monetised food aid and is often provided long term.

Note that very broad less focussed definitions of food aid are also used. For instance the FAO has offered that as none of the international treaties dealing with food aid contain an explicit definition of food aid, it may also be defined simply as

³ Description as proposed by Trinity College Dublin, Ireland. Definition accessible via: http://www.tcd.ie/iis/policycoherence/index.php/iis/development_cooperation/food_aid visited 16 March 2009.

an agreed list of international transactions in food that are considered to constitute food aid⁴. This paper adopts the former definition for purpose of clarity.

In the broader context food aid is related to the wider concept of 'food security'. Food security has traditionally served as a sustained argument for the exclusion of elements of agricultural trade from the application of some of the primary legal rules of the global trading system. Food security was defined by the 1996 World Food Summit of the FAO, which couched the term as follows in the World Food Summit Plan of Action:

'Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life'.⁵

The World Food Summit Plan of Action also indicates that inadequate access to land, water, inputs, improved seeds and plants, appropriate technologies and farm credit; wars, natural disasters, and climate among other considerations can adversely affect food security. It recognises that while food aid may be provided to ease these circumstances, this tool is not a long term solution to the underlying causes of food insecurity. This being said it is recognised that it is important to maintain an adequate capacity in the international arena to provide food aid when it is required in response to emergency situations⁶. The question then arises as to what will constitute long term assurances of food security? The Plan suggests that increased production efficiently combined with 'food imports, reserves, and international trade' are appropriate tools to strengthen the food security position of a country. It is thus evident that food aid is just one of several instruments which can help to promote food security, and food aid is a temporary stop-gap response which should not crowd out more sustainably focussed long-vision tools in the quest to foster food security⁷.

In this quest to foster food security there are some key international regulatory mechanisms that address themselves to the topic of food aid. The discussion in this chapter will hence proceed to describe these regulatory mechanisms and later assess whether these food aid mechanisms are efficient.

2.2. The international Food Aid Convention

2.2.1. Rationale and origin

The Food Aid Convention (FAC) is arguably the most significant source of international food aid regulation in the global context. The importance of the FAC is that it is the only instrument under international law whereby donor countries have undertaken firm obligations to provide food aid. The FAC forms part of the International Grains Agreement (IGA) of 1995. The sister convention to the FAC is the Grains Trade Convention (GTC). The relationship is important because the existence of the FAC is tied to the existence of the IGA. The treaties are administered by the secretariat of the International Grains Council (IGC) based in London. The current FAC has its roots back in 1967 and its current incarnation is

⁴ FAO Trade Policy Technical Note, 'Food aid in the context of international and domestic markets and the Doha Round', Policy note no. 8, FAO Rome 2005 at page 2.

⁵ 'World Food Summit Plan of Action'; FAO Rome, November 1996 at paragraph 1. Accessed via <http://www.fao.org/docrep/003/w3613e/w3613e00.htm> on 17 March 2009.

⁶ Ibid at paragraph 2.

⁷ Ibid at paragraph 5.

the 1999 version which has been renewed up to the present date. The GTA has a longer history dating back to the formation of the Bretton Woods institutions and the GATT in the late 1940's. The International Grains Agreement of 1967 was intimately linked to the trading regime and was concluded in the context of the GATT's Kennedy Round. At that time several international commodity agreements were concluded with a view to managing international commodity trade. In the grain sector there was a tightening of grain market supply and thus with stocks available for use as food aid being low, an incentive for food aid donors to share their aid supply loads with other donor countries emerged. This explains the present day linkage between the IGC and the WTO⁸ and the present sequencing of negotiations in the Fac to follow in tandem but subsequent to those of the Doha Development Agenda, as elaborated in paragraph 2.2.5. Historically the FAC took its lead from the GATT, and today this remains the position with the FAC now taking its lead from the WTO.

Related to the FAC, the GTC covers trade in wheat, maize, barley, sorghum and more recently oil seeds and rice. The GTC aims to foster international cooperation in the grain trade; to promote expansion, openness and fairness in the grains sector; to contribute to grain market stability and to enhance world food security. These aims are operationalised through market transparency, information collation, discussion and analysis as regards the international grain markets. All this is enabled by the IGC's status as an intergovernmental forum. Note that like the WTO, the IGC is not a United Nations (UN) body and operates independently of the UN system.

2.2.2. Objectives

The objectives of this FAC are essentially two-fold⁹. Firstly to contribute to global food security and secondly to improve the ability of the international community to respond to food emergencies and other food needs of developing countries. In particular these two objectives will be fostered by:

- Making appropriate levels of food aid available on a predictable basis using the FAC.
- Encouragement in ensuring that the food aid is targeted at the alleviation of hunger (and poverty) of the most vulnerable groups.
- Providing food aid consistent with agricultural development in recipient countries.
- Maximising the impact, the effectiveness and quality of food aid granted so as to be a tool in support of food security.
- Providing a platform for coordination and information sharing on food aid matters.
- The pursuit of improved coherence between food aid and other policy instruments.

2.2.3. Commitments

In practice donors pledge to provide a minimum amount of food aid to developing countries in the form of grains and other eligible products each year. The members

⁸ The 1994 WTO Agreement on Agriculture still makes direct reference to the FAC in its Article 10.4.

⁹ Food Aid Convention 1999: Article 1.

of the FAC are Argentina, Australia, Canada, European Community (EC), Japan, Norway, Switzerland and the United States (US).

Given the area of impact of the undertakings under the FAC, African countries are glaringly absent in their participation under the Convention. The text of the convention itself defines what these quantities of donated food should be, and determines that all products provided must meet international quality standards, and be consistent with the dietary habits and nutritional needs of recipients. The pledges under the FAC are as follows:

Food Aid Convention Commitments		
FAC Member	Annual Aid Tons	%
Argentina	35,000	1%
Australia	250,000	5%
Canada	420,000	9%
European Community	1,320,000	27%
Japan	300,000	6%
Norway	30,000	1%
Switzerland	40,000	1%
USA	2,500,000	51%
Total	4,895,000	100%

(Source: FAC Article III (e))

These are minimum tonnages, and these are usually exceeded. The overall aim is to provide double this amount. The FAC's preamble and Article I stipulate that the objective is actually to commit at least 10 million tonnes of food aid annually. This is mainly in the form of grain but also includes other accepted food products suitable for human consumption, like rice, oil or sugar. An increasing proportion of FAC food aid is purchased locally within the recipient country or in neighbouring developing countries, supporting the agricultural sector and local food markets. These triangular transactions help to boost regional agricultural trade, while the rise in local purchases has greatly reduced the food aid component in international trade flows, according to the IGC. Note that countries not listed in the above table can still provide food aid; they simply do not have a treaty obligation to do so.

The advantage of this formalised treaty is that FAC members make food aid available to developing countries with the greatest needs on a predictable basis, and theoretically this is not related to fluctuations in world food prices and supplies.

2.2.4. The Food Aid Committee (Fac)

To achieve greater efficiency in food aid operations there is an emphasis on the monitoring and evaluation of the impact and effectiveness of food aid operations. Rules 9 and 10 of the FAC requires each member report of each of its food aid operations which form part of its treaty contributions including those channelled through international organizations or NGO's. The FAC is operationalised through a food aid committee (Fac) which consists of all parties (signatories) to the FAC. It is these donor members, distinct from observers, who operate the tactical side of the business, mainly by exchanging information on food aid needs and operations. The Fac monitors the performance of its members' undertakings under the Convention,

on the basis of records maintained by the IGC Secretariat. Information supplied under Rule 9 is detailed in a 12 point reporting list and ranges from information on price to details of third country purchases done using cash donations. It shares information on policy developments affecting food aid and discusses the world food situation and prospects in developing countries. It also considers ways in which donors' aid efforts may best achieve their objectives, with emphasis on the evaluation of world food needs and on the effectiveness and impact of food aid operations on those receiving the food aid.

The Fac holds two meetings a year in June and December. The Fac sessions may also be attended by invited observers from international organisations concerned with food aid. These include the UN Food and Agriculture Organisation (FAO), the World Food Programme (WFP), the World Trade Organisation (WTO), the Organisation for Economic Cooperation and Development (OECD) and the UN Conference on Trade and Development (UNCTAD). Countries party to the IGC can also request observer status at these meetings¹⁰.

Notable in recent times is the participation at Fac meetings of government observers from some new potential members. South Africa has been the only African country to show an interest in this regard, and has been admitted as an observer to the proceedings on several occasions since July 2004. The Secretariat has felt encouraged by this 'new' interest.

2.2.5. Latest developments, debates & discussions

The most recent meeting of the Food Aid Committee was in December 2008. It dealt with the ongoing business under the Convention but was preceded by two days of informal meetings in order for FAC members to share ideas on the objectives and form of a new Convention on food aid. At this informal discussion it was confirmed that the FAC would take its cue from the WTO and that any formal negotiations would have to take into account the outcome of the ongoing WTO agriculture negotiations. It was agreed that there is indeed space to improve the operation of the Fac under the existing FAC, notably as regards information exchange and the coordination of donor activities. In looking to a future incarnation of the FAC, the Fac members agreed to explore how the FAC could be improved by expanding the list of eligible products for donation and reviewing some of the procedural rules. The example was cited of donations of fortified products and micronutrients being added as eligible products in addition to the present grains, pulses, oil, root crops, sugar and milk powder. The Committee is said to be holding more discussions in 2009 ahead of the June 2009 official FAC session. In deference to the decision to await progress from the WTO negotiations it was agreed that the FAC of 1999 (as extended) should be renewed for yet another term to be decided and made effective from 1 July 2009¹¹. It is notable that resigning the FAC has been on ice as it were since June 2004 based on the premise that the WTO negotiations need to set the pace and that the FAC can then take its lead from the WTO. This is reminiscent of the birth of the FAC during the Kennedy trade round of the late 1960's. Note also that the linkage between the FAC and the WTO is

¹⁰ South Africa has participated in the FAC using this method of attendance, being a long standing member of the IGC. The fact that South Africa had itself become a modest donor also played a role. This participation is discussed later.

¹¹ 'Meeting of the Food Aid Committee' FAC Press Release 16 December 2008 available at <http://www.igc.org.uk/en/aboutus/pressreleases/prfac.aspx> accessed 16 March 2009.

emphasised by an exchange of letters of understanding as between the FAC and the WTO¹².

The FAC is not only cross linked to the WTO, but also to the FAO. In this regard note that Article IX of the FAC makes reference to the requirement that food aid transactions are executed so as to be consistent with the FAO's 'Principles of Surplus Disposal and Consultative Obligations' (CSSD). The CSSD is thus discussed in the following section.

2.3. The FAO Consultative Subcommittee on Surplus Disposal

The origin of the FAO Consultative Subcommittee on Surplus Disposal (CSSD) harks back to 1954. Unlike the FAC the CSSD includes both donor and recipient developing country governments among its members, with a number of international organizations and NGOs, notably the International Federation of Agricultural Producers (IFAP), being admitted. This immediately raises an opportunity in that SACAU might evaluate what influence it may bring to bear on the CSSD through its own membership of the International Federation of Agricultural Producers.

The CSSD constructed what are known as the FAO's 'Principles of Surplus Disposal'¹³ (the Principles). It should be stated upfront that this is a non-binding code of good practice for food aid transactions. According to the FAO these Principles look to ensure that agricultural commodities which are exported on concessionary¹⁴ terms result in additional consumption for the recipient country and do not displace normal commercial imports. Likewise domestic production should not be discouraged or otherwise adversely affected. The Principles are not a binding instrument and they do not represent a commitment but only intent by signatory countries. They assist governments to focus on their responsibilities as parties to concessionary transactions and to avoid the potential for disagreements. The interests of food aid recipients are safeguarded by the Principles which emphasize the importance of increasing consumption rather than restricting supplies. The interests of exporting countries are protected by the undertaking that such disposals should be made without harmful interference with normal patterns of production and international trade; by assurances against resale or transshipment of commodities supplied on concessionary terms.

It is notable that the Principles are specifically referred to in Article 10.4 of the WTO Agreement on Agriculture together with the reference to the FAC.

In practice, the CSSD addresses programme food aid where aid is given through untargeted government to government transfers. In contrast, project and emergency food aid (usually targeted to vulnerable groups, linked to humanitarian or development activities, and carried out by NGOs or the WFP) are generally regarded as additional to commercial exports. Because it operates under the umbrella of the FAO's Committee on Commodity Problems it is able to draw on the FAO's expertise on agricultural trade, food aid, and food security. However, the

¹² Copies of these letters are appended to the actual text of the FAC 1999.

¹³ 'A Guide for Members of the FAO Consultative Subcommittee on Surplus Disposal'; FAO, Rome 2000 at page 7. The description is paraphrased from this source.

¹⁴ 'Concessional': Terms relating to price or to other conditions of sale or payment more favourable than those obtainable in the open market.

Principles of Surplus Disposal are non-binding commitments and, like the FAC, the CSSD has no enforcement powers.

A further concept of the FAO's CSSD to consider here are the 'Usual Marketing Requirements' (UMR's). The UMR is a commitment by the recipient country of food aid to maintain a normal level of commercial imports of the same commodity and is based on a rolling average of the last five years of commercial imports. Its aim is to ensure that food aid results in additional consumption and that there is no adverse impact on commercial trade. UMRs are thus required to be negotiated between the supplying and recipient countries and included as part of their contractual arrangement in any case in point involving these concessionary transactions. The UMR concept primarily safeguards the interest of donor countries. It is interesting that the FAC, post 1995, ceased to mention the UMRs. The provision addressing the issue simply provides that food aid transactions must be carried out consistently with the FAO 'Principles of Surplus Disposal and Consultative Obligations'¹⁵. Thus the inclusion of UMR provisions in food aid agreements between donor and receiving countries is not a requirement under international law, however it is not prohibited either.

2.4. The World Trade Organization

The WTO has assumed a primary role in the food aid arena as food aid is closely linked to trade, as was evident in looking at the FAC and FAO structures earlier. In addition we noted that the revision of the primary international food aid instrument, the FAC, is being held on ice pending progress in the Doha Round of trade negotiations. One of the reasons why the WTO has developed a prominence in the food aid arena is because it has a binding and enforceable dispute settlement system which is absent in the FAC and the FAO¹⁶. In addition to its WTO unique provisions, the WTO's legal text does also make cross reference to both the FAC and the FAO treaties within its texts, thus confirming the authority of the WTO to deal across the three treaties in a manner of speaking. The two places where food aid is notable in the WTO aqis is firstly under the Agreement on Agriculture and secondly in the 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries'. These are now discussed in turn.

2.4.1. The Agreement on Agriculture

When the WTO Agreement on Agriculture was negotiated food exporting countries were suspicious that international food aid might be used by some large subsidy using countries as a ruse to avoid their reduction commitments on export subsidies, which were essentially prohibited save for those scheduled. The essence of the concern is that the distinction between food aid and commercial sales can be unclear and it may happen that a country claims to be providing food aid while it is really exporting food at a subsidized price, on what would be a purely commercial sale absent of the subsidy. It is for this reason that Article 10 on the prevention of circumvention of export subsidy commitments found its way into the agreement. The aim was to ensure that there was no foul play while at the same time

¹⁵ See Article IX (e)(ii) of the FAC 1999.

¹⁶ Note for instance that in the WTO's US Upland Cotton dispute 'export credits' which may be partly food aid related were ruled as illegal export subsidies. See WTO documents: WT/DS 267/R 8 September 2004 & WT/DS 267/AB/R 3 March 2005 at final findings. No WTO dispute to date has directly addressed illegal food aid as such.

recognising that there was a perfectly legitimate role for aid¹⁷. The text of Article 10.4 of the Agreement on Agriculture is directly addressed at food aid donors and lists 3 conditions that they must adhere to. Interestingly the text makes cross reference to the FAC and to the FAO and thus includes their disciplines by way of borrowing and subsuming these disciplines. In short:

1. Donors cannot 'tie' (that is conditionally connect) international food aid directly or indirectly to commercial exports to the recipient country.
2. Food aid transactions, including aid which is monetized, must adhere to the FAO's 'Principles of Surplus Disposal and Consultative Obligations' and the system of UMRs.
3. The food aid must be provided to the extent possible fully in grant form or on terms 'no less concessional' than those provided for in Article IV of the Food Aid Convention 1986¹⁸.

It is thus evident that the WTO Members decided not to reinvent food aid disciplines but to use the existing international architecture as it pertained to providing disciplines on trade. The implication for Africa is that trade rules are determined not only at the WTO but have been outsourced to the FAC and the FAO¹⁹. Tripartite participation at all three these forums are this required if a country is to pursue a holistic domestic food aid policy.

In addition to this Article 10.3 is also informative in assigning the burden of proof in instances where there is suspicion of export subsidy commitments being flaunted. The provision requires that a country claiming that a quantity of a food product exported in excess of its reduction commitment levels is not subsidized (as would be the case for food aid shipments), that exporter has the onus to establish that no export subsidy has been granted in respect of the quantity of exports in question. This is a stringent provision as the onus is squarely on the exporter to justify the claim that he remains within his WTO obligations.

2.4.2. Decision on Least-Developed & Net Food-Importing Countries

The preamble to the Agreement on Agriculture states that 'commitments under the reform programme should be made in an equitable way [...] taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries'. This is then addressed in substance in Article 16 where the link is made to the so-called 'Decision'²⁰. The text states that developed countries must take actions provided for in the 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries'. (LDC's & NFIDCs).

¹⁷ This is supported by a reading of the preamble to the Agreement on Agriculture which indicates that 'commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including *food security* and the need to protect the environment' [emphasis added].

¹⁸ The 1986 FAC today equates to the 1999 FAC as currently renewed to July 2009.

¹⁹ The concern that a government's donations of food aid could be motivated more by a desire to promote domestic prices and dispose of a domestic surplus than in response to genuine need of the receiving country is not new. Indeed, it was in response to such concerns that donor country members of the FAO adopted the Principles of Surplus Disposal and Consultative Obligations in 1957. The objective of the Principles was to try to ensure that food aid resulted in additional consumption rather than displacing commercial transactions – which also became part of the mandate for the DDA negotiations on food aid. This was, for many in the negotiations, the primary concern because commercial displacement means other supplying countries lose out. Therefore, it is commercial displacement in non-emergency situations which has been the main target of food aid disciplines.

²⁰ 'Marrakech Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries'; WTO Document WT/GC/62/G/AG/13, June 2002, Geneva.

Essentially in the Decision it is recognised that while the implementation of the Uruguay Round will generate increasing opportunities for trade expansion, in the scheduled reform programme LDCs and NFIDCs may experience constraints in the availability of adequate supplies of basic foods. It is this concern that the Decision serves to address. The Decision has three main thrusts. It determines that:

1. There will be a review the level of food aid established periodically under the FAC and to initiate negotiations' in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries.
2. Guidelines are established to ensure that a growing part foods aid is provided to LDCs and NFIDCs in full grant form in line with the FAC.
3. Full consideration under donor aid programmes should be given to requests for technical and financial assistance to LDCs and NFIDCs to improve agricultural productivity and related infrastructure.

It is notable that the Decision does not infer any firm obligations. It is perhaps for this reason that it has not been very effective. Desta for example reasons that the encouragement for donors to give consideration in the aid programmes to the requests of LDCs and NFIDCs is not subject to any multilateral monitoring and there is a complete lack of information on it. He adds that it is unclear that any LDCs or NFIDCs have ever made any requests under the Decision. He forms an opinion that points to the overall experience with the Decision as being unsatisfactory²¹.

Desta also remarks that the failure of the WTO set disciplines governing the export credits²² has rendered the obligation to ensure differential treatment in favour of LDCs and the NFIDCs irrelevant. The reason is that as long as no such agreement is reached on the practice of agricultural export credits, the legality of export credits used for food aid purposes within the parameters of 'concessionality' prescribed in the relevant provisions of the Food Aid Convention remains out of question. Also the concept of differential treatment for the benefit of these countries does not arise from the outset because the primary treatment (the rule on export credit) is not established²³. These comments and others indicate that food aid in the WTO is an issue that requires further negotiating effort under the Doha Development Agenda negotiations. We will thus proceed to examine these negotiations in brief.

2.4.3. The Doha Negotiations

In looking ahead we see that although the elimination of commercial displacement is the primary objective, all food aid deliveries, both emergency and non-emergency, will be subject to some basic provisions such as the food aid being needs driven, provided in fully grant form, not tied to commercial exports of agricultural or other goods and services and not linked to market development objectives. These disciplines, which are important for many WTO Members, simply underlie the fundamental rationale and purpose of food aid and that food aid should not be used as a means to profit in other areas of international trade; i.e. food aid should not be used as a means to develop market share via increased access to one country's product which gains a foot hold with local consumers who then purchase

²¹ Desta MG: 'Food Security and International Trade Law: An Appraisal of the WTO Approach'; Journal of World Trade, volume 35 no 3 of 2001, Kluwer Law International, The Hague, at pages 449-468.

²² As set out in Article 10.2 of the WTO Agriculture Agreement.

²³ Ibid. footnote 21.

the good, or tied to the provision of the purchase of other goods and services in the donor country. An explanation on relative levels of trade distortion by different types of food aid is provided in Annex 5.

According to the WTO Secretariat, surveyed in this study, food aid has been one of the more controversial issues in the WTO Doha negotiations on agriculture. To some extent this was based on substantive issues as some WTO Members sought to restrain what they considered to be the circumvention of export subsidy commitments by the US through large quantities of food aid donated in-kind. But, to some extent some countries' positions were political as they were giving up export subsidies and wanted to make sure others made equivalent commitments for any export support provided through food aid, export credits and exporting state trading enterprises. However, nobody wanted to create a situation where new WTO disciplines could restrict future food aid transactions. To ensure that the new disciplines do not create problems for genuine food aid, WTO Members reaffirmed their commitment to maintaining adequate levels of food aid and that the food aid disciplines do not unintentionally impede the delivery of food aid provided to deal with emergency situations.

2.4.3.1. Food aid in the Hong Kong Ministerial Declaration

The legal basis upon which the current WTO initiatives on food aid reform are based, can be found in the text of the 2005 Hong Kong Ministerial Declaration. The Food Aid topic was included in the preamble to the Declaration under the text that deals with the elimination of export subsidies. In Hong Kong it was decided to ensure the elimination of all forms of export subsidies and on export measures with equivalent effect to such subsidies. The greatest stride in the negotiations post the launch of the Doha Round in 2001 was that a specific end date for the elimination of export subsidies would be the end of 2013²⁴. In this context the same paragraph of the Hong Kong text also indicates that:

'On food aid, we reconfirm our commitment to maintain an adequate level 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, monetization and re-exports so that there can be no loop-hole for continuing export subsidization. The disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities, including appropriate provision in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision.'

This concept is then described in the Hong Kong agriculture annex L²⁵ in greater detail as follows²⁶:

'There is consensus among Members that the WTO shall not stand in the way of the provision of genuine food aid. There is also consensus that what is to be eliminated is commercial displacement. There have been detailed and intensive discussions, some of which have even been text-based, but not to a point where a consolidated draft text could be developed. This has been precluded by Members clinging to fundamentally disparate

²⁴ 'Ministerial Conference Sixth Session Hong Kong, 13 - 18 December 2005'. WTO document: WT/MIN(05)/W/3/Rev.2 of 18 December 2005 at paragraph 6.

²⁵ The view of the WTO Secretariat is that it is likely that, possibly with some amendments, the proposed language in Annex L of the draft modalities text would be a replacement for the Article 10.4 of the Agreement on Agriculture.

²⁶ Ibid footnote 24 in Annex A at paragraph 14.

conceptual premises. There are proposals that in the disciplines a distinction should be made between at least two types of food aid: emergency food aid and food aid to address other situations. However, there is not yet a common understanding where emergency food aid ends and other food aid begins, reflecting concerns that this distinction should not become a means to create a loophole in disciplines. A fundamental sticking point is whether, except in exceptional, genuine emergency situations, Members should (albeit gradually) move towards untied, in-cash food aid only, as some Members propose but other Members strongly oppose.'

The negotiations in Hong Kong leading to this position were not easy and in many respects reflected a classic divide between North and South, rich and poor. This can be gleaned from a press release issued in Hong Kong by the LDC Group²⁷:

'If the EU and the US were fighting to see who delivers the most sustainable and least disruptive food aid as proposed by the beneficiaries, LDC's would consider the fight over their empty stomachs as an honourable affair. As things stand the LDC's consider the current battle as another excuse for the two not to deliver on the promises of the Doha Development Agenda.'

Arguably the three most controversial issues within the food aid dossier have been the 'definition' of circumstances that would allow food aid to be provided in emergency situations; ensuring there is no commercial displacement caused by food aid in non-emergency situations (the potential for commercial displacement is much less in emergencies anyway); and monetization of food aid. While the first issue primarily relates to ensuring genuine food aid in emergency situations (as opposed to deliveries for the purpose of circumventing other disciplines), it is the last two situations that WTO Members have been concerned to ensure that non-emergency food aid does not have negative consequences for other producers or traders. In this respect, even food aid recipients have been cognisant of the negative impact of commercial displacement, either via the supply of physical commodities or through monetization. These concepts are encapsulated in the Hong Kong text.

The other issue that is of importance is 'monetization' where there are sales of in-kind aid in the recipient country. Some NGOs use monetization, to some extent at least, for finance to help run their development and aid programmes while some governments use it to obtain budgetary support. Thus, restrictions on monetization may have significant implications for future food aid programmes. Many WTO Members acknowledge, and some object to, the negative impact that monetization can have in the recipient country (e.g. increasing competition for domestic producers, lowering domestic prices and displacing sales of domestic products which impacts on the income of domestic producers). But, some others have stated that monetization is at times necessary to ensure that development aid programmes are able to proceed. As a result, certain exceptions have been provided for LDCs and net food-importing developing countries whereby monetization may be available for nutritional requirements, internal transportation and delivery of food aid, or the procurement of agricultural inputs to low income or resource poor producers.

²⁷ 'Food Aid: EU and US Fight over LDC's empty stomachs' LDC Group Press Release – Office of the LDC Coordinator, 14 December 2005. Copy on file with the authors, single page document.

2.4.3.2. The African response on food aid

In response to the Hong Kong text, Africa made its own negotiating submission on the food aid topic²⁸. The African paper takes both an aid and trade element on board. The introduction states that:

'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.'

The proposal distinguishes between emergency food aid and other non-emergency food aid. In emergencies they support the 'Safe Box' concept arguing that as it will be used for emergency food aid, it should not be subject to any disciplines at all. With regards other forms of food aid: in order to ensure that food aid does not displace commercial trade or adversely affect local agricultural production, the paper makes the following proposals that food aid should:

- Be demand driven;
- Be provided in full grant form;
- Not be tied to commercial exports;
- Account for local market conditions and be sourced locally;
- Be aimed at addressing developmental objectives;
- Not be used for advancing market development for the donor;
- Only be monetised 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;
- Not be re-exported.

The Chair of the agriculture negotiations has substantially taken these issues on board in subsequent drafts of an agriculture modalities text²⁹. In the main interview respondents indicate that African negotiators are satisfied with the food aid provisions in the negotiating text that is currently to hand³⁰. The December 2008 text confirms that emergency food aid would be in a Safe Box with more lenient disciplines. Emergencies would be declared or appealed by relevant international organizations such as the UN World Food Programme or Red Cross. Other non emergency aid would be disciplined to prevent the aid from displacing commercial trade, and with needs assessment, which would be under the responsibility of a UN agency. In addition the text gives the recipient government priority over all food aid operations, emphasizes a needs assessment, and gives the UN the final say when NGOs assess needs. The parts on monetization (the selling of donated products to raise funds for aid) no longer have options and can only be permitted under certain

²⁸ 'Joint Submission by the African and LDC Groups on Food Aid'; WTO document TN/AG/GEN/13 of 6 March 2006.

²⁹ The WTO Secretariat concurs with this view in their response to the authors: 'In 2006, the African and LDC Groups put forward a proposal on food aid which arguably laid the framework for the disciplines that are currently proposed. In this proposal, the African group and LDCs supported, inter alia, the notions that non-emergency food aid needed to be demand driven (as opposed to supply driven); take fully into account local market conditions of the same or substitute commodities (with the greatest amount of aid being sourced locally or regionally as possible); address targeted development objectives to vulnerable populations; and not be monetised except 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 recipient. The proposed disciplines on non-emergency food aid reflect many of the concerns of the African and LDC groups.'

³⁰ WTO document: TN/AG/W/4/Rev.4 in annex L, dated 8 December 2008.

strict conditions. It is expected that African negotiators will continue to support a food aid text in this format.

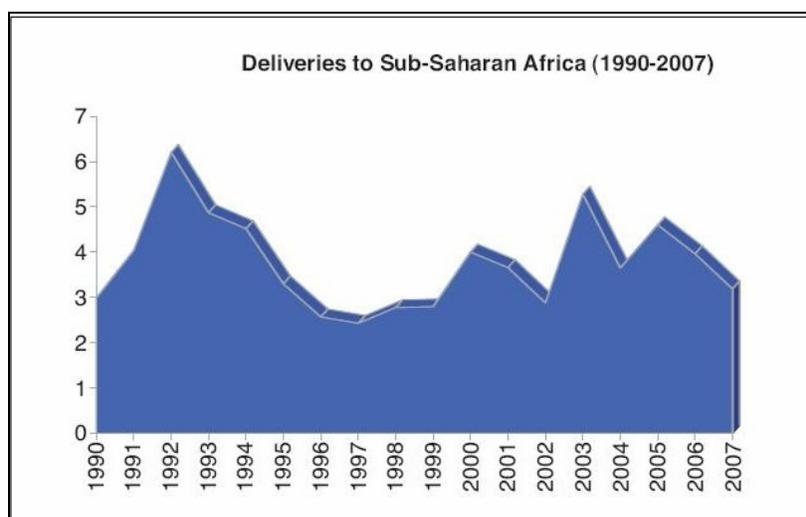
Unlike in the FAC where food aid recipient countries are absent, the WTO Secretariat observes in discussion with the author that given the importance of food aid for many developing and least developed countries (in emergency situations or developmental food aid programmes) it is unsurprising that this issue has been followed closely by food aid recipient Members of the WTO. Moreover, the importance of the issue is also underlined by the particular participation in the WTO negotiations of food aid recipients, many who are LDCs.

3. Food Aid in Southern Africa

When food availability from local production and commercial imports is insufficient, as most commonly occurs in acute emergencies, food aid can fill a crucial gap, thereby contributing to economic development and the protection of basic human rights. But if used inappropriately or managed poorly, food aid can undermine agricultural production, market development and international trade, thus impeding economic development and human rights. It is, therefore, crucial to have some understanding of the possible impacts of various forms of food aid.

3.1. A statistical snapshot

Southern Africa is the region that has received the highest proportion of food aid over recent years³¹. Its position remains unchanged as the largest recipient of food aid despite a 20 percent decline in volume terms. In 2004 the food aid deliveries to Southern Africa was 3.65 million tons and then increased to 4.57 million tons in 2005. Food aid continued to decline to 3.19 million tons delivered in 2007.



(Source: WFP/Interfais, 2007)

Some key statistics from the above source reveal the following:

³¹ World Food Programme Statistical Report: '2007 Food Aid Flows': World Food Programme, International Food Aid Information System (INTERFAIS); Policy, Planning and Strategy Division; Rome, Italy 2007.

- The importance of food aid has declined over the past decade, with quantities decreasing from 15.1 million tons in 1999 to 5.9 million tons in 2007. This is a record low for food aid deliveries. Over the years it has been found that the availability of food aid is high when there have been good harvests and low prices. In contrast, availability of food aid is low when prices are high, which critically compromises the compensating role of food aid in times of food shortages. This is indicative of the link between food aid and surplus disposal policies.
- The share of food aid in world cereal trade has decreased from 10% in the 1970s to less than 3% in 2007.
- In terms of its contribution to the global official development assistance (ODA), Food aid has declined from approximately 20% of total ODA in the 1960s to less than 5% today.
- In recent years the majority of food aid deliveries were provided as grants, about 97%, and the remainder on concessional terms.
- In 2007 the United States provided 44% of global food aid, while the European Union provided 25%. Sub-Saharan Africa received 65% of all food aid, Asia following with 21%.

3.2. The impact of food aid on local production

If the possible impacts of food aid deliveries are well understood and anticipated, various mechanisms can be introduced in the form of monitoring, reporting or following an alternative form of food aid to avoid adverse impacts on the agricultural industry at large. In the following section the positive and negative impacts of food aid on crop production are analysed. This analysis incorporates a detailed explanation of the importance of equilibrium pricing conditions in markets and the underlying information systems. This explanation is followed by a discussion of possible policy options and food aid strategies.

The impact that food aid has on the region lies in the distinction that has to be made between the forms in which food aid is provided. SADC cites the following as an example of market and crop production interference³²:

'In 2002/2003 (and again in 2005/2006) food aid donors over reacted to a projected 600 000 ton food deficit in Malawi, and sent close to 600 000 tons of food in aid. However, commercial and informal importers brought in an additional 350 000–500 000 tons. Malawi was flooded and had very large carry over stocks. Maize prices dropped from US\$250 per ton to US\$100 per tonne in the course of a year. Local production of maize, cassava, and rice fell markedly, and estimated losses to the Malawian economy were approximately US\$15 million.'

The greatest concern identified by SADC in food aid is the possibility that it can undermine the livelihoods of poor farmers by creating disincentives for local food producers, by flooding markets and depressing prices. In their view substantial volumes of food aid provided over a long term basis could discourage local production, resulting in increased poverty, and the creation of long-term food insecurity due to increased dependence on food imports. Regenerating agricultural production and local markets is central to any strategy for longer term recovery and development. Across the Southern African region there are numerous cases where producers report falling prices and market displacement as a result of an influx of

³² SADC cites: Mousseau (2004) 'Roles and Alternatives to Food Aid in Southern Africa'.

food aid commodities. Unfortunately, economic studies are often inconclusive about the extent of disincentives for local production caused by food aid. However, there is strong historical evidence that the use of food aid tends to correlate with long-term dependence on food imports, either food aid or commercial imports. [End of paraphrase from SADC.]

The case of Malawi provides a perfect example of a form of food aid that is not beneficial for local production and the agricultural sector at large. In other words, food aid has a negative impact on the local agricultural sector if it supplies a local market with large volumes of physical commodities that are imported so that local prices fall to levels at which local producers cannot make a profit. If food aid, however, promotes the local economy by sourcing the product from local producers or even countries in the region that have a surplus of a particular commodity to offer, then programs can benefit the economy at large.

The formation of commodity prices in markets is one of the key elements to understand and analyse the possible impact of food aid on prices and, therefore, production and consumption in the region. If one assumes perfect markets and trade occurs between two markets, according to the law of one price, the markets are integrated and the difference in the prices equals the transactions costs to move the goods between those markets in the long run. The equilibrium price in the smaller market can be estimated as a function of the equilibrium price in the dominant market, the exchange rate and the transaction costs. As soon as the difference in the market prices becomes less than the transaction costs, trade is discontinued and the markets are not integrated any longer. Now the market equilibrium (equilibrium price) is a function of the domestic supply and demand factors in each market respectively. Thus, the formation of prices also referred to as the equilibrium pricing condition, in a specific market changes as the market switches between different trade and policy regimes. If a commodity moves from a non-tradable (importable) to an exportable (non-tradable) equilibrium, the correlation between the parity price and the local market prices should jump from (to) zero to (from) significantly positive, to (from) one if the law of one price holds strictly.

These are the principles of equilibrium pricing conditions in a market. To make it clearer, if food aid enters a net importing country where local prices are already trading at import parity then local prices can be depressed if the volume of food aid is sufficient to change the status of the country from being a net importer to a country where the total supply exceeds total demand. This will have a negative impact on local producers that will receive less for their produce in the market. This is typically what happened in the case of Malawi. If only small volumes of targeted food aid enter a net importing country, then prices are likely to remain at import parity.

If markets function well and information is available, then the impact of food aid on production, consumption, trade and prices can be projected. In 2005 Meyer et.al simulated the impact of food aid procurement in South Africa³³. The main findings of the report mentioned that the WFP is, in strictly economic terms, a welcome addition to the South African market. It does not compete with state domestic programmes in any way, it adds to the demand for maize (which has been in

³³ Meyer, Vink, Mkhabela and Kirsten: 'Food aid procurement in South Africa: An Analytical Review of WFP Activities'. Unpublished report prepared for the Economic Analysis Unit (PSPE) in the Strategy, Policy and Program Support Division (PSP) of the World Food Program, Pretoria April 2005.

continuous surplus production for more than a decade), and its purchases of other commodities are too small to have any real effect on South African markets. The BFAP sector model was applied to simulate the possible market effects of WFP procurements in South Africa. Modelling results indicated that local maize prices increased by 7.61% due to the procurement of food aid maize. This caused the area under production to increase by 2.56%, boosting local production by 169 000 tons.

The issue of the possible impact of food aid on local crop production has been on the food security agenda for many years and more specifically, we note that the FAC (Art XIII (a)(i)) aims to avoid: 'harmful effects on local harvests, production and marketing structures, by appropriately timing the distribution of food aid'. One of the ways to do this is to provide seed, relating also to notions of food security. The FAC list of eligible products includes seeds. In this regard the IGC stated that example, in 2007-2008, some 5 000 tons of seed were provided to recipients by donors.

Unfortunately markets in Southern Africa are not always transparent and prices are not formed according to the standard principles of equilibrium pricing conditions. To understand the formation of prices in the region a comprehensive intelligence unit needs to be established that can research and inform to formation of prices in the region. Further recommendations with respect to the importance of good market information are set out under the policy recommendations.

4. Policy Considerations on Food Aid

'To the people of poor nations, we pledge to work alongside you to make your farms flourish.'

(US President Barack Obama, Inaugural Address, January 2009)

4.1. The international architecture of Food Aid

The future role and structure of the multilateral organizations that have jurisdiction in the food aid arena has emerged as a matter that will require attention going forward. These are each addressed in turn where after some future possibilities are raised.

4.1.1. The FAC

Is the FAC working well? This is a question that has been posed in the research community, and there have been suggestions that the FAC could be improved. For example the ODI³⁴ has observed that under the FAC cash contributions to meet transportation and delivery be attributed against FAC commitments, which in their view means that there is likely to be a decline in the amount of food aid available. They contend that most of the FAC's minimum commitment is already accounted for by ongoing commitments of what they call 'protracted relief aid', or multi-year donor commitments. This would then imply that there is inflexibility to respond to any new emergencies within the FAC's structure. The ODI concludes in the reference above that 'The Food Aid Convention has largely been ineffective in assuring stability in food aid levels. Traditionally strong links to agricultural surpluses are major sources of uncertainty'.

³⁴ 'Reforming food aid: time to grasp the nettle?'; ODI Briefing Paper, London, January 2000 at pages 1-4.

Similar views were raised by IFPRI in a 2007 study³⁵. Essentially IFPRI raises three concerns.

- Firstly they contend that the tonnages committed under the FAC are too low to be meaningful, they contend that '[the commitments] should represent a meaningful floor below which shipments should not fall'.
- Secondly representation on the Food Aid Committee is limited only to FAC signatories and as such recipient countries and NGOs are excluded from negotiations over FAC terms. This said IFPRI concedes that representatives from the World Food Programme (WFP), FAO, WTO, OECD, and the UN Conference on Trade and Development (UNCTAD) are able to attend as observers and are invited to speak to at certain meetings. Their concern is however that practically the representatives cannot attend the sessions when Committee members have not requested their presence.
- Thirdly the FAC operates without much transparency. The Fac provides remarkably little public information on its deliberations, even though the members are represented by officials of democratic governments that are accountable to their citizens. Background position papers provided by signatories are difficult to obtain and no minutes of the meetings are made publicly available.

This third critique can be confirmed by reference to Rule 18 of the FAC which requires that proceedings of the Fac remain confidential. It is thus also difficult for interviewees consulted in the research of the present paper to comment fully on their experiences in attending Fac meetings.

IFPRI makes the following suggestions in order to remedy the shortcomings of the FAC³⁶:

- Firstly the FAC needs to change its focus from the provision of food aid to one of 'preventing famine, reducing hunger and malnutrition, and working toward improved food security'. They postulate that this would clarify the appropriate role of food aid.
- Secondly the FAC should retain minimum commitments by members but the manner of calculating this tonnage could be revised. The IFPRI view is that better 'counting' will encourage more local purchases, micronutrient provision and enable greater donor coordination.
- Thirdly the Fac needs to ensure greater transparency in its workings. Documents should be posted publicly and the FAC could include a way of having representation from of recipient countries. It is also contended that international organizations, the private sector, and non governmental organizations have rights to observe and be heard at meetings.
- Fourthly the FAC should be revised so that better monitoring and evaluation are present, perhaps through a peer review mechanism.

Present interviews indicate that Africa needs to show a greater interest in the IGA in general terms, including the FAC and the Fac. In some sense Africa has itself reneged on its responsibilities as there are a very limited number of African active in the IGC. Only Kenya and South Africa are members from Sub-Saharan Africa. South Africa in particular has become a donor in the region and as such could be eligible for direct FAC membership. South Africa has attended some Fac meetings

³⁵ Hoddinott, J & Cohen, MJ: 'Renegotiating the Food Aid Convention: Background, Context, and Issues'; IFPRI Discussion Paper 00690, Washington DC, February 2007 at pages 4 & 17-22.

³⁶ 'Time to Update the Food Aid Convention'; IFPRI FORUM newsletter, July 2007, at page 7.

as an observer since 2004 and interviews suggest that the South African government is considering this option. In terms of the FAC a minimum tonnage of 20 000 tons of grain (or cash equivalent) is required as a commitment by new signatories. In the case of new members this tonnage can be built up over a 3 year period, but commencing at no less than 10 000 tons in the 1st year. Based on recent history it appears that South Africa is already contributing at these levels.

The views of the outgoing 2009 IGC Chairman, Mr. Itumeleng Makabanyane, a South African agricultural diplomat were surveyed for the study. He was of the view that African agriculture does have a role to play in food aid policy making. He comments that farmers should lobby the national governments to get membership status of the IGC and lobby South African government to join FAC – noting that there is no single aid recipient voice in the FAC; with this representation of recipient countries made by FAO and WFP, who may not necessarily master the social and political dynamics of all regions around the globe. In addition he contends that only meaningful involvement and participation in policy making decisions at national level by farmers and processors can result in an appropriate food aid policy mix and then national and regional farmer organizations can participate in IGC conferences and propose relevant conference themes which directly affect them.

Makabanyane also makes some further notable observations:

- At times the same assistance is counted twice because it is published by both the donor and the distributing agency. Food aid is sometimes accounted for and published as official development assistance and thus overestimated or underestimated the real food aid assistance attributable to one donor.
- Some donors club together development, food aid and emergency aid budgets. This can be used conveniently in anyway for international political gains.
- The international regulatory mechanisms for food aid are not efficient. Food aid often ends up in the wrong hands and does not reach target beneficiaries. Receiving authorities in beneficiary countries are often not accountable to donors or to the target beneficiaries.
- In conflict areas food aid is open to abuse and can be a power wielding tool for local receiving authorities. In functioning economies within a country or the region in which a receiving country occurs food aid may distort the market. Food aid agencies are likely to overestimate the food aid need in an effort to solicit more pledges. Donors often deliver less than they pledge.
- In some cases donating inputs (like fertilizers) may be both more cost effective and may effectively break aid dependency syndrome.
- Donors have monopoly over decisions and conditions of delivery, aid recipients have no say at this stage.

4.1.2. The FAO- CSSD

As regards reforms to the CSSD, Konandreas³⁷ makes suggestions as to the changes to the 'Principles of Surplus Disposal' and the operational procedures of the CSSD. These include:

³⁷ Konandreas, P. 'Multilateral mechanisms governing food aid and the need for an enhanced role of the CSSD in the context of the new WTO disciplines on agriculture'; Background paper presented at the FAO

1. Dovetailing the existing register of transactions with the definition for food aid as it becomes settled in the Doha Round of the WTO.
2. Allowing the CSSD makes better use of the pre-existing information at the FAO's GIEWS and WFP on food aid needs.
3. Changing the concept of 'Usual Marketing Requirements' (UMR) to one of 'Commercial Import Requirements' (CIR). The benefit of this would be to focus on the ability to import commercially assessed through a multilateral process, as compared to the UMR's bilateral determination.
4. Establishing a legal obligation in the WTO for donors to notify regularly and comprehensively their food aid transactions to the CSSD, which in turn would report formally to the WTO's Committee on Agriculture.
5. The name 'surplus disposal' is dated and does not reflect modern trade-speak in subsidy disciplines.
6. The seat of the CSSD should be housed within the FAO in Rome as opposed to its present removed location in Washington.

In considering an African view on these suggestions, Grant³⁸ observes that additional in country consumption is difficult to achieve in the face of food aid interventions and therefore the UMR tends to only safeguard the commercial interests of exporting countries and not necessarily the interests of domestic producers in the recipient country. Recognising this problem the UMR can be negotiated at a bilateral level to take into account additional factors. Recipient countries are thus likely to benefit from this process being multilateralised. Grant expresses the view that the concept of commercial import requirements (as proposed by Konandreas above) would do this by looking at the capacity of recipient countries to import commercially. The result would be a greater level of assurance provided to recipient countries that food aid would not be provided in levels that cannot be absorbed by the local market.

Interviewees have indicated a lack of familiarity with the CSSD and suggest that African countries do not participate actively in the CSSD, although several do attend the meetings. Clearly the activities of the CSSD need to be further investigated. As Barrett and Maxwell³⁹ observe the CSSD is 'lacking the legal status of a treaty and any enforcement mechanism, and organized around the objective of preventing trade displacement, the CSSD has languished as food aid has evolved'. This begs the question as to whether Africa needs to take its responsibility for this state of languish, as unlike at the FAC, Africans are present at the CSSD. Grant has observed that few Africans have actively participated in the CSSD meetings¹⁸.

4.1.3. The WTO

As regards the WTO, it appears that Africans have had the most positive and influential experience within this forum. This is especially so in that the African inputs into the Doha negotiations as regards food aid have essentially been driven by Africa and its inputs subsumed into the current negotiating texts. This being said it has come to light that because the WTO Members have decided not to reinvent

Informal Expert Consultation on food aid, Rome, January 2005 at pages 10-15.

³⁸ Comment made to the authors.

Also see Grant C: 'Food Aid: A Regional Study of Southern Africa'; chapter 6 in 'Trade in GMO Foods – Decoding Southern African Regulatory Approaches' edited by Draper P & Khumalo N; SAIIA Johannesburg July 2007 at pages 182 & 183.

³⁹ Barrett, C. and Maxwell, D: 'Towards a Global Food Aid Compact'; December 2005 version (unpublished, pending in Food Policy) New York 2005 at page 6.

food aid disciplines but to use the existing international architecture as it pertained to providing disciplines on trade. The implication for Africa is that trade rules are determined not only at the WTO but have been outsourced to the FAC and the FAO⁴⁰. Tripartite participation at all three these forums are this required if a country is to pursue a holistic domestic food aid policy.

4.1.4. Possible new structures

How will this reform work and how should the reform be directed as regards the FAC, CSSD and the WTO? There are those that suggest that the efforts of the FAC, CSSD and WTO all need to be replaced. They make reference to a 'Berlin Statement on Food Aid for Sustainable Food Security' that raises the concept of the Global Food Aid Compact (GFAC). This emanated from a food aid workshop in Germany in September 2003. Barrett and Maxell⁴¹ contend that the GFAC could include recipient governments and the distribution agencies with the donor countries. This would apparently improve the coherence of food aid given that it will assign explicit responsibilities under a code of conduct to all parties that join. To operationalise this, the proponents talk of a 'Global Food Aid Council'. This would be an interagency body drawing on existing technical capacity. The detail of this is unclear however the WTO Committee on Agriculture would apparently outsource its monitoring and compliance function to this GFAC, but then any disputes would be handled through the WTO. Only one interviewee made reference to the GFAC. We observe that this reflects a wider concept often seen where bodies and persons dealing with so-called 'non-trade concerns' have an aversion to WTO law, but cannot distance themselves from the WTO as it is the only effective form of economic dispute settlement available.

On the other hand the IGC Secretariat, for example, indicates that how to best address food insecurity is a topic being considered in a number of forums, with the 2008 global food price crisis reinforcing the need for urgent international cooperation and action. They mention that the 'Global Partnership for Agriculture and Food Security' (GPAFS), as well as the so called 'Comprehensive Framework for Action' of the UN High level Task Force, are major initiatives that seek to achieve greater coherence in setting global food security policies, including the provision of food aid. The Fac is being kept informed of GPAFS developments, its members recognising the importance of the linkages between food aid and other tools to help improve food security. The GPAFS may be a more lucid incarnation of the GFAC concept.

Africans will have to evaluate whether their preference is to reinvent the international food aid architecture, or elicit reform from within the existing structures⁴².

⁴⁰ The concern that a government's donations of food aid could be motivated more by a desire to promote domestic prices and dispose of a domestic surplus than in response to genuine need of the receiving country is not new. Indeed, it was in response to such concerns that donor country members of the FAO adopted the Principles of Surplus Disposal and Consultative Obligations in 1957. The objective of the Principles was to try to ensure that food aid resulted in additional consumption rather than displacing commercial transactions – which also became part of the mandate for the Doha negotiations on food aid. This was, for many in the negotiations, the primary concern because commercial displacement means other supplying countries lose out. Therefore, it is commercial displacement in non-emergency situations which has been the main target of food aid disciplines.

⁴¹ Barrett, C. and Maxwell, D: 'Towards a Global Food Aid Compact'; December 2005 version (unpublished, pending in Food Policy), New York 2005 at pages 10-14.

⁴² Recall from section 2 for instance that the present African chair of the IGC called for greater African participation in the IGC and related structures. This would seem to be a firm suggestion for reform from within.

Also, as in many policy formulation and execution scenarios, a focus on strengthened 'in country' structures has emerged as key in the reform of food aid structures and operations. In other words one has to be organized locally in order have the wherewithal to make effective international inputs.

4.2. Food Aid management

After addressing the institutional architecture some practical, functional aspects of the international regime also bear comment. The FAO releases an annual report titled 'The State of Food and Agriculture' (SOFA). Each year the report adopts a theme. In 2006 the adopted theme was 'food aid for food security'⁴³. The report draws in widely from findings in numerous food aid related literature. The report together with the present analysis thus provides a useful synthesis of possible policy approaches for food aid at a global level.

The FAO emphasises the importance of solid food aid management, and suggests food aid be provided in the form of cash or food coupons rather than food aid shipments, as the latter distorts international trade. A staggering ninety percent of food aid provided may be tied to specific donor demanded conditions, which often hampers implementing agencies in being efficient in food aid delivery and targeting. This is all said upon the caveat that there no substitute for food aid in coping with humanitarian crises where food aid has historically saved millions of lives. The main policy recommendations may be distilled as follows:

- Food aid should be seen as one of many options within a broader range of social support measures ensuring access of the poor to food.
- Cash transfers or food vouchers can stimulate local production, strengthen local food systems and empower recipients in ways that traditional in-kind food aid cannot.
- Eliminate programme (government to government) food aid which by its very construct is not specifically targeted to the needy.
- The monetization of aid should be ended. Currently one quarter of all food aid is sold in recipient countries to generate funds for development projects.
- Assistance aimed at improving markets might be more effective than in kind aid.
- Use local food aid procurement where possible as this can be of great benefit to agricultural development.
- Improve information systems, needs analysis and monitoring.
- Guard against the emergence of 'relief traps'. This occurs when extreme hunger triggers constant food aid delivery which eventually ignores medium to long term development strategies.

5. Concluding Comment

The agricultural sector is thus critical to the region as it plays a significant role in food security, job creation, poverty reduction, export revenue and rural development. It is crucial to prevent food aid from weakening it, and rather to seize the opportunity of making food aid a tool that contributes to unlocking the agricultural potential of the region to produce enough food for its people, enhancing

⁴³ 'The State of Food & Agriculture - Food Aid for Food Security?'; FAO, Rome 2006, Part 1 at pages 8-9. The following section is paraphrased from this source.

its commercial capacities as well as creating jobs for rural people. Food aid would then truly contribute to building sustainable food security and reducing poverty.

It is imperative that farmers in Southern Africa are brought up to speed on these issues and secondly develop positions with respect to a food aid mechanism addressing legitimate food needs without compromising local food production systems. These collective considerations highlight certain elements that would be appropriate for regional farmers to address, adopt or develop. In this regard a SACU food aid policy has been developed and adopted⁴⁴. In essence the policy draws on the analysis of the international legal regime for food aid. The farmers of Southern Africa recognize that Food Aid cannot be a replacement for the benefits that a long term food security strategy and related system will provide.

Southern African farmers acknowledge the necessity for and benefits of Food Aid to augment their productive activities in providing human relief in times when circumstances outside of the control of regional farmers lead to a shortage of food in the region to the extent that some people do not have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

However they also wish to guard against the introduction of ill timed and poorly targeted market disrupting food aid into their home and regional markets. Attention to ongoing international engagement, together with attention to in-country activities to back up this engagement, is a key part of what is seen to be the optimal policy approach for regional agriculture in the Food Aid sphere.

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⁴⁴ A summary of the key elements of this policy as adopted in April 2009 is provided in Annexure A to this paper.

6. Annexure A

The SACAU Food Aid Policy Positions

The following are the Southern African Confederation of Agricultural Unions (SACAU) policy positions on Food Aid:

SACAU,

1. Is of the view that food aid is simply a subset of food security and as such increased production efficiently combined with food imports, reserves, and international trade are appropriate tools to strengthen the food security position of a country.
2. Supports the reform of the Food Aid Convention under the auspices of the International Grains Agreement. In particular, SACAU would like to see the emergence of a mechanism for food aid recipient countries to make their voice heard at Food Aid Committee meetings under the Food Aid Convention.
3. In supporting its policy on reform of the FAC, SACAU encourages Southern African governments to accede to the International Grains Agreement under the auspices of the International Grains Council. Kenya and South Africa are seen as examples of best practice in this regard.
4. Endorses the presence and inputs of the International Federation of Agricultural Producers (IFAP) to the functioning of the FAO's CSSD.
5. Concurs with the views expressed in the WTO by the LDC Group and the Africa Group that disciplines on food aid should not have the effect of hindering the delivery of food aid to needy countries and communities. At the same time SACAU members, 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 requires greater transparency to achieve credibility with respect to the objectives and management of the food aid.
6. Seeks to constructively participate in ongoing food aid policy formulation processes within SADC and COMESA.
7. Aims to act as a forum where farmers' contributions into national and multinational structures can be synchronised and dovetailed in the interests of harmonization for national, regional and international efficiency in food aid provision.
8. Seeks the elimination of trade distorting agricultural export subsidies and thus promotes the view that countries providing trade distorting subsidies should be making a concomitantly greater contribution to food aid funding.
9. Is convinced that appropriate application of development funding and aid for trade initiatives to bolster inputs and infrastructure will reduce the need for food aid as local farmers will be better placed to provide sufficient food.
10. Encourages the development of national policies and regulations to handle GMO grain.
11. Supports the concept of enforcement of existing rights under international food aid agencies, if necessary through the dispute settlement mechanism of the WTO, to which these bodies are linked.
12. Endorses the practice of affording priority to regional stocks in the sourcing of food aid.