Arrangement Concerning Certain Dairy Products

MANAGEMENT COMMITTEE

Draft Decision concerning the Communication from the Consultative Sub-Committee on Surplus Disposal (MCDP/W/83)

Introduction

1. This document has been prepared in response to the request made by the Management Committee at its meeting of 21 November 1977. In accordance with the wishes of the Committee, its purpose is to provide information on transactions having both commercial and concessional features. To facilitate a decision regarding the questions raised in the communication from the Consultative Sub-Committee on Surplus Disposal (CSD), circulated as document MCDP/W/83, an effort has been made to prepare a draft decision concerning that communication.

Transactions having both commercial and concessional features

2. According to an FAO publication setting forth the basic texts leading to the adoption of the FAO Principles of Surplus Disposal, in 1953 the FAO Conference had recommended general principles that should be taken into account by governments in order to minimize adverse international effects of a situation characterized by the existence of surplus supplies of some agricultural commodities. Following these recommendations the Principles of Surplus Disposal were drawn up and the Consultative Sub-Committee on Surplus Disposal (CSD) was established in FAO in 1954.

3. Since 1963, the CSD has reported certain facts concerning the scope and nature of near-commercial and extra-commercial transactions in respect of agricultural commodities, and difficulties encountered in determining the extent to which governments were observing the Principles. Following FAO deliberations in 1969 and

1 The information in paragraphs 2-5 is taken from "FAO Principles of Surplus Disposal and Consultative Obligations of Member Nations" (FAO, Rome, 1972) and from the CSD communication to the secretariat (MCDP/W/83).
1970 to draw up a list of transactions and to reach agreement on the respective 
competence and responsibility of FAO and GATT, it had been concluded that the 
first 13 types in the list of transactions, excluding short-term credit sales, were 
primarily food-aid transactions and fell within the jurisdiction of FAO. The 
first 13 types constitute the "Catalogue of Transactions" that are subject to 
prior consultation and notification procedures in the CSD. The "Catalogue of 
Transactions" will be found in Annex I to this document.

4. "Grey area" transactions (i.e. transactions for which there was not agreement 
that they were either entirely commercial or entirely concessional) were generally 
understood as including (but not necessarily being limited to) types 14 through 19 
of the "List of Transactions" developed by the Committee on Commodity Problems (FAO). 
While having some concessional aspects, transactions of types 14 through 19 were 
considered to be directly related to commercial trade and therefore the 
responsibility of GATT. The "List of Transactions" will be found in Annex II to 
this document.

5. In short, of the 20 types of transactions included in the "List of 
Transactions" (Annex II), the first 13, with the exception of short-term credit 
sales, are subject to prior consultation and notification procedures in the CSD 
and constitute the "Catalogue of Transactions" (Annex I). Types 14 through 19 
of the "List of Transactions" has both commercial and concessional features, and 
are considered "grey area" transactions. It was agreed that the CSD had the 
mandate, after taking account of arrangements in other international negotiations, 
to examine any proposals for additions to or deletions from the "List of 
Transactions" and for modifications of the "Catalogue of Transactions". Although 
the CSD examined the possibility of expanding the "Catalogue of Transactions" by 
adding certain "grey area" transactions, no decision on the matter has ever been 
taken in FAO.

6. With regard to supply of skimmed milk powder on concessional terms, so far 
the secretariat has received information from EEC and New Zealand. The 
information communicated to the secretariat by EEC has been circulated in 
documents MCDP/W/40 and Add.1-3. That information relates to sales of skimmed 
milk powder to certain developing countries affected by natural disasters or 
experiencing a particularly difficult economic situation. The f.o.b. selling 
price was about US$28 per 100 kgs. and the total quantity of skimmed milk powder 
involved was 21,451.25 tons. The Regulation of 24 January 1975 authorizing these 

sales of skimmed milk powder at reduced prices to developing countries was 
modified on 28 July 1975 and subsequently cancelled as from 1 April 1976.
7. The information communicated to the secretariat by New Zealand concerning a transaction involving the supply of skimmed milk powder on concessional terms is contained in documents MCDP/W/62 and Add.1. The price of the skimmed milk powder was equivalent to US$150 per ton net f.a.s., and the powder was to be used for the furtherance of a social welfare programme in schools. This transaction between New Zealand and Egypt covered a quantity of 8,500 tons, for delivery between November 1976 and October 1977.

Draft decision concerning the communication from the CSD (MCDP/W/83)

8. With regard to the scope of the transactions envisaged in the Arrangement, the Committee noted that the transactions referred to in Article III, paragraph 8 of the Arrangement went somewhat beyond the framework of the transactions enumerated in the "Catalogue of Transactions" subject to prior consultation and notification procedures in the CSD.

9. The Committee was of the opinion that consequently the second sentence of Article III, paragraph 8 of the Arrangement was not to be interpreted as meaning that the members of the Committee must notify the CSD of all transactions effected under that paragraph of the Arrangement.

10. The Committee also noted that not all the signatories of the Arrangement were members of the CSD.

11. As to the suggestion made by some CSD representatives that the Management Committee of the Arrangement should refer transactions involving concessional elements to the CSD, it was noted that the provisions of the Arrangement did not empower the Management Committee to refer such transactions to the CSD. The Committee felt, however, that there was nothing in the Arrangement to prevent its signatories from bringing transactions involving concessional elements to the notice of the CSD.

12. Lastly, the Committee felt that if one of its members should send it data concerning arrangements for the supply of skimmed milk powder on concessional terms, it could decide to communicate such data to the CSD for information.

13. Attention was drawn to the fruitful relations existing between the Committee and the CSD. The wish was expressed that the Committee should maintain and develop those relations with the CSD.
ANNEX I

Catalogue of Transactions

1. Gifts or donations of commodities from a government to a government of an importing country, an intergovernmental organization or a private institution for free distribution directly to the final consumers in the importing country.

2. Gifts or donations of commodities from a government to a government of an importing country, or an intergovernmental organization or a private institution for distribution, by means of sale on the open market of the importing country.

3. Monetary grants by the government of an exporting country to an importing country, for the specific purpose of purchasing a commodity from the exporting country.

4. Monetary grants by a government either to a supplying country (or countries) or to a recipient country for the specific purpose of purchasing a commodity from the exporting country (or countries) for delivery to the specific recipient country.

5. Monetary grants by a government to an intergovernmental organization for the specific purpose of purchasing commodities in the open market for delivery to eligible importing countries (developing countries).

6. Transfers of commodities under the rules and established procedures of the World Food Programme.

7. Sales for the currency of the importing country which is not transferable and is not convertible into currency or goods and services for use by the contributing country.

8. Sales for the currency of the importing country which is partially convertible into currency or goods and services for use by the contributing country.


10. Sales on credit in which, as a result of government intervention, or of a centralized marketing scheme, the interest rates, period of repayment (including periods of grace) or other related terms do not conform to the commercial rates, periods or terms prevailing in the world market. In particular with respect to period of repayment, credit transactions are distinguished as follows: (a) ten years or more; (b) over three years and under ten years.

11. Sales in which the funds for the purchase of commodities are obtained under a loan from the government of the exporting country tied to the purchase of those commodities, distinguished as follows with respect to period of repayment: (a) ten years or more; (b) over three years and under ten years.

The delegate of India reserved his Government's position on the inclusion of this item.
12. Transactions under categories 1 to 4 and 7 to 11 subject to tied Usual Marketing Requirements or to tied Offset Purchasing Requirements.

13. Transactions under categories 1 to 4 and 7 to 11 tied to purchase of fixed quantities of the same or another commodity from the exporting country.
ANNEX II

List of Transactions

1. Gifts or donations of commodities from a government to a government of an importing country, and intergovernmental organization\(^1\) or a private institution for free distribution directly to the final consumers in the importing country.

2. Gifts or donations of commodities from a government to a government of an importing country, or an intergovernmental organization\(^1\) or a private institution for distribution, by means of sale on the open market of the importing country.

3. Monetary grants by the government of an exporting country to an importing country, for the specific purpose of purchasing a commodity from the exporting country.

4. Monetary grants by a government either to a supplying country (or countries) or to a recipient country for the specific purpose of purchasing a commodity from the exporting country (or countries) for delivery to the specific recipient country.

5. Monetary grants by a government to an intergovernmental organization\(^1\) for the specific purpose of purchasing commodities in the open market for delivery to eligible importing countries (developing countries).

6. Transfers of commodities under the rules and established procedures of the World Food Programme.

7. Sales for the currency of the importing country which is not transferable and is not convertible into currency or goods and services for use by the contributing country.

8. Sales for the currency of the importing country which is partially convertible into currency or goods and services for use by the contributing country.


\(^1\)Excluding World Food Programme, which is covered in 6.
10. Sales\(^1\) on credit in which, as a result of government intervention, or of a centralized marketing scheme, the interest rate, period of repayment (including periods of grace) or other related terms do not conform to the commercial rates, periods or terms prevailing in the world market. In particular with respect to period of repayment, credit transactions are distinguished as follows: (a) ten years or more; (b) over three years and under 10 years; (c) up to three years.\(^2\)

11. Sales\(^1\) in which the funds for the purchase of commodities are obtained under a loan from the government of the exporting country tied to the purchase of those commodities, distinguished as follows with respect to period of repayment: (a) ten years or more; (b) over three years and under ten years; (c) up to three years.\(^2\)

12. Transactions under categories 1 to 4 and 7 to 11 subject to tied Usual Marketing Requirements or to tied Offset Purchasing Requirements.

13. Transactions under categories 1 to 4 and 7 to 11 tied to the purchase of fixed quantities of the same or another commodity from the exporting country.

14. Sales in which, as a result of government intervention or of a centralized marketing scheme: (a) prices are inconsistent with price provisions of an international agreement for the commodity concerned; or (b) prices are lower than prevailing world prices;\(^3\) or (c) sales made in such ways as to disrupt prevailing world prices or the normal patterns of international trade.

15. Subsidized exports and imports, including special transport arrangements.

16. Barter transactions not involving price concessions: (a) government-sponsored; (b) not government-sponsored.\(^4\)

\(^1\)The delegate of India reserved his Government's position on the inclusion of this item.

\(^2\)Category (c) would include commercial and quasi-commercial transactions.

\(^3\)Or, in the case of multiyear contracts, at prices lower than can be reasonably expected to prevail in international markets for the duration of the contract.

\(^4\)The delegate of Pakistan reserved his Government's position on the inclusion of this item.
17. Barter transactions involving price concessions: (a) government-sponsored; (b) not government-sponsored.¹

18. Sales for non-convertible currency: (a) involving price concessions; (b) not involving price concessions.

19. Any other categories of government-sponsored transactions which may interfere with normal commercial trade.

20. Transactions which conform to the usual commercial practices in international trade and which do not include those transactions listed above.

¹The delegate of Pakistan reserved his Government's position on the inclusion of this item.