

**National Interest Analysis [2013] ATNIA 10
with attachment on consultation**

Food Assistance Convention

(London, 25 April 2012)

[2012] ATNIF 31

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the *Food Assistance Convention*, adopted at London on 25 April 2012 (the Convention). Australia signed the Convention on 21 December 2012.
2. In accordance with its Article 15(1), the Convention entered into force generally on 1 January 2013, as five Signatories had deposited instruments of ratification, acceptance or approval by 30 November 2012.
3. It is proposed that Australia ratify the Convention as soon as practicable following consideration by the Joint Standing Committee on Treaties. Under its Article 15(3), the Convention would enter into force for Australia on the date of the deposit of its instrument of ratification.
4. The Convention replaces the *Food Aid Convention 1999* [1999] ATS 28, which expired on 30 June 2012.

Overview and national interest summary

5. The purpose of the Convention is to save lives, reduce hunger, improve food security, and improve the nutritional status of the most vulnerable populations. The Convention is broadly similar to the *Food Aid Convention 1999*, expanding the traditional focus to include all forms of food assistance that will protect and improve access to food for those most in need. The Convention includes a fresh commitment structure, a broader range of eligible activities and food assistance products, as well as a commitment to improved transparency and accountability.
6. Ratification would reinforce Australia's reputation as a country committed to global food security.

Reasons for Australia to take the proposed treaty action

7. Ratification of the Convention would reflect Australia's commitment to improving global food security as well as its commitment to ensuring food assistance is in line with current practice for the provision of food assistance. The Convention is consistent with current Australian food assistance policies and incorporates current best practice in food assistance. In particular, it is now well recognised that a broader range of food assistance tools (beyond the direct provision of food and cash) are required to address food insecurity and its root causes. As such, a broader range of tools can now be counted towards meeting commitments under the Convention, including cash and vouchers, all products in international organisations' food baskets (such as ready-to-use supplementary foods, micronutrients, and high energy biscuits), and appropriate twinning¹ costs.

8. The Convention maintains and builds on the provisions of the *Food Aid Convention 1999*. Failure to ratify the Convention (after the expiration of the *Food Aid Convention 1999* on 30 June 2012) could undermine Australia's longstanding reputation as a participant in global fora to ensure assistance to those in need of food.

9. The Convention is consistent with Australia's active participation in the World Trade Organization (WTO) Committee on Agriculture in considering food aid and food assistance related issues under the WTO *Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries*. The Convention is also consistent with Australia's negotiating position in the WTO Doha Round of agricultural negotiations with regard to our efforts to prevent commercial displacement, including of local agricultural production, by avoiding harmful interference with normal patterns of production and international commercial trade. To this end, elements of the current Doha agriculture negotiating text were incorporated as non-binding components of the Convention.

Obligations

10. The Preamble of the Convention states that Parties are determined to act in accordance with their WTO obligations, in particular any WTO disciplines on food aid.

11. Article 1 states that the objectives of the Convention are to save lives, reduce hunger, improve food security and improve the nutritional status of vulnerable populations by: addressing the food and nutritional needs of the most vulnerable populations through commitments made by the Parties; ensuring that food assistance is appropriate, timely, effective and efficient; and facilitating information sharing, cooperation and coordination to make the best use of the Parties' resources.

12. Article 2 sets out principles for the delivery of food assistance, grouped under four headings:

¹ 'Twinning' is a form of support that fosters cooperation between development partners, including emerging donors and developing countries. Under twinning arrangements, emerging donors donate food through the World Food Programme, while established donors provide the funds to transport that food to where it is needed most.

- General principles of food assistance: for example, providing food assistance effectively, efficiently and appropriately based on need and in ways that do not adversely affect local production, market conditions and commercial trade;
- Principles of food assistance effectiveness: for example, purchasing food assistance locally or regionally, wherever possible and appropriate; providing untied cash-based food assistance whenever possible; and not using food assistance to promote the market development objectives of the Parties;
- Principles on the provision of food assistance: for example, targeting food assistance according to the food and nutrition needs of the most vulnerable populations; and
- Principles of food assistance accountability: for example, taking specific and appropriate measures to strengthen the accountability and transparency of food assistance policies, programs and operations.

13. Article 3 sets out the relationship between the Convention and the Parties' WTO obligations. *Inter alia*, Article 3 provides that in the event of a conflict, the Parties' WTO obligations will prevail over the Convention.

14. Article 4 sets out eligible food assistance products, activities and recipients. Eligible activities for the fulfilment of a Party's minimum annual commitment (see below) include the provision and distribution of eligible products; provision of cash and vouchers; and nutritional interventions. A nutritional intervention is a treatment based on a nutritional assessment. This involves planned actions intended to positively change a nutrition-related behaviour, environmental condition, or aspect of health status for an individual and/or target group and may, for example, involve dietary changes (such as vitamin supplements) or nutritional education (such as promotion of breastfeeding).

15. Pursuant to Article 5, each Party agrees to make an annual commitment of food assistance under the Convention, known as the "minimum annual commitment". Article 5 establishes requirements for the notification of the initial minimum annual commitment (Article 5(4)), changes to the minimum annual commitment (Article 5(5)), and the form that contributions should take (Article 5(7)). Under the Convention, Parties may self-determine the level of their minimum annual commitment and the type of contribution they will make towards their minimum annual commitment. Minimum annual commitments may be expressed in terms of value, volume (for example, tonnes of grain), or a combination of both (Article 5(2)). Contributions may be delivered bilaterally, through intergovernmental or international organisations or through other food assistance partners (Article 5(12)). Parties undertake to conduct the delivery of food assistance in a way which does not interfere with normal patterns of production and trade (Article 5(8)). The delivery of food assistance may not be explicitly or implicitly tied to commercial exports (Article 5(9)). If a Party is unable to meet its minimum annual commitment for a particular year, the shortfall will be added to its minimum annual commitment for the following year unless the Food Assistance Committee decides otherwise or extraordinary circumstances justify not doing so (Article 5(13)). If a Party's contribution exceeds its minimum annual commitment, the excess (up to a limit of five per cent of its minimum annual commitment) may be counted as part of that Party's contribution for the following year.

16. Article 6 of the Convention relates to annual reporting requirements. Article 6(1) states that each Party shall provide an annual report within 90 days after the end of the calendar year. The report details how the Party met its minimum annual commitment under the Convention.

17. Article 7 establishes the Food Assistance Committee, consisting of all Parties, as the decision-making body of the Convention. Decisions are taken by consensus. Article 8 sets out the responsibilities of the Chair and Vice-Chair of the Committee. Article 9 outlines the obligations of the Committee, such as holding at least one formal session a year (Article 9(2)). Article 10 establishes a Secretariat to carry out the instructions of the Committee. Article 11 provides that the Committee shall seek to resolve any dispute among the Parties concerning the interpretation or implementation of the Convention or the associated (non-treaty level) Rules of Procedure and Implementation.

Implementation

18. No changes to Australia's laws would be required for Australia to meet its obligations under the Convention. There will be no changes to the existing roles of the Commonwealth Government and the State and Territory governments.

Costs

19. There are no costs associated with the ratification of the Convention, as existing Commonwealth, State and Territory laws and practices comply with the provision of the Convention. Australia is only under an obligation to meet its minimum annual commitment, which is self-determined (Article 5). Australia will meet its commitment relating to food assistance through the Australian aid program. Australia's minimum commitment under the *Food Aid Convention 1999* was 150,000 wheat equivalent (*FAC equivalent*) tonnes² per annum. Australia has not provided in-kind food aid since December 2005. (Australia's food assistance is predominantly provided through the aid program's support to the United Nations World Food Programme).

20. The Convention gives Parties the option to declare their commitment as either a 'metric tonne wheat equivalent' or a cash commitment. The level and nature of Australia's minimum annual commitment is yet to be determined. Under the terms of the Convention (Article 5(4)), Australia will have 3 months from accession to determine its commitment option (FAC equivalent tonne or cash) and the specific commitment amount being valid on an annual basis. We anticipate that prior to taking this decision, the Australian Agency for International Development (AusAID) will consult with the Department of Foreign Affairs and Trade (DFAT), the Department of Agriculture, Fisheries and Forestry (DAFF) and the Minister for Foreign Affairs.

21. Australia's ratification of the Convention is a commitment for Australia to deliver a certain minimum amount of food assistance through the aid program. It does not require additional funds outside of the aid (Official Development Assistance) budget allocation. The commitment of Parties to the Convention represents a collective commitment among responsible aid donors to provide a minimum level of global food assistance through national aid programs.

² A 'wheat equivalent tonne' is a measurement defined under the Food Aid Convention. It is used by the international donor community to compare the value of food assistance provided, ensuring a standard value of contributions, irrespective of the market price of various goods. For instance, if rice is cheaper than wheat, more rice would need to be provided to make up a donor's annual pledge.

Regulation Impact Statement

22. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action

23. Under Article 16 of the Convention, any Party may propose an amendment to the Convention. Any proposed amendment shall be circulated by the Secretariat to each of the Parties at least six months in advance for discussion at the next formal session of the Committee. Proposals adopted by the Committee shall be circulated to Parties for acceptance. An amendment shall enter into force for those Parties having notified their acceptance of the amendment, ninety days after the date on which the Depositary has received such notifications from not less than four fifths of the number of Parties to the Convention on the date of adoption of the proposed amendment by the Committee. Such an amendment shall enter into force for any other Party ninety days after that Party deposits its notification of acceptance. The Committee may decide that a different threshold be used to trigger the entry into force of a specific amendment.

24. The Convention does not provide for the negotiation of future legally binding instruments.

25. Any proposal to take binding treaty action in respect of an instrument arising out of a revision of the Convention would be subject to Australia's domestic treaty-making procedures, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

26. Article 17 provides for withdrawal and termination. Any Party may withdraw from the Convention at the end of any year by giving written notice of withdrawal to the Depositary and the Committee at least ninety days prior to the end of that year. That Party shall not be released from its minimum annual commitment or reporting obligations incurred under the Convention, while it was a Party, that have not been discharged by the end of that year. Any Party may propose the termination of the Convention at any time after its entry into force. A proposal to terminate must be communicated in writing to the Secretariat and shall be circulated by the Secretariat to all of the Parties at least six months in advance of its consideration by the Committee.

27. Any action to denounce the Convention, or ratify a replacement convention, would be subject to Australia's domestic treaty-making procedures.

Contact details

Multilateral Trade Branch
Trade and Market Access Division
Department of Agriculture, Fisheries and Forestry

ATTACHMENT ON CONSULTATION

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CONSULTATION

28. As the agency with administrative responsibility for the Convention, DAFF has consulted in advance of and throughout the negotiation and in the lead up to Australia's signature and domestic ratification of the Food Assistance Convention with key Australian Government agencies, including AusAID and DFAT. AusAID and DFAT, on behalf of Australia, led the negotiations for the Food Assistance Convention. This was undertaken through Australia's attendance, represented by AusAID, at the Food Assistance Committee (previously Food Aid Committee) session and meetings during 2011, 2012 and February 2013. Also present at these meetings are other Food Assistance Committee member states, including Canada, European Union, Japan, Switzerland, United Kingdom and United States of America.

29. Information on the Convention was provided to states and territories at the meeting of the Standing Committee on Treaties in October 2011. No questions or concerns were raised.