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FOOD AID CONVENTION 1999

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SEPTEMBER 5, 2000.—Ordered to be printed

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Mr. HELMS, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany Treaty Doc. 106-14]

The Committee on Foreign Relations, to which was referred the Food Aid Convention 1999, which was open for signature at the United Nations Headquarters, New York, from May 1 through June 30, 1999, and signed by the United States on June 16, 1999, having considered the same, reports favorably thereon with three declarations and one proviso, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The purpose of the Food Aid Convention 1999 (“the Convention”), which replaces the Food Aid Convention 1995, is to establish a level of food aid commitments that would cover as wide a range of donors and donative foodstuffs as possible in order to meet the legitimate needs of developing countries. The Convention provides an international, donors-only forum to discuss food assistance. Donor members make minimum annual commitments which can be designated either by quantity or, pursuant to a new provision, the value of the food aid they will provide to developing countries. Under the 1999 Convention, the United States will continue to be

committed to donate or sell on favorable terms at least 2.5 million tons of food aid annually.

Innovations in the new Convention include broadening of the list of eligible commodities beyond grains and legumes to include such critical food products as edible oils and milk powder; encouragement of parties to fortify contributed food and to provide dietary supplements such as vitamins by counting these products toward a party's annual contribution; encouragement of parties to provide food aid to difficult-to-reach destinations by permitting transport and other operational costs to be counted toward a party's contribution; promoting local agricultural development and markets in recipient countries; and improving information-sharing and coordination among members.

## II. BACKGROUND

The Food Aid Convention 1999 replaces the Food Aid Convention 1995, which expired on June 30, 1999. The Convention was signed by the United States on June 16, 1999. It entered into force on July 1, 1999, and will remain in force until June 30, 2002, unless extended further.

Under Article XXII(b) of the Convention, each signatory state was given until June 30, 1999, to deposit its instrument of ratification for the Convention. At the June 12–13, 2000, meeting of the Food Aid Committee in Regina, Alberta, Canada, the United States obtained an extension until June 30, 2001, to deposit its instrument of ratification of the Convention. In the interim, the United States has continued to participate provisionally in the Food Aid Convention.

Under the Convention, parties will continue to commit themselves to minimum levels of food aid to developing countries. All parties to the 1995 Convention (*see* Senate Exec. Rept. 105–16), including the United States, the European Community and its member states, Japan, Canada, Australia, Norway, Switzerland and Argentina, are either already parties to the 1999 Convention or intend to become parties. Under the 1999 Convention, the United States will continue to be committed to donate or sell on favorable terms at least 2.5 million tons of food aid annually.

The foreign food aid programs of the United States are either authorized in permanent statute under the Agricultural Act of 1949, as amended, or through fiscal year 2002 under the Federal Agricultural Improvement and Reform Act of 1996, and appropriations are made each year through the Agricultural appropriations legislation. Other food aid is in the form of loan programs operated under the Commodity Credit Corporation. There is no apparent conflict between the requirements of the Convention and U.S. programs.

Prior Food Aid Conventions have been adopted simultaneously with the Grains Trade Agreement. However, because of 1996 developments at the Singapore Ministerial on food and the World Food Conference in Rome, the parties decided to update the Food Aid Convention independently of the Grains Trade Agreement, and accordingly adopted the 1999 Food Aid Convention. The Grains Trade Agreement remains in effect, and separating the two agreements for the purpose of updating the Food Aid Convention has no adverse operational or legal effect on either.

## III. SUMMARY

## A. IN GENERAL

In submitting the Convention to the Senate, the Executive Branch stated that the Convention will not require United States implementing legislation. Further discussion of the Convention's objectives is set forth in Treaty Doc. 106-14.

The Convention consists of a preamble and four main parts, including a total of twenty seven articles.

*Part I—Objectives and Definitions (Articles I and II)*

Part I of the Convention sets out the Convention's objectives, and contains definitions of terms used in the Convention. As stated in Article I, the main objectives of the agreement are to "contribute to world food security and to improve the international ability to respond to food emergencies and other food needs of developing countries by making food aid available on a predictable basis." The Convention defines a "developing country" as "any country or territory eligible to receive food aid under Article VII." (Art. II(a)(vii)). Article II defines "eligible products" as a product which may be counted as food aid by a donor as part of its commitment under the Convention (Art. II(a)(viii)).

*Part II—Contributions and Needs (Articles III–XIV)*

Part II of the Convention sets out the basic food aid commitments of the parties, and the guidelines for the types of aid which fulfill the commitments of each party (Art. III). Donor countries listed in the Convention are Argentina, Australia, Canada, the European Community and its member States, Japan, Norway, Switzerland and the United States (Art. III(e)).

Permitting party commitments to be expressed in terms of value is one of the innovations in the 1999 Convention. Article III establishes the commitment of each of the members, which may be expressed in terms of either tons of wheat equivalent or in value, where "value" means the commitment in convertible currency, or a combination of tonnage and value. Donors expressing a commitment in value must also specify a guaranteed annual tonnage.

Permitting some transport and operational costs to count toward fulfillment of a commitment is a new feature of the 1999 Convention, intended to encourage parties to contribute food aid to remote destinations. Annex A lists the types of costs permitted to count as part of a commitment.

Under Article IV, the basic list of eligible products to be included as food aid under the commitments of this Convention has been expanded beyond the grains, grain products, and pulses/legumes on the list in the 1995 Convention. The new Convention's basic list now includes edible oil, root crops (potatoes, yams, taro, cassava) provided through triangular transactions or in local purchases, skimmed milk powder, sugar, seed for eligible products, and products which are a part of the traditional diet of the recipients or are part of a supplementary feeding program.

Another new Article IV feature of the 1999 Convention permits parties to count vitamins and minerals toward their commitments, and encourages parties to provide fortified food aid products. Arti-

cle V provides that food aid contributions shall be counted in terms of their wheat equivalent, as calculated in accordance with Rules of Procedure established by the Food Aid Committee. A Food Aid Committee Rule will also determine the wheat equivalent of micro-nutrients and products fortified with micro-nutrients.

Article VI provides guidelines for the permissible carry-over of annual commitments from year-to-year. Article VII defines which countries are eligible for food aid under the Convention. Article VIII sets out the general principles for distributing food aid, according to the greatest need, and provides for more consultation and better communication among parties with respect to needs evaluation and prioritization. These guidelines are new in the 1999 Convention.

Article IX prescribes the forms and terms of food aid in greater detail than the previous Convention. Aid may be in the form of (1) grants of food or of cash to purchase food; (2) sales of food in exchange for the currency of the recipient country, which is not transferable nor convertible into currency, goods or services for use by the donor; and (3) sales of food on credit, with payment extended over 20 or more years and at interest rates below the prevailing commercial rates.

Article X sets out food aid transportation and delivery guidelines. Transportation costs beyond the free on board (f.o.b.) stage shall as far as possible be covered by the donors. Article XI provides that parties may channel their food aid bilaterally, through intergovernmental or other international organizations, or non-governmental organizations. Article XII provides for the promotion of local agricultural development, local markets, and long-term food security through triangular transactions.

Article XIII sets out principles and guidelines intended to maximize the effectiveness and positive impact of food aid, while minimizing potential negative impact on local markets. Article XIV provides for regular reporting by the parties to the Food Aid Committee on every aspect of their food aid contributions and operations, including, among other things, amount, content, transportation costs, cash contributions, any local purchases or triangular transactions, and any arrangements for the future supply of food aid.

### *Part III—Administration (Articles XV–XX)*

Part III of the Convention establishes the Food Aid Committee, its functions, composition, meetings, and the settlement of disputes.

Article XV provides that every party to the Convention is a member of the Committee and that each shall designate a representative who shall reside at the seat of the Committee and to whom all Committee communications may be addressed. Article XVI authorizes the Committee to make decisions and establish Rules of Procedure necessary to implement the Convention. Article XVII provides for the appointment of a Chairman and a Vice-Chairman for the following year at the last session held each year and describes the duties of the Chairman in presiding over the sessions, with the Vice-Chairman serving in place of the Chairman when the Chairman is absent.

Article XVIII provides for biannual sessions in conjunction with the statutory sessions of the International Grains Council. The Committee shall also meet at such other times as the Chairman shall decide, at the request of three members, or as otherwise required by the Convention. The seat of the committee shall be in London. Article XIX provides that the Committee shall rely on the Secretariat of the International Grains Council for administrative support, and an Executive Director shall perform other duties established by the Convention and the Rules of Procedure.

Under Article XX, the Committee shall meet to take appropriate action in any dispute concerning the interpretation and application of the Convention and any “default” in meeting commitments under the Convention. The members shall “take account of” any decisions and conclusions reached by consensus by the Committee in disputes. The Committee on Foreign Relations understands that such decisions and conclusions are not mandatory or binding upon the United States.

*Part IV—Final Provisions (Articles XXI–XXVII)*

Part IV provides for the terms of signature, ratification, accession, entry into force, and withdrawal and duration.

Under Article XXV, the Convention shall remain in force until and including June 30, 2002, unless extended or terminated earlier, provided that the Grains Trade Convention remains in force. Article XXVI provides that this 1999 Convention shall replace the 1995 Convention, as extended, and shall be one of the constituent instruments of the International Grains Agreement, 1995. Article XXVII provides that the English, French, Russian and Spanish texts of the Convention shall be equally authentic.

B. KEY PROVISIONS

The heart of the Convention is Article III, which defines donor contributions in detail.

Article III establishes the minimum contribution commitment of each of the parties, which may be expressed in terms of either tonnes of wheat equivalent, where a “tonne” means a metric ton of 1,000 kilograms, or in value, where “value” means the commitment in convertible currency, or as a combination of both. Donor parties expressing their commitment in value must also specify a guaranteed annual tonnage. Permitting party commitments to be expressed in terms of value is one of the innovations in the 1999 Convention.

Where the party commitment is expressed wholly or in part as value, the value may include the transport and other operational costs related to food aid operations. A party may include an indicative value representing its total estimated cost, including the transport and other costs associated with food aid operations. Permitting transport and operational costs to count toward fulfillment of a commitment is a new feature of the 1999 Convention, intended to encourage parties to contribute food aid to remote destinations. Annex A lists the types of costs which may be credited as part of a commitment.

Transport and other costs credited as part of a party’s commitment must be associated with a food aid operation which is also eli-

gible to be counted towards a party's commitment. A party cannot count transport and other operational costs in excess of the acquisition cost of eligible products towards its commitment, except for internationally recognized emergencies. Food aid products must meet international quality standards, be compatible with the dietary habits and nutritional needs of the recipients and be suitable for human consumption.

In the 1999 Convention, the commitment of each country which was a party to the 1995 Convention is specified; the United States is committed to 2.5 million tons (as in the previous Convention) with a total indicative value of \$900 million to \$1 billion. As in the case of the 1995 Convention, under the 1999 Convention the United States is the largest donor nation, followed by the European Community. Minimum party commitments (in tons) are set forth in Article III(e) as follows:

Argentina .....	35,000
Australia .....	250,000
Canada .....	420,000
European Community and its member states .....	1,320,000
Japan .....	300,000
Norway .....	30,000
Switzerland .....	40,000
United States of America .....	2,500,000

As noted above, parties "shall, to the extent possible," bear the costs of transporting and delivering food aid beyond the f.o.b. stage, particularly in the case of emergency food aid or food aid provided to priority recipient countries (Art. X(a)).

New parties acceding to the 1999 Convention who were not parties to the 1995 convention shall be deemed to be listed under Article III with their respective commitments, which shall be not less than 20,000 tons, applicable in full from the first year of accession. However, to facilitate accession of new parties, the Food Aid Committee may agree that a new party's commitment shall be phased in over a period of not more than three years, provided that the commitment is at least 10,000 tons in the first year and increases by at 5,000 tons yearly thereafter. The Food Aid Committee may approve an appropriate value other than the amounts specified as the minimum commitment for new parties.

#### IV. ENTRY INTO FORCE AND TERMINATION

##### A. ENTRY INTO FORCE

The Convention entered into force on July 1, 1999. On October 13, 1999, the President submitted the Convention to the Senate for advice and consent. The Convention limits accession until June 30, 2000, unless extensions are granted. The United States has been granted an extension until June 30, 2001, and may accede to the Convention by submitting its instrument of accession to the Secretary General of the United Nations.

## B. WITHDRAWAL

Parties may withdraw from the Convention at the end of any calendar year by giving written notice of withdrawal to the Secretary General of the United Nations at least ninety days prior to the end of that year. However, the party's unfulfilled obligations under the Convention continue through the end of the withdrawal year.

## V. COMMITTEE ACTION

The Committee on Foreign Relations held an informal public meeting on the Convention on July 20, 2000 (a transcript of the session and questions for the record can be found in the appendix to Executive Report 106–16, Convention (No. 176) Concerning Safety and Health in Mines, also filed this day).<sup>1</sup> The Committee considered the Convention on July 26, 2000, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Convention subject to three declarations and one proviso.

## VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Convention. On balance, the Committee believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification.

## VII. EXPLANATION OF PROPOSED CONVENTION

For the Executive's description of the proposed Convention, see the corresponding Letter of Submittal from the Secretary of State, which is set forth at pages V–VI of Senate Treaty Doc. 106–14.

## VIII. TEXT OF THE RESOLUTION OF RATIFICATION

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Food Aid Convention, 1999, which was open for signature at the United Nations Headquarters, New York, from May 1 through June 30, 1999, and signed by the United States on June 16, 1999 (Treaty Doc. 106–14), referred to in this resolution of ratification as “The Convention,” subject to the declarations of subsection (a) and the proviso of subsection (b).

(a) DECLARATIONS.—The advice and consent of the Senate is subject to the following declarations:

(1)NO DIVERSION.—United States contributions pursuant to this Convention shall not be diverted to government troops or security forces in countries which have been designated as state sponsors of terrorism by the Secretary of State.

(2)PRIVATE VOLUNTARY ORGANIZATIONS.—To the maximum feasible extent, distribution of United States contributions under this Convention should be accomplished through private voluntary organizations.

<sup>1</sup>On the day the Committee was scheduled to conduct a hearing on the treaty, permission to do so pursuant to Senate Rule 26(5)(a) had not been granted. Therefore, the Committee proceeded in informal session. A transcript is appended to Executive Report 106–16.

(3) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the State Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISO.—The advice and consent of the Senate is subject to the following provisos:

(1) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.