
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 136

Treaty tabled on 14 May 2013

Food Assistance Convention (London, 25 April 2012)

August 2013
Canberra

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Membership of the Committee

Chair	The Hon Richard Marles MP <i>(from 8/5/13)</i>	
	Senator Matthew Thistlethwaite <i>(from 14/2/13 to 8/5/13)</i>	
	Mr Kelvin Thomson MP <i>(until 6/2/13)</i>	
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Members	The Hon Justine Elliot MP <i>(from 6/2/13 to 22/4/13)</i>	Senator the Hon Kim Carr <i>(from 14/5/13)</i>
	Mr Laurie Ferguson MP <i>(from 14/3/13)</i>	Senator David Fawcett
	Mr John Forrest MP	Senator Scott Ludlam
	Ms Sharon Grierson MP	Senator the Hon Lisa Singh
	Mr Harry Jenkins MP	Senator Dean Smith
	Ms Kirsten Livermore MP	Senator Matthew Thistlethwaite <i>(from 13/2/13 to 14/5/13)</i>
	The Hon Richard Marles MP <i>(from 22/4/13)</i>	Senator the Hon Lin Thorp
	The Hon Robert McClelland MP <i>(until 14/3/13)</i>	
	Ms Melissa Parke MP <i>(until 6/2/13)</i>	
	Mrs Jane Prentice MP	
	The Hon Dr Sharman Stone MP	
	Mr Mike Symon MP <i>(from 6/2/13)</i>	

Committee Secretariat

Secretary	Russell Chafer
Inquiry Secretary	Katie Ellis
	Kevin Bodel
	Dr Andrew Gaczol
Researcher	Rhys Merrett
Administrative Officers	Heidi Luschtnetz
	Dorota Cooley



Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of recommendations

2 Food Assistance Convention

Recommendation 1

The Committee recommends that the Australian Government provide both in-kind and cash support to meet its food aid commitments, as allowed in the convention and as practiced by other developed countries.

Recommendation 2

Subject to Recommendation 1 being adopted, the Committee supports the *Food Assistance Convention (London, 25 April 2012)* and recommends that binding treaty action be taken.

x

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Food Assistance Convention* (London, 25 April 2012) tabled on 14 May 2013 and proposed for ratification.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaty examined in this report does not require an RIS.
- 1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.

- 1.7 Copies of the treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
<http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/14may2013/tor.htm>

Conduct of the Committee's review

- 1.8 The treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions for the treaty were requested by Friday, 7 June 2013 with extensions available on request.
- 1.9 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.10 The Committee examined witnesses on the treaty at a public hearing held in Canberra on Monday, 17 June 2013.
- 1.11 The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **14 May 2013**
- <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/14may2013/hearings.htm>
- 1.12 A list of submissions received and their authors is at Appendix A
- 1.13 A list of witnesses who appeared at the public hearing is at Appendix B.

Food Assistance Convention

Background

- 2.1 The *Food Assistance Convention 2012* aims to ‘save lives, reduce hunger, improve food security, and improve the nutritional status of the most vulnerable populations’.¹
- 2.2 The Convention maintains and builds on the provisions of the *Food Aid Convention 1999*,² to which it is broadly similar.³
- 2.3 The Food Aid Convention operated from 1967 as a separate legal instrument under the *International Grains Agreement 1995*, which reflected tightening grain markets and the desire of food aid donors to share their efforts with other countries. Donors pledged to provide annually specified minimum amounts of food aid to developing countries in the form of grains and other eligible products. This aimed to contribute to world food security and improve the ability of the international community to respond to emergency food situations and other food needs of developing countries.⁴
- 2.4 In 2004, a renegotiation of the 1999 Convention was undertaken ‘to strengthen its capacity to meet identified needs when food aid is the

1 Food Assistance Convention (London, 25 April 2012), New York, 21 December 2012 (Not yet in force [2012] ATNIF 31), Article 1.

2 National Interest Analysis [2013] ATNIA 10 with attachment on consultation, Food Assistance Convention, (London, 25 April 2012) [2012] ATNIF 3 (Hereafter known as NIA) para. 8.

3 NIA para. 5.

4 Food Aid Convention, *Contributing to world food security*, <<http://www.foodaidconvention.org/en/index/aboutthefac.aspx>>, accessed 17 May 2013.

appropriate response'. However, the Food Aid Committee decided to await the outcome of trade-related food aid issues being addressed in the WTO Doha agriculture negotiations. In the interim the existing Convention was extended, most recently with effect from 1 July 2009.⁵ Australia has been a signatory to the various iterations of this Convention since 1968.⁶

2.5 At the 106th session of the Food Aid Committee in June 2012, members agreed not to further extend the Convention and accordingly it expired at the end of that month. The new Food Assistance Convention came into effect on 1 January 2013.⁷

2.6 According to the Department of Agriculture, Fisheries and Forestry:

The main difference between the new Convention and the 1999 version is a preference for aid to be given in grant form, rather than in-kind food aid.

The new Convention states that food assistance should be provided in fully grant form, whenever possible.⁸

2.7 The above quote implies that in-kind food aid is outside of the definition for 'fully grant form'. However, further information received by the Committee clarified that 'fully grant form' means contributions provided as either cash or in-kind (commodity), 'where there is no agreement and/or expectation for repayment – it is provided unconditionally'⁹. The conditions important in this definition are that:

- there should be no 'harmful interference with normal patterns of production and internal commercial trade'; and
- the provision of assistance is not tied to 'commercial exports ... to recipient countries'.¹⁰

2.8 The Food Assistance Convention states that food assistance should be purchased 'locally or regionally, whenever possible and appropriate' and

5 Food Aid Convention, *Contributing to world food security*, <<http://www.foodaidconvention.org/en/index/aboutthefac.aspx>>, accessed 17 May 2013.

6 Department of Agriculture, Fisheries and Forestry, *Submission 1*, p. 1.

7 FAC press release, Meeting of the Food Aid Committee, London 11 June 2012, <http://www.foodaidconvention.org/Pdf/p_r/facjune12.pdf>, 12 June 2012, accessed 17 May 2013.

8 Department of Agriculture, Fisheries and Forestry, *Submission 1*, p. 1.

9 AusAID, *Submission 5.1*, p. 1.

10 Food Assistance Convention, Article 5.

‘increasingly provide untied cash-based food assistance, whenever possible and based on needs’.¹¹

2.9 In relation to the ‘not less than 80 per cent’ of Australia’s minimum annual commitment provided under this Convention (which is to be in fully grant form), the assistance may be comprised of grants of commodities or cash, in any proportion, so long as they are provided ‘in line with the stipulations of Article 5.7 and other criteria for eligibility’¹².

2.10 The objectives of the Food Assistance Convention include:

- commitments by Parties to provide food assistance that improves access to, and consumption of, adequate, safe and nutritious food;
- ensuring food assistance is appropriate, timely, effective, efficient, and based on needs and shared principles; and
- facilitation of information-sharing, cooperation, and coordination, and a forum for discussion to improve the effective, efficient, and coherent use of Parties’ resources to respond to needs.¹³

2.11 The Food Assistance Convention expands the focus of previous Food Aid Conventions and now includes all forms of food assistance to protect and improve access to food for those most in need:

The new Convention includes a new commitment structure, a broader toolbox of eligible activities and food assistance products, as well as a commitment to improved transparency and accountability.¹⁴

Overview and national interest summary

2.12 The National Interest Analysis (NIA) states that ratification would reinforce Australia’s reputation as a country committed to global food security.¹⁵

11 AusAID, *Submission 5.1*, p. 1.

12 AusAID, *Submission 5.1*, p. 1.

13 Food Assistance Convention, Article 1.

14 Food Assistance Convention, *About FAC*, <http://www.foodassistanceconvention.org/en/about_fac/about.aspx>, accessed 17 May 2013.

15 NIA para. 6.

Reasons for Australia to take the proposed treaty action

- 2.13 The following summary of the proposed treaty action and its claimed benefits is taken from the NIA.
 - 2.14 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.¹⁶
 - 2.15 The Convention is consistent with current Australian policies and incorporates current best practice in food assistance.¹⁷
 - 2.16 A broader range of tools can 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 twinning costs.¹⁸
 - 2.17 The Committee was advised that the Convention had sufficient ratifications to enter into force on 1 January 2013.¹⁹ Countries which have already ratified the Convention include Austria, Canada, Denmark, the European Union, Finland, Japan, Switzerland and the United States of America.²⁰ Failure by Australia 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.²¹
 - 2.18 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.²²
 - 2.19 The Convention is also consistent with Australia's negotiating position in the WTO Doha Round of agricultural negotiations, and elements of the
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16 NIA para. 7.

17 NIA para. 7.

18 NIA para. 7. '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.

19 Department of Agriculture, Fisheries and Forestry, *Submission 1*, p. 1.

20 Mr Alan March, Acting First Assistant Director General, Humanitarian and Stabilisation Division, AusAID, *Committee Hansard*, 17 June 2013, p. 33.

21 NIA para. 8.

22 NIA para. 9.

current Doha agriculture negotiating text were incorporated as non-binding components of the Convention.²³

Obligations

- 2.20 **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. These objectives are to be met by addressing food and nutritional needs of the most vulnerable populations through commitments made by the Parties; ensuring food assistance is appropriate, timely, effective and efficient; and facilitating information sharing, cooperation and coordination to make the best use of resources.²⁴
- 2.21 **Article 2** sets out principles for the delivery of food assistance including general principles, principles of food assistance effectiveness, provision of food assistance and principles of food assistance accountability.²⁵
- 2.22 **Article 3** sets out the relationship between the Convention and the Parties' WTO obligations, including that in the event of a conflict, the Parties' WTO obligations will prevail over the Convention.²⁶
- 2.23 **Article 4** sets out eligible food assistance products, activities and recipients.²⁷
- 2.24 **Article 5** establishes requirements for the notification of the initial "minimum annual commitment" of food assistance, changes to this commitment, and the form that contributions should take. Parties may self-determine their level of minimum annual commitment and the type of contribution they will make.²⁸

Contributions made to meet minimum annual commitments should be made in fully grant form whenever possible.²⁹

23 NIA para. 9.

24 NIA para. 11.

25 NIA para. 12.

26 NIA para. 13.

27 NIA para. 14.

28 NIA para. 15.

29 *Food Assistance Convention* (London, 25 April 2012), New York, 21 December 2012 (Not yet in force [2012] ATNIF 31), Article 5(7).

- 2.25 **Article 6** states that each Party shall provide an annual report, detailing how it has met its minimum annual commitment under the Convention, within 90 days after the end of the calendar year.³⁰
- 2.26 **Articles 7-9** establish the Food Assistance Committee as the decision-making body of the Convention (decisions to be taken by consensus), and set out responsibilities of the Chair and Vice-Chair and the obligations of the Committee. At least one formal session per year must be held.³¹

Implementation

- 2.27 The NIA states that no changes to laws would be required for Australia to meet its obligations under the Convention. No changes to existing roles of the Commonwealth Government and the State and Territory governments would be required either.³²
- 2.28 The following table shows the confirmed commitments of members of the new Food Assistance Convention to date. These constitute the 'minimum annual commitment' of food assistance each Party has agreed to make in order to meet the objectives of this Convention, in accordance with its laws and regulations.

Table 2.1 Members of the Food Assistance Convention and their commitments (as at 20 June 2013)

Donor	Commitment
Austria	€1.495m
Canada	C\$250m
Denmark	DKK185m
European Union	€200m
Finland	€6m
Japan	JPY10bn
Switzerland	CHF34m
United States of America	\$1.6bn

Source Department of Agriculture, Fisheries and Forestry, *Supplementary Submission 1.1*, p. 3.

30 NIA para. 16.

31 NIA para. 17.

32 NIA para. 18.

Costs

2.29 As existing Commonwealth, State and Territory laws and practices comply with the provision of the Convention, there are no costs associated with ratification. Australia is under an obligation to meet its minimum annual commitment, which is self-determined. Australia will meet its commitment relating to food assistance through the Australian aid program.³³

Australia's minimum commitment under the Food Aid Convention 1999 was 150 000 wheat equivalent (FAC equivalent) tonnes³⁴ per annum. ... (Australia's food assistance is predominantly provided through the aid program's support to the United Nations World Food Programme).³⁵

2.30 The dollar cost of Australia's previous commitment of 150 000 FAC equivalent tonnes has varied over time due to the price of commodities, however it has averaged about \$100 million per annum over the last four or five years.³⁶

2.31 Although in 2006-07 Australia did not meet its minimum annual commitment, it has traditionally exceeded this commitment.³⁷

2.32 Australia will have three months from accession to determine its specific commitment amount. Australia's minimum annual commitment is yet to be determined.³⁸

2.33 The Department explained that, in relation to the trade impacts of food aid the new Convention asks donors to:

- ensure that food assistance does not adversely affect local markets or commercial trade;
- increasingly provide untied cash-based food aid; and
- refrain from combining food aid directly or indirectly to commercial exports.³⁹

33 NIA para. 19.

34 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.

35 NIA para. 19.

36 Mr March, AusAID, *Committee Hansard*, 17 June 2013, p. 34.

37 Mr March, AusAID, *Committee Hansard*, 17 June 2013, p. 33.

38 NIA para. 20.

- 2.34 Australia's ratification of the Convention 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.⁴⁰

Consultation

- 2.35 The NIA says that information on the Convention was provided to states and territories at the meeting of the Standing Committee on Treaties in October 2011 and that no questions or concerns were raised.

Conclusion

- 2.36 Given the benefits of the proposed Convention in ensuring the continuing provision of international food assistance in a manner which builds on its predecessor, the Food Aid Convention, the Committee supports the Treaty and recommends that binding treaty action be taken.
- 2.37 The Committee, however, is strongly of the opinion that where there is an emergency aid issue, the preferred approach for Australia should be for Australian producers and food manufacturers to provide appropriate levels of Australia's aid as in-kind contribution.
- 2.38 This approach fits within the principles of food assistance effectiveness outlined in the Treaty.⁴¹
- 2.39 The Committee believes that the requirements to ensure that food assistance does not adversely affect local markets or commercial trade, and is not tied directly or indirectly to commercial exports, provide sufficient protection against market distortion.
- 2.40 The Committee also asserts that Australia should be able to make its own decisions with respect to the proportion of assistance provided, in-kind or

39 Department of Agriculture, Fisheries and Forestry, *Submission 1*, p. 1.

40 NIA para. 21.

41 Food Assistance Convention, Article 2(b).

as cash, depending on the circumstances of the food need emergency, including factors such as location and logistics.

- 2.41 The Committee notes that, 'Canada and the US have traditionally provided a mix of commodities and cash'.⁴²
- 2.42 Article 5 declares that food assistance provided towards Australia's minimum annual commitment shall be 'not less than 80 per cent' in fully grant form⁴³ (and there is no exemption for any Party to the Convention from this requirement⁴⁴). The Committee notes that Article 5 also provides that Parties may self-determine their level of minimum annual commitment and the type of contribution they will make. The level and nature of Australia's minimum annual commitment is yet to be determined.
- 2.43 The Committee's preference is for Australia to, as a default position, provide in-kind commodity food assistance whenever appropriate, as allowed under the convention. In addition to this, Australian food producers and manufacturers should be invited to register with the UN purchasing portal and tender to provide produce for the World Food Program (WFP).
- 2.44 The Committee respects the need to support local markets and avoid commodity dumping but does not see in-kind support from Australia as any more likely to result in market distortions than food purchased for the country through the WFP.

Recommendation 1

- 2.45 **The Committee recommends that the Australian Government provide both in-kind and cash support to meet its food aid commitments, as allowed in the convention and as practiced by other developed countries.**

42 Department of Agriculture, Fisheries and Forestry, *Supplementary Submission 1.1*, p. 1.

43 Food Assistance Convention, Article 5(7).

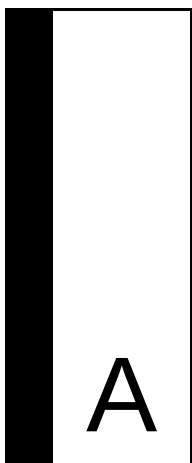
44 AusAID, *Submission 5*, p. 1.

Recommendation 2

- 2.46 **Subject to Recommendation 1 being adopted, the Committee supports the *Food Assistance Convention (London, 25 April 2012)* and recommends that binding treaty action be taken.**

Senator Bridget McKenzie

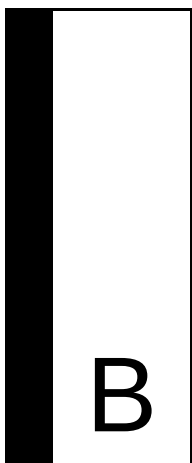
Acting Chair



Appendix A – Submissions

Treaty tabled on 14 May 2013

- 1 Department of Agriculture, Fisheries and Forestry
- 1.1 Department of Agriculture, Fisheries and Forestry
- 5 AusAID
- 5.1 AusAID



Appendix B – Witnesses

Monday, 17 June 2013 - Canberra

Australian Agency for International Development (AusAID)

Mr Alan March, Acting First Assistant Director General, Humanitarian
and Stabilisation Division

Department of Agriculture, Fisheries and Forestry

Ms Jo Evans, First Assistant Secretary, Trade and Market Access Division

Department of Foreign Affairs and Trade

Ms Elizabeth Ward, Assistant Secretary

Mr David Mason, Executive Director, Treaties Secretariat, International
Legal Branch

