Food Security Act of 1985: Title XI—Trade

Introduction

by

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FOOD SECURITY ACT OF 1985: TITLE XI—TRADE

INTRODUCTION

The focal point of Title XI of the 1985 Farm Bill is agricultural exports. The spirit of this provision leans toward the promotion of these exports. Public Law 480, through which essential markets for American agricultural commodities have been developed, has been expanded and extended. The U.S. agricultural trade policy provided within Title XI supports the development of export markets and dissuades the use of embargoes as an instrument of foreign policy. Export activities of the CCC and the USDA are exempted from cargo preference requirements. This article will examine the structure of Title XI and delineate the various changes it makes in prior law.

PUBLIC LAW 480 AND USE OF SURPLUS COMMODITIES IN INTERNATIONAL PROGRAMS

Background

The Agricultural Trade Development and Assistance Act of 1954[1] was enacted in response to a considerable surplus of agricultural commodities. Its original purpose was to expand international trade, to promote economic stability of American agriculture, to make maximum use of surplus agricultural commodities in furtherance of foreign policy and to stimulate the expansion of foreign trade in agricultural commodities produced in the United States.[2] The fundamental design of Public Law 480 is to provide agricultural commodities to foreign countries.

In 1966, the Act was amended to include the Food for Peace Act.[3] As amended, its objectives were the use of surplus agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in underdeveloped countries.[4] The disposition of surplus agricultural commodities was no longer a necessary objective of Public Law 480.[5]

Though the principal objectives of Public Law 480 have changed since its inception, the law's innate value to domestic agriculture has remained constant. From 1954 through 1984, approximate $35 billion worth of agricultural commodities have been exported through Public Law 480 programs.[6] The

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1. The Agricultural Trade Development and Assistance Act of 1954, ch. 469, Pub. L. No. 480, 68 Stat. 454 (codified as amended at 7 U.S.C. §§ 1691a, 1701-1715, 1721-1727g, 1731-1736n (1982)).
2. H.R. REP. NO. 1776, 83rd Cong., 2d Sess., *reprinted in* 1954 U.S. CODE CONG. & AD. NEWS 2509.
3. Food for Peace Act, Pub. L. No. 89-808, 80 Stat. 1526 (1966) (codified as amended at 7 U.S.C. §§ 1427, 1431, 1431b, 1446a-1, 1691, 1701-1710, 1721-1725, 1731-1736d (1982)).
4. H.R. REP. NO. 1558, 89th Cong., 2d Sess. *reprinted in* 1966 U.S. CODE CONG. & AD. NEWS 4410.
5. *Id.* at —, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 4414.
6. H.R. REP. NO. 271(I), 99th Cong., 1st Sess. 60-61 *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS 1103, 1164 (hereinafter cited as H.R. REP. NO. 271(I)).

major commodities exported have included wheat and wheat products, corn and corn products, sorghum, rice, nonfat dry milk, soybean oil and cotton.[7] The essential markets developed through Public Law 480 include Korea, India, Brazil, Indonesia, Pakistan, Taiwan and Yugoslavia—all of which were prior recipients and have now become major customers of American agricultural commodities.[8]

Public Law 480 is administered through three separate programs. Title I[9] provides that sales of agricultural commodities can be made on a concessional basis to "friendly countries"[10] on the open market for United States dollars on credit terms or for convertible foreign currency on credit terms.[11] Title II[12] involves the donation of food to needy countries for emergency use in areas suffering critical food shortages. Title III[13] is the Food for Development Program in which Title I concessional sales are financed by the recipient nation's undertaking of predetermined developmental efforts.[14]

In the 1985 Farm Bill, Congress has shown support for Public Law 480 by expanding and extending its provisions. Title I is amended to authorize the use of foreign currencies accruing from Title I concessional loans for promoting private enterprise in developing countries.[15] This amendment complements the current objective of Title III to encourage economic development in such countries. The program is placed on a fiscal rather than a calendar year.[16] Also, the President is authorized to waive the program authorization ceiling to meet urgent humanitarian needs.[17] Additional commodities stored under section 416 of the Agricultural Act of 1949[18] are provided for disposal through Title II. A new Food for Progress[19] program encourages foreign countries to promote free enterprise in their domestic food production system.

Title I

Under the amendment to Title I, foreign currencies will be loaned to financial intermediaries in countries purchasing Title I commodities for use in providing loans for private enterprise investment.[20] Financial intermediaries may include banks, financial institutions, cooperatives, non-profit voluntary

7. *Id.*
8. *Id.*
9. 7 U.S.C. §§ 1701-1715 (1982).
10. *Id.* at § 1701.
11. *Id.* at §§ 1701, 1703(b).
12. *Id.* at §§ 1721-1726.
13. *Id.* at §§ 1727-1727g.
14. *Id.* at § 1727b(a).
15. Food Security Act of 1985, Pub. L. No. 99-198, § 1111, 99 Stat. 1354, 1474 (hereinafter cited as Food Security Act).
16. *Id.* at § 1101, 99 Stat. at 1465 (to be codified at 7 U.S.C. § 1724).
17. *Id.*
18. The Agricultural Act of 1949, ch. 792, 63 Stat. 1061 (codified as amended at 7 U.S.C. § 1431 (1982)).
19. Food Security Act, *supra* note 15, at § 1110, 99 Stat. at 1472 (to be codified at 7 U.S.C. § 1736o).
20. Food Security Act, *supra* note 15, § 1111, 99 Stat. at 1474 (to be codified at 7 U.S.C. §§ 1691, 1701, 1703, 1705, 1706, 1708).

agencies or other organizations or entities, as determined by the President, that have the capability of making and servicing such loans.[21] These loans will go to private individuals, cooperatives, corporations or other non-governmental entities for productive private enterprise projects.[22] Funds loaned by financial intermediaries cannot be used to finance state-owned entities or ventures, or to produce commodities or products that will compete with U.S. commodities or products.[23]

The foreign currencies for this private enterprise promotion will be provided by the host government in an amount equal to the value of the commodities received through Title I sales for dollars on credit terms.[24] The host government-owned currencies will be applied from a jointly programmed account.[25] The host government will continue to pay its Public Law 480 Title I dollar debt to the United States as under current law.[26]

In addition, the President is authorized to enter into agreements with friendly countries for the sale of commodities for foreign currencies convertible to dollars for use in private enterprise development.[27] Included in the agreements will be a schedule permitting the conversion of these currencies to dollars ten to thirty years following delivery of the commodities.[28] Prior to conversion of these currencies, the President is authorized to loan the currencies to financial intermediaries in purchasing countries for use in private enterprise investment.[29] These loans are to be made at reasonable interest rates consistent with business practices.[30] Preferential rates of interest or local currency grants, however, may be provided to cooperatives and private voluntary organizations to help defray startup costs of becoming a financial intermediary.[31]

Once the financial intermediaries begin to repay their loans to the President, he may convert such currencies into dollars in accordance with the conversion schedule included in the original sales agreement, reloan the currencies to financial intermediaries to finance additional private investments, use the currencies for agricultural market development, or use the currencies to pay United States obligations with the recipient country.[32] For fiscal years 1986 through 1990, no less than ten percent of the aggregate value of Public Law 480 Title I agreements are to be made for local currencies for use in this program, provided that this requirement may be waived in any year in which meeting the minimum would result in a significant reduction in the

21. *Id.*, 99 Stat. at 1478.
22. *Id.*, 99 Stat. at 1475.
23. *Id.*, 99 Stat. at 1476.
24. *Id.*, 99 Stat. at 1475.
25. *Id.*
26. *Id.*
27. *Id.*, 99 Stat. at 1474.
28. *Id.*, 99 Stat. at 1475.
29. *Id.*, 99 Stat. at 1476.
30. *Id.*, 99 Stat. at 1477.
31. *Id.*
32. *Id.*

volume of commodities furnished under Title I.[33]

The amendment to Title I indicates a commitment to strengthening the private sector of recipient countries. The apparent belief is that promotion of private enterprise will improve the general economy with more jobs and active trading. The long-range effect will hopefully benefit the United States by creating an essential market for U.S. commodities. Achievement of this goal is aided by the provision proscribing the use of funds loaned to produce commodities or products that will compete with U.S. commodities or products. Although the success of any program can rarely be said to be inevitable, the amendment to Title I is based on a concept which has proven reliable in the past.[34]

Title II

Title II of Public Law 480, also known as the Food for Peace Act, not only encourages economic development in developing countries, but has an additional objective of combatting hunger and malnutrition. The altruistic rationale of Title II is supplemented by the possibility of creating new markets for U.S. commodities.

Section 416 of the Agricultural Act of 1949 provided for the domestic and international disposal of surplus U.S. farm commodities to prevent the waste of those commodities. Public Law 480 revised Section 416 to allow non-food commodities to be used in the program to emphasize barter as a disposal method, to authorize the Commodity Credit Corporation (CCC) to pay transportation costs to the port of export for foreign distributions, and to authorize the CCC to pay for storage until time of distribution.[35] In 1966, the authority for use of Section 416 foreign donations was eliminated.[36]

The Omnibus Reconciliation Act of 1981[37] restored the authority of the CCC to donate surplus dairy stocks to needy people overseas.[38] The 1984, Section 416 was amended by the Agricultural Programs Adjustment Act[39] to provide that CCC-owned surplus dairy products and wheat could be furnished by the Secretary for carrying out Title II of Public Law 480 and for such purposes as approved by the Secretary.[40]

The minimum quantity of commodities distributed under Title II for each of the fiscal years 1987 through 1990 shall be 1,900,000 metric tons, of which

33. *Id.*, 99 Stat. at 1474.

34. *See supra* note 6.

35. H.R. REP. NO. 271(I), *supra* note 6, at 63, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1167.

36. *Id.*

37. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (codified as amended at 7 U.S.C. § 1416 (1982)).

38. H.R. REP. NO. 271(I), *supra* note 6, at 63, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1167.

39. Agricultural Programs Adjustment Act of 1984, Pub. L. No. 98-258, 98 Stat. 130 (codified at 7 U.S.C. § 1446a (1982)).

40. H.R. REP. NO. 271(I), *supra* note 6, at 63, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1167.

not less than 1,425,000 metric tons shall be for non-emergency programs distributed through non-profit voluntary agencies, cooperatives and the World Food Program.[41] At least seventy-five percent of these commodities must be in the form of processed or fortified products or bagged commodities.[42] The President is authorized to waive the latter requirement during any fiscal year in which he determines that the programs will not best be served by the distribution of fortified or processed food in the amounts required.[43]

In distributing agricultural commodities under Title II, the President shall consider: the nutritional assistance to recipients and benefits to the United States that will result from distributing such commodities in the form of processed or protein fortified products, including processed milk, plant protein products and fruit, nut and vegetable products; the nutritional needs of the proposed recipients; and the cost-effectiveness of providing such commodities.[44] A non-profit voluntary agency, such as C.A.R.E. or Catholic Relief Services, requesting a non-emergency food assistance agreement is required to include in the request a description of the intended uses of any foreign currency proceeds that would be generated with the commodities provided under this agreement.[45] This would apply with respect to assistance agreements entered into after December 31, 1985.[46] Such agreements must provide, in the aggregate for each fiscal year, for the use of foreign currencies in an amount not less than five percent of the aggregate value of the commodities distributed under the Title II non-emergency programs for that fiscal year.[47]

The 1985 Farm Bill specifies dairy products, grains and oilseeds acquired by the CCC through price support operations, and such other edible commodities as the Secretary or the CCC may acquire in the normal course of operations; but, the acquisition of these commodities by the Secretary or the CCC for the purpose of using them under the Section 416 program is prohibited.[48] Before commodities may be furnished for disposition to a country, the Secretary must determine that the receiving country has the capacity to use the commodities efficiently and effectively, and that the disposition will not interfere with usual marketings of the United States, nor disrupt world prices of agricultural commodities or normal patterns of commercial trade with developing countries.[49]

The Secretary is also required to take reasonable precautions to ensure that commodities furnished will not displace or interfere with sales that other-

41. Food Security Act, *supra* note 15, at § 1102, 99 Stat. at 1465 (to be codified at 7 U.S.C. § 1721).
42. Food Security Act, *supra* note 15, at § 1103, 99 Stat. at 1466 (to be codified at 7 U.S.C. § 1721).
43. *Id.*
44. *Id.*
45. Food Security Act, *supra* note 15, at § 1104, 99 Stat. at 1466 (to be codified at 7 U.S.C. § 1726a).
46. *Id.*
47. *Id.*
48. Food Security Act, *supra* note 15, at § 1109, 99 Stat. at 1467-68 (to be codified at 7 U.S.C. § 1431).
49. *Id.*, 99 Stat. at 1468.

wise might be made, and that sales or barters will not unduly disrupt world prices of agricultural commodities or normal patterns of commercial trade with friendly countries.[50] Commodities can not be made available if, by doing so, it will prevent the Secretary from fulfilling any agreement entered into by him under a payment-in-kind program.[51] The requirement for the safeguarding of usual marketings, however, may not be used to prevent the furnishing of eligible commodities for use in countries that have not traditionally purchased the commodity from the United States or have inadequate financial resources to acquire the commodity from the United States through commercial sources or through concessional sales arrangements.[52]

The CCC is authorized to pay in cash or in the form of eligible commodities for the processing and domestic handling costs of donated commodities if the Secretary determines that such in-kind payments will not disrupt domestic markets.[53] Eligible commodities may be sold or bartered to finance the distribution, handling and processing costs in a country through which such commodities or products must be transshipped.[54] The 1985 Farm Bill also authorizes the sale and barter of commodities furnished to non-profit and voluntary agencies or cooperatives under agreements in which the foreign currency proceeds are used for activities that will enhance the effectiveness of transportation, distribution and use of commodities and products donated.[55] The expenditure of such currencies must be within one year of acquisition and within the country of origin, except as needed to expedite the transportation of commodities and directly supplement the transportation, distribution and use of commodities furnished in connection with the foreign sale agreements.[56]

Five percent of the aggregate value of commodities supplied under Section 416 must be provided for subsequent sale.[57] This minimum does not apply to the extent there are insufficient requests for use of the local currency sales[58] or with respect to commodities made available in the new Food for Progress program.[59] The use of proceeds from the sale or barter of Section 416 commodities and products for operating and overhead expenses is prohibited, except that such proceeds are allowed to be used for personal or administrative costs of a local cooperative.[60]

The Secretary is required to make available 500,000 metric tons of grains and oilseeds or ten percent of CCC uncommitted year-end stocks, whichever is less, and ten percent of CCC uncommitted year-end daily stocks, but not less than 150,000 tons for fiscal years 1986 through 1990 for agreements with pri-

50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*, 99 Stat. at 1969.
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*, 99 Stat. at 1470.

vate voluntary organizations and cooperatives and in government-to-government programs and the World Food Program.[61] Also, the minimum tonnage will be at least 150,000 tons of dairy products or ten percent of CCC's uncommitted year-end stocks.[62]

Title II of Public Law 480 has additionally been amended to clarify that intermediate export financing may generally be provided in the form of direct or guaranteed credit to promote United States agricultural exports.[63] The amendment permits the intermediate export credit program to be used to finance the importation of agricultural commodities by developing nations for use in meeting their food and fiber needs.[64] The Secretary is authorized under the amendment to determine the rate of interest on direct credit loans, and the CCC must make available not less than $500 million in intermediate export credit guarantees for each fiscal year 1986 through 1988, and not more than one billion dollars in intermediate export credit guarantees in fiscal year 1989.[65]

The immediate goal of the plan is to combat hunger and malnutrition in developing countries. An incidental desire is to open up new markets for U.S. agricultural commodities. The means to these ends is the donation of Section 416 surplus commodities through Title II of Public Law 480. The variety of commodities available for disposal has been increased and minimum distribution levels are mandated. Various restrictions are intended to safeguard international and domestic trade.

Food for Progress Program

The Farm Bill also creates a new Food for Progress program under which the President is authorized to donate commodities to countries which promote free enterprise in their domestic food production systems. Under the new program, the President may enter into agreements to provide food to countries to promote private, free enterprise agricultural policies for agricultural development.[66] Commodities provided under this Act would be through authority granted under Title I of Public Law 480 or Section 416 of the Agricultural Act of 1949.[67]

Under the Food for Progress program, the President is authorized to enter into multi-year commitments.[68] In determining whether to enter into an agreement, the President shall consider whether the recipient country is carrying out or is committed to carry out policies that promote economic freedom,

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61. *Id.*, 99 Stat. at 1471.
62. *Id.*
63. Food Security Act, *supra* note 15, at § 1131, 99 Stat. at 1487 (to be codified at 7 U.S.C. § 1707a).
64. *Id.*
65. *Id.*, 99 Stat. at 1487-88.
66. Food Security Act, *supra* note 15, at § 1110, 99 Stat. at 1472 (to be codified at 7 U.S.C. § 1736o).
67. *Id.*
68. *Id.*

private domestic production of food commodities for domestic consumption, and create and expand efficient domestic markets for the purchase and sale of such commodities.[69]

Not less than 75,000 tons are to be provided annually for use under this program, provided there are a sufficient number of qualified participants to utilize this quantity.[70] No more than 500,000 tons of commodities can be provided under this program in any year.[71] The President, however, is encouraged to utilize the entire 500,000 tons, provided that there are a sufficient number of qualified participants.[72] In entering into Food for Progress agreements,the President will be required to take reasonable precautions to avoid displacement of any sales of U.S. agricultural commodities that would otherwise be made to such countries. Any agreement entered into would have to prohibit the resale or transshipment to other countries, of commodities furnished under this Program.[73]

Examination of the changes made in connection with Public Law 480 reveals an inclination to adhere to its general structure. The changes, rather than deviating from the program's established design, add to its provisions without taking anything away. Although the basic concept of Public Law 480 remains the same, its foundation has been given support and strength by the Farm Bill.

MAINTENANCE AND DEVELOPMENT OF EXPORT MARKETS

In the 1985 Farm Bill, Congress has recognized that agricultural exports are vital to both the American farmer and to the economy. The Bill provides that U.S. agricultural trade policy should be: to provide by all means possible for export of agricultural commodities and their products at competitive prices, to support the principle of free trade and the promotion of fairer trade; to cooperate in all efforts to negotiate reductions in barriers to fair trade; to counter aggressive unfair trade practices by all available means; to remove foreign policy constraints in order to maximize agricultural trade; and to provide for consideration of U.S. agricultural trade interests in the design of national fiscal and monetary policy.[74] The Secretary of Agriculture, in coordination with the U.S. Trade Representative, is required to initiate and pursue agricultural trade consultations among major agricultural producing countries.[75]

The Secretary is compelled in each of fiscal years 1986 through 1990 to use more than $325 million in CCC funds, or an equal value of commodities

69. *Id.*
70. *Id.*, 99 Stat. at 1473.
71. *Id.*
72. *Id.*
73. *Id.*
74. Food Security Act, *supra* note 15, at § 1121, 99 Stat. at 1480 (to be codified at 7 U.S.C. § 1736p).
75. Food Security Act, *supra* note 15, at § 1123, 99 Stat. at 1481 (to be codified at 7 U.S.C. § 1736r).

owned by the CCC, for export activities.[76] For each of fiscal years 1989 through 1991, the Secretary is authorized to use for export activities such funds of the CCC as the Secretary deems necessary, or an equal value of CCC commodities.[77] The funds or commodities are only to be used to counter the subsidies, import quotas, or unfair trade practices of a foreign country.[78] Such subsidies would include an export subsidy, tax rebate on exports, financial assistance on preferential terms or for operating losses, assumption of production and distribution costs, a differential export tax or duty exemption, a domestic consumption quota, or other methods of furnishing or ensuring the availability of raw materials at artificially low prices.[79]

The CCC is required to make available for each of fiscal years 1986 through 1990 more than $5 billion in short-term credit guarantees and, before extending the credit, to consider the credit needs and credit-worthiness of recipient countries and to determine whether provisions of the guarantees will improve the competitive position of United States agricultural exports.[80] The amount of any loan guarantee origination fee is limited to one percent.[81]

The Secretary of Agriculture must implement during the marketing years of 1985 through 1990 a program under which commodities and products acquired by the CCC would be provided at no cost or reduced cost to exporters, processors or foreign purchasers to encourage the development, maintenance and expansion of export markets for value-added or high value agricultural products produced in the United States.[82] Authorization also is made for the Secretary to provide commodities and products which would counter or offset: (1) foreign subsidies or unfair trade practices that benefit foreign agricultural producers, processors or exporters; (2) the adverse effects of U.S. agricultural price support levels that are temporarily above the export prices offered by overseas competitors; and (3) fluctuations in the exchange rate of the United States dollar.[83] In addition, the Secretary would be authorized to provide commodities and products in conjunction with an intermediate export credit program for the export sale of breeding animals and the cost of freight from the United States to foreign countries. Authority is also available for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage or distribution of imported agricultural commodities (through the use of local currency sales).[84]

During the period October 1, 1985, through September 30, 1988, the Sec-

76. Food Security Act, *supra* note 15, at § 1124, 99 Stat. at 1481 (to be codified at 7 U.S.C. § 1736s).
77. *See id.*
78. *Id.*
79. *Id.*
80. Food Security Act, *supra* note 15, at § 1125, 99 Stat. at 1482 (to be codified at 7 U.S.C. § 1736t).
81. *Id.*
82. Food Security Act, *supra* note 15, at § 1127, 99 Stat. at 1483 (to be codified at 7 U.S.C. § 1736v).
83. *Id.*
84. *Id.*, 99 Stat. at 1483-84.

retary must use more than two billion dollars of agricultural commodities and products to carry out the program.[85] To the maximum extent practicable, commodities used under the program shall be used in equal amounts throughout the three-year period of fiscal years 1986 through 1988.[86] The Secretary would also be authorized in carrying out barter and countertrade transactions to acquire and hold strategic or other materials that the United States does not domestically produce in sufficient amounts and for which national stockpile or reserve goals established by law are unmet.[87]

The U.S. agricultural trade policy under the Farm Bill reflects the emphasis Congress places on agricultural exports. A minimum amount of CCC funds or commodities are required to be used for export activities. Credit availability is an important factor in expanding such exports by providing purchasing power to importers. The Bill mandates that short-term credit guarantees must be made by the CCC.

Lastly, embargoes have appeared to be ineffective as an instrument of foreign policy.[88] American agriculture suffers the immediate consequences of the embargo and loses part of its market for agricultural products.[89] The United States policy expressed under the Farm Bill is not to restrict or limit the export of United States agricultural commodities or products except under the most compelling circumstances and that any such prohibition or limitation be imposed only in time of a national emergency under the terms of the Export Administration Act,[90] and that contracts entered into before prohibitions or limitations are imposed not be abrogated.[91]

EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES

Under the Farm Bill, export activities of the CCC and the United States Department of Agriculture (USDA) are exempted to a certain extent from cargo preference requirements.[92] The cargo preference requirements of the

85. *Id.*, 99 Stat. at 1485.

86. *Id.*

87. Food Security Act, *supra* note 15, at § 1129, 99 Stat. at 1486 (to be codified at 7 U.S.C. § 1431).

88. Juergensmeyer, *International Trade Developments*, 5 J. AGRIC. TAX'N & L. 72 (1983).

89. *See* Moyer & Mabry, *Export Controls as Instruments of Foreign Policy: The History, Legal Issues and Policy Lessons of Three Recent Cases*, 15 L. & POL'Y INT'L BUS. 1 (1983).

90. Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (codified as amended at 50 U.S.C. app. §§ 2401-2420 (1981)).

91. Food Security Act, *supra* note 15, at § 1133, 99 Stat. 1489 (to be codified at 7 U.S.C. § 1736y-j).

92. 46 U.S.C. § 1241(b) provides: "Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 percentum of the gross tonnage of such equipment, materials, or commodities . . . which may be transported on ocean vessles shall be transported on privately owned United States-flag commercial vessels. . . ." 46 U.S.C. § 1241(b) (1982).

Merchant Marine Act of 1936,[93] and the Joint Resolution of March 26, 1934,[94] do not apply to any USDA or CCC export activity under which: CCC-acquired commodities are made available for the purposes of developing, maintaining or expanding export markets for United States agricultural commodities or products at previous world market prices; payments are made available to importers, users or processors (or grants are made available to importers, so long as the cash grant does not result in the grantee paying less than the prevailing world market price for the commodities purchased) for purposes of developing, maintaining or expanding export markets for United States agricultural commodities at prevailing world market prices; commercial credit guarantees are blended with direct CCC credit to reduce effective interest rates on export sales of United States commodities; CCC short-term credit or credit guarantees are extended to finance or guarantee export sales of United States commodities; and under which commodities or products that are owned, controlled or under loan from the CCC are exchanged or bartered for materials, goods, equipment or services at prevailing world market prices.[95]

The percentage of agricultural cargoes that are subject to the cargo preference laws is to be increased from the present fifty percent of certain cargoes to sixty percent in calendar year 1986, seventy percent in 1987 and seventy-five percent in 1988 and thereafter.[96] The agricultural commodities and products that will be subject to the new higher levels of cargo preferences are those exported under Public Law 480; those exported under Section 416 of the Agricultural Act of 1949 and the Food Security Wheat Reserve Act of 1980; those donated to foreign governments or sold on credit terms of more than ten years; those being made available for emergency food relief at less than prevailing world market prices; those purchased through the use of cash grants, if the grants result in the purchasers paying less than the prevailing world market price for such commodities; and those owned, controlled or under loan from the CCC that are exchanged or bartered for materials, goods, equipment or services at prices other than prevailing world market prices.[97]

Before any authority within the Department of Agriculture acts to relax or remove a restriction on the importation of an agricultural commodity, all appropriate authorities shall be consulted.[98] This provision of the Farm Bill is significant, as cargo preference would increase the cost to the taxpayers of financing agricultural exports under the programs.[99] The requirement to con-

93. The Merchant Marine Act of 1936, ch. 858, 49 Stat. 1985 (codified as amended at 46 U.S.C. §§ 1101-1295g (1982)).

94. Joint Resolution of March 26, 1934, ch. 90, 48 Stat. 500 (codified as amended at 46 U.S.C. § 1241-1 (1982)).

95. Food Security Act, *supra* note 15, at § 1142, 99 Stat. at 1490-91 (to be codified at 46 U.S.C. §§ 1241e-o).

96. See *id.* at § 1142, 99 Stat. at 1491.

97. *Id.* at § 1142, 99 Stat. at 1491-92.

98. *Id.*

99. H.R. Rep. No. 271(I), *supra* note 6, at 76, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1180.

sult operates to coordinate trade policy among all appropriate authorities. In the past, omissions in the coordination of trade policy have resulted in the loss of opportunities in the conduct of American agricultural trade negotiations.[100]

CONCLUSION

Exportation of United States agricultural commodities is recognized in Title XI of the 1985 Farm Bill as essential to a stable farm economy. The underlying purpose of its provisions is to develop new foreign markets. This is to be accomplished by supporting the advancement of developing countries by providing them with needed commodities. The concepts of prior programs which were successful are reinforced in Title XI. Should a recipient country eventually attain status as an importer, the program contemplates that the United States will be regarded by that country as an established supplier.

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100. *Id.* "Lack of communication between agencies within the Department of Agriculture resulted in restrictions being removed for the entry of sand pears into the United States from Japan without consultation from another affected agency within the USDA. Representatives for USDA lost an opportunity to obtain similar benefits for American agriculture into Japan." *Id.*