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U.S. Food Aid Reform through Alternative Dispute Resolution

*By Delilah J. Griswold**

I. Introduction

> *"Don't worry about what I feed my family. You just give me some money and I will take care of it. You don't have to assume that I don't know what to feed my family. The problem is that I happen to be poor and if you can't do anything about that then get out of here. Don't waste my time."* ~ Female Farmer, Bangladesh, 1980s[1]

The opening sentence of Amartya Sen's *Poverty and Famines* states succinctly, "[s]tarvation is the characteristic of some people not *having* enough food to eat. It is not the characteristic of there *being* not enough food to eat."[2] The idea and the details of its substantiation caused a paradigm shift in academic and political discourse concerning famine and hunger.[3] Those concerned with the plagues of malnutrition and starvation began to conceptualize their causes in intricate relation to economics and markets as opposed to considering them solely in relation to the supply of food.[4]

In addition to positing the notion of entitlements and access as the foundation of food security, Sen also highlighted the significant role government plays in stabilizing and ensuring the necessary entitlements and access, thus quelling the potential or severity of hunger and famine.[5] Consequently, hunger is no longer perceived solely as an inevitable consequence of natural systems, but instead as a malevolent event, largely preventable and ameliorable through appropriate governmental intervention.[6] Although impacted by controllable policy, Sen was quick to add that the cause of malnourishment is complex and very often a result of sudden, uncontrollable natural events or prolonged developments which gradually erode food security.[7] The theory thus followed that flexible and locally-aware food aid and famine-prevention efforts, which are unrestricted by rigid controls, provide the best potential for effective relief.

Despite Sen's foundational theories and the expanse of academic acumen that his insights spurred, both malnourishment and hunger persist while a bulk of food aid policy remains unchanged and outdated. Based on modest calculations,[8] recent estimates find that there are 36 million annual hunger-related deaths.[9] Moreover, the recent trend is one of disquieting growth: Reports from the United Nations ("UN") state that between 1992 and 2007, the number of undernourished people in the world increased by 80 million.[10] Furthermore, the global food-price spike in 2007 meant that, by 2008, another 40 million individuals had inadequate access to food, bringing the total number of those undernourished to 936 million–1 in every 6 people.[11]

The persistence of outdated food aid policy, despite an improved understanding of causal mechanisms and prevention tactics for reducing both hunger and famine, highlights a main thesis of this article:[12] Policy is rarely empirical and frequently imperfect, and although academic expertise offers significant insight, it is not always easily converted into appropriate law and policy. As the largest single source of international food aid, lamentably with some of the most outdated food aid policies, the structure and controversy surrounding U.S. food assistance serve as important case studies to this argument. The failure to improve U.S. food aid helps to illustrate how and why public policy often lags behind academic and empirical understanding on key issues. The legislative process, which dictates the formation of U.S. policy, is often over-burdened with competing interests and divergent stakeholders that aggravate both strategic and institutional barriers to the cooperation and negotiation necessary for effective decision-making.[13]

In the case of U.S. food aid, conflicting stakeholder interests have been a key impediment to reform.[14] Furthermore, efforts for reform have largely ignored the importance and power of the key oppositional groups, failing entirely to include them in conversations about how food aid policy might be improved.[15] The lack of facilitated and inclusive negotiation preceding reform attempts has continually worked against change, in part by assuring fervent opposition from the powerful excluded parties and further minimizing the limited voice of those most impacted by the controversial policies.

To this end, this article proposes that improving legislative negotiations through two specific alternative dispute resolution ("ADR") tactics—private, multiparty negotiation and mediation by a politician—could have improved the success of various food aid reform efforts in the past by working to balance stakeholder power and quell detrimental opposition tactics. The field of ADR has tremendous potential to aid the legislative process in both the specific area of food aid reform as well as more generally by improving cooperative action toward the beneficial resolution of disputes. Negotiations between diverse stakeholders with divergent interests are often contentious, yet are also the foundation of developing current policy and legislation. Consequently, a focus on improving the level of cooperative action within negotiations is invaluable to forging effective governance through appropriate policy.

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To contextualize the contemporary controversy over U.S. food aid reform, Part II of this article begins with a brief history and description of the practical and political elements of international food aid policy, thus elucidating the roots of the current controversy. This Part finishes by analyzing the specific institutional components of U.S. food aid, providing an overview of the Food for Peace Act ("P.L. 480"),[16] the specific legislation to be reformed, and the associated statutes impacting the implementation of the Act. Part III introduces the key stakeholders in the food aid reform debate, highlighting their interests, goals, and influence in the contemporary food aid controversy. Part IV introduces the concept of ADR and the theoretical underpinnings that make it a valuable tool for improving the potential outcome for food aid reform efforts. Through an implementation of ADR theory, Part IV examines the recent attempts to achieve food aid reform, highlighting the key tactical failings and concluding that the usage of multi-stakeholder negotiations mediated by a key facilitative mediator could have improved the likely success of food aid reform.

II. International Food Aid in Practice and Politics: From the Roots of the Present Controversy to the Structure of Contemporary Aid

For the past six decades, the United States has played a principal role in international food aid, spending roughly $2 billion annually since the mid-1950s,[17] and contributing 55% of all global donations since 2000.[18] Despite its unquestionably large scale, U.S. food aid policy has been both historically and contemporarily questioned for its efficiency and appropriateness.[19] From the 1950s to the 1970s, critics lamented U.S. food aid policy "as a classic example of donor self-interest."[20] They protested that food aid programs were structured primarily to benefit domestic agricultural and foreign policy interests of the donor state.[21] Specifically, aid programs served U.S. and other donor countries'[22] economic interests by creating outlets for surplus agricultural commodities, and as leverage to influence political and economic policies of recipient states—an important diplomatic strategy for gaining political power during the Cold War.[23]

Removed from the primary aim of serving those in need, donor-centric food aid strategies often had unfortunate consequences,[24] which spurred rising criticism in the 1970s and 1980s.[25] This criticism prompted an effort by the United States and other donor states to amend aspects of the donor-oriented policies in international food aid, and by the 1980s and 1990s public opinion saw these efforts as a success.[26] As a result, global public and political interest in evaluating international food aid policy waned.[27]

Key academic publications in the early part of the twenty-first century, coupled with the 2007-2008 global food crisis, reawakened both public and political interest in the contemporary policies of food aid, specifically focusing attention on U.S. policies.[28] Although the intensity of twenty-first century food aid discussions matched previous levels, the context and content of the controversy was markedly changed, as aid had become increasingly linked to a mix of international and domestic institutions with various agendas. The expanded complexity of interests involved in food aid policy increased the number of key stakeholders involved and complicated the dialogue concerning reform.[29]

Instead of focusing on the geopolitical and commodity surplus motivations of donor-states, contemporary concerns emphasized the mechanisms of food aid distribution and their problematic character.[30] Specifically, the dilemma of whether food aid should be in-kind and tied to the donor country became central to an animated debate among various governmental and nongovernmental institutions.[31] Previously, the tying of aid was seen as a given and an intrinsic component of the aid programs of grain-surplus producing countries such as the United States, Canada, and Australia.[32] As agricultural commodity surpluses declined and disappeared due to a restructuring of agricultural policies among donor states, the mechanisms of tying food aid changed, with donor countries sourcing food from the commercial market instead of governmentally controlled domestic surplus stores.[33] This requirement for commercial sourcing and the concomitant fiscal strains, combined with growing academic, public, and political disapproval towards tied aid, prompted many donor countries to abandon the practice.[34] Most notably, the European Union ("EU") began to untie its aid beginning in 1996, with Australia and Canada following suit within the decade. "The United States, however, as the world's largest donor of food aid, continued with a nearly 100[%] tied food aid policy."[35] Consequently, twenty-first century food aid critique is directed specifically at the United States.

The unique entrenchment of a controversial tied-aid policy within U.S. aid programs highlights the powerful economic interests of key stakeholders who assert influential authority over the direction of aid policy.[36] The key stakeholders include the agricultural industry, nongovernmental food aid organizations reliant upon monetization of in-kind donations for program funding, and the shipping and maritime industry that benefit from the transport contracts for tied food aid.[37] These powerful and entrenched interests reduce the potential for cooperation or compromise in efforts for reform. Understanding the specific nature of U.S. food aid policy, and the associated interests built by that structure is essential to illuminating potential areas for improved cooperation toward reform.

A. U.S. International Food Aid in Institution & Policy

The Marshall Plan,[38] launched in 1949, was the first U.S. institutionalized food aid program, laying the foundation for the United States' primacy in the amount of international food assistance provided.[39] The United States has since become the largest single donor of international food aid in the world.[40]

The United States Farm Bill,[41] generally renewed on a five-year basis, is the primary legislation addressing a variety of agricultural programs, including international food aid.[42] Fundamentally, the Farm Bill delineates the specific tonnage of aid to be donated through the United States' food aid programs and outlines the portions allotted to either emergency or non-emergency aid, while additionally proposing program funding levels—although the final funding levels are ultimately approved through the federal budget process.[43] Thus, funding for most food aid programs is discretionary—determined through the annual Agricultural Appropriations Bill—and requires Congressional approval.[44]

Of the numerous U.S. food aid programs, the Food for Peace program[45] is the largest.[46] Both the U.S. Department of Agriculture ("USDA") and U.S. Agency for International Development ("USAID") administer the program, which accounts for 50 to 90% of the total food aid budget,[47] a total contribution of nearly 75% of all U.S. international food assistance.[48] In recent times, Title II under P.L. 480 has received the largest amount of funding, averaging $1.8 billion in annual appropriations since 2008, with a current authorized maximum level of $2.5 billion per annum.[49]

At the height of the Cold War, the U.S. Congress passed P.L. 480, the "Agricultural Trade and Development Act," which authorized the Food for Peace program to "increase the consumption of United States agricultural commodities in foreign countries, [and] to improve the foreign relations of the United States."[50] While signing P.L. 480 into law on July 10, 1954, then President Dwight D. Eisenhower echoed this objective, noting that the purpose of the legislation was to "lay the basis for a *permanent expansion* of [U.S.] exports of agricultural products with lasting benefits to [the United States] and the peoples of other lands."[51] President Eisenhower's statement makes plain the dual intentions of P.L. 480: expand markets for U.S. agricultural export with the added benefit of providing international food assistance. P.L. 480 allowed for the provision of surplus agricultural products to developing nations either through emergency aid or on concessionary terms.[52] In the decade following the law's passage, 27% of all agricultural exports ($12.3 billion worth) were shipped through P.L. 480.[53]

P.L. 480 is composed of four parts, each listed under a separate title with distinct objectives. Each title works to meet one of several overarching goals, "including combating world hunger and malnutrition and [its] causes; promoting sustainable development; and preventing conflicts."[54] The most utilized and significant section, Title II, Emergency and Private Assistance, is specifically directed "to minimize hunger in the world . . . to ensure that one day no one needs food aid" and is currently the largest single program source of U.S. food aid.[55] Between P.L. 480's inception and 2004, the Title II program provided 106 million metric tons of food assistance.[56] From 2002 to 2011 the program accounted for between 50 and 90% of total annual international food aid spending.[57] Unsurprisingly, a tenfold rise in the annual dollar value of U.S. agricultural exports since 1954 has accompanied the passage of P.L. 480.[58] Furthermore, the value of annual Title II programs has increased more than threefold since P.L. 480's inception.[59]

Title II of P.L. 480 functions through partnerships with non-governmental and private voluntary organizations ("NGOs" and "PVOs") that assist with distribution.[60] The U.N. World Food Program ("WFP") is the largest partner, and the Title II program is the largest donor among all 82 WFP partner programs. The celebrated successes of Title II include the development of "self-sufficiency," or net-food export, in previously aid-receiving countries such as France, Germany, Belgium, Austria, Italy, the United Kingdom, Spain, Greece, Portugal, Cyprus, Turkey, Poland, and former Czechoslovakia.[61]

Despite these accomplishments, Title II is the target of major critiques of U.S. international food aid policy. Distilling the essence of these critiques, Seventh Circuit Judge Frank Easterbrook has sardonically stated that "[Public Law] 480 has three beneficiaries: the starving, American Farmers, and the Owners of American Ships."[62] The most contentious components include U.S. commodity preferences, which are directly authorized under the P.L. 480 program and U.S.-flagged cargo preferences; and monetization, authorized under the Cargo Preference Act[63] and both the Food Security Act of 1985 and Title III of P.L. 480.

B. Tying Aid: Title II's Domestic Commodity Mandates[64]

As highlighted by President Eisenhower's statement,[65] Title II's original goal was twofold: (1) to expand U.S. agricultural export markets, and (2) to provide assistance for international populations in need of aid.[66] Consequently, the primary form of Title II aid to receiving organizations has always been domestically sourced and in-kind, tied aid. By law, 100% of the food aid must be sourced from U.S. agricultural producers.[67] At the outset, aid covered under Title II was sourced from surplus agricultural commodities purchased directly from U.S. farmers by the former Commodity Credit Corporation.[68] Because the United States has ceased to maintain significant stockpiles of agricultural commodity surplus, the food aid provided under Title II is now produced explicitly for the purpose of the program.[69]

Currently, USDA's Kansas City Commodity Office ("KCCO") purchases the food required for the Title II program. The purchases occur through a sealed-bid, fixed-price process: "USAID formulates a request for a specific commodity and tonnage based on their needs and the domestic preferencing requirements, and the KCCO creates an invitation for bids."[70] Invitations to bid are sent only to contractors who fulfill the qualification requirements established by the KCCO.[71]

The dual objectives of benefiting U.S. agricultural producers and the hungry, and the aid structure their mutual fulfillment requires is at the root of organizational, political, and public critique of the program. Contemporary concern stems primarily from the reality that meeting the first objective, prioritizing and benefiting U.S. agricultural producers, fundamentally impedes the program's efficacy in meeting its second objective of hunger and famine relief.[72]

C. Transporting Aid: The Cargo Preference Act

In addition to 100% U.S. commodity procurement requirements for Title II food aid, 75% of the total tonnage of all aid distributed under the program must be transported via U.S.-flag vessels.[73] The Cargo Preference Act (P.L 83-644) governs this transportation mandate for all U.S. government generated shipments.[74] Congress passed the Act in 1954, amending the Merchant Marine Act of 1936 by adding "a new section 901(b), to ensure U.S.-flag vessel participation in the carriage of U.S. government sponsored cargos."[75] An additional mandate, entitled the Great Lakes Set-Aside, "requires that up to 25[%] of Title II bagged food aid tonnage be allocated to Great Lakes ports each month."[76] These legislative requirements were primarily intended to ensure the security and stability of the U.S. merchant maritime fleet.[77]

A 2011 report from the U.S. Government Accountability Office ("GAO") noted that "[t]hese legal requirements limit competition and potentially reduce food aid shipping capacity, leading to higher freight rates."[78] For monetized food aid alone, ocean shipping between 2008 and 2010 cost $235 million, roughly one-third of the total aid costs.[79] Furthermore, for certain commodities the cost of U.S.-flag ocean transport is frequently higher than the initial commodity purchase cost: "[f]or example, while it cost[s] $3.9 million to purchase the shipment of 10,000 metric tons of wheat to be sent to Malawi in 2008 for monetization, it cost[s] $4.5 million in ocean shipping."[80] Overall, the cost to ship aid commodities is roughly $25 per ton less on foreign flagged vessels than for U.S.-flag vessels.[81]

Further aggravating the cost disadvantage of U.S.-flag transport is the requirement that foreign built vessels wait three years after reflagging into the U.S. registry to transport food aid.[82] Like the general cargo preference requirements, this additional requirement sought to secure U.S. shipyard employment and the general security and stability of the U.S. merchant maritime fleet.[83] Alternatively, this restriction works to further reduce competition for U.S. government-generated cargo, consequently increasing overall freight rates for U.S. international food aid shipments.[84] Specifically, this limiting of competition "contributes to fewer ships winning the majority of the food aid shipping contracts" and thus gives more leverage to the existing fleets to demand higher freight costs.[85]

D. Monetizing Aid: The Food Security Act of 1985

The selling of food aid commodities in local or regional markets in order to fund nonemergency food assistance programs in those areas, referred to as monetization, is arguably one of the most contentious components of current food aid policy and its proposed reform.[86] Monetization was originally authorized by the Food Security Act of 1985,[87] allowing "implementing partners that received nonemergency food aid under USAID's Food for Peace program and USDA's Food for Progress program to monetize some of the food in recipient countries and use the proceeds to cover associated shipping costs."[88] Funds generated through monetization are typically used for development projects such as those that "[provide] assistance to improve agricultural production, provide health and nutrition activities, and support education and humanitarian needs."[89]

Of the $2.5 billion spent to provide 2.5 million metric tons of food aid commodities in 2010, the United States shipped a total of 540,000 metric tons specifically for monetization; the procurement and transport of this monetized freight cost more than $300 million.[90] In the same year, 63% of the total food aid tonnage under the Food for Peace program, more than 313,000 metric tons, was destined for monetization.[91]

Monetization is carried out by food aid partner organizations, primarily NGOs, who have received grants from either USAID or the USDA "to monetize agreed upon commodities in certain countries."[92] When submitting a grant application, the implementing partner must have secured a buyer in the recipient country; if the organization has met this requirement, the agency "approves or disapproves the request, which is then routed to KCCO. KCCO purchases the requested commodities from U.S. producers in the United States and ships them to the implementing partner in the recipient country."[93] This shipment must comply with the cargo preference requirements, which the U.S. Department of Transportation ("USDOT") aids KCCO in meeting.[94] Ultimately, the process of monetization consists of at least seven major steps, with as many as 50 sub-steps, "including steps to complete the application, conduct market assessments, coordinate requests and shipment, identify bidders and obtain bids, deliver commodities, and collect payment."[95]

Like domestic procurement mandates for food aid, monetization originated in part from surpluses in U.S. agricultural commodities—a phenomenon largely resulting from U.S. government farm subsidies.[96] Those critical of monetization frequently note that "the U.S. government no longer has surplus agricultural commodities[;]"[97] consequently, the current maintenance of the program depends on U.S. government purchases of agricultural commodities from the commercial market.

While proponents of monetization laud its facilitation of necessary development programs for the food insecure, critics deride the program as inefficient and potentially detrimental to the stability of markets in recipient countries.[98] Although the programs funded through monetization provide essential services, 2007 and 2011 reports from the GAO make it clear that monetization is inefficient:[99] "The inefficiencies stem from the process of using U.S. government funds to procure food aid commodities in the United States which are then shipped to the recipient country and sold."[100]

Moreover, following a 2002 Farm Bill amendment to the Food for Peace Act, neither USAID in its administration of the Food for Peace programs, nor USDA in its administration of Food for Progress is obligated to achieve a specific level of cost recovery: instead each agency is simply required to achieve "reasonable market price," a standard left undefined by the statute.[101] Thus, the only steadfast condition on monetization is that the sale be "an amount not less than 15% of the aggregate amounts of all commodities distributed under Title II nonemergency programs for each fiscal year,"[102] a condition which is continually met at rates above the minimum requirement.[103]

Taken together, these policies compose the structure of tied U.S. food aid—aid that mandates spending in the donor country as opposed to providing direct monetary assistance to recipient nations. Despite widespread opposition to tied aid, shifts away from tied aid among other donor countries, and multiple pushes for the reform of U.S. aid, the United States has yet to transition away from a "nearly 100[%] tied food aid policy."[104]

The United States' ostensible inability to modernize its food aid policies is directly linked to the strong economic interests of powerful stakeholders pulling in the opposite direction. It is telling that a significant portion of the U.S. food aid budget is spent domestically: "[I]n 2004, for example, it was estimated that some 90[%] of the aid budget was spent inside the country."[105] The primary beneficiaries of this spending include domestic agricultural and maritime industries, as well as food aid NGOs.[106] Each of these groups has formed large and influential lobbies, tasked with quelling any effort to alter the structure of food aid in a way that would limit the direct support these organizations receive under the current order. Consequently, as will be highlighted in Part III, the asserted efforts of these institutions have been the primary obstacle to food aid reform in the United States.

The argument of this article, taken up in Part V, is that this is not an inevitable fate for food aid reform but a precedent that is largely ameliorable through the use of specific alternative dispute resolution tactics. Before making this argument, it is first important to clearly understand the interests and influences of the stakeholders involved.

III. Food Aid Reform & Divergent Stakeholder Interests

A. Reform-Supporting Stakeholders

Sen's 1981 analysis of famines made clear that "[f]amine was not caused by a slump in the overall availability of food, but by the loss of entitlements to that food.[107] Thus, social scientists adopted a focus on "demand failure" as opposed to "supply failure" as the appropriate means to evaluate the cause of famines.[108] Focusing on demand failure resituated famines as "predictable consequences of normal market processes given that markets respond to purchasing power rather than to need."[109] This shift to a focus on entitlements has also altered the way relief and aid are academically conceptualized: "[A]consensus has emerged from famine ethnographies that famines are preventable and that relief initiatives must focus on restoring lost entitlements and not simply "throw grain at famines."[110]

The United States' Title II hunger and famine aid policy, which functions by effectively prohibiting any other tactic than the "throwing of grain"—specifically U.S.-produced grain—has been the focus of numerous public and political critiques. These critiques have come from a variety of individuals, institutions, and organizations, representing both sides of the U.S. political party divide. Notably, appeals for Title II reform have created such uncharacteristic bedfellows as The Heritage Foundation[111] and Oxfam America.[112] These unexpected partnerships are most clearly explained by two theoretical categories of critique, which underpin most arguments against the current food aid policies. Specifically, there are those concerned with fiscal efficiency and those that focus on humanitarian efficiency. Unsurprisingly, the supporting stakeholders motivated by fiscal concerns include the conservative organizations such as The Heritage Foundation and Republican legislators.

On the other hand, reform supporting aid organizations, federal agencies, and agency administrators, most notably Andrew Natsios, Administrator of USAID from 2001 to 2005, are primarily motivated by humanitarian concerns. While this divide helps contextualize the uncharacteristic partnerships, it is not a hardline division. Overlap exists with many humanitarian organizations making appeals premised on fiscal efficiency, while food-aid reform supporting fiscal conservatives also make humanitarian-minded arguments for policy change. Consequently, instead of exploring the strict divisions, it is more relevant to highlight the principal arguments motivating pushes for reform.

The primary arguments of food aid reform supporters include the critique that too much of the aid budget is wasted on U.S. mandated procurement and consequent transport, which can also delay aid, making it less effective.[113] Furthermore, those in support of reform note that domestic procurement preferences increase costs to agencies and aid recipients and reduce the amount available for the provision of actual aid.[114] Finally, supporters critique U.S. commodity distribution and monetization as having a detrimental effect on local markets in the areas in need of aid, consequently exacerbating future need, and failing to meet the program's goal of increasing food security.[115]

Concerted efforts to reform U.S. food aid did not emerge on the political scene until the start of the 21st century, when a number of key publications awakened public and political consciousness to the issues of U.S. food assistance policy.[116] In a 2005 statement supporting a move away from domestic procurement requirements and other tied aid measures, Andrew Natsios, then USAID Administrator, commented: "The primary purpose of the Title II program is to save lives and having more flexibility in our programs to use cash to buy food locally will save lives;" adding that "[t]he fact that United States farmers and shippers are able to benefit from the Food for Peace program is an important, but secondary benefit."[117]

Natsios' comments convey the typical humanitarian appeal for food aid reform. These ethical arguments are frequently coupled with economic arguments concerning efficiency, as those supporting food aid reform are quick to highlight the inefficiencies of domestic commodity and U.S.-flagged cargo preferencing.[118] Most argue that by allowing for local procurement[119]—as opposed to the current laws that require domestic food purchases—U.S. food aid funding could provide more food at lower cost and a faster pace.[120] Furthermore, supporters of reform also critique the practice of monetization both for the efficiency issues addressed above and because the practice hampers the development and long-term resilience of local agricultural markets in aid-receiving regions.[121]

Despite bipartisan, multi-institutional and academic support, reform efforts have been largely unsuccessful primarily because of the influence of key oppositional groups motivated by strong economic interests in maintaining the food aid status quo. These groups—the agricultural lobby, the shipping lobby, and food aid NGOs—have exerted powerful pressure within the

U.S. Congress, successfully swaying the most important institutional body in food aid policy.

B. Opposing-Stakeholders

Often swayed by the aggressive lobbying efforts of reform-opposing groups, many lawmakers voice skepticism about the lauded efficacy of cash aid versus in-kind—or tied—food aid.[122] Most note the potential loss of important U.S. industry and jobs if the proposed reforms to food aid are implemented. Furthermore, many lawmakers are simply not impressed by the predictions of savings in the realm of "$500 million over a decade," a comparatively small sum, "when stacked against the vocal complaints about the potential loss of jobs and markets for U.S.-grown food."[123]

Furthermore, there are cynical concerns about the ability of international food aid to maintain its robust funding if it loses the support of powerful agricultural lobbyists. Critics note that "allowing non-U.S. commodities to be purchased with U.S. funds would result in undermining the coalition of commodity groups, PVOs, and shippers that support the program, and in reductions in U.S. food aid."[124] Further fueling opposition are concerns regarding the ability of the United States to receive public credit for aid purchased locally in the area of need as opposed to being U.S. sourced and shipped. American Farm Bureau economist Veronica Night has stated "[e]xports via food aid are a small drop in the market. . . . Our concern is less about decreasing an important revenue stream for U.S. agriculture. It's more about the loss of a sense of pride."[125]

These general sentiments, shared by many reform-opposing lawmakers, are an overall reflection of steadfast lobbying efforts on the part of three key oppositional stakeholders—the agricultural industry, the shipping industry, and some food aid NGOs.

1. Agricultural Interests & Lobbies

The interest of U.S. agricultural producers, processors, and handlers in maintaining domestic procurement mandates for food aid is readily apparent. The depth and power of this interest is largely galvanized by the corporatization of the agricultural industry. The majority of the global grain trade is controlled by just four firms—Archer Daniels Midland ("ADM"), Bunge, Cargill, and Louis Dryfus.[126] Consequently, the purchase of U.S. aid commodities through the commercial market provides direct and substantial benefit to the handful of private grain companies.[127] Furthermore, the domestic procurement mandates restricting food aid commodity sourcing "mean[] that there are a limited number of potential providers bidding on contracts."[128] Unsurprisingly, "more than half of food aid in the Food for Peace program was purchased from just four large transnational agri-food companies and their subsidiaries: ADM, Cargill, Bunge, and Cal Western Packaging."[129]

This low level of competition has resulted in a price premium for food aid commodities.[130] Estimates show that wheat is now sourced at roughly 3.2% above market rates, while maize procured for aid has on average a more than 70% price premium.[131] Consequently, "domestically sourced food aid costs the U.S. government on average 11[%] more than market prices."[132] Accordingly, domestic procurement mandates serve to assure both a market and a bloated profit for the handful of companies controlling the global grain trade.

A quote from a wheat industry lobby group, the U.S. Wheat Associates, conveys the entrenched interests: "Losing in-kind donations and monetization would be a difficult blow for the U.S. wheat industry."[133] The U.S. wheat industry is the agricultural sector most supported by food aid, as "23[%] of all hard white wheat exports for 2001-[0]2 and 17[%] of hard red wheat exports in 2002-[0]3 were sold to the government for food aid programs."[134] Other key agricultural lobby groups fighting against food aid reform include the National Association of Wheat Growers and the North American Millers Association.[135]

2. Shipping Interests & Lobbies

The shipping industry's interest in maintaining the status quo for food aid policy is also huge: "[F]or U.S.-flag vessel operators, their bread and butter remains in the transportation of food aid."[136] For a number of shipping firms, this declaration is unequivocally true. For shipping lines such as Waterman Steamship Corporation and Liberty Maritime, contracts for food aid shipment are responsible for the vast bulk of their income.[137] Moreover, between 2003 and 2006 the U.S. food aid programs have funneled nearly $1.3 billion in government money toward the shipping industry in the form of food aid contracts.[138] However, support also flows in the reverse, as the shipping industry is responsible for substantial amount of political campaign donations,[139] giving the shipping lobby considerable weight in U.S. politics. Industry representatives that have been active congressional lobbyists on the issue of food aid, include the American Maritime Congress, American Maritime Officers, and the Maritime Trades Department of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"). Overall, the combination of their significant stake in maintaining the food aid status quo and their political might makes the shipping industry a powerful player in preventing U.S. food aid policy reform.

Like the grain industry, the U.S. shipping industry is characterized by large scale concentration—over half of the $300 million spent on the transport of food aid in 2004 went toward contracts with just five shipping firms.[140] Such mandates under the Cargo Preference Act work to benefit a small portion of U.S.-flagged shippers through stringent policies that prevent contracts from going to newly flagged vessels.[141] Consequently, "[i]n the 1990s there were only eighteen shipping companies that were qualified to bid on food aid contracts, and by the early 2000s this number had dropped to just thirteen."[142] Moreover, as explained in Part II, "[t]his lack of competition at the shipping and freight end of food aid has led to inflated prices for transportation."[143]

A fundamental argument made by the shipping and maritime industries is that U.S.-flagged aid shipments are important for national security because they ensure that the United States "is able to maintain vital sealift capabilities during peacetime."[144] Those making the argument note that in 1975 the United States had over 850 U.S.-flagged ocean vessels but that by 2012 the number had dropped to 109. Predictably, there has been a concomitant drop in the percentage of U.S. commercial cargo transported on U.S. vessels, falling from 10% in 1959 to 4% by 2012.[145] These statistics evidence shippers' appeal that cargo preference laws mandating the transport of food aid on U.S.-flag vessels provide a critical source of cargo for the dwindling U.S. fleet and thus offer an essential assurance that the United States "[maintains] adequate sealift capacity, both to support [the] military and to ensure . . . the retention of . . . at least a core of skilled merchant mariners and commercial vessels of all types."[146] Ultimately, this appeal cautions that a loss of U.S. food aid cargo for U.S.-flag vessels would expedite the decline of an already diminishing fleet, making the Nation's sealift "objectives . . . dependent on foreign-flagged vessels operated by foreign mariners."[147]

The protection of a U.S. merchant maritime fleet is also praised as providing essential jobs and economic stability for a number of U.S. citizens.[148] Industry representatives warn that an exemption of food aid from cargo preferences would put U.S. jobs on the line by compromising the economic stability of already struggling shipping fleets.[149]

3. Food Aid Nongovernmental Organizations

As noted in Part III, the U.S. policy of providing in-kind food aid, coupled with authorization for the monetization of nonemergency aid, serves as an essential source of funds for U.S. based food-aid NGOs. The vast majority of nonemergency Title II aid is funneled through NGOs charged with delivery and sale of the donated commodity, achieved primarily through monetization.[150] Unsurprisingly, the practice of monetization provides a significant funding source for these NGOs.[151] For certain organizations, the total funds provided through the monetization of in-kind aid have been more than $100 million.[152]

The capital generated by NGOs through monetization works to fund non-emergency development projects that lack an alternative source of concerted funding. Since the practice was first authorized in 1985, the overall percentage of nonemergency Title II aid that becomes monetized has continued to grow: In 1996, 28% of nonemergency aid was monetized, by 2001 the share had risen to 70%, and in more recent years the portion has been as high as 74% on average.[153] Furthermore, "[f]or some food aid operations, NGOs monetized the entire amount, as it is a major source of their development finance."[154]

Accordingly, the food aid NGOs reliant on the monetization of in-kind aid institutionalized in U.S. food assistance policy are markedly opposed to reform efforts that would disallow this practice. The Alliance for Global Food Security has served as the primary voice of NGOs lobbying against reform to U.S. international food aid.[155] Importantly, the presence of food-aid NGOs in the group opposing reform has given a "degree of legitimacy" to the industry position, "and together they form[] a powerful bloc fighting against food aid reform."[156] This block of powerful stakeholders has unquestionable influence in the debate about food aid reform.[157] They have, and will undoubtedly continue to have, a significant impact on the success, failure, and overall composition of any changes to U.S. food aid policy.

C. The Voiceless Stakeholders

Often forgotten in the midst of heated debates about food aid reform are the people who depend on food aid for their daily survival, the stakeholders for whom the debate and the outcomes are the most crucial; yet, they have the smallest voice in the dispute over food aid reform. Logistically, it would be impossible to include the opinions and perceptions of each potential recipient in every dialog concerning reform. However, there are key representative bodies, such as the recipient country governments and country-specific hunger relief NGOs that are acutely aware of the potential consequences of food aid policies for the ultimate recipients.[158] Yet, these representatives are largely voiceless in the determinant conversations over food aid issues in the United States.

Food aid policy has significant impacts on the lives of people in the global South. Between 1994 and 2003 food aid served as the source of 15-20% of all food imports for the least developed countries, a large portion of which are in sub-Saharan Africa.[159] In certain circumstances and in certain locations the level of dependence is even more extreme—for example, from 2001 to 2003 food aid contributed 46% of Ethiopia's total food supply.[160]

The trend in modern food aid need has been one of increasing emergency aid and decreasing need for non-emergency assistance; by 2007 more than three-quarters of aid was delivered as emergency support.[161] Returning again to Sen's work on the appropriate mechanisms for famine and hunger reduction, the academic understanding is that aid should be flexible and adaptable to the specific circumstances of the area in need, especially in emergency circumstances.[162] Food systems anthropologist, Johan Pottier, explains the basic rationale, noting that given the "diversity of famine situations" and the conflicting opinions about the best mode of assistance, "the more reasonable solution is to examine the merits and drawbacks of either option within highly specific situations and to ensure that potential famine victims have some choice regarding the kind of patronage system they wish to have."[163]

Pottier acknowledges the political realities that determine the structure of food aid policy, especially for key nations such as the United States. However, this does not dissuade him from making the appeal that "relief and prevention work, like development aid generally, can only be truly effective if potential recipients have the power to determine what is used and how . . . [s]uch a dialogue must never be considered a luxury."[164]

Given the numerous stakeholders involved in U.S. food aid policy as well their disparate levels of power, voice and influence, it is important to find mechanisms that will facilitate an equitably weighted dialogue—where parties that are the most impacted are also given a say and those with the least to lose but with the strongest influence are prevented from overpowering the less advantaged. This is where the use of alternative dispute resolution mechanisms becomes important. As this article argues, contemporary attempts for food aid reform have neglected to limit this divide in influence and consequence between the various stakeholders. In fact, the inverse has been true, namely, that the attempts for reform have aggravated this imbalance. The following section highlights the important underlying theories of ADR and how they might be applied to attempts for food aid reform. This is followed by an examination of the specific attempts for reform, with an analysis of key barriers to cooperative action and an evaluation of the potential for multi-stakeholder negotiations, mediated by a key meditative figure to reconcile these barriers.

IV. The Role of Alternative Dispute Resolution

The structure of U.S. food aid under Title II of P.L. 480 creates a system of multiple, often unbalanced and conflicting stakeholders with antagonistic interests. Consequently, ADR, which seeks to resolve conflict between multiple parties through cooperative action, is a useful tool for improving the outcomes of contentious debates about reform.[165] Although the theories and tools of ADR are most commonly used to avoid litigation, and not within the legislative process, this is not to say that ADR has no role in legislative disputes, particularly those that involve multiple stakeholders with varying degrees of power and influence.[166] Quite conversely, as the legislative process is often fraught with conflict between divergent stakeholders yet procedurally flexible and quite amenable to the tools of ADR, the limited application of ADR theories and tactics is an unfortunate oversight.[167]

In the case of food aid reform, there are additional impediments to a perfect application of ADR tools. The process of ADR seeks to ask the fundamental question: Why is it that under circumstances where there are resolutions that better serve disputants, negotiations often fail to achieve efficient resolutions?"[168] In the situation of food aid reform, opposing stakeholders benefit primarily from maintaining the status quo and consequently have limited potential for achieving tangible gains from any cooperation for change. This is an important consideration, but not a steadfast roadblock; the use of basic dispute resolution tactics—facilitated, private, multiparty negotiation—can decrease the level of opposition by giving opposing stakeholders a stake in the reform proposal, thus increasing the likelihood of less diluted reform measures and greatly improving the balance of stakeholder power.[169]

Recognizing and mediating the inherent power imbalance within food aid reform disputes is essential to constructing effective negotiations. Although some scholars have questioned the efficacy of mediated negotiations to reduce imbalances in power, three key aspects of the mediation process—the voluntary nature, the "empowerment function," and the "non-adversarial approach"—explicitly work to "prevent power abuses by a more powerful party."[170] In negotiations including all food aid reform stakeholders, a negotiation would be refereed by a facilitative mediator[171] equipped to reduce both power imbalance and maintain focus on cooperative action toward mutual goals.

The process of alternative dispute resolution begins by pinpointing the key barriers to cooperation and only then determining the appropriate use of specific ADR tools to improve cooperative action toward a favorable outcome.[172] Following this process, the subsequent section examines key strategic barriers that inhibit cooperation such as the aggravation of the stakeholder power imbalance through the use of both "outside strategies,"[173] use of the media as a position-promoting strategy, and the dilemma of the "principal agent barrier," a barrier primarily of representation.[174] In this context, the subsequent section highlights how facilitated, multi-stakeholder negotiations could work to mediate these barriers and improve the likely passage of favorable food aid reform measures.

A. Attempts to Reform Food Aid & the Barriers to Cooperative Action

Efforts to reform food aid since 2006 have shared both fundamental tactics and fundamental flaws that have substantially and unnecessarily hindered actual food aid reform. Attempts at reform, while including bipartisan and multi-institutional support, neglected to give the key oppositional parties a chance to negotiate the mechanisms of reform prior to their congressional introduction.[175] This tactic ignored the influential weight and substantial interests of key oppositional parties and overlooked the necessity of inclusive negotiations for the success of controversial legislation.

These tactical oversights manifest as specific categorical barriers to cooperative action: (1) bargaining through the mass media or an "outside-strategy;" and (2) the "principal agent barrier," where final decisions are filtered through representatives that do not often share the same interests or motivations as their constituents.[176] In the case of food aid reform efforts, this outside strategy was employed not only in the political and legislative arena but also by key stakeholder interest groups (both the pro-reform agencies and NGOs as well as the oppositional lobby groups representing the agricultural, shipping, and food-aid NGO interests).[177] The issue with this bargaining strategy is that it aggravates differences by diluting the arguments and interest of each side into oppositional positions.[178] This ultimately reduces the likelihood of cooperative action by decreasing the parties' abilities to identify mutually beneficial solutions, as Tom Melling explains: "Conflict encourages the media to create a story by exaggerating differences and by polarizing parties' positions. . . . Reporters dislike tentativeness, which discourages the flexibility that politicians need to make compromises during long negotiations.[179]

While Melling's analysis focuses specifically on the issues an outside strategy creates for cooperation, this article argues that in the case of food aid reform the same barriers are created by the outside strategies of key stakeholder groups in addition to those used by the congressional figures—consequently creating a "stakeholder dilemma" in addition to the commonly occurring "politicians' dilemma."

The issue of the principal agent barrier in food aid reform results from the role of Congress in determining the ultimate fate of food aid policy. Legislators, who arguably hold a stake in the food aid debate as a consequence of effects on their constituents, are nevertheless primarily indirect stakeholders; while key groups like the NGOs, food aid administering agencies, lobby groups, and food-aid recipients make up the direct stakeholders. While these groups face the most direct impact from the composition of food aid reform, their interests and opinions must filter through Congress, creating the representation issue often referred to as the "principal agent barrier."[180]

To illustrate these barriers, the following three sections provide an overview of three contemporary attempts at food aid reform, beginning first with a series of attempts made by the Bush administration, then moving to the 2013 attempt by the Obama administration, and concluding with the attempt originating by two legislators, Representative Ed Royce (R-CA), and Representative Karen Bass (D-CA).

B. Bush Administration & Food Aid Reform

In the 2002 "President's Management Agenda," former President George W. Bush acknowledged the fundamental need for food aid reform.[181] The specific critiques highlighted by the report included the common laments regarding the overly complex administration of the programs, the associated inefficiencies and cost increases, and the wasteful and counterproductive nature of tied aid and monetization with their potential to negatively impact the local agricultural markets of recipient countries.[182] Acting on these critiques, "[i]n early 2005, just as the food aid issue was heating up at the WTO, President Bush included in his 2006 budget proposal a request for authority to allow 25[%] of the food aid budget for that year to be provided in the form of cash for local and regional purchase."[183]

Bush's efforts at reform were supported most notably by then-USAID Administrator Natsios, who strongly favored the proposed reforms to food aid policy.[184] Natsios specifically championed efforts to increase the flexibility of aid, allowing for increased cash assistance for local and regional procurement.[185] Despite the robust efforts by both President Bush and Natsios, the 2006 budgetary reforms to food aid were defeated by Congress.[186] A key factor leading to this rejection was the vocal opposition by the agricultural, shipping, and NGO groups who asserted robust pressure on legislators, convincing them that the proposed reform was unnecessary and harmful to both the United States and food-aid recipients.

Concomitantly to renewed White House efforts in the 2007 budget, efforts were made to pass a new 2007 Farm Bill in the legislature. The new Farm Bill legislation included a request for the allotment of 25% of P.L. 480 Title II funds toward cash assistance for the procurement of local and regionally purchased food aid.[187] This was intended to increase efficiency through a reduction in food aid delivery times and savings on transportation and commodity costs.[188] However, Congress was more amenable to the lobbying of influential agricultural, maritime, and food aid NGO interests, and the bill was ultimately defeated.[189]

Final efforts in 2008 again attempted to move a fraction of U.S. food aid into cash allocations for local and regional purchase of aid commodities.[190] President Bush's 2008 proposals followed largely from policy proposals drafted by The Heritage Foundation, most notably allowing for local sourcing of food aid by discontinuing domestic commodity mandates and exempting food aid from cargo preferences—in other words, implementing partially untied aid.[191] Furthermore, the proposal eliminated funding for Title I of P.L. 480, which authorizes the untargeted monetization of aid after 2001.[192] However, the heavy-handed agricultural lobby, shipping lobby, and certain NGOs reliant upon monetization, significantly diminished reform efforts; "[t]hese groups were [again] able to exert influence over a powerful part of the domestic institutional setting where important decisions regarding food aid policy are made: U.S. Congress."[193] In sum, despite executive level, institutional, and bipartisan support, the Bush Administration's attempts for reform had, at best, limited success, as unsurprisingly, Congress' reception of the bill largely paralleled this initial reception by important industry leaders.[194]

In total, the food aid reform efforts made between 2004 and 2008 were successfully opposed by an alliance of agricultural, maritime, and food-aid NGO industry lobbyists asserting tremendous pressure over Congress and "shap[ing] public discourse by posting news items and press releases on their websites and testifying at numerous congressional hearings that touched on food aid."[195] They also worked on the international platform, lobbying at the Geneva Convention, targeting key trade negotiators.[196] Ultimately, the reform attempts achieved no change to the present structure of U.S. food aid policy.[197]

C. Obama Administration & Food Aid Reform

Relying on tactics almost indistinguishable from those proven unsuccessful by the Bush administration, President Obama aimed to implement even more drastic food aid reform measures in his 2014 budget proposal. In equal fashion, Obama's budgetary reform to food aid, which attempted to completely replace in-kind aid with cash aid, was largely eroded by Congress as the same strong oppositional interests fought fervently against it.

Yet again the primary opponents were the agricultural industry, the shipping industry, and aid organizations that rely on monetization for nonemergency program funding. These fierce lobby groups worked quickly to gather significant support within Congress and oppositional efforts began as soon as February 2013, when information about the budget proposal was leaked.[198] After months of fierce lobbying, "only a few lawmakers [were] prepared to publically support the effort to send cash abroad to make distribution of aid faster and more efficient. They [were] outnumbered by lawmakers from both parties who [wanted] to kill the initiative or water it down substantially."[199] A combination of major aid organizations, including the Alliance for Global Food Security, and various commodity groups headed the effort. Those opposed to reform used a range of tactics to influence key lawmakers, including meetings, letters, and fueling support from constituents.[200] The major catalyst for inspiring opposition was a continual reference to the U.S. jobs at stake if the reform went through.[201]

Some of the most notable efforts to generate congressional opposition to the proposed reform included a letter sent directly to President Obama with 70 signatories from various institutions and organizations against the proposed changes to aid.[202] This letter was followed in March by a similar letter sent to nine congressional committees.[203] The letters argued for the significance of the "transparency, accountability and reliability" provided by the current food aid system of in-kind contributions; further cautioning the potential for corruption that comes with cash-based aid; and citing the importance of the system for domestic job security.[204] In addition to letters, there were also direct interactions between oppositional interest groups and legislators, including a meeting in March between congressional aides and the soybean farmers opposed to aid reform.[205] These efforts generated significant congressional opposition, and President Obama's original proposal—a 100% re-appropriation of funds typically provided for in-kind aid to cash transfers and untied flexible food aid programs—was whittled down to a redistribution of just 45%.[206]

D. Congress & the Food Aid Reform Act

Wary of the failure for the food aid reform proposed in the Obama budget, Republican Representative Ed Royce, Chairman of the House Foreign Affairs Committee, and Democratic Representative Karen Bass; Ranking Member of the Subcommittee on Africa, Global Health, Global Human Rights and International Organizations; introduced bipartisan legislation to reform major components of U.S. international food aid. The legislation introduced in the 113th Congress, and entitled the Food Aid Reform Act[207] specifically targeted the Food for Peace Program, calling for modernization and increased efficiency in an effort to "reach more people, more quickly, at less expense."[208]

In endorsing the Food Aid Reform Act both Chairman Royce and Ranking Member Bass explicitly referenced the importance of food aid policy that benefits the hungry and food insecure peoples in the most efficient and expedient way possible. Chairman Royce noted that, "[t]he system through which the United States provides food aid [to] those facing starvation is needlessly inefficient and ineffective. Especially given the current fiscal environment . . . ."[209] Ranking Member Bass echoed Royce's appeal for efficiency by stating, "[t]his legislation provides commonsense reforms to our grossly inefficient system for delivering food aid. . . [ensuring that] . . . funds aren't wasted as we seek to lend a helping hand to those who would otherwise face severe consequences due to food insecurity."[210]

With the underlying goal of improving the efficiency and effectiveness of the Title II food aid program, the Food Aid Reform Act specifically addresses U.S. commodity sourcing requirements, U.S. cargo preferences, and food aid monetization. The Food Aid Reform Act focuses on improving the efficiency and effectiveness of international food aid by: (1) eliminating U.S. procurement requirements for agricultural commodities, (2) eliminating the costly and inefficient practice of "monetization" (selling food aid commodities in recipient countries to finance development projects), (3) aligning nonemergency food aid with the Foreign Assistance Act of 1961, and (4) exempting U.S. food aid provided from cargo preference requirements.[211] Supporters of the reform bill were motivated largely by what they see as an outdated, inefficient, and often ineffective way of meeting the primary goal of food assistance.[212] Such changes would move policy in a direction more in line with current academic understanding of appropriate hunger-relief efforts; namely, by providing cash assistance, and increasing aid flexibility, the proposed reforms would work to stabilize and augment what Sen termed the necessary "entitlements" for adequate food access.[213] Most concretely, the bill is estimated to save the U.S. government $500 million over ten years while also increasing the human value of the aid administered.[214]

Although using a stand-alone bill is a novel tactic for reform, the negotiations process preceding the construction of the act, like previous attempts, neglected to include dialogue with the expected opponents.[215] Consequently, and unsurprisingly, robust opposition from the "iron triangle" lobbing groups has severely limited the likely passage of the act.[216]

E. Options for Cooperative Action: The Value of Obama's Budget Proposal

Despite what appears to be mutually exclusive positions and interests on the part of each stakeholder group, a closer look at Obama's 2014 budget proposal reveals key options for mutual benefit—or at least areas for concession between the divergent groups. The budget specifically proposes to reallocate the $1.47 billion annual appropriations for Title II of P.L. 480 to three USAID assistance accounts.[217] This reallocation would essentially cease tied aid provided under Title II, and shift funds to USAID programs that are unrestricted by commodity preferences and subsequently unencumbered by cargo preferences.[218] The specific USAID programs that would receive additional funding under the proposal include: International Disaster Assistance ("IDA"), Development Assistance ("DA") for a Community Development and Resilience Fund ("CDRF"), and a new Emergency Food Assistance Contingency Fund ("EFAC")—all of which would add "gains of flexibility, timeliness, and efficiency in the provision of emergency food aid," by expanding the aid options available to USAID.[219] Instead of restricting aid mechanisms to "a commodity-only response," USAID could choose from a variety of options, including: "local or regional procurement in countries or regions where food aid emergencies are occurring and other forms of cash-based assistance like food vouchers or cash transfers."[220] The increase in funding toward more flexible aid options would ultimately result in significant efficiency savings as well as increasing the ability of USAID to provide more need-appropriate aid, enabling the Agency and partnering organizations to adapt assistance methods to the local circumstances of the recipient regions.[221]

Furthermore, the proposal reallocates a portion of the "efficiency savings" from the transfer of Title II funds directly toward increases to the Maritime Security Program ("MSP") equal to $25 million and to the CDRF equal to $330 million for food aid NGOs.[222] Given the cumbersome and inefficient structure of the indirect benefits received through both cargo preferences and monetization, there is potential for the shipping industry or NGOs to support reform. Despite these seemingly conciliatory fund reallocations, steadfast opponents highlight another reason why facilitated negotiations between all parties could benefit reform. The efficiency savings allocations in the Obama budget make apparent that the administration is sensitive to the concerns of reform opposition groups; consequently, they are likely amenable to compromise. The resistance on the part of both the shipping industry and food aid NGOs is most likely a consequence of their lack of participation in the proposal.[223] In the case of food aid reform, failure to include key stakeholders causes fervent opposition from powerful and influential parties, invariably limiting the success of reform. Thus, if the key oppositional stakeholders were able to participate in the preceding negotiations for reform proposals, thereby giving them a stake in the proposal, opposition efforts would be significantly reduced and reform success significantly increased.

Moreover, as the public and political discourse heats up on global food security issues, inaction on increasing the efficacy of food assistance will become harder to accept.[224] Consequently, it is likely that reform attempts will continue as food issues remain in the forefront of public consciousness. Accordingly, it might behoove the iron triangle members to participate in early negotiations in an effort to prevent future reform proposals that offer little conciliatory measures to ameliorate their potential financial losses. The Food Aid Reform Act foreshadowed the potential for this as it emerged on the heels of the unsuccessful budgetary reform efforts and offered a fervent effort to advance food aid policy changes with far less iron triangle appeal.[225] While mirroring the Obama budget in its elimination of Title II funding, the Food Aid Reform Act lacked comparable reallocations to either food aid NGOs or the shipping industry.[226]

Even if divergent parties were brought together, multi-stakeholder negotiations alone would not be enough to guarantee successful reform efforts. Given the contentious nature of U.S. food aid policy and the power imbalances between key stakeholders, the structure of any negotiation will be an important consideration. While an exhaustive evaluation of the necessary negotiation structure is outside the scope of this article, it is important to recognize the fundamental need for an effective facilitator or a facilitative mediator, to be present in any successful negotiation. Used in concert with multi-stakeholder negotiations, facilitation between the conflicting stakeholders by an effective mediator would help balance the disparate power and influence of stakeholders participating in the negotiation.[227]

As mentioned above, three key aspects of the mediation process—its voluntary nature, the "empowerment function," and the "non-adversarial approach"—explicitly work to "prevent power abuses by a more powerful party."[228] Most basically, a facilitative mediator would work to establish ground rules and a process for the overall discussion, ensuring that all parties understood the importance of reaching a mutually acceptable settlement.[229] Additionally, "by focusing on specific issues and the parties' interests and needs, the mediator can prevent the dialectic of adversarial opposition and encourage the parties to engage in a common search for a mutually satisfactory, or at least bearable, solution for both sides."[230]

In sum, a fatal flaw of the recent attempts for food aid reform was the failure to use the key ADR tool of facilitated, multi-stakeholder negotiations preceding food aid reform proposals. While legislative negotiations followed the introduction of each reform proposal, legislative negotiations failed in every instance to convene all of the impacted stakeholder groups prior to the structuring of the proposed reforms. Consequently, each proposal was met with instant opposition from the iron triangle groups.[231] Conversely, inviting the key oppositional groups to engage in a private dialogue or negotiation about proposals for reform might have worked to quell the fierce opposition or helped to construct a reform proposal that was more likely to generate the requisite Congressional support. Furthermore, these negotiations could have included representatives of the aid recipient countries, who were decidedly absent in the final debate about all reform proposals. Finally, the presence of a facilitative mediator could work to balance the convergent stakeholder interests and power imbalances, ensuring a mutually amenable outcome.

V. Conclusion

As the pressures of population growth, increasing affluence, and climate change strain the stability of global food supplies, fringe populations are increasingly susceptible to hunger and malnourishment.[232] Consequently, the demand for effective food aid and food assistance programs is likely to rise. Efforts to limit the dissonance between food aid logic and policy must not be disused by avoidable barriers in the legislative process. Specific tactics of alternative dispute resolution—including facilitated, multi-party negotiations and the use of a facilitative mediator—could beneficially advance efforts to modernize food aid by enabling cooperative action and balanced negotiations between divergent stakeholders.

Current reform efforts have detrimentally overlooked key concepts and tactics of alternative dispute resolution. By incorporating basic efforts for cooperative negotiation through the inclusion of both reform-critics and reform-supporters in the conversations about reform proposals, the chance of passing U.S. food aid reform legislation could be greatly increased. Efforts on the part of both the Bush administration and the Obama administration, although bipartisanly inclusive, were exclusive in stakeholder representation. With such a complex and contentious issue, efforts to push through legislative change without the full participation of all powerful stakeholders will likely fail. As was the case in past efforts for U.S. food aid reform, failure stems primarily from the guarantee of fervent opposition by powerful, but excluded stakeholders. Efforts for food aid reform have ignored this key concept and have consequently achieved only limited success.

Endnotes: U.S. Food Aid Reform through Alternative Dispute Resolution

1 Edward J. Clay & Benjamin Lernard Schaffer, Room for Manoeuvre: An Exploration of Public Policy Planning in Agriculture and Rural Development 55 (1984) (citing quotation from unpublished notes of interviews with female household workers, Mymensingh District, Bangladesh, 1980).
2 Amartya Sen, Hunger and Famines: An Essay on Entitlement and Deprivation 1 (1981).
3 Johan Pottier, Anthropology of Food: The Social Dynamics of Food Security 142 (1999).
4 Sen's assertion that a lack of access , and not necessarily a lack of supply, causes a lack of adequate food repositioned government and policy as key factors in preventing and ameliorating both hunger and famines. Sen, *supra* note 2, at 142-43.
5 *See generally*, *id.*
6 *Id.* at 142-143.
7 *See generally* Sen, *supra* note 2.
8 Gordon Conway, One Billion Hungry: Can We Feed the World? 29-32 (2012).
9 Gan Ziegler, United Nations Comm'n on Human Rights, The Right to Food: Report by the Special Rapporteur on the Right to Food 5 (2001), *available at* http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/f45ea4df67ecca98c1256a0300340453/$FILE/G0111035.pdf.
10 Food & Agric Org. of the United Nations, The State of Food Insecurity in the World 2008 6 (2008), *available at* ftp:// ftp.fao.org/docrep/fao/011/i0291e/i0291e00.pdf.
11 *Number of hungry people rises to 963 million*, Food & Agric Org. of the United Nations (Dec. 9, 2008), http://www.fao.org/news/story/en/item/8836/.
12 Pottier, *supra* note 3, at 165-67.
13 Tom Melling, *Dispute Resolution within Legislative Institutions*, 46 Stan. L. Rev. 1677, 1689 (1994).
14 Jennifer Clapp, Hunger In The New Balance: The New Politics of International Food Aid 69 (2012).
15 Attempts to reform food aid have been the result of collaboration and conversation between only key supporters of the suggested reforms. Notable actors include aid organizations like Oxfam America and CARE, policy think tanks such as The Heritage Foundation, and supporting legislators.
16 7 U.S.C. § 1691.
17 The Editorial Board, *Food Aid Reform*, N.Y. Times, April 27, 2013, http://www.nytimes.com/2013/04/28/opinion/sunday/food-aid-reform.html.
18 U.S. Gov't Accountability Office, GAO-07-560, Foreign Assistance: Various Challenges Impede The Efficiency And Effectiveness of U.S. Food Aid 7 (2007); Stacey Rosen, *A Pilot Program for U.S. Food Aid*, Amber Waves 2 (Nov. 2008) http://www.ers.usda.gov/AmberWaves/November08/PDF/AW_November08.pdf.
19 For example, in proposing the FY2014 budget, President Obama also addressed the need for food aid reform. His proposal, after consideration by the 113th Congress, was largely rejected. His proposals are comparable to those addressed through The Food Aid Reform Act (H.R. 1983), including monetization, local procurement, and U.S. cargo preferences. Charles E. Hanrahan, *International Food Aid Programs: Background and Issues*, Cong. Research Serv. 12 (May 20, 2013), *available at* http://foreignaffairs.house.gov/sites/republicans.foreignaffairs.house.gov/files/R41072.pdf.
20 *Id.* at 3.
21 Mitchel B. Wallerstein, Food for War/Food for Peace: United States Food Aid in a Global Context 47, 146-47 (1980).
22 Clapp, *supra* note 14, at 3 (From the 1950s to the 1970s political and public concern focused on the controversial geopolitical and agricultural surplus-dumping motivations behind food aid programs of multiple donor countries, namely the United States, Europe, and Australia).
23 Bill Winders, The Politics Of Food Supply: U.S. Agricultural Policy in the World Economy 129 (2009). "In its early days, food aid policy was driven largely by forces no longer relevant in the current context: sizable grain surpluses needing to be disposed of, which determined the largest donors, and geopolitical considerations of the Cold War, which determined the most likely recipients. Humanitarian concerns always underlay food aid policies, but the economic and political considerations of donor countries typically dictated the terms." Clapp, *supra* note 14, at 15. *See also* Harriet Friedmann, *The Political Economy of Food*, 197 New Left Review 29, 29-57 (1993); Theodore Cohn, The International Politics of Agricultural Trade: Canadian-American Relations in a Global Agricultural Context 91-108 (1990); John Cathie, The Political Economy of Food Aid 2, 11, 22 (1982).
24 Winders, *supra* note 23, at 95 (citing Harriet Friedmann, *The Political Economy of Food: The Rise and Fall of the Postwar International Food Order*, 88 Am. J. Soc. 248 (1982) (Specifically, donor-oriented aid was blamed for turning previously self-sufficient countries into aid-dependent nations while serving the capitalist expansion of major agribusiness interests overseas and for distorting farmer incentives in recipient countries, reducing local food production and security).
25 *See* Wallerstein, *supra* note 21, at 47 (Most notably the 1970s food crisis increased awareness for the importance of effective food aid policies).
26 Clapp, *supra* note 14, at 1.
27 The perception that aid policy had become less donor-oriented and thus more altruistic was true in many cases; in fact, the majority of donor countries (apart from the United States) made substantial efforts in the 1970s to reform the practices of geopolitical and surplus oriented food donations. Clapp, *supra* note 14, at 3.
28 *See generally* Christopher Barrett & Daniel Maxwell, Food Aid after 50 Years: Recasting Its Role (2005); U.S. Gov't Accountability Office, *supra* note 18 (2007); Edward J. Clay, Matthew Geddes & Luisa Natali, Org. for Econ. Co-operation & Dev., Untying Aid: is it working? An Evaluation of the Implementation of the Paris Declaration and of the 2001 DAC Recommendation of Untying ODA to the LDCs (2009); E. Holt-Gimenez & A Shattuck, *Food Crises, Food Regimes and Food Movements: Rumblings of Reform or Tides of Transformation?*, 38 J. Peasant Stud. 109, 109-10 (2011). Like the crisis in the 1970s, this crisis generated public awareness for the importance of effective international food assistance.
29 Clapp, *supra* note 14, at 2.
30 "Old debates about the use of food aid to further foreign policy goals or dispose of grain surpluses have given way to debates over *how* food aid is given. In particular, the question of whether food aid is tied to food sourced in the donor country has generated heated exchanges between donors." Clapp, *supra* note 14, at 5.
31 Clapp, *supra* note 14, at 5.
32 Clapp, *supra* note 14, at 5.
33 Clapp, *supra* note 14, at 5.
34 The idea of untying food aid "gained significant momentum in international policy circles starting in the mid-1990s, after the European Union adopted the policy in 1996. Agencies such as the Food and Agricultural Organization ("FAO") and the Organization for Economic Co-operation and Development ("OECD") have taken up the issue in extensive reports directed at their membership since 2005, and from 2007 the WFP began to strongly endorse the idea. Some donors, such as Canada and Australia, eventually followed the EU on this idea by untying their own food aid programs." Clapp, *supra* note 14, at 46.
35 The idea of untying food aid had been championed by development experts since the mid-1970s. The Paris Conference on International Economic Cooperation, a meeting of 27 governments representing industrialized, oil-producing, and developing countries held in 1975-77 as part of global negotiations on a New International Economic Order, strongly promoted the idea in its final declaration, yet uptake was slow and uneven. Clapp, *supra* note 14, at 6.
36 The specific stakeholders working to maintain the US's policy of tied aid will be discussed more thoroughly in Part III, but include the agricultural industry, the shipping industry, and some food aid NGOs, including most notably the Alliance for Global Food Security.
37 Clapp, *supra* note 14, at 6.
38 Officially called the European Recovery Program, the Marshall Plan was the United States program that provided aid to Europe in the form of economic support to help rebuild European economies after the end of World War II with the purpose of preventing the spread of Soviet Communism. The specific goals of the United States were to rebuild the war devastated region, remove trade barriers, modernize industry, and return Europe to prosperity. Michael J. Hogan, The Marshall Plan: America, Britain, and the reconstruction of Western Europe, 1947-1952 (1998).
39 U.S. Agency for Int'l Dev., Celebrating Food For Peace 1954-2004: Bringing Hope to the Hungry 7 (2004), *available at* http://foodaid.org/news/wp-content/uploads/2011/01/FFP_50thAv_Brochure.pdf.

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1 David Vogel, *The Environment and International Trade*, 12.1 J. Pol'y Hist. 72, 76.

2 *Id.*; General Agreement on Tariffs and Trade, Art. XX Apr. 15, 1994, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994].

3 GATT 1994, Art. XX.

4 *Chronological List of Disputes,* World Trade Org. (Dec. 3, 2013, 9:30 PM), http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

5 Margo McDiarmid, *Joe Oliver Takes Oilsands Fight to Europe's Financial Heart,* CBC News (Nov. 19, 2013), http://www.cbc.ca/news/politics/joe-oliver-takes-oilsands-fight-to-europe-s-financial-heart-1.2432413.

6 *Id.*

7 Charles T. Drevna et al., *Multi-Association Letter Regarding EU Fuel Quality Directive*, Institute for 21st Energy (Dec. 3, 2013, 9:30 PM), http://www.energyxxi.org/multi-association-letter-regarding-eu-fuel-quality-directive.

8 Barbara Lewis, *Update 2-EU Vote on Tar Sands Oil Delayed Until* 2013, Reuters (Apr. 20, 2012), http://www.reuters.com/article/2012/04/20/energy-tar-idUSL6E8FK33620120420.

9 Directive 2009/30, 2009 O.J. (140) 1, 2 (EC).

10 Défense Terre, WTO Implications Of Reporting Measures for Tar Sands under the Fuel Quality Directive 1 (2011), *available at* http://www.transport-environment.org/sites/te/files/media/2011%2006%20WTO%20and%20Tar%20Sands_FINAL.PDF.

11 Drevna, *supra* note 7.

12 Drevna, *supra* note 7.

13 Drevna, *supra* note 7.

14 GATT 1994, Art. I:1. In WTO cases, four criteria have been used to determine if a product constitutes a "like product:" the physical properties, the extent to which it is capable of serving the same or similar end use, the extent to which consumers perceive and treat the product as an alternative to perform specific functions to satisfy a particular demand, and the international tariff classification of the product. *WTO Rules and Environmental Policies: Key GATT Disciplines,* World Trade Org. (Dec. 3, 2013, 9:30 PM), http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

15 GATT 1994, Art. III:4.

16 GATT 1994, Art. XX(g).

17 Increased GHG emissions increases average temperature, the frequency of heat waves and extreme weather events, the severity of coastal storms, and mortality. Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,497-98 (Dec. 15, 2009).

18 Panel Report, *United States—Standards for Reformulated and Conventional Gasoline*, 19, WT/DS2/9 (May 20, 1996), *available at* http://www.wto.org/english/tratop_e/dispu_e/2-9.pdf.

19 *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,523.

20 Panel Report, *supra*, note 18.

21 Panel Report, *supra*, note 18, at 1-4.

22 These standards created baselines "to permit scrutiny and monitoring of the level of compliance of refiners, importers and blenders with the "non-degradation" requirements." Panel Report, *supra*, note 18 at 4.

23 Panel Report, *supra*, note 18, at 19.

24 Panel Report, *supra*, note 18, at 5-6.

25 Panel Report, *supra*, note 18, at 29-30.

26 *See* GATT 1994, Art. XX (stating that measures should not be "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail.").

27 More specifically, the DSB considered whether: (a) the application of the measure necessarily results in discrimination, (b) the discrimination is arbitrary or unjustifiable in both the actual provisions of the measure and how it is applied in practice, and (c) discrimination occurs between countries where the measures prevail. Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, ¶ 150-60, (Nov. 6, 1988).

28 In *United States—Standards for Reformulated and Conventional Gasoline*, the DSB appellate body found that the United States "had not sufficiently explored the possibility of entering into cooperative arrangements with affected countries in order to mitigate the administrative problems raised by the United States in their justification of the discriminatory treatment." *WTO Rules and environmental policies: GATT exceptions,* World Trade Org. (Dec. 20, 2013, 4:00 PM), http://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm.

29 The provision does not impose a different standard on tar sands oil than other forms of crude oil within its boundaries. Therefore, there is no discrimination of like products. Défense Terre, *supra* note 10, at 8. *See supra* note 27 and accompanying text; Directive 2009/30, 2009 O.J. (140) art. 7a (EC); GATT 1994, Art. XX.

30 The EU and Canada participated in multi-year peer reviewed consultations, which demonstrates the EU's good faith effort in mitigating potential disputes. Défense Terre, *supra,* note 10,at 8.

31 Directive 2009/30, 2009 O.J. (140) ¶ 2 (EC).

32 *See* GATT 1994, Art. XX(b), (g).

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40 World Food Programme, 2010 Food Aid Flows 7 (2011), *available at* http://home.wfp.org/stellent/groups/public/documents/research/wfp238954.pdf.

41 7 U.S.C.A. § 8701.

42 *Id.*; "U.S. international food aid programs have traditionally been authorized in farm bills. The most recent of such bills, the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), authorized through FY2012 and amended international food aid programs. . . . U.S. international food aid has been distributed mainly through five program authorities: the Food for Peace Act (P.L. 480); Section 416(b) of the Agricultural Act of 1949; the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and the Local and Regional Procurement Pilot Project, a pilot program in the 2008 farm bill which ended in FY 2012. In addition, the 2008 farm bill also reauthorized the Bill Emerson Humanitarian Trust (BEHT), a reserve of commodities and cash for use in the Food for Peace program to meet unanticipated food aid needs." Hanrahan, *supra* note 19, at ii.

43 Clapp, *supra* note 14.

44 "By setting out food aid policies within specific pieces of legislation that it must approve annually, Congress plays a strong role in determining the direction of these policies." Clapp, *supra* note 14, at 72.

45 Agricultural Trade Development Assistance Act, 7 U.S.C. § 1721 (2006).

46 *Id.*

47 *See* House Foreign Affairs Comm., Food Aid Reform, *available at* http://foreignaffairs.house.gov/sites/republicans.foreignaffairs.house.gov/files/06-11-13%20Food%20Aid%20Reform%20Fact%20Sheet%20PDF.pdf.

48 U.S. Gov't Accountability Office, GAO-07-560, *supra* note 18, at 7.

49 Fiscal year 2014 request for U.S. food aid was $1.47 billion as compared to the $1.15 billion the House Agricultural Appropriations introduced. House Foreign Affairs Comm., *supra* note 47; U.S. Agency for Int'l Dev. , U.S. International Food Assistance Report 2007, at 7 (2008), *available at* http://kenya.usaid.gov/our_ work/humanitarian_assistance/frp/fy07_usifar_final.04.24.08.pdf

50 7 U.S.C.A. § 1691.

51 U.S. Agency for Int'l Dev., supra note 39.

52 U.S. Agency for Int'l Dev., supra note 39 (following World War II, U.S. agricultural policy funded an unprecedented and unmatched level of research, credit, and production advice while also supporting farmers' incomes, the combination of which created a massive food commodity surplus by the end of the Korean War.).

53 U.S. Agency for Int'l Dev., supra note 39.

54 Hanrahan, *supra* note 19, at 2.

55 Hanrahan, *supra* note 19, at 2.
56 U.S. Agency for Int'l Dev., supra note 39.
57 Hanrahan, *supra* note 19, at 2.
58 Paul L. Doughty, *Peace, Food and Equity In Peru*, 15 Urb. Anthropology & Stud. Cultural Sys. & World Econ. Dev., 45-59 (1986).
59 *Id.*; Clapp, *supra* note 14, at 71(Although Title II is currently the most significant component of the Food for Peace program, prior to 1980, the majority of aid was delivered under Title I, "sold on concessional terms to poor countries[,] and was in turn sold on local markets in an untargeted fashion" with the chief purpose of creating export markets for U.S. grain. The food crisis in the 1970s initiated a decrease in Title I aid funding, and beginning in the 1980s the United States distributed the bulk of its food aid under Title II.).
60 Doughty, *supra* note 58.
61 U.S. Agency for Int'l Dev., *supra* note 39.
62 Milwaukee v. Sec'y of Agric., 877 F.2d 540 (1989).
63 46 U.S.C. §§ 55305(b), 55314(a)(1) (2006); 46 U.S.C. § 55314(c)(3).
64 22 U.S.C. § 2354(c) (2006); 22 C.F.R. § 228.13(a) (2008).
65 U.S. Agency for Int'l Dev., *supra* note 39.
66 U.S. Agency for Int'l Dev., *supra* note 39.
67 Food for Peace Act (Agricultural Trade Development and Assistance Act of 1954) 7 U.S.C. §§ 1691-1738r.
68 Derek J. Hanson, *Foreign Food Aid Procurement: Why Domestic Preferencing Requirements Must be Substantially Reduced to More Effectively and Efficiently Alleviate Global Hunger* 39 Pub. Cont. L.J. 51, 63 (Fall 2009) (citing Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 83-480 § 201, 68 Stat. 454, 457 (1954).
69 *Id.*
70 *Id.*
71 *Id.*
72 *See* Erin C. Lentz, Simone Passarelli, & Christopher B. Barrett, *The Timeliness and Cost-Effectiveness of the Local and Regional Procurement of Food Aid*, 49 World Dev. 9, 11 (2013).
73 46 U.S.C. §§ 55305(b), 55314(a)(1) (2006); 46 U.S.C. § 55314(c)(3); Originally, P.L. 83-644 required U.S.-flag vessels to transport 50% of U.S. generated food aid waterborne cargos, but in 1985 the total was increased to 75%. Hanrahan, *supra* note 19, at 15.
74 Hanrahan, *supra* note 19, at 15.
75 Murray A. Bloom, *The Cargo Preference Act of 1954 and Related Legislation*, 39 J. Mar. L. & Com. 289 (2008).
76 U.S. Gov't Accountability Office, *supra* note 18, at 23; U.S. Gov't Accountability Office, International Food Assistance: Funding Development Projects through the Purchase, Shipment, and Sale of U.S. Commodities Is Inefficient and Can Cause Adverse Market Impacts 23 (2011), *available at* http://www.gao.gov/assets/330/320013.pdf [hereinafter Int'l Food Assistance].
77 Int'l Food Assistance, *supra* note 76, at 26.
78 Int'l Food Assistance, *supra* note 76, at 23.
79 Int'l Food Assistance, *supra* note 76, at 24.
80 Int'l Food Assistance, *supra* note 76, at 24.
81 Int'l Food Assistance, *supra* note 76, at 24-25.
82 Int'l Food Assistance, *supra* note 76, at 25 (reflagging is a term used to denote the transfer of a ships registration from one nationality to another; in this instance, reflagging refers to foreign ships coming under the authority and protection of the United States).
83 Int'l Food Assistance, *supra* note 76, at 26.
84 Int'l Food Assistance, *supra* note 76, at 26.
85 "Based on KCCO data, from fiscal year 2002 to 2010, the number of U.S.-flag vessels awarded food aid contracts declined by 50 percent, from 134 to 67 vessels" Int'l Food Assistance, *supra* note 76, at 27.
86 *Food Aid Reform*, U.S. Agency for Int'l Dev., http://www.usaid.gov/foodaidreform (last visited, Jul. 31, 2013).
87 Food Security Act of 1985, Pub. L. No. 99-198, § 1111, 99 Stat. 1354 (1985).
88 Int'l Food Assistance, *supra* note 76, at 5.
89 Int'l Food Assistance, *supra* note 76, at 1.
90 Int'l Food Assistance, *supra* note 76, at 1, 7.
91 Int'l Food Assistance, *supra* note 76, at 7.
92 Some implementing partners work with the recipient country's government to monetize the aid commodities—for example, in Bangladesh, the government is the sole purchaser of USAID monetized aid. Int'l Food Assistance, *supra* note 76, at 13–14. An additional common procedure is through the formation of a consortium among several partners with one partner serving as the selling agent, or alternatively, a single partner might work independently to sell the food aid commodity. U.S. Agency for Int'l Dev., Monetization Field Manual (Oct. 2012), *available at* http://www.usaid.gov/sites/default/files/documents/1866/MonetizationManual12222012FINAL.pdf [hereinafter Monetization Manual].
93 Monetization Manual *supra* note 92, at 10.
94 Monetization Manual *supra* note 92, at 10.
95 Monetization Manual *supra* note 92, at 10.
96 Monetization Manual *supra* note 92, at 4.
97 Monetization Manual *supra* note 92, at 4.
98 Monetization Manual *supra* note 92, at 1.
99 Monetization Manual *supra* note 92, at 2.
100 Monetization Manual *supra* note 92, at 2.
101 Pub. L. No. 99-198, § 1111. The rationale behind this amendment was twofold. First, there was a worry that the cost recovery formula was unfairly inflexible, working to "punish participants where market forces were beyond their control, or not reward situations where the market price was above the formula value." H.R. Rep. No. 107-424 (2002). Secondly, because only USAID was required to meet cost recovery requirements, there was concern that this difference in standard could result in inequitable inconsistencies in monetization, "potentially [penalizing] one agency or the other agency." Int'l Food Assistance, *supra* note 76, at 6.
102 Hanrahan, *supra* note 19, at 12. Less resolutely, both USAID and USDA "must ensure that monetization transactions do not entail substantial disincentive to, or interfere with, domestic production or marketing in that country." *Id*.
103 *See* H.R. REP. No. 107-424, at 236 (2002) (Conf. Rep.).
104 *Id.* at 69; Clapp, *supra* note 14, at 46-47, 69. International efforts to untie and reform international food aid have been present since the 1970s and became a prominent and widely accepted policy by the mid-1990s as notable donor states such as the EU began to adopt policies that untied aid, spurring likeminded efforts in other donor countries. Furthermore, international development organizations such as FAO, OECD, and WFP avidly support policies providing flexible, untied food aid. Clapp, *supra* note 14, at 46-47, 69.
105 Clapp, *supra* note 14, at 74.
106 Clapp, *supra* note 14, at 73.
107 Sen, *supra* note 2; Pottier, *supra* note 3, at 142.
108 Sen's theory of famine was not without critiques, the majority of which "stressed that famines develop over time; [that] famine is a process, not an event . . ." arguing that, "[a]s famine ethnographies now show, famines indeed come mostly 'at the tail end of a long-term process of increasing vulnerability . . . to food supply shocks.' The view that *normal* market processes were at the root of famine, invaluable as a new insight, also overlooked the possibility that well-functioning markets sabotaged in war can trigger famine." Sen, *supra* note 2, at 143 (citing Stephen Deveroux, Theories of Famine 159 (1993)).
109 Stephen Deveroux, Theories of Famine 71 (1993).
110 Pottier, *supra* note 3, at 143.
111 The Heritage Foundation is a preeminent conservative think-tank dedicated to advancing conservative public policy. *See generally*, The Heritage Foundation: Leadership for America, www.heritage.org (last visited Dec. 20, 2013).
112 Oxfam America is a decidedly liberal international aid organization with companion interests in opposing the majority of conservative political and economic agendas. *See generally*, Oxfam America: Working to End Poverty and Injustice, www.oxfamamerica.org (last visited Dec. 20, 2013).
113 Hanrahan, *supra* note 19, at 8, 14.
114 Hanrahan, *supra* note 19, at 15.
115 Clapp, *supra* note 14, at 78.
116 Christopher Barrett, an agricultural economist, and Daniel Maxwell, then international deputy regional director of CARE, published *Food Aid after 50 Years: Recasting Its Role*, which argued that the U.S. food aid system needed to be more flexible by including cash for local and regional purchases, in 2005. Around the same time, OECD published a report showing that in-kind food aid was both more costly and more time-consuming to provide. In 2007, GAO published a report on the performance of U.S. food aid programs, which indicated that, *inter alia*, rules on in-kind aid and transport were making the programs ineffective and inefficient. Clapp, *supra* note 14, at 77, 80-81.
117 151 Cong. Rec. 24,197 (2005) (Remarks by Andrew S. Natsios, USAID Administrator at the Kansas City Export Food Conference on the Local Purchase Initiative (May 3, 2005)); *see also* 7 U.S.C. § 1691 (2006) (stating that the policy of the United States is the promotion of food security in the developing world through the use of agricultural commodities and local currencies). *But see* U.S. International Food Assistance Report 1 (2007), *available* at http://www.usaid.gov/ our_work/humanitarian_assistance/ffp/fy07_usifar.pdf (listing

as important goals the need to combat hunger and to "develop and expand export markets for U.S. agricultural commodities").

118 Hanrahan,, *supra* note 19, at 15. Critiques of the cargo preferences are largely about efficiency. Those supporting reform note the inefficiencies in both time and cost that come with requiring aid to be shipped on U.S.-flagged vessels. Hanrahan,, *supra* note 19, at 15.

119 The Editorial Board, *supra* note 17.

120 Hanrahan,, *supra* note 19, at 14.

121 Monetization is often blamed for causing commercial displacement of local agricultural products, causing harm to traders and local farmers and undermining the development of local markets, which may act to reduce long term food security. Clapp, *supra* note 14, at 78.

122 It is argued that buying locally or regionally could result in price spikes that would make it difficult for poor people to buy the supplies they need on local markets. Some also argue that the reliability and quality of food supplies could not be guaranteed with local or regional procurement. Hanson, *supra* note 68, at 60.

123 Charles Abbott, *Fierce Lobbying Counters White House Push for Food Aid Reform*, Reuters, May 1, 2013, http://www.reuters.com/article/2013/05/01/usa-foodaid-lobbying-idUSL2N0D21F420130501.

124 Hanrahan, *supra* note 19, at 14.

125 Elijah E. Cummings, Duncan Hunter & Nick Rahall, *Keeping the Food in Food for Peace*, U.S. News & World Report, May 21, 2013, http://www.usnews.com/opinion/articles/2013/05/21/keep-us-food-aid-programs-reliable-and-transparent.

126 ActionAid Int'l, Power Hungry: Six Reasons to Regulate Global Food Corporations 12 (2005), *available at* http://www.actionaid.org.uk/_content/documents/power_hungry.pdf.

127 Barrett & Maxwell, *supra* note 28, at 89.

128 Clapp, *supra* note 14, at 73.

129 "Just one of those firms, Cargill, is reported to have sold $1.09 billion in grain to the U.S. government for food aid between 1995 and 2005." Clapp, *supra* note 14, at 73.

130 Barrett & Maxwell, *supra* note 28, at 91-92.

131 Barrett & Maxwell, *supra* note 28, at 91-92.

132 Clapp, *supra* note 14, at 74.

133 Liz Jayankura, *U.S. food aid policies discussed at IFAC*, Wheat Letter (U.S. Wheat Associates), May 3, 2007, *available at* http://www.uswheat.org/wheatLetter/doc/45C55CE3775E571285257C150061CD08?OpenDocument; Polly Diven, *The Domestic Determinants of U.S. Food Aid Policy*, 26 Food Pol'y 455 (2001) (discussing the historical significance of food aid to commodity producer groups).

134 Clapp, *supra* note 14, at 74.

135 Clapp, *supra* note 14, at 82.

136 Chris Gillies, *U.S.-Flag Vessel Operators Torn by Market*, American Shipper (May 2004), http://www.americanshipper.com/paid/MAY04/US_flag_frm.asp.

137 Barrett & Maxwell, *supra* note 28, at 96; Samuel Loewenberg, *Bush in Food Aid Fight with Congress*, Politico, Feb. 06, 2008, 6:17PM, http://www.politico.com/news/stories/0208/8378.html.

138 Celia Dugger, *CARE Turns Down Federal Funds for Food Aid*, N.Y. Times, Aug. 16, 2007, http://www.nytimes.com/2007/08/16/world/africa/16food.html?pagewanted=all.

139 Clapp, *supra* note 14, at 74 (citing Interview with Marc Cohen, senior research fellow, IFPRI).

140 Dugger, *supra* note 138, at 1-3.

141 U.S. Gov't Accountability Office, *supra* note 18, at 108.

142 Barrett & Maxwell, *supra* note 28, at 94.

143 Clapp, *supra* note 14, at 74.

144 "Additionally, the supporters of these changes mischaracterize the importance of the U.S. merchant marine and the essential policy nexus between it and food aid programs. Since 1936, U.S. law has held that the United States shall have a merchant marine sufficient to carry . . . a substantial portion of the water-borne export and import foreign commerce of the United States and . . . capable of serving as a naval and military auxiliary in time of war or national emergency." Cummings et al., *supra* note 125.

145 Furthermore, critics note "[a] study issued by IHS Global Insight in 2009 found that barely 2[%] of U.S. foreign trade is now moving in U.S.-flagged vessels." Cummings et al., *supra* note 125.

146 Cummings et al., *supra* note 125.

147 Cummings et al., *supra* note 125.

148 Hanrahan, *supra* note 19, at 20.

149 "USA Maritime cites a report it commissioned on the economic impacts of U.S. international food aid, which shows that the combination of handling, processing, and transporting U.S. commodities all the way from the farm to foreign ports supported $2 billion of U.S. industry output, $523 million in household earnings, and over 13,000 jobs in 2009." Hanrahan, *supra* note 19, at 20 (citing Promar International, Impacts on the U.S. Economy of Shipping International Food Aid (2010), *available at* http://mebaunion.org/WHATS-NEW/Food_Aid-April_2010.pdf.

150 "Barrett and Maxwell have shown, for example, that food aid delivered by the top eight NGOs accounted for 30[%] of the weighted average of their gross revenues for 2001; some relied on U.S. food aid for up to 50[%] of their budget." Clapp, *supra* note 14, at 75 (citing Barrett & Maxwell, *supra* note 28, at 98).

151 "Each has received tens of millions of dollars' worth of in-kind food aid through the Food for Peace program each year over the past decade." Clapp, *supra* note 14, at 75.

152 U.S. Agency for Int'l Dev., U.S. International Food Assistance Report (2006), *available at* http://www.usaid.gov/ our_work/humanitarian_assistance/ffp/fy06_usifar.pdf; U.S. Agency for Int'l Dev., U.S. International Food Assistance Report (2007), *available at* http://www.usaid.gov/ our_work/humanitarian_assistance/ffp/fy07_usifar.pdf; U.S. Agency for Int'l Dev., U.S. International Food Assistance Report (2008) *available at* http://www.usaid.gov/ our_work/humanitarian_assistance/ffp/fy08_usifar_revised.pdf; U.S. Agency for Int'l Dev., U.S. International Food Assistance Report (2009), *available at* http://www.usaid.gov/ our_work/humanitarian_assistance/ffp/fy09_usifar_revised.pdf.

153 Emmy Simmons, P'ship to Cut Hunger & Poverty in Afr., Reconsidering Food Aid: The Dialogue Continues 65 (2007), *available at* http://www.partnership-africa.org/sites/default/files/ReconsideringFoodAidfinalfeb12.pdf; *see also, id.*

154 Clapp, *supra* note 14, at 76.

155 Hanrahan, *supra* note 19, at 19.

156 Clapp, *supra* note 14, at 77.

157 *See generally*, Steve Inskeep, *A Political War Brews Over 'Food For Peace' Aid Program*, Nat'l Pub. Radio (Apr. 04, 2013, 3:18 AM), http://www.npr.org/templates/transcript/transcript.php?storyId=176154775 (concerning opposition to Bush administration reform proposals); Abbott, *supra* note 123 (concerning opposition to the Obama administration reform proposal and the Food Aid Reform Act proposal); Brad Plumer, *Food Aid Reform is Running into Trouble in Congress*, Wash. Post, May 17, 2013, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/17/obamas-plan-to-overhaul-food-aid-is-running-into-trouble-in-congress/; Charles Abbott, U.S. Senate Largely Rebuffs Obama Plan for Food-Aid Reform, Reuters, Jun. 03, 2013, http://www.reuters.com/article/2013/06/04/usa-agriculture-foodaid-idUSL1N0EF1TG20130604.

158 An example might be found in the governing structure of the WFP, where developing countries have a majority presence on the governing executive board. Incorporating key figures, representing the major recipients of P.L. 480 aid—which in 2010 included Niger, Djibouti, Zambia, Burma, and South Sudan—in any preceding negotiations to food aid reform proposals would greatly expand the dialogue and balance the weight of the conversation between donor and recipient more equitably. Noting the largest recipients of aid are largely centralized in Africa, making sure the representatives from that continent were present in the dialogue would be a substantial improvement. Notable hunger relief organizations in the region include Action against Hunger and Oxfam. Furthermore, the inclusion of hunger relief organizations should be achieved with an aim of balancing representation on either side of the debate about monetization. The insights of organizations like CARE, which once relied upon monetization, but have since moved away from the practice for humanitarian and efficiency reasons, would be valuable and important voices in shaping effective reform. Roberta van Haeften, Mary Ann Anderson, Herbet Caudill & Eamonn Kilmartin, Second Food Aid and Food Security Assessment (FAFSA-2) 3-8 (2013), *available at* http://www.usaid.gov/sites/default/files/documents/1866/FAFSA-2%20Chapter3.pdf.

159 Edward Clay, Barry Riley, & Ian Urey, Org. for Econ. Co-operation & Dev., The Development Effectiveness of Food Aid: Does Tying Matter? 3 (2006), *available at* http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3043.pdf.

160 Food & Agric. Org., The State of Food and Agriculture 4 (2006).

161 *Id.*

162 Sen, *supra* note 2.

163 Pottier, *supra* note 3, at 166.

164 Alex de Waal, Famine That Kills 32 (1989).

[165] Melling, *supra* note 13, at 1680 (concerning the definition of alternative dispute resolution).
[166] Furthermore, "Congress is the 'anvil' of democracy—the place where bargains are forged and policy is hammered out. This institutional structure affects individual legislators' incentives and creates unique barriers to the cooperative resolution of conflict." Melling, *supra* note 13, at 1682.
[167] Melling, *supra* note 13, at 1679.
[168] Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict* 8 Ohio St. J. Disp. Resol. 235, 238 (1993).
[169] "Some critics of mediation believe that the lack of procedural safeguards, the absence of an authoritative third-party decision maker, and the neutrality of the mediator, allow for instances in which a disputing party might use power unfairly to impose a solution upon the other. However, this concern seems often misplaced as mediation contains core features that act as safeguards to prevent power abuses by a more powerful party." Jordi Agustí-Panareda, *Power Imbalances in Mediation: Questioning Some Common Assumptions*, 59 Disp. Resol. J. 24, 29 (May–July 2004).
[170] *Id.* (citing Robert Bush, *Efficiency and Protection, or Empowerment and Recognition?* 41 Fla. L. Rev. 253 (1989); L.A. Pinzón, *The Production of Power and Knowledge in Mediation*," 14 Med. Q. 5 (1996); Lon Fuller, *Mediation: Its Forms and Functions*, 44 S. Cal. L. Rev. 325 (1971); G.A. Chornenki, Mediating Commercial Disputes: Exchanging 'Power Over' for 'Power With, in Rethinking Disputes: The Mediation Alternative 164 (J. Macfarlane ed., Cavendish Publishing 1997)).
[171] "In facilitative mediation, the mediator structures a process to assist the parties in reaching a mutually agreeable resolution. The mediator asks questions; validates and normalizes parties' points of view; searches for interests underneath the positions taken by parties; and assists the parties in finding and analyzing options for resolution." Zena Zumeta, *Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation* (Sept. 2000), http://www.mediate.com/articles/zumeta.cfm.
[172] Melling, *supra* note 13, at 1678.
[173] The concept of "outside strategies" is taken from the political science analysis of Timothy Cook, who uses the term to refer specifically to the use of the media as a bargaining or position-promoting tool on the part of politicians. Here, I use the term, not with regard to legislators or politicians exclusively, but to all stakeholders involved in the food aid reform debate. Timothy E. Cook, Making Laws and Making News: Media Strategies in the U.S. House of Representatives 154 (1991).
[174] "The problem arises when a principal and an agent have different incentives. For example, lawyers, particularly those who bill by the hour, have an incentive to avoid settling a case until the litigation reaches the courthouse steps. Research suggests that it is difficult to align the interests of the principal and agent, either by contract or by custom. Thus, agents can inflict unnecessary losses on disputing parties or prevent them from discovering joint gains." Melling, *supra* note 13, at 1681.
[175] Reform proposals have been made primarily through reforms in annual Presidential Fiscal Year budgets. The most recently proposed Food Aid Reform Act was a hasty bill proposed with bipartisan support, but no preceding negotiations with potential opposition.
[176] Cook, *supra* note 173, at 154 (In the realm of political science, the act of bargaining through the mass media is commonly called an "outside strategy," establishing what is referred to as the "politicians' dilemma."); Melling, *supra* note 13, at 1681 (concerning "principal agent barrier").
[177] Key examples include letters to the editor, press releases, and publications on the websites of the Maritime Industry, Agricultural industry, and food aid organizations.
[178] Melling, *supra* note 13, at 1689.
[179] Melling, *supra* note 13, at 1689.
[180] Lawrence Susskind & Connie Ozowa, *Mediating Public Disputes: Obstacles and Possibilities*, 41 J. Soc. Issues 145, 147-48, 157 (1985) (discussing problems of representation); Melling, *supra* note 13, at 1681.
[181] Clapp, *supra* note 14, at 78.
[182] Clapp, *supra* note 14, at 78.
[183] Clapp, *supra* note 14, at 78.
[184] *Andrew Natsios Extended Interview*, Religion & Ethics Newsweekly, Pub. Broad. Serv. (Feb. 19, 2010), http://www.pbs.org/wnet/religionandethics/2010/02/19/february-19-2010-andrew-natsios-extended-interview/5720/.
[185] Clapp, *supra* note 14, at 78. Academic studies, including Amartya Sen's work were influential in shaping Natsios' opinion; in a 2005 speech, Natsios commented, "I've seen children starve to death when there was a surplus of food in their local markets, but there was no one to buy the food because we didn't have the money to do that, so people died." Pub. Broad. Serv., *supra* note 184.
[186] Inskeep, *supra* note 157.
[187] U.S. Dep't of Agric., USDA's 2007 Farm Bill Proposals, *available at* http://www.usda.gov/documents/07final.fbp.pdf.
[188] Clapp, *supra* note 14, at 80.
[189] Clapp, *supra* note 14, at 82.
[190] Clapp, *supra* note 14, at 69.
[191] Specifically, the President's agenda "called for the establishment of more reliable levels of food aid, with the proportion of the U.S. programs that relied on unpredictable surpluses not to exceed 10[%]," while also seeking "better-focused programs, improved safeguards to avoid commercial displacement, and overall improved transparency and efficiency." Clapp, *supra* note 14, at 78.
[192] Clapp, *supra* note 14, at 78.
[193] Clapp, *supra* note 14, at 69.
[194] Clapp, *supra* note 14, at 69.
[195] Clapp, *supra* note 14, at 82.
[196] Clapp, *supra* note 14, at 82.
[197] However, the administration did manage to negotiate the establishment of two pilot programs in untied, locally and regionally procured aid, which now account for a quarter of U.S. food aid; "[a]nd according to independent reviews they're working pretty well." Inskeep, *supra* note 157.
[198] Abbott, *supra* note 123.
[199] Abbott, *supra* note 123.
[200] Abbott, *supra* note 123.
[201] Abbott, *supra* note 123.
[202] Abbott, *supra* note 123.
[203] Abbott, *supra* note 123.
[204] Abbott, *supra* note 123.
[205] Abbott, *supra* note 123.
[206] The remaining portion allotted to the standard in-kind and tied aid programs was 55%, equal to roughly $800 million of the $1.4 billion total, as remaining earmarked for U.S. produced and shipped food aid.
[207] Food Aid Reform Act, H.R. 1983, 113th Cong. (1st Sess. 2013).
[208] Press Release, Chairman Royce, House Comm. on Foreign Affairs, Subcommittee Ranking Member Bass Move to Reform U.S. Food Aid Delivery to Help More at Less Expense (May 15, 2013) *available at* http://foreignaffairs.house.gov/press-release/chairman-royce-subcommittee-ranking-member-bass-move-reform-us-food-aid-delivery-help [hereinafter Press Release, House Comm. on Foreign Affairs].
[209] *Id.*
[210] *Id.*
[211] House Committee on Foreign Affairs, Royce-Bass Food Aid Reform Act: Section-by-Section 1, *available at* http://foreignaffairs.house.gov/sites/republicans.foreignaffairs.house.gov/files/Food%20Aid%20Reform%20Act%20Section-by-Section.pdf.
[212] *Id.*
[213] Sen, *supra* note 2.
[214] Press Release, House Comm. on Foreign Affairs, *supra* note 208.
[215] Arguably, the urgency with which the bill was introduced eliminated the logistical possibility for complex negotiations to take place. Furthermore, coming on the tails of controversy over the FY2014 budgetary reforms to food aid, the atmosphere for cooperative dialog was even further reduced.
[216] *See* Cydney Hargis, *Reforming U.S. Food Aid Would Eliminate 7,000-Mile Food Chain* (Jun. 12, 2013), http://www.ipsnews.net/2013/06/reforming-u-s-food-aid-would-eliminate-7000-mile-food-chain/ (noting the likelihood of passage to be about 7%).
[217] "[T]he President's budget: **Shifts $1.1 billion to International Disaster Assistance (IDA) for emergency food response.** This shift would augment IDA's Emergency Food Security Program, previously described, which provides up the $300 million for cash-based food security assistance (e.g., local and regional procurement, vouchers, or cash transfers). The total available for IDA emergency food security assistance would be $1.4 billion. **Shifts $250 million to Development Assistance (DA) for a Community Development and Resilience Fund (CDRF).** The CDRF would address chronic food insecurity in area of recurrent crises such as the Horn of Africa or the West African Sahel. The CDRF also would receive $80 million of DA from USAID's Bureau of Food Security, which administers the Feed the Future program. Total funding for this program would be $330 million. **Shifts $75 million to a new Emergency Food Assistance Contingency Fund (EFAC).** EFAC would serve as a fund

to provide emergency food assistance for unexpected and urgent food needs." Hanrahan, *supra* note 19, at 17-18 (emphasis in original).

[218] Hanrahan, *supra* note 19, at 17-18.

[219] Hanrahan, *supra* note 19, at 18.

[220] Hanrahan, *supra* note 19, at 18.

[221] *Food for Peace by the Numbers.* U.S. Agency for Int'l Dev. (Nov. 01, 2013), http://www.usaid.gov/foodaidreform/ffp-by-the-numbers; *Food Aid Reform*, U.S. Agency for Int'l Dev. (Nov. 01, 2013), http://www.usaid.gov/foodaidreform.

[222] *Food Aid Reform*, U.S. Agency for Int'l Dev., *supra* note 221.

[223] Dispute resolution scholars have recognized that regardless of the ultimate outcome, if a significant stakeholder is absent from a final decision affecting their interests, they will likely oppose the decision. Melling, *supra* note 13, at 1677.

[224] *The 9 Billion-People Question*, Economist, Feb. 24, 2011, http://www.economist.com/node/18200618.

[225] Press Release, House Comm. on Foreign Affairs, *supra* note 208.

[226] Press Release, House Comm. on Foreign Affairs, *supra* note 208.

[227] Agustí-Panareda, *supra* note 169, at 24, 29-30.

[228] Agustí-Panareda, *supra* note 169, at 29.

[229] Agustí-Panareda, *supra* note 169, at 29-30.

[230] Agustí-Panareda, *supra* note 169, at 29-30.

[231] Inskeep, *supra* note 157 (concerning opposition to Bush's proposals); Abbott, *supra* note 123(concerning opposition to Obama's proposals).

[232] Conway, *supra* note 8.