

Chair's Reference Paper¹

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

Background

Paragraph 6 of the Hong Kong Ministerial Declaration states, *inter alia*, that:

"We note emerging convergence on some elements of disciplines with respect to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below. We agree that such programmes should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline. [...] The disciplines on export credits, export credit guarantees or insurance programmes, [...] will be completed by 30 April 2006 as part of the modalities, including appropriate provision in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision."

Paragraph 17 of Annex A of the Agreed Framework (WT/L/579) states that:

"The Doha Ministerial Declaration calls for 'reduction of, with a view to phasing out, all forms of export subsidies'. As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible date."

Paragraph 18 states, *inter alia*, that:

"The following will be eliminated by the end date to be agreed:

"Export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days.

"Terms and conditions relating to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below which are not in accordance with disciplines to be agreed. These disciplines will cover, *inter alia*, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade."

Paragraph 19 states:

"Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations."

¹ The headings used in this reference paper are indicative only.

Paragraph 20 states:

"Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members."

Paragraph 21 states:

"The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members."

Paragraph 24 states:

"Members will ensure that the disciplines on export credits, export credit guarantees or insurance programs to be agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Improved obligations for monitoring and surveillance of all new disciplines as foreshadowed in paragraph 48 [of the Agreed Framework] will be critically important in this regard. Provisions to be agreed in this respect must not undermine the commitments undertaken by Members under the obligations in paragraph 18 above."

Paragraph 26 states:

"In exceptional circumstances, which cannot be adequately covered by food aid, commercial export credits or preferential international financing facilities, ad hoc temporary financing arrangements relating to exports to developing countries may be agreed by Members. Such agreements must not have the effect of undermining commitments undertaken by Members in paragraph 18 above, and will be based on criteria and consultation procedures to be established."

Structure for Discussion

Introduction

1. Recalling the export credit discussions prior to the Hong Kong Ministerial Conference and the working documentation that has been used in the past, I would suggest that we work henceforth on an updated basis along the lines of what is outlined below as a first iteration. None of what is outlined below should be taken as representing something that is agreed in textual terms, but I would suggest it is a useful heuristic device for organising discussion and narrowing differences that remain. This reflects the fact that there are, of course, important questions remaining to be resolved within it. Some of these I have taken the liberty of emphasising within the body of the paper as a comment and in others via the device of square bracket alternatives. Of course, it should not be assumed that I view anything else as implicitly settled (manifestly a fair bit of it is not), although I hope some of it at least is reasonably close to where we could find agreement.

General

Subject to the provisions of this Article, Members shall not, directly or indirectly, provide support or enable support to be provided for or in connection with, the financing of exports of agricultural products, including the credit and other risks associated therewith, otherwise than on market related terms and conditions. Each Member accordingly undertakes not to provide export financing support otherwise than in conformity with this Article.

Forms and providers of export financing support subject to discipline

- (i) *For the purpose of this Article, "export financing support" includes any of the following forms of support for, or in connection with, the financing of exports of agricultural products:*
 - (a) *direct financing support, comprising direct credits/financing, refinancing, and interest rate support;*
 - (b) *risk cover, comprising export credit insurance or reinsurance and export credit guarantees;*
 - (c) *government-to-government credit agreements covering the imports of agricultural products exclusively from the creditor country under which some or all of the risk is undertaken by the government of the exporting country;*
 - (d) *any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.*
- (ii) *The provisions of this Article shall apply to export financing support provided by or on behalf of the following entities, "export financing entities", whether such entities are established at the national or at the sub-national level:*
 - (a) *government departments, agencies, or statutory bodies;*
 - (b) *any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of loans or underwriting of losses;*

We need to reflect on whether these descriptions are precise enough or are potentially too broad.

- (c) *agricultural export state trading enterprises;*

This obviously needs to be viewed in parallel with our work on the definition of STEs for the purposes of our agriculture disciplines.

- (d) *any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.*

Terms and conditions

2. There has been discussion in the past about having a basic approach that defines exhaustively what is in conformity with the rules. Anything failing to meet those terms and conditions would be non-conforming. That is the structure followed here, with the idea that whatever export financing support would be in conformity with specified terms and conditions would not be deemed to be an export subsidy either for the purpose of this Agreement or any of the other WTO Agreements. Nor would such support be deemed a non-commercial transaction for the purposes of Article 10.1 of the Agreement on Agriculture. What is specified below is nothing more or less than a work in progress, a working orientation for continuing our discussions.

Export financing support which is provided in conformity with the following terms and conditions shall be deemed to comply with paragraph 1 above:

- (a) ***Maximum repayment term:*** *the maximum repayment term of a supported export credit, the period beginning at the starting point of credit and ending on the contractual date of the final payment, shall be no more than 180 days. The "starting point of a credit" shall be [...].²*
- (b) ***Payment of interest:*** *Interest shall be payable. "Interest" excludes premiums and other charges for insuring or guaranteeing supplier or financial credits, banking fees or commissions relating to the export credit, and withholding taxes imposed by the importing country.*
- (c) ***Minimum interest rate:*** *the applicable Libor (London Interbank Offered Rate) for the currency in which the credit is denominated (not inclusive of and separate from risk-premium reflective of, as the case may be, the buyer/commercial, country/political and sovereign credit risks covered) plus [a fixed margin of [...] basis points] [an appropriate margin sufficient] to cover the cost of extending such financing (e.g. administrative or transaction costs) shall be applicable in respect of direct financing support and in respect of invoiced amounts benefiting from deferred payment under an export contract.*
- (d) ***Premiums in respect of coverage of risks of non-repayment under direct financing support, export credit guarantees or export credit insurance/reinsurance:*** *premiums shall be charged, shall be [market-based] [risk-based], and shall be adequate to cover [period to be defined] operating costs and losses. Premiums shall be expressed in percentages of the outstanding principal value of the credit and shall be payable in full at the date of issuance of cover. Premium rebates shall not be accorded. Furthermore, support in the form of export credit insurance, reinsurance or guarantees shall not be provided in respect of export financing contracts whose terms and conditions are not otherwise in conformity with the provisions of this paragraph.*

² Repayment terms for a possible exception for breeding livestock and agricultural vegetable reproduction material to be developed.

- (e) **Risk sharing:** *Cover provided in the form of export credit insurance, reinsurance or export credit guarantees shall not exceed [...] per cent of the value of a transaction.*
- (f) **Foreign exchange risk:** *Export credits, export credit insurance, export credit guarantees, and related financial support shall be provided in freely traded currencies. Foreign exchange exposure deriving from credit that is repayable in the currency of the importer shall be fully hedged, such that the market risk and credit risk of the transaction to the supplier/lender/guarantor is not increased. The cost of the hedge shall be incorporated into and be in addition to the premium rate determined in accordance with this paragraph.*
- (g) **Self-Financing:** *Export financing support programmes subject to the provisions of this Article shall be self-financing. Self-financing shall be considered the ability of such programmes to operate in manner which reflects market consistency and by which the premiums charged cover all operating costs and losses [over a period to be developed.]*

Clearly there is considerable divergence at this point over what this period should be, with one to fifteen years on the table. It might be worth adding that we need to take note here of the specific language and direction given in paragraph 6 of the Hong Kong Declaration regarding not circumventing "real commercially oriented discipline", which is, of course, not limited only to time-period. It seems to me also a matter of practical negotiating reality to take into account what the Dispute Settlement process has generated.

- (g) **Other:** *(e.g. borrower defaults; unilateral debt forgiveness)*

Non-conforming financing support

3. With respect to non-confirming support, I do have the sense that Members generally believe that export financing support programmes that do not meet the final agreed terms and conditions would therefore constitute an export subsidy. As such, something along the lines of the following language could be used conceptually:

Export financing supports which do not conform with the provisions of paragraph 2 of this Article or in the circumstances as may otherwise be allowable under Article 9 of this Agreement, hereinafter referred to as "non-conforming export financing", constitute export subsidies for the purposes of this Agreement and are therefore, subject to specific export financing phase-out/elimination commitments under this Article, prohibited.

Clearly this can only be finally defined at the point at which we know what any transitional phase out arrangements may be.

Implementation

4. We clearly need to develop the question of implementation and how we achieve the parallel reduction and elimination of all forms of export subsidies. That said, as in other areas of the negotiations, it is difficult to provide specificity on the implementation issues pending specification of the base disciplines.

Other Issues

5. Under the export credits heading we have a number of other issues that need further consideration and elaboration. This includes, transparency and notification procedures, special and differential treatment provisions, including, in particular, with respect to the Decision on Measures

Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, provisions for exceptional circumstances and the linkages to existing Agreement on Agriculture provisions relating to export financing (i.e. the provisions of Articles 3.1, 3.3, 8, 10.1 and 10.3) and/or other additional specific anti-circumvention provisions.

6. Of these issues, transparency and notification procedures and exceptional circumstances were discussed in the most recent discussion. I believe that the following needs to be further discussed.

Transparency and notification procedures

No later than three months after the entry into force of this Article each Member shall submit a notification concerning that Member's export financing programmes, export financing bodies and other related matters in accordance with the format specified in Annex [...] hereto. This notification shall be updated at the beginning of each subsequent year. At not less than [...] monthly intervals Members shall submit a notification to the Committee on Agriculture in which details are provided of export financing commitments entered into in accordance with the format specified in Annex [...] hereto. Least-developed country Members shall not be required to submit such notifications.

7. We have also had before us a more detailed informal paper on transparency and notification, which also needs to be further discussed.

Special and Differential Treatment

8. Paragraph 22 of the Agreed Framework text is clear that developing country Members will benefit from longer implementation periods for the phasing out of all forms of export subsidies. As noted above, the implementation aspect will need further general consideration. It need simply be noted at this point that, when dealing with that question more operationally we need to remain mindful of the entitlement that developing country Members have under the Framework as actual or potential users of export credits.

9. Paragraph 24 of the Agreed Framework is also clear that Members will ensure that the disciplines agreed will make appropriate provision for differential treatment in favour of least and net food-importing developing countries pursuant to paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, least-developed countries and net food-importing developing countries as listed in G/AG/5/Rev.8.

As provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, least-developed countries and net food-importing developing countries as listed in G/AG/5/Rev.8 shall be accorded differential and more favourable treatment comprising:

[to be developed]

10. This clearly needs detailed elaboration. It seems to me that there is, on the one hand, a clear obligation and will to deal effectively with this requirement and that no one, on the other, wishes or intends to see a loophole created. It is a question therefore of tailoring the provisions appropriately to the genuine need. Various options have been placed on the table. It is a matter of now moving to something that would be operational. Above all it is worth recalling that in fact only a tiny percentage of credits actually go the Members concerned at present and that it is important, therefore, not to lose a sense of perspective on the issue and perhaps unduly over-rate the risk of a "loophole" as a practical matter. Associated with this, it is worth bearing in mind that notification and monitoring can go a long way to allaying concerns that provisions would lead to unintended consequences.

Special Circumstances

More favourable terms for export financing support in respect of exports to developing and least-developed country Members may be provided in exceptional circumstances and in accordance with the following provisions:

In exceptional circumstances where it has been confirmed by [to be developed] that commercial export credits are not available, and where the absence of export credits would preclude trade, ad hoc temporary government financing arrangements to underwrite agricultural export credits shall comply with the terms and conditions in paragraph 2, notwithstanding that they may charge risk based premiums, rather than market based premiums, and need not be self-financing. Members shall provide ex ante notifications [to be developed] for such government financing

There are obvious concerns that this not be a loophole but we have a clear mandate to discharge the terms of Article 26 of the Agreed Framework. The above text is intended as a starting point to orient a more detailed discussion.
