

Chair's Reference Paper¹

Rev.1²

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

Structure for Discussion

Introduction

The previous Reference Paper on export credits, export credit guarantees or insurance programmes set out a possible structure for further discussion by Members on the basis of developing disciplines for individual elements of export credits, export credit guarantees or insurance programmes (hereafter referred to as export credits).

At the open-ended informal consultations that I convened on 19 April 2006, we had a constructive discussion regarding that paper. On that occasion, some Members offered new drafting suggestions or indicated specific points which needed to be further reflected upon. After that meeting it was my intention to revise the Reference Paper to take this discussion into account. At that meeting, I did not detect any disagreement with the approach that we were taking to this issue – namely a "rules" based approach that sought to apply disciplines to various elements of export credit programmes that would have the effect of ensuring that there was no inherent export subsidy element of such programmes (and therefore being consistent with our mandate to phase out all forms of export subsidies).

However, since the date of our last discussion on this issue, two new proposals on export credits have been submitted – JOB(06)/119 and JOB(06)/121. While the former of these two proposals is structured along the approach we have been discussing to-date, albeit with some modifications, the latter takes a very different approach to dealing with this issue than that which we have been working from. Unfortunately, due to time constraints we have not been able to meet as a negotiating group since these new proposals were submitted and for me to hear your thoughts on them, particularly with respect to the newly proposed approach. As such, I am not in a position to make any significant amendments to where we currently stand on this issue. That said, I can not simply ignore this new approach either.

Given the degree of potential change of approach, I do believe that Members must decide quickly on whether the existing approach should be continued or whether to change track. Therefore, in order to provide some sense of how the two approaches differ, in relevant sections I have indicated what the changes would amount to, without attempting to pass judgment. I strongly suggest that Members refer back to both submissions to understand the full detail and implications of both approaches. I would hope to be in a position to convene a meeting specifically on export credits in the near future from which I would hope to hear your views on which track we should be developing, but I cannot stress enough that we must decide quickly.

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

² This is a revision of the Chair's Reference Paper issued on 13 April 2006, under n°2810.

General

1. 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 [and with the commitments as specified in Members schedules].

Forms and providers of export financing support subject to discipline

2. 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; and
- (d) any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

3. 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;
- (c) agricultural export state trading enterprises; and
- (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.

Concern has been raised regarding the application of disciplines to certain entities and rather, what we need to agree is the operational disciplines that would apply, presumably, to all entities. I believe that we need to further consider this issue and reflect on whether these descriptions are relevant, precise enough or are potentially too broad.

Terms and conditions

The thrust of the newly proposed approach to dealing with export credit, as set out in JOB(06)/121, has implications for disciplines related to the terms and conditions for such credits. Rather than identify a series of terms and conditions for which disciplines need to be developed (as we have been doing), this new approach seeks to develop a set of "core disciplines" by which the elimination of export subsidies flowing from export credits would be achieved. Such disciplines would include only focusing on the maximum repayment period (and the situation of non-repayment), the premiums to be

charged, and a determination of the self-financing period. I suggest that Members refer to the actual proposal itself, JOB(06)/121.

Alternatively, as set out in JOB(06)/119, should we continue with the existing approach, which includes developing specific disciplines for all relevant elements of export credit programmes which could be considered to convey some form of export subsidy, then as outlined in the previous Reference Paper, we would need to consider the following elements and disciplines set out in paragraph 4 below. I would also suggest that Members refer to JOB(06)/119 to take account of any differences to that which is set out below, including the possibility of providing specific definition for some of the terms.

4. 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 [...].³

There are various proposals relating to the starting point of credit, including: the date of export; the date of the contract of sale for purposes of export; and no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period. This issue requires further reflection.

- (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][and/or] [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.

³ Repayment terms for a possible exception for breeding livestock and agricultural vegetable reproduction material to be developed. *There remains a very divergence of option on whether or not there should be exceptions to the 180 day rule, including possible exceptions for developing countries. This needs further reflection.*

- (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].

With respect to the period for self-financing, there is considerable divergence at this point over what this period should be, with one to fifteen years on the table. As I noted in my previous Reference Paper, we need to take note here of the specific language and direction given in paragraph 6 of the Hong Kong Ministerial 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 WTO jurisprudence on this issue.

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

Non-conforming financing support

5. Export financing supports which do not conform with the provisions of paragraph 4 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.

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 above language could be used conceptually. Though clearly this can only be finally defined at the point at which we know what any transitional phase out arrangements may be.

Implementation

6. [To be developed.]

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

Other Issues

7. [To be developed.]

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.

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

Transparency and notification procedures

8. [On the day of the entry into force of these provisions] [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 the years (to be developed)] in accordance with the format specified in Annex [...] hereto. [After the entry into force of this Agreement] 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. [For each export financing programme, the notification shall include accounting information referred to under the self-financing provisions indicating whether the programme was self-financing during the previous year. A Member whose export financing programmes are not in conformity with the disciplines and the self-financing principle shall provide the Committee on Agriculture information on any corrective action taken or envisaged to bring the programme back into conformity.] [Least-developed country Members shall not be required to submit such notifications.]

We have also had before us a more detailed proposal on transparency and notification, which also needs to be further discussed (JOB(06)/119 refers).

Special and Differential Treatment

9. [To be developed.]

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. We have had some proposals on special and differential treatment which include: a longer self-financing period; possible exceptions to the maximum repayment period of 180 days to address supply chain issues in importing countries; the provision of both direct financing and risk cover for developing countries; and flexibility in the premium computation and in the structure as it relates to developing country export credit suppliers. We need to have a more detailed discussion on such issues, and other possible special and differential treatment provisions.

10. 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.]

As I noted in my previous paper, paragraph 24 of the Agreed Framework makes it clear that Members will ensure that the disciplines agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries (as listed in G/AG/5/Rev.8) 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.

To this end, it was commented by one delegation that there needs to be a distinction made (within the context of special and differential treatment) between those Members that use export credits, those that receive export credits, and special circumstances. In terms of flexibility for NFIDCs, two possible options were put forward – (i) complete exemption; or (ii) flexibility in the disciplines based on filters (e.g. for basic foodstuffs, the application of a trigger based notification system when a negative effect is occurring, and transparency and notification procedures). Again, we need to have a more detailed discussion of these, and possibly other options so that we can begin to move to something more operational. It is also worth bearing-in-mind that the proponents of this flexibility are quite clear that they themselves do not want to open up a large loophole. Indeed, only a tiny percentage of credits actually go the Members concerned at present and it is therefore important not to lose a sense of perspective on the issue and perhaps unduly over-rate the risk of a "loophole" as a practical matter. Furthermore, I believe that notification and monitoring can go a long way to allaying concerns that provisions would lead to unintended consequences.

Special Circumstances

11. 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.

The above text is only slightly modified from the previous Reference Paper. I would add however, a more detail proposal has been submitted (JOB(06)/119 refers) but as noted in my covering page comments, we have not had a discussion on this as yet. I would therefore encourage delegations to review this proposal, along with the above text so that you are in a position to provide me with guidance on how we should proceed with this issue, on which we have a clear mandate to discharge the terms of Article 26 of the Agreed Framework.
