

**Committee on Agriculture
Special Session**

**G-20 SUBMISSION
MODALITIES FOR EXPORT COMPETITION AND
EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES**

The following communication, dated 17 December 2007, is being circulated at the request of the G-20.

1. With a view to contributing to the final draft of the disciplines on Export Credits that will replace Article 10.2 of the Agreement on Agriculture, the G-20 presents the following contribution.

2. As an integral part of its submission, the G-20 suggests that a paragraph 137 bis be introduced in the modalities paper (TN/AG/W/4), as follows:

"137 bis – Nothing in these modalities can be construed to diminish in any way the existing commitments contained in the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries of April 1994 and the Decision on the Implementation-related Issues and Concerns of 14 November 2001 on commitment levels of food aid (paragraph 3.i) to provide food aid by donors, technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure (paragraph 3.iii), financing normal level of commercial imports of basic foodstuffs (paragraph 4-5). Nor could it be understood as to alter the regular review of these decisions by the Ministerial Conference and the monitoring by the Committee on Agriculture (paragraph 6)."

3. The G-20 indicates also that, although its paper does not present specific suggestions regarding repayment periods, it is understood that, in keeping with usual special and differential treatment provisions, those periods are larger than those provided for developed countries.

WORKING DOCUMENT No.

ANNEX D

**POSSIBLE NEW ARTICLE TO REPLACE THE CURRENT ARTICLE 10.2 OF THE
AGREEMENT ON AGRICULTURE**

EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

Definition

1. 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, particularly by means of export credits, export credit guarantees or insurance programmes, otherwise than in conformity with this provision, other provisions of this *Agreement*, including Article 16.1 of the Agreement on Agriculture of 1994 on the Marrakech Decision, and the provisions of the other covered agreements, including the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”)¹. These export credits, export credit guarantees and insurance programmes (hereinafter referred to as “export financing support”) include:

- (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 import of agricultural products wholly or partly from the creditor country under which some or all of the risk is undertaken by the government of that country; and
- (d) any other form of governmental export financing support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

2. The provisions of this Article shall apply to export financing support provided by or on behalf of the following entities, hereinafter referred to as “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 funds, 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, at the direction of, or by virtue of the actions of, governments or their agencies.

¹ It is further understood that the second paragraph of item (k) of the Illustrative List shall not be applicable in the case of agricultural products.

Terms and Conditions

3. In addition to the other relevant provisions in the covered agreements, in this *Agreement* and to those in the *SCM Agreement* governing export subsidies, export financing support shall also conform to the terms and conditions set out below:

- (a) **Maximum repayment term:** The maximum repayment term for export financing support under this *Agreement*, this being the period beginning at the starting point of credit² and ending on the contractual date of the final payment, shall be no more than 180 days.
- (b) **Self-Financing:** Export credit guarantee, insurance and reinsurance programmes, and other risk cover programmes included within paragraph 1(b) above, shall be self-financing. These programmes are not self-financing when they constitute export subsidies within the meaning of item (j) of the Illustrative List of Export Subsidies in Annex I ("Illustrative List") of the *SCM Agreement*. In making this self-financing assessment, and for purposes of this provision only, a determination that premium rates charged under a programme over a previous [4][5] year period were inadequate to cover the operating costs and losses of the programme during that same period is, in and of itself, sufficient to establish that the programme is not self-financing.³

Non-conforming Export Financing Support

4. Export financing support which does not conform with the provisions of paragraph 3, 5, 6, **6bis** and 7 or which constitutes an export subsidy on any other grounds, shall be provided in conformity with the export subsidy elimination commitments specified in the Schedule of the Member providing the support, pursuant to Articles 3.3 and 8 of this *Agreement*.

Special and Differential Treatment

5. Developing countries providers of export financing support shall be eligible to benefit from the following elements:

- (a) the maximum repayment term may be up to [X] [360] days;
- (b) in paragraph 3(b), the applicable period shall be [6][7.5] years.

6. In relation 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, those countries as listed in G/AG/5/Rev.8 shall be accorded differential and more favourable treatment comprising allowance for a repayment term in respect of them of [Y] days for the acquisition of basic foodstuffs.

² The "starting point of a credit" shall be 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.

³ Whether or not an export financing support measure conforms with this provision, it may still constitute an export subsidy pursuant to the terms of any other provision of this *Agreement* or the other covered agreements, including by reference to the long-term operating costs and losses of a programme, not limited to a historical [4][5] year period, under item (j) of the Illustrative List of the *SCM Agreement*.

6 bis. Without prejudice to the provision of paragraph 6, NFIDCs and LDCs Members with exceptional financial difficulties in acquiring imports of basic foodstuffs and/or impossibility of accessing loans granted by multilateral and/or regional financial institutions will receive a differential and more favourable treatment comprising allowance for a repayment term of [K] days for the acquisition of basic foodstuffs.

7. In exceptional circumstances which cannot be adequately covered otherwise by international financing facilities, international food aid or export financing support consistent with the terms of this Agreement, Members may be permitted to provide *ad hoc* temporary export financing support not otherwise in conformity with the terms and conditions of paragraphs 3 (a) and 5(a), subject to the following:

- (a) A written request shall be made to the Member from whom such export financing is sought, together with a copy of that request to the Committee on Agriculture for the information of all Members. Where a Member recipient of such a request considers that such exceptional circumstances exist, it, together with the requesting Member, shall jointly notify the WTO Committee on Agriculture, of the intention to proceed. Such a notification shall specify in writing all the circumstances which justify a variation from the terms permitted under the relevant provisions of this provision, together with details of the product(s) concerned so that interested exporting Members shall have the opportunity to respond. To this end, the Committee on Agriculture shall review the notification at a Special Session of the Committee on Agriculture to be called within 30 days of the receipt of notification, or at its next scheduled meeting if it occurs sooner. In the event that some Members do not object to the transaction, following the review, the Member recipient of the request may proceed accordingly. Members shall, however, provide *ex ante* notifications on all of the more favourable terms provided for in such exceptional circumstances.
- (b) In the event that some Members do object to the transaction, but both Members involved still wish to proceed and it is a case where the essential character of the proposed transaction has been declared to be in response to humanitarian need for basic foodstuffs, they shall be permitted to do so⁴. However, the matter shall be referred immediately to a standing panel of experts which shall render their judgement on the transaction within thirty days. This judgement will be binding on the Members and, in the event that it is negative, shall include recommendations that effectively restore the status quo ante. In any situation where objections remain and the essential character of the proposed transaction has been declared to be other than in response to humanitarian need for basic foodstuffs, the initiating Members must resort to the standing panel of experts for their judgement, and any proposed transaction will be stayed pending that judgement.

⁴ Where the transaction is declared by both the requesting and the recipient Members to be of this character, it is not precluded that this transaction may actually be initiated prior to the actual meeting of the Committee itself, but this would be permissible only where such prior action is itself warranted on the grounds of humanitarian need in relation to basic foodstuff needs: i.e. that delay would jeopardize achievement of these objectives.

8. [In any case, the maximum repayment term for exceptional circumstances temporary government financing arrangements shall not exceed [W] days in the case of paragraph 3(a), and [Z] days in the case of paragraph 5(a)].

9. [placeholder for notifications and Group of Experts – monitoring and surveillance.]
