

Committee on Agriculture

IMPLEMENTATION OF ARTICLE 10.2 OF THE AGREEMENT ON AGRICULTURE

Report by the Vice-Chairman, Minister Yoichi Suzuki, to the General Council

1. At its meeting on 18 October 2000, the Special Session of the General Council referred to the relevant subsidiary bodies, including the Committee on Agriculture, a number of implementation related issues which had been identified in the report presented by the Director-General and the Chairman of the General Council on their consultations on implementation issues and concerns as being appropriate for such action.

2. In the case of the Committee on Agriculture the relevant part of this report, which constitutes the Committee's mandate in this matter, is as follows:

"On tirt 6, regarding the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes pursuant to Article 10.2 of the Agreement, I propose, on the basis of our discussions, that the General Council instruct the Committee on Agriculture to include in the agenda of its regular meetings an item on the implementation of Article 10.2 and to report back on the Committee's progress on this issue to the General Council at its last regular meeting of this year.

It is my understanding that in pursuing their work on export credits in accordance with Article 10.2, Members will of course take into account the provisions of paragraph 4 of the Marrakesh Decision on net food-importing countries, in which Ministers agreed that any agreement on export credits should ensure appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries."

3. As instructed by the Special Session of the General Council, an item on the implementation of Article 10.2 of the Agreement on Agriculture was included on the agenda of, and was the subject of discussions at, the regular meeting of the Committee held on 14 November 2000, including with respect to the provisions of paragraph 4 of the Marrakesh Ministerial Decision on least-developed and net food-importing developing countries.

4. A detailed summary of the discussion in the Committee on the implementation of Article 10.2 of the Agreement and on the provisions of paragraph 4 of the Marrakesh Ministerial Decision is attached hereto as Annex I. A statement made, at the invitation of the Committee, by the observer of the OECD on the negotiations currently underway within that Organization on a sector understanding on agricultural export credits is included in the attached summary (Annex I, paragraph 22 refers). A document introduced by Mercosur (Argentina, Brazil, Paraguay and Uruguay) as a contribution to further discussion and transparency in this area (G/AG/W/47) is attached hereto as Annex II.

5. Overall, it was considered that the Committee's first round of discussions on this subject had been useful. In this regard it was noted that the question of the implementation of Article 10.2 and of

the related provisions of the Marrakesh Ministerial Decision would, as appropriate, remain on the agenda of the regular meetings of the Committee.

6. As agreed by the Committee on Agriculture at its meeting on 14 November 2000, this report is submitted to the General Council on my responsibility as Vice-Chairman of the Committee.

Annex I

Implementation of Article 10.2 and the related provisions of the Marrakesh Ministerial Decision: Summary of the discussion at the meeting of the Committee on Agriculture on 14 November 2000

1. Brazil, on behalf of MERCOSUR, stated that MERCOSUR had circulated a proposal on export credits (document G/AG/W/47 dated 14 November 2000 refers) which MERCOSUR had tabled in the context of the FTAA negotiations. The text had not been circulated as a proposal as such but was intended as a constructive contribution to a transparency exercise on the issue of export credits in the Committee on Agriculture. The intention was to share with Members an example of a plurilateral endeavour to develop internationally agreed disciplines on agricultural export credits. Since the text had been developed to fit a regional context, it would probably need to be reviewed and adjusted to better reflect a multilateral approach. One of the issues that the paper had not addressed was the needs of the net food-importing countries, as well as LDCs, and MERCOSUR intended to do that at the appropriate time.

2. Brazil noted that the text contained a number of positive elements which MERCOSUR believed to be illustrative of any discussions that may be held on this matter in the WTO. Firstly, the text was non-product-specific, i.e., it was not tailored to suit the specific needs of countries or regions. The disciplines were horizontal in nature and essentially non-discriminatory. Further, an effort had been made to achieve a more thorough definition of what export credits for agriculture products were. The text also sought to identify the scope and nature of what would be officially-supported export credits. Nevertheless, in the light of recent developments in the WTO dispute settlement mechanism, MERCOSUR believed that the language of this paper deserved further careful consideration in order to ensure that all aspects of governmental participation in the area of export credits were covered. MERCOSUR was convinced that the use of governmental resources must be carefully monitored and regulated under any circumstances, be it under concessional or favourable terms, be it under alleged market terms. Secondly, the overall terms and conditions set out in the text were generally compatible with international market practices for agricultural products. It was important to note that the text was not biased in favour of economies with surplus resources. Thirdly, the text did not provide for derogations, neither under special market circumstances nor for matching practices, a highly questionable practice very common in the OECD for industrial products. Fourthly, despite the fact that the document was designed for a regional free-trade area, it was important to note that its horizontal character would make it suitable for any open-ended framework.

3. Brazil expressed the hope that the elements contained in the MERCOSUR paper might provide guidance to the WTO about the main essential parameters in any multilateral disciplines for export credits covering agricultural products.

4. The EC stated that by signing the Marrakesh Agreement WTO Members had undertaken to work towards development of internationally agreed disciplines to govern the provisions of export credits in Article 10.2 of the Agreement on Agriculture. However, nine months after the agreed date for starting Article 20 negotiations, disciplines foreseen in an agreement reached in Marrakesh in 1994 had not as yet been agreed. As a consequence, export credits covering exports of agricultural and food products had not been governed by any specific discipline within the Agreement on Agriculture, including transparency requirements. This had resulted in total flexibility for those WTO Members that used this instrument to boost their exports. Some WTO Members resorted to long-term state guaranteed export credits for a significant part of their trade in certain commodities, such as grains. Traders would not normally be able to obtain credits that substantially exceeded the lifetime of the goods before they had been consumed, transformed, or resold locally. Furthermore, due to the state guarantee the interest rate was lower than what a bank would normally charge. This constituted a subsidy. Given the wide range of forms that officially supported credits could take and the

confidential nature of some of the data regarding subsidized export credits, it was generally difficult to determine the exact magnitude of support that was provided to exports by this instrument and the extent to which trade was distorted. What was clear was that officially supported export credits did distort trade. Specific strict WTO rules and disciplines should therefore cover them like any other mechanism used to support exports. In the short term and in other certain circumstances, it was fair to recognize that export credits could lower the food bill of the net food-importing countries. However, in the long run, using export credits to overcome food security problems had several drawbacks. Granting export credits to poor countries would increase their future debt burden which could worsen the problem of heavily indebted poor countries. Food aid on fully grant terms, aid and technical assistance to structural development were tools that were far more appropriate.

5. The EC stated further that the negotiations on the development of disciplines on export credits had started more than five years ago in the OECD where disciplines had previously been negotiated on export credits for exports of industrial goods. Australia, Canada, the European Communities, Japan, Korea, New Zealand, Norway, Switzerland, the United States, as well as Argentina, which was not an OECD member, had participated in these negotiations which had moved on only recently. Hopefully an agreement could be reached at the OECD by the end of this year so that the use of subsidized export credits become progressively closer to commercial practices. In the view of the EC, this would be an important step in the right direction for the whole of the WTO membership. Notwithstanding the EC's final position on the latest proposal of the Chairperson in the OECD negotiations, it must be clear that this agreement could only be a first step for further improvements in disciplining export credit practices. Regarding the OECD negotiations on export credits, the EC considered that if as hoped there was an agreement in the OECD by the end of the year, it could only be part of the implementation of the Uruguay Round and not an early harvest of the new WTO negotiations on agriculture. For the current negotiations on agriculture, the EC objective was to bring export credit practices as close as possible to commercial practices, i.e. to improve the disciplines that could be agreed in the OECD. These disciplines should then be integrated into the new WTO Agreement on Agriculture.

6. Canada stated that the undertaking to work towards the development of internationally agreed disciplines to govern the provision of export credit guarantees or insurance programmes was an outstanding commitment from the Uruguay Round of negotiations. Canada had engaged in negotiations in the OECD towards an understanding that would contain disciplines on the practices of the participating OECD members. Canada believed that this was an important first step in reducing the potential to circumvent export subsidy commitments. The understanding was to contain appropriate provisions in favour of least-developed countries and net food-importing developing countries. This was in response to the commitment in the Marrakesh Ministerial Decision concerning the least-developed and net food-importing developing countries to ensure that any agreement made appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries. Canada was committed to pursuing an understanding which provided meaningful disciplines, not one that legitimised existing practices. Canada was seeking maximum repayment terms that were as close to commercial practices as possible. Regrettably the negotiations at the OECD were not yet concluded. Canada remained hopeful that the negotiations held this week in Paris would result in consensus on an understanding. Successful negotiations would be an important first step towards meeting the commitment in Article 10.2 of the Agreement on Agriculture but this would not exclude export credits from being discussed in negotiations to continue the reform process in agriculture. Canada and other Cairns group members had proposed the elimination of the export subsidy element of subsidized export credits in the context of the current negotiations on agriculture. Canada looked forward to pursuing this objective in the on-going WTO negotiations.

7. The United States thanked Brazil for having introduced the paper referred to above and welcomed the commitment expressed by Canada and the EC to moving forward in the OECD and reaching an agreement on export credits. The subject of export credits was one of great importance to the US. The United States was committed to reaching an agreement at the OECD and believed that

this could be achieved. The United States called upon those who were negotiating, as well as the other countries that were involved in the negotiations, to press forward to find an agreement and to bring these very difficult discussions to their earliest possible conclusion.

8. New Zealand welcomed MERCOSUR's contribution to the Committee's deliberations on the implementation of Article 10.2 of the Agreement on Agriculture. New Zealand, too, had been disappointed by the lack of progress in implementing Article 10.2 of the Agreement. New Zealand believed that the development of internationally agreed disciplines on the provision of export credits referred to in Article 10.2 were an integral part of the Uruguay Round outcomes, and essential to ensuring that export subsidy disciplines were not circumvented by the use of subsidized export credits. Intensive negotiations were proceeding this week in the OECD in Paris on the issue of export credits. New Zealand was participating constructively and positively in those negotiations, and like other participants, called on all other participants in that forum to work to ensure that they were concluded as quickly as possible and no later than by the end of the year, given the importance of this issue to the wider membership.

9. Mauritius thanked Brazil for having introduced MERCOSUR's paper on the implementation of Article 10.2 of the Agreement on Agriculture. Mauritius wished to remind Members that, in looking at the elaboration of disciplines on export credits, they needed to consider differentiated measures for least-developed and net food-importing developing countries in accordance with paragraph 4 of the Marrakesh Decision on least-developed and net food-importing developing countries, and looked forward to working with other Members on this issue.

10. Japan noted that discussions on export credits were currently going on in the OECD and members of the OECD, including Japan, were trying to reach an agreement before the end of this year. These discussions were based on Article 10.2 of the Agreement on Agriculture. Japan did not exclude having discussions on export credits in the WTO as an implementation issue in respect of the existing Agreement on Agriculture. However, it was perhaps more realistic to wait for the results of the OECD discussions. In any case, Members could discuss export credits within the framework of on-going agricultural negotiations based on Article 20 of the Agreement.

11. Australia thanked Brazil for presenting the paper that MERCOSUR had contributed to the FTAA negotiations. Australia was also very interested in having a set of disciplines agreed as soon as possible – a set of real disciplines that brought further discipline to the use of export credits. Australia said it supported many of the comments made by others regarding the OECD negotiations and looked forward to having them concluded by the end of this year. Australia considered this to be a very important implementation issue under the Agreement on Agriculture and looked forward to the EC approaching the issue of traditional export subsidies with the same enthusiasm and fervour as it was approaching the issue of export credits.

12. Malaysia stated that the issue of export credits was of great concern to Malaysia. Malaysia hoped that there could be a speedy conclusion to the on-going negotiations at the OECD. However, even if these negotiations were successfully concluded at the OECD, in the view of Malaysia this would not fulfil the mandate of Article 10.2 since disciplines should be developed in the WTO. Malaysia did not wish to see disciplines that were developed in the OECD transposed to the rest of the WTO membership. This matter had to be discussed within the Committee on Agriculture to see whether an OECD agreement could gain wider membership and whether there was a consensus for it to be accepted as having fulfilled the objectives of Article 10.2. This should not preclude the possibility to discuss the present and other proposals, and Malaysia was grateful in this regard to Brazil for its contribution. Malaysia stated that export credits had seriously affected Malaysia's exports in third country markets and it was for that reason that Malaysia was enthusiastic that this baggage left behind was part of the implementation concerns from the Uruguay Round Agreement and was seriously addressed.

13. Colombia thanked the MERCOSUR countries for their contribution regarding disciplines on export credits. Colombia supported the initiative that this issue be discussed in the Committee on Agriculture and in the WTO. Colombia noted that the Committee had on numerous occasions been informed that the OECD was close to reaching an agreement and a definition of such disciplines but as of to date this had not been possible. Colombia's position was that any initiative on export credit disciplines should be worked out within the framework of the WTO.

14. Chile welcomed Brazil's contribution on behalf of MERCOSUR. Chile considered this to be a relevant part of the transparency and information exercise, particularly as it came from a group of developing countries. While Chile recognized that progress had been made in the OECD, this was an implementation issue that should be dealt with within the WTO. This was a topic of great importance to Chile and Chile was willing to continue holding discussions in this forum.

15. Thailand thanked Brazil for its contribution on behalf of MERCOSUR. While Thailand wished to encourage the rapid conclusion in the OECD, Thailand supported previous speakers that the results achieved in the OECD should also be discussed in the WTO.

16. Egypt stated that it supported the statements made by Mauritius and Malaysia.

17. Mexico underlined the importance that Mexico attached to addressing Article 10.2. In Mexico's view this was an implementation issue rather than an issue for a new round of negotiations. Mexico hoped that there would be a speedy solution found to what was contained in the provisions of Article 10.2.

18. Hungary stated that it was amongst those Members which had been concerned for several years about the lack of implementation of Article 10.2. Hungary wished to join previous speakers in the hope that the negotiations currently going on within the framework of the OECD would be concluded by the end of the year. In Hungary's view this would be an important first step in implementing the obligations that were accepted by all Members under Article 10.2. Hungary agreed that this was an issue of implementation which by no means meant that it could not be addressed in the current negotiations on agriculture. Indeed, Hungary supported this issue being taken up and the further strengthening of the disciplines on export credits.

19. Brazil stressed that it was not opposed to the exercise that was going on in the OECD. Brazil considered this to be a legitimate exercise for the members of the OECD. But this exercise did not fulfil the implementation of Article 10.2. MERCOSUR therefore wished to have a process in the WTO to implement Art. 10.2. Brazil noted that in case of a dispute it was appropriate to have a legal framework of rules that all Members were comfortable with, and knowledgeable of, and had participated in making.

20. The United States asked those delegations which had referred to the possibility of an OECD agreement being subject to further negotiations in the WTO to elaborate and to indicate whether they wanted this to be done immediately or as part of the next round of negotiations.

21. In response to the question raised by the United States, Brazil stated that Brazil sought the development of disciplines on export credits in the WTO, either as an implementation issue or, if the objectives regarding the implementation of 10.2 were not achieved, as part of the mandated negotiations in agriculture.

22. At the invitation of the Vice-Chairman, the representative of the OECD stated that in accordance with a commitment made in the context of the Uruguay Round, the participants to the Export Credit Arrangement began negotiations in 1997 on complementary guidelines to cover officially supported export credits for agricultural products. In successive communiqués of the OECD Council Meeting at ministerial level, OECD Ministers had urged the participants to conclude an

agreement on export credits for agricultural products. In this year's communiqué, dated 27 June 2000, OECD Ministers strongly regretted the failure of the participants to the Export Credit Arrangement to reach agreement on an Understanding covering agriculture as mandated in the Uruguay Round. They called for the negotiations to be resumed and successfully concluded by the end of July if possible, and by the end of 2000 at the latest. Pursuant to this latest mandate from OECD Ministers, the participants had accelerated their programme of work. The participants had met on three occasions since the OECD Ministerial, including twice in Special Session on agriculture in July and September, and intensive negotiations were currently going on in an effort to finalize the negotiations for an Understanding on Export Credits for Agricultural Products, including provision for the differential treatment of net food-importing developing countries in accordance with the WTO Marrakesh Decision. This accelerated programme also reflected the continued strong commitment of OECD member governments to resolve this issue in the forum of the participants. The meeting of the participants in September 2000 was constructive and brought the participants closer to reaching agreement on an Understanding. Whilst differences remained, hopes were high that these could be bridged at the current meeting and that the Understanding could be concluded and implemented as from 1 January 2001.

23. Bolivia sought clarification from the OECD representative as to whether any provisions were being negotiated in favour of net food-importing countries within the context of the disciplines on export credits and, if so, whether the countries concerned were represented in the OECD negotiations.

24. Uruguay requested the OECD representative to elaborate on the meaning of an understanding under the Arrangement.

25. In response, the representative of the OECD stated that he was not in a position to comment on the status of the negotiations at OECD which were taking place on the same day. Concerning the question from Bolivia on whether net food-importing countries are represented in the OECD negotiations, he noted that only OECD countries and Argentina participate but he could not presently provide a comprehensive list of participants. With regard to the question from Uruguay, he noted that "the Arrangement" referred to the Export Credit Arrangement, and "the Understanding" referred to the Sector Understanding on Export Credits for Agricultural Products which was currently being negotiated..

26. In response to the sentiment expressed by Brazil that the report by of the OECD had failed to provide more transparency on the issues discussed at the OECD, the Vice-Chairman noted that it was perhaps more the responsibility of those WTO Members participating in the negotiations to inform the Committee on such matters.

Annex II

CONTRIBUTION BY MERCOSUR (ARGENTINA, BRAZIL, PARAGUAY AND URUGUAY) TO THE 14-15 NOVEMBER 2000 REGULAR MEETING OF THE COMMITTEE ON AGRICULTURE UNDER PART I, ITEM G OF THE AGENDA*

The following document is a contribution by Mercosur (Argentina, Brazil, Paraguay and Uruguay) to the deliberations of the Committee on Agriculture on the implementation of Article 10.2.

* (G/AG/W/47, dated 14 November 2000).

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FTAA – NEGOTIATING GROUP ON AGRICULTURE

MERCOSUR

EXPORT CREDITS FOR AGRICULTURAL PRODUCTS

ARTICLE 1

DEFINITION AND SCOPE

1.1. Export credits for agricultural products are considered to be any type of financial activity whose source is official resources, for the purpose of improving and marketing agricultural products, for export, covered by the FTAA Agreement on Agriculture.

1.2. An illustrative, though not an exhaustive list of institutions and programs to be covered by this chapter can be found in Annex I[†], and shall be periodically revised.

1.3. For the purposes of this chapter, official resources may take the form of credits, financing, interest rates, and export credit insurance and guarantees, among others.

ARTICLE 2

DISCIPLINES

2.1. All export-related credit operations of institutions and programs involved with official resources for agricultural products shall respect the terms of this chapter, including private and State-owned enterprises that hold exclusive or special rights to market agricultural products, resulting from statutory or constitutional rights, the exercise of which could affect their acquisitions or sales, or influence imports or exports.

2.2. Terms and conditions for granting of credits

2.2.1. General Considerations

2.2.1.1. This chapter establishes the most generous terms and conditions to be used in the context of the FTAA. All FTAA member countries, taking into account the risk of such terms and conditions becoming common practice in domestic agricultural policies, shall adopt the measures necessary to prevent such practices becoming generalized.

[†] Not included.

2.2.1.2. FTAA member countries shall observe the credit terms and conditions for agricultural products that traditionally enjoy usufructuary credit terms and conditions less favorable than those authorized by this chapter.

2.2.2. Term of payments

Pre-shipment operations

2.2.2.1. The term of payment for credit operations in the pre-shipment period is the time between the date on which the resources are available to the beneficiary and the date of maturity of the capital.

2.2.2.2. The term of payment for pre-shipment credit operations covered by this article shall not exceed 90 days.

Post-shipment operations

2.2.2.3. The term of payment for post-shipment export financing is the time between the date of shipment or of the delivery of the goods, invoice, commercial contract, or requirements contract and the maturity date of the final capital installment.

2.2.2.4. The payment period for products covered by this article shall not exceed 180 days, and may be extendable for more than 180 days at the request of the debtor country, except in the cases listed below. The period of extension shall be substantiated by the debtor country and be approved by the other FTAA members.

- a) Bovines for animal improvement purposes: the term of payment shall not exceed 2 years for contracts of up to US\$150,000 and 3 years for contracts in excess of US\$150,000.
- b) Other animals for purposes of animal improvement: the term of payment shall not exceed 12 months.
- c) Plant material for reproduction: the term of payment for plant material (seeds, tubers and similar material), exported for purposes of reproduction, shall not exceed 12 months.

2.2.3. Payment of capital

Pre-shipment operations

2.2.3.1. The value of export credit capital shall be paid in a single installment or in equal and successive installments beginning on the date on which the resources are available to the beneficiary.

Post-shipment operations

2.2.3.2. The principal value of the export credit shall be paid in a single installment or in equal and successive installments, based on the predetermined events set forth in item 2.2.3.

2.2.4. Interest payments

2.2.4.1. The form of interest payment shall be defined by free negotiation between the parties, observing the terms defined in items 2.2.2 and 2.2.4.

2.2.4.2. For the purpose of the provisions of this chapter, interest excludes:

- a) any payment, such as premiums or other surcharges, for the purpose of ensuring or guaranteeing credit to exporters;
- b) any other payment, such as bank fees or commissions, related to export credit; and
- c) discounts made by importing countries.

2.2.5. Cash payment

2.2.5.1. Member countries shall require importers of agricultural products included in item 2.2.4 (a) that have received official resources to make cash payment of a minimum of 15 percent of the exported value, prior to or on the date of shipment of the goods.

2.2.5.2. Exported value shall be understood to mean the total value to be paid by the importer, excluding interest.

2.2.6. Sharing of risk

2.2.6.1. Any type of credit guarantee dealt with in this chapter, including those financed with resources from national treasuries, shall include a minimum level of private sector participation. The official insurance agency may only cover up to 85 percent of the value of the transaction.

2.2.7. Minimum interest rate

[To be defined]

2.2.8. General Provisions

FTAA member countries shall not use any form of official resource with a view to refinancing the payment of capital and interest on export credits for agricultural products.

2.3. Sanctions

2.3.1. If a FTAA member country fails to comply with the disciplines established in this chapter, any other FTAA member may cancel the trade preferences granted to the product benefiting from the subsidized credit or apply other countervailing measures agreed upon in the context of the FTAA.
