

EXPORT CREDITS IN THE WTO

Paper by Brazil

The following communication, dated 25 April 2002, has been received from the Permanent Mission of Brazil.

The current WTO provisions concerning export credits were imported into the multilateral trading disciplines at times when the international economic environment was quite different from that prevailing today. Items (j) and (k) of Annex I of the SCM Agreement, for instance, derive from provisions that were first introduced in the multilateral rules in the sixties. Presently, those disciplines are clearly insufficient in coverage (new practices having been created since then) and reflect outdated and unbalanced benchmarks.

Of particular concern is the fact that the current disciplines, mostly negotiated by a few countries outside the GATT/WTO system, do not take into account the contrasts among WTO Members and, in so doing, introduce asymmetries in the capacity of Members to compete on equal footing in the field of export credits. These asymmetries weaken the credibility of the multilateral trading system, which hinges on equitable conditions of competition for all Members. Therefore, Brazil's main objective when raising the issue is to establish truly equal conditions for all Members in the field of export credits, creating a "level playing field", through the recognition that the domestic macroeconomic environments vary considerably.

Moreover, recent disputes in the WTO have raised serious concerns about the adequacy of the relevant provisions of the WTO agreements, which contain a large number of grey areas.

The Negotiating Group on Rules should, therefore, clarify and improve these disciplines, as appropriate.

THE PROVISIONS OF THE SCM AGREEMENT THAT REQUIRE REVIEW

Export credit practices are regulated by just a few provisions of the SCM Agreement. Insofar as export financing is specifically concerned, the SCM Agreement dedicates just a couple of items in the illustrative list of export subsidies found in Annex I to the Agreement. They are items (j) and (k):

- Item (j)

In Brazil's view, what item (j) basically offers is only a notion that insurance and guarantee programmes should charge premium rates that are adequate to cover its long-term costs and losses. Put differently, they should "break even". Some countries interpret item (j) in such a way that would allow Members to offer guarantees that bring transaction rates under usual market levels. This is an

issue of utmost importance for those countries that cannot match these terms, even if they offered similar guarantees. After all, sovereign credit ratings differ considerably even among homogeneous economies. In a membership so diverse as WTO's, the "break even" requirement of item (j) falls quite short of ensuring a level playing field among Members, with a clear disadvantage to those that enjoy lower credit ratings.

- Item (k)

In its first paragraph, item (k) establishes, as a general rule, that Members must not finance exports at rates that are below their cost of funds. The last phrase of that first paragraph, however, would lead one to infer that rates below their costs of funds would be acceptable if they did not secure a "material advantage".

This last phrase should give Members some comfort. However, according to some interpretations, a Member could be in violation of its WTO obligations depending on the way that it supports the interest rates to bring them to market levels. In other words, depending on the way that a developing country chooses to match market conditions – even if it is not securing a material advantage – this practice or mechanism could be challenged. This finding is a source of inequity that some Members cannot live with. The costs of funds of WTO Members are different and that, in itself, should not be a parameter for determining WTO compliance or not.

Some believe that the "benefit test" of Article 1 of the SCM Agreement could serve as a replacement for the first paragraph of item (k). However, even if one goes down this road, this would not address the cited imbalance against developing countries. Since that "test" implies a comparison of what would be available in the market for the recipient, it follows that when the recipient is from a country with higher sovereign risk one will find a benefit more easily than when the recipient is from a developed country (this is especially evident when dealing with supplier credits).

Another question that needs to be addressed is the interpretation by panels that the reference to the OECD Consensus gives a permanent "carte blanche" to the participants of that Arrangement to alter WTO rules. When Members agreed to incorporate the interest rate provisions of the Arrangement, they incorporated the provisions that were in place at the time the Marrakesh Agreement was signed. They did not waive their rights to decide on any changes to the text of the WTO Agreements, or even to their domestic legislation, when they have incorporated the WTO Agreement to their internal law. If the "evolutionary interpretation" prevails, non-OECD participants may be faced with a situation where, all of a sudden, their legislations, once in perfect compliance with WTO obligations, become vulnerable to action under the DSU for the simple reason that OECD participants, with no warning, changed some provisions of their Arrangement.
