DRAFT - Report to Plurilateral Meeting on March 26, 2011

Contact Group: EXPORT CREDITS

1. The Group is composed of delegates from Brazil, Canada, China, the EU and the United States.

2. The Group met internally on February 22nd, March 14th and March 18th to discuss various elements relating to export credits, as elaborated below.

3. The Group also met with the following delegations on February 24th and March 15th: Egypt, Argentina, Korea, Japan, Australia, India and Turkey.

4. The issues discussed by the Group and with other Members included the issue of benchmarks under items j) and k), footnote 6, and successor undertakings. Comments were largely based on the 2007 version of the Chair's text and a non-paper tabled by Brazil in 2008 and most recently discussed in a plurilateral meeting in February 2011.

5. In general, the range of views expressed could be characterized as follows:

    - The benefit-to-recipient standard should apply throughout the Agreement, including in items j) and k) in Annex I.
    - The cost-to-government standard for export finance in items j) and k) should be maintained.

    and,

    - Successor undertakings to the OECD Arrangement on export credits as referenced in item k) of Annex I should not take effect without approval by the WTO Membership.
    - There should be no veto within the WTO to evolutions of the OECD Arrangement on export credits.

6. Members of the Group made the following points regarding Benchmarks (i.e. items j) and k) of Annex I and footnote 6). This does not purport to be an exhaustive list of Members' views, but merely represents a reflection of the main points made during meetings of the Group.

(a) in support of a benefit-to-recipient standard throughout the Agreement:

- Proposed text of items j) and k) in the non-paper would reflect the benefit-to-recipient concept that prevails in other parts of the Agreement (particularly Article 14). The current items j) and k) still use the cost-to-government concept.

- The use of a cost-to-government concept is detrimental to those countries (usually developing countries) that have a higher cost of funds due to perceived risk. Countries with lower capital costs would be favoured by a cost-to-government concept.

- The continuing existence in the Agreement of two different concepts to determine the existence of a subsidy (i.e. cost-to-government and benefit-to-recipient) causes concern, particularly when benefit-to-recipient is not being used to deal with particularly trade-distortive export subsidies.

- The main problem arising from the concept of cost-to-government in items j) and k) is the understanding defended by some Members that for export credits and export credit guarantees, the cost-to-government concept would overrule the benefit-to-recipient concept that prevails throughout the Agreement. Therefore, any language in footnote 6 that ensures that an export subsidy not explicitly referred to in Annex I shall be prohibited under the general rule in Article 3.1(a) could be considered.

(b) in support of a cost-to-government standard for items j) and k):

- The established cost-to-government standard in items j) and k) reflects the particular nature of export finance. Changing to a benefit-to-recipient approach would create uncertainty with respect to relevant benchmarks and has the potential to increase the cost of financing overall and/or lower the appetite for providing export financing. This could also increase the number of WTO disputes.

- What is the meaning of the proposed wording in the non-paper in both items j) and k), in particular the use of the word "or" before point ii) in item j)? The second threshold in point ii) of item j) in the non-paper is based on a different standard and is generally higher; therefore, point i) would essentially be meaningless.

- The principle expressed in footnote 6 achieves the same objective as point ii) in item j). This could create legal ambiguity by including the same idea twice, or would effectively read the cost-to-government standard out of the Agreement.

- Is it appropriate for footnote 6 to apply to the entirety of the illustrative list in Annex I if the original concern was only with respect to export credits and there has been no discussion of how it might affect the interpretation of other items on the list?

(c) on benchmarks generally:

- One view is that market benchmarks can and should be estimated, including through the use of models used by export credit authorities. Another perspective is that this would raise practical questions about how market benchmarks could be derived, especially where a readily identifiable benchmark cannot be found in the market, and that there can be no guarantee that a given model would be accepted as a source of benchmarking.

- Would all terms (such as collateral) also be part of the comparison if benefit-to-recipient benchmarks were applied? It was discussed that all terms should be part of the comparison.

- The language "denominated in the same currency" in the non-paper reinforces the idea that benchmarks should relate to the market in the country of the financing institution.

- Some Members consider that estimating benchmarks based on international markets could contribute to uncertainty.

- Differences exist in the manner in which various institutions provide financing. Some generally provide export financing to purchasers in other jurisdictions, while others tend to concentrate on financing to exporters in their own markets. These two situations raise different concerns.

- One argument raised is that low-cost financing by one jurisdiction can increase the flow of imports into another, since export credit programs not only benefit exporters but also purchasers who buy products from the country of the financing government. Another argument is that export credits provided to purchasers provide a benefit in the first instance to the purchaser and that any benefit to the exporter would be indirect.

7. Members of the Group made the following points regarding Successor Undertakings (second paragraph of item k) in Annex I). This does not purport to be an exhaustive list of Members' views, but merely represents a reflection of the main points made during meetings of the Group.

(a) in support of WTO approval:

- Systemic problems arise from the automatic adoption by the WTO of a plurilateral agreement reached outside the WTO by a small number of Members.

- The automatic adoption of interest rate provisions of any newly revised edition of the OECD Arrangement as an exception to prohibited export subsidies is unfair to WTO Members who are not OECD participants. Therefore, approval in the WTO is needed.

- The safe harbour in item k) should only apply if all WTO Members have been involved in its creation or can agree with it.

- The provisions in the second paragraph of item k) only relate to the specific parts of the relevant undertaking at issue (i.e. interest rate provisions).

(b) in opposition to WTO veto:

- There are only a small number of non-OECD countries that actually supply medium and long-term export credits. These countries are often invited to participate in the negotiation of revisions to the OECD Arrangement. The OECD has expertise in this area, as well as established procedures for interested countries to participate, as observers, in export financing negotiations.

- The OECD has embarked on an enlargement initiative with respect to providers of export finance, which should address the concerns identified with respect to successor undertakings.

- Seeking approval of an agreement reached elsewhere would be complicated, particularly as the OECD Arrangement by necessity evolves quickly. WTO Members without an interest in export credits could withhold approval for reasons unrelated to the export credit rules. Caution should be exercised in considering an approach that could create conflict between the jurisdiction and/or membership criteria of two separate international organizations.

(c) Apart from these differences in view, practical questions about how the proposal would work were explored on a theoretical basis, including: whether and how transparency could be increased regarding the Arrangement; on what basis a Member might oppose the adoption of a new undertaking; whether there might be a requirement to demonstrate interest or participation in Arrangement discussions and decisions.

8. In meetings with other delegations, the Group was presented with comments along the following lines:

On Benchmarks:

- Cost-to-government approach is disadvantageous to developing countries due the differences in the cost of capital among other Members.

- The cost-to-government standard could raise the export financing benchmark for both importers and exporters in developing countries.

- Cost-to-government approach does not cover the core element of a subsidy (i.e., the benefit), and cannot overrule the Agreement's benefit-to-recipient approach clearly stated in Article 14. There may be relationships between this issue and other proposals concerning Article 14.

- An explicit reference in footnote 6 changes a lot and requires serious discussion.

- Changes to item k) could have implications for agriculture.

- Changing from cost-to-government to benefit-to-recipient standard would raise the export financing benchmark for developing countries and increase the cost of export finance.

- Company-specific risk premiums are difficult to identify, and there may be difficulties in establishing relevant benchmarks for some domestic currencies.

- It is hard to accept the international market price as a benchmark because it has characteristics of uncertainty and is difficult to apply.

- Benchmarks should be estimated based on what could be available in the market of the Member concerned. The international market could be a reference, but adjustments would need to be made.

- Export financing issues are complex, which is why they are subject to unique provisions in the Agreement. The particular nature of export credits has been recognized and dealt with as an exception since the Tokyo Round.

- It would be illogical to circumvent the cost-to-government standards and apply a different test.

- There may be questions about the scope of the term "program" in item j.

- Export credit agencies generally provide financing within countries with higher political risk. Export financing is often not in-country. It is usually purchasers in other jurisdictions who receive financing.

On Successor Undertakings:

- Systemic problems arise from the automatic adoption of a plurilateral agreement to all Members of a multilateral forum like the WTO.

- The carve-out in item k is not appropriate and should be removed, or there should be some form of scrutiny and approval by WTO Members before it comes into place. WTO scrutiny could be in the form of a vote.

- Removing the safe harbour in item k) would mean that the first part of item k) would apply equally to all Members.

- Concerns exist if the OECD Arrangement needs to be approved by the WTO. This could create problematic situations as with the approval requirement for 3rd country dumping provisions in the Anti-dumping Agreement, and could effectively write these provisions out of the Agreement.

- The possibility for veto creates challenges for the role of the WTO as an institution. One institution cannot block the coming into force of an outside agreement reached in another institution.

- Enhanced transparency and notification of successor undertakings could be addressed, and could be modeled after subsidy notification procedures. This would raise some questions about who would be obligated to notify a successor undertaking and the effect on its status if no one did.

- In reaction to points made about WTO Members not having a say on the results of decisions taken in the OECD, a hypothetical question was posed about what implications could arise if the same scenario was created for other groups within the WTO Membership. This raised similar questions about how an alternative form of safe harbour would work in practice.