

THE COUNCIL,

Having regard to Article 5(a) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the terms of reference of the Trade Committee's Group on Export Credits and Credit Guarantees, which includes consideration of all possible ways of improving co-operation between Member countries in the field of export credits and credit guarantees [Doc. Nos. C(63)141, C/M(63)22 Annex (Final), Item 225];

Considering the growing role played by export credits in competition on export markets and the problems resulting therefrom;

Considering that an arrangement which would enable Member countries with export credit and credit guarantee schemes to obtain from their partners, whenever they deem it necessary, information on the terms envisaged for export credits of more than five years' duration, would help to create more orderly conditions of competition in the matter of export credits;

Having regard to the Report by the Trade Committee's Group on Export Credits and Credit Guarantees of 28th May 1971 concerning the Implementation of an OECD Exchange-of-Information System for Export Credits of More than Five Years' Duration [Doc. No. C(71)96];

I. DECIDES:

1. The Exchange-of-Information System used by Member countries represented on the Trade Committee's Group on Export Credits and Credit Guarantees, as set out in the Annex to this Decision, of which it shall form an integral part, shall enter into force on 1st July 1972.
2. The operation of the Exchange-of-Information System shall be reviewed at the end of a trial period of one year.
3. Following this trial period, any Member country may withdraw from the System on giving three months' notice to the Secretary-General of the Organisation.

II. INSTRUCTS:

The Trade Committee's Group on Export Credits and Credit Guarantees to undertake the review provided for in paragraph 2 above, to follow the System's application, and to make any appropriate proposals to the Council.

ANNEX

EXCHANGE-OF-INFORMATION SYSTEM FOR EXPORT CREDITS OF MORE THAN FIVE YEARS' DURATION

I. The Scope of the System

1. The Exchange-of-Information System (hereinafter called the "System") concerns the credit terms for transactions which fall within

the competence of the Group on Export Credits and Credit Guarantees (hereinafter called the "Group") and which are defined in paragraph 2(a) below.

2. (a) The System shall apply to any officially supported transactions tied to exports on credit terms which exceed a duration of five years, calculated from the recognised starting points of the Berne Union*, whether official support is given in whole or in part and whether or not the exports in question are destined for a country which is a Member of the Group**. Guarantees of suppliers' credits, guarantees of private financial credits or credits financed by governments, government institutions or with any other form of direct or indirect governmental participation shall be considered as officially supported transactions for the purposes of this System.

(b) Outright government grants, untied loans, tied official development assistance loans on concessional terms***, technical assistance operations and sales of military equipment under intergovernmental agreements relating to such sales shall be excluded from the System.

3. Each Member of the Group (hereinafter called "Member") shall inform the Organisation of the person, persons or authority who is to act on its behalf under the System. All communications concerning this exchange of information, whether they are enquiries, replies or notifications, shall begin as follows:

"INFORMATION CREDITS - OECD"

II. Arrangements for Exchange-of-Information

4. A Member which has received a request for official support from one of its exporters or from a recipient**** with regard to a transaction

* The recognised starting points of the Berne Union are:

- (i) in the case of capital goods consisting of individual items usable in themselves (e.g. locomotives), the mean date, or actual dates, when the buyer is to take physical possession of goods in his own country;
- (ii) in the case of capital equipment for complete plants or factories, the date when the buyer is to take physical possession of the entire equipment (excluding spare parts) supplied under the contract;
- (iii) in the case of construction or installation contracts, either the date when the seller will have respectively constructed or installed the plant or 12 months after the date when the entire equipment (excluding spare parts) to be supplied under the contract will have been delivered on site, whichever is the earlier.

** The Members of the Group are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Japan, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

*** See Protocol.

**** For the purposes of this System, the term "recipient" shall be taken to mean the Government, or any other authority or any individual enterprise with which the transaction is being negotiated.

covered by the definition in paragraph 2(a) may address to any other Member an enquiry concerning this transaction, with a view to ascertaining whether this Member has also received a request to support credit terms exceeding five years' duration for that transaction, or whether it has received a previous enquiry regarding the terms it would be prepared to support. If a Member addresses an enquiry concerning a given transaction to more than one other Member, it shall inform each of the Members concerned of the other Members to which the enquiry has been addressed.

5. The enquiry shall clearly identify the transaction or the part of the transaction in which the enquiring Member is interested and shall give the full name and address of the recipient. It should also state the credit terms which the enquiring Member would be prepared to support as follows:

- (a) Payments with contract;
- (b) payments on or before delivery;
- (c) total length of credit and, if applicable, the reasons for supporting credit terms exceeding five years' duration (specifying in the case of shipments by instalments whether the credit begins from the date of each shipment or delivery, from the mean date of all shipments or deliveries, or from the final date of shipment or delivery, or, in the case of projects for the erection of complete plants from the date of handing over of the completed plant);
- (d) the number and amounts of instalments and the periods between each;
- (e) any arrangements for covering local costs.

In cases in which the enquiring Member has received allegations that another country, or an exporter in another country, has offered credit terms exceeding five years' duration, it shall accompany its enquiry with the details of any such allegations. If it is alleged that the offer in question has been made by a named exporter in the country of the Member to which the enquiry is addressed, the full name and, if known, the address of the exporter shall be provided.

6. Any Member to which an enquiry is addressed shall inform the enquiring Member whether or not it has received a request or a previous enquiry in respect of the transaction described and shall provide the following information*:

* It is possible that enquiries may be made in connection with transactions which the enquiring Member believes to be covered by the provisions of paragraph 2(a) but which in fact fall under the provisions of paragraph 2(b). In such cases, the Member to which the enquiry is addressed shall give a reply providing sufficient information to eliminate any doubts as to whether or not the transaction falls within the provisions of paragraph 2(a); in the case of tied Official Development Assistance loans, see Protocol.

- (a) if it has received a request in respect of the transaction, whether from the recipient described in the enquiry or from another recipient, or from the exporter named or from another exporter in its own country, it shall give the enquiring Member the details of the terms as set forth in (a) to (e) of paragraph 5 above;
- (b) if it has not received a request in respect of the transaction described, it shall either inform the enquiring Member of the maximum terms which it would be prepared to support for the transaction described including, if applicable, the reasons for envisaging credit terms exceeding five years' duration or else it shall reply that it is not able to take a position with respect to the transaction described. In the latter case it shall be committed if it receives a subsequent request to notify to the enquiring Member the terms it is prepared to offer as set forth in (a) to (e) of paragraph 5 above.

7. Replies shall be sent as quickly as possible to the enquiring Member and, in any event, within seven calendar days; they shall be transmitted by telephone, by telegram or by telex. If it is not possible to send a full reply within seven calendar days, the Member to whom the enquiry was addressed shall send as much information as is available at that time including, if possible, the best indication it can give of the decision likely to be taken in respect of any request which it has received. The full reply shall follow as soon as possible. On replying to an enquiry, a Member shall at the same time give the same information to any other Members to which an enquiry has been addressed.

8. When information has been exchanged between two or more Members under the System, each Member concerned may support terms for the transaction in question as favourable as, but not more favourable than, the terms reported by any one of the Members concerned. Each Member shall, as soon as possible, give any other Members concerned particulars of the terms of credit which it finally decides to support.

9. If any Member which has been concerned in an exchange of information under the System should subsequently decide to support more favourable terms than had previously been indicated by any Member in the exchange of information on the transaction in question, it shall immediately notify the more favourable terms in question by telephone, by telegram or by telex to any other Members which were concerned in the earlier exchange of information, indicating the reasons which have led it to decide to support more favourable terms and specifying whether or not this decision implies final conclusion of the transaction in question.

10. In order to permit the effective operation of the System, Members shall instruct their respective institutions concerned with export credits to take all necessary steps to ensure that exporters and others concerned are urged to consult those institutions at an early stage in negotiations leading to the signing or concluding of a contract.*

11. All Members agree that it is most desirable that the occasion for notification, required by paragraph 9 above, of a decision to support more favourable terms than those previously indicated in the course of an exchange should represent an exceptional occasion.

III. Special arrangements to prevent a "fait accompli"

12. The notification required by paragraph 9 above may be made the subject of a binding obligation to give adequate prior notice, for specified transactions or categories of goods in cases where all the Members taking part in the exchange of information involving the transaction or category of goods in question are agreeable to the acceptance of such an obligation. The general agreement to acceptance of a binding obligation shall be established on the initiative of any interested Member and shall become effective immediately all other Members concerned have signified their acceptance of it. Where such a binding obligation has been accepted, any Member who subsequently decides to support terms more favourable than those previously indicated by any Member taking part in the exchange of information, must immediately notify all other Members who have been party to the exchange in accordance with paragraph 9 and, in so doing, must give the minimum notice required by (a) or (b) below, as appropriate.

- (a) Where there has been a call for tenders or a fixed date has otherwise been specified, notification of the changed terms shall reach the other Members concerned at least seven calendar days before the closing date for tenders or the conclusion of negotiations, or
- (b) where there has been no call for tenders and there is no fixed date for the conclusion of negotiations, notification of the changed terms shall reach the other Members concerned not later than the time at which the exporter or the recipient is informed by the notifying Member of its agreement to support these changed terms.

* For the purpose of this System, it is understood that "signing or concluding of a contract" shall mean entering into any written and signed agreement by which the buyer undertakes irrevocably to buy goods or services from the exporter and to pay according to specified terms, even if the agreement is subject to reservations which can be withdrawn only by the exporter, and that a contract shall be deemed to have been signed or otherwise concluded from the moment when the buyer has committed himself irrevocably.

If it is not possible to give such minimum notice, the Member may not support more favourable terms than those previously indicated by any Member taking part in the exchange, except that the period specified in sub-paragraph (a) may be reduced in the event of an urgent need to match (but not exceed) proved competition on credit terms from a country which does not participate in the System, or from a Member which had not been concerned in the previous exchange of information. In such cases the notification pursuant to paragraph 9 shall be made by telephone, by telegram or by telex to any other Member concerned and neither the Member which has notified these changed terms nor the other Members concerned shall give final agreement to support the more favourable terms in question until a waiting period of at least 48 hours has elapsed from the despatch of the notification.

13. Unless adequate prior notice in accordance with the procedure set out in paragraph 12 has been given, Members entering into such a binding obligation shall refuse support for any contract* which has been signed or otherwise concluded, whether ad referendum or not, on terms more favourable than those reported by any Member concerned in the exchange of information.

14. The information exchanged in compliance with paragraphs 4, 7, 9 and 12 shall be brought to the knowledge of the Organisation.

EXCHANGE-OF-INFORMATION SYSTEM

Protocol

concerning tied official development assistance loans
on concessional terms

With regard to tied official development assistance loans on concessional terms, which are excluded from the exchange-of-information System under paragraph 2(b), Members agree that they will use their best efforts to give as far as possible the same information as for the transactions covered by the System.

In cases where Members participating in an OECD exchange-of-information relating to a specific transaction accept the binding obligation referred to in paragraph 12 this obligation shall also apply to tied official development assistance loans on concessional terms.

* See footnote to paragraph 10.

Members also agree to examine, at the completion of the trial period of one year, any practical difficulties which may have arisen from the exclusion of tied official development assistance loans on concessional terms.

In adopting this Decision, the Council:

1. NOTED the Report by the Trade Committee's Group on Export Credits and Credit Guarantees of 28th May 1971, referred to above;
 2. NOTED the Statements made by Delegates;
 3. AGREED that the Decision should take effect on 1st July 1972;
 4. WELCOMED this first concrete action in the field of export credits;
 5. INVITED the Trade Committee and the Group on Export Credits and Credit Guarantees to pursue their efforts to achieve further progress in this important field.
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At its meeting on 27th September 1972, the Council DECIDED to derestrict this Decision [Cf. C/M(72)25(Final), Item 223(a)].