



Committee on Agriculture

**REPORT ON THE SECOND TRIENNIAL REVIEW OF THE MINISTERIAL DECISION
OF 19 DECEMBER 2015 ON EXPORT COMPETITION**

1 MANDATE AND PROCESS

1. Paragraph 5 of the Nairobi Ministerial Decision on Export Competition adopted on 19 December 2015¹ (the Nairobi Decision on Export Competition) provides that: "*The regular sessions of the Committee on Agriculture shall review every three years the disciplines contained in this Decision, with the aim of enhancing disciplines to ensure that no circumvention threatens export subsidy elimination commitments and to prevent non-commercial transactions from being used to circumvent such commitments*".

2. The first triennial review of the Nairobi Decision on Export Competition took place in 2018 and concluded with the adoption of the report by the Committee on Agriculture (CoA) on 26 September 2018².

3. Members discussed the second triennial review in seven informal meetings of the CoA on 29 March 2021, 17 June 2021, 23 September 2021, 2 February 2022, 18 February 2022, 4 March 2022 and 15 March 2022, complemented by several consultations held by the Chair of the CoA.

4. The Chair reported on these meetings in the formal meetings of the CoA on 29-30 March 2021³, 17-18 June 2021⁴, 23-24 September 2021⁵ and 15-16 March 2022⁶.

5. It was noted from the outset that the second triennial review would be undertaken in parallel with two other export competition related tracks:

- a. First, the annual dedicated discussion process in the CoA to monitor the implementation of the disciplines contained in the Nairobi Decision on Export Competition. As was highlighted by Members, 2021 was a significant year since for the first time all Members were expected to reply to the questionnaire, following the expiry of the grace period foreseen in footnote 17 of the Decision.
- b. Second, the agricultural negotiations undertaken in the framework of the Committee on Agriculture in Special Session (CoA-SS) with a view to reaching an outcome on agriculture at the 12th Ministerial Conference (MC12).

6. Members expressed the view that the triennial review and the negotiation process on export competition should be complementary and mutually supportive. It was noted that the review could help highlight unfinished business on export competition, while some Members considered that both the review and the negotiations could contribute to an outcome on agriculture inclusive of transparency elements at MC12.

¹ Document WT/MIN(15)/45 - WT/L/980, dated 21 December 2015.

² Document G/AG/28, dated 26 September 2018.

³ See report G/AG/R/98, paragraph 4.22 and annex 3.

⁴ See report G/AG/R/99, paragraph 5.23 and annexes 3 and 4.

⁵ See report G/AG/R/100, section 4.4.2 and annex 3.

⁶ See upcoming report G/AG/R/101.

7. The Chair presented, during the informal meeting held on 17 June 2021, a detailed report on the issues addressed during the first half of 2021⁷. It was stressed (see section 3 below) that several issues identified in this report were also being considered in the agriculture negotiations in advance of MC12.

8. As a result, Members agreed during the September 2021 CoA meeting to conclude the second triennial review after MC12, at the March 2022 CoA meeting, to ensure complementarity in the review and the negotiation tracks.

9. Following the postponement of MC12 at the end of 2021, Members reconvened their discussions during the 2 February and 18 February 2022 informal CoA meetings to reassess the situation and possible way forward. During these meetings, most Members supported the completion of the triennial review at the March 2022 CoA meeting. They acknowledged that this would require realism and pragmatism in their approach to possible conclusions or recommendations, and that these would need to relate to issues that had been clearly identified in the discussions in the context of the triennial review.

10. The Chair subsequently circulated on 24 February 2022 a draft report that was discussed during the 4 March 2022 informal CoA meeting. Some drafting suggestions were made during the meeting in the concluding section. Following further consultations, the Chair circulated on 11 March 2022 a revised version that was discussed during the 15 March 2022 informal CoA meeting.

11. Following the meeting, the Chair circulated a final draft version for Members' consideration and this report was adopted by the Committee on Agriculture on 16 March 2022.

2 CONTENT OF DISCUSSIONS

12. Members stressed in the discussions the importance of transparency to ensure an effective monitoring of the Nairobi Decision and to ensure that no circumvention threatens export subsidy elimination commitments contained therein.

13. It was emphasized on several occasions that 2021 was the first year during which all Members were expected to reply to the Export Competition Questionnaire (ECQ) and that it would be important to draw from this experience, including potential challenges faced by some Members, to explore ways to enhance transparency. In this vein, some Members underscored that the results of the 2021 annual dedicated process showed that there was room for improvement both in terms of quantity and quality of ECQ replies.

14. Members also welcomed the compilation of issues raised under the monitoring of the Nairobi Decision on Export Competition⁸ that was circulated by the Secretariat on 11 May 2021, following a request made by one Member during the discussions. One Member suggested that the Secretariat prepare an analytical study of the questions and replies compiled in this document as a possible next step.

15. The rest of this section summarizes the discussions held during the second triennial review based on the list of **nine** issues identified by the Chair of the CoA in its June 2021 report⁹. Members noted in the course of the discussions that many transparency-related items included in these nine issues were also being considered in the agriculture negotiations and included in several submissions presented by Members in this context¹⁰.

16. **First**, several Members considered that, in light of the new export competition landscape resulting from the adoption of the Nairobi Decision on Export Competition, Members should consider a comprehensive review to update and streamline the notification requirements and formats in relation to Export Subsidies and total exports in Tables ES:1 and ES:2, as well as international Food

⁷ See report G/AG/R/99, annex 4.

⁸ Document G/AG/W/211 and G/AG/W/211/Add.1.

⁹ See report G/AG/R/99, annex 4.

¹⁰ See in particular documents JOB/AG/184, JOB/AG/211 and JOB/AG/213.

Aid in Tables ES:1, ES:3 and NF:1, read in conjunction with the transparency requirements under the ECQ.

17. Another Member notably suggested updating the list of Members required to submit export data in Table ES:2, as well as the current list of products and groups of products and the related tariff lines.

18. Several Members noted that such a comprehensive review could enhance the effectiveness of the transparency requirements, by reducing unnecessary, burdensome or redundant requirements while preserving the accuracy and completeness of data provided by Members. Some Members emphasized that future transparency requirements should take due account of the capacity constraints faced by developing Members, and particularly LDCs.

19. In this regard, one Member suggested that the CoA should develop proposals for practical arrangements on streamlining and simplifying current export competition notification obligations towards a better overall compliance and quality of the transparency. This Member considered that the document JOB/AG/213 could be used as a basis for these reflections.

20. **Second**, while several Members considered that it would be useful to update the content of the ECQ to improve the accuracy and relevance of data provided by Members, other Members were of the view that this would be premature and that priority should rather be given to efforts aimed at improving the monitoring process based on the existing requirements.

21. **Third**, several Members considered that there was a need to clarify or explain the scope of some of the questions contained in the ECQ, based on the experience acquired so far. It was noted that an "illustrative list" approach could be useful in this regard. However, no concrete proposals were made in this respect.

22. **Fourth**, while some Members supported the integration of the ECQ information requirements into the document G/AG/2, including as part of a process to update and streamline the export competition transparency requirements (see first item), other Members did not consider this to be a priority. Some Members stressed the need to assess the consequences of such a change on the existing monitoring process, and the need for a comprehensive approach.

23. **Fifth**, some Members considered that the Secretariat could usefully provide additional trade data to complement Members' replies to the ECQ. Some other Members expressed reservations about the Secretariat providing data that would not be submitted or validated by Members.

24. In relation to these first elements, several Members considered that the triennial review should focus on ways to improve the existing monitoring practices and obligations, including the rate of replies to the existing ECQ, rather than exploring possible new requirements, especially in light of the fact that all Members were expected to answer the ECQ for the first time in 2021.

25. One Member stressed in this regard that any new proposal, including clarifications on the kind of information to be presented or the addition of new questions to the ECQ, should be thoroughly discussed and supported by the whole Membership in order to be approved.

26. **Sixth**, several Members welcomed, during the discussions, the efforts made by Members with export subsidy reduction commitments at the time of the Nairobi Decision on Export Competition to modify their schedules pursuant to the Decision. They also encouraged the remaining Members to do so as quickly as possible.¹¹

27. Seventh, Members supported concrete initiatives aimed at enhancing the existing monitoring process as well as the rate of replies to the ECQ, including by assisting Members that are not yet accustomed to replying to the ECQ.

¹¹ At the date of circulation of this report, out of the 16 Members with export subsidy reduction commitments at the time of the Nairobi Decision, 15 Members have circulated their draft revised schedules. Revised schedules of 13 of these Members are already certified.

28. Initiatives such as information sessions¹², mentoring by more experienced Members, or technical assistance by the Secretariat were mentioned in this regard.

29. The on-going development by the Secretariat of a new IT tool under AG-IMS for online submission of replies to the ECQ and online data extraction and reporting has also been welcomed in this context. The Secretariat has regularly informed Members about the progress of this project and committed to consult Members and obtain their feedback in the early phase of development before the project is operationalized.

30. Several Members also stressed the importance of undertaking an analysis of the implementation of the Nairobi Decision so far, including a proper assessment and feedback of the actual difficulties encountered by Members in replying to the ECQ, as a prerequisite for being able to address them effectively.

31. **Eighth**, some Members expressed concern that some export subsidies under Article 9.4 of the Agreement on Agriculture, that benefitted from a longer phasing-out period pursuant to the Nairobi Decision on Export Competition, were not being notified in a timely manner. These Members highlighted, during the discussions, the importance of enhanced transparency in that regard.

32. Several Members considered that it would be useful in this context for the Secretariat to compile data on the use of such subsidies, as contained in Members' ES:1 notifications (Supporting Table ES:2) in the annual background document on export competition.

33. It was noted that this could be done following the same practice used so far for notified scheduled export subsidies, namely tables in Addendum 1 reflecting the annual use in quantity and budgetary outlays, and summary charts by Members in the main document.

34. One Member suggested that the Secretariat could also include, in the background document, the average levels of export subsidies under article 9.4 for the past five years on a product basis, keeping in view paragraph 10 of the Nairobi Decision on Export Competition.

35. Another Member considered that this issue, and more broadly the role of the Secretariat's background document on export competition, would also depend on the outcome of the suggested holistic review of all relevant export competition related notification requirements.

36. Ninth and last, several Members noted during the discussions that the ECQ information requirements for agricultural exporting State Trading Enterprises are by design almost identical to those contained in the questionnaire of the Working Party on State Trading Enterprises.

37. Many Members considered in this context that, in order to avoid redundant requirements, it would be useful to confirm that Members can use their reply to the questionnaire of the Working Party on State Trading Enterprises to reply to the ECQ section on exporting agricultural State Trading Enterprises.

38. It was stressed, however, that the notification frequency was different under the two exercises: annual in the case of the ECQ, and every two years in the case of the Working Party on State Trading Enterprises questionnaire.

39. It was considered that Members should therefore ensure that information contained in the reply to the ECQ in relation to their exporting agricultural State Trading Enterprises is fully up to date for the years during which no notification is provided to the Working Party on State Trading Enterprises.

3 CONCLUSIONS

40. The following conclusions, building upon Members' inputs and comments throughout the process, were agreed by the Committee as a result of the second triennial review of the Nairobi Decision on Export Competition:

¹² An information session on how to reply to the ECQ was organized on 29 March 2021, with a presentation by the Secretariat and the sharing on national experiences by Brazil, Canada and Indonesia.

- a. The Committee emphasizes the importance of transparency on all areas under export competition to ensure an effective monitoring of the implementation of the Nairobi Decision by the Committee on Agriculture.
 - b. Recalling that 2021 was the first year when all Members were required to reply to the ECQ, the Committee encourages all Members to provide timely and comprehensive replies to the ECQ and invites Members facing difficulties to comply with this requirement to reach out to the Secretariat for technical assistance or capacity building.
 - c. The Committee invites the Secretariat to pursue its efforts to provide support to Members as appropriate and upon request, through activities such as information sessions, technical assistance and capacity-building, based on the challenges identified by developing country Members.
 - d. The Committee confirms that Members can use the reply to the questionnaire of the Working Party on State Trading Enterprises for the section on agricultural exporting STEs of the ECQ, while acknowledging the need to update it, where relevant in the years during which no notification is provided to the Working Party on STEs.
 - e. The Committee invites the Secretariat to pursue the development of an ECQ IT tool project to ensure online replies to the ECQ and online data extraction and reporting. The Committee takes good note of the WTO Secretariat's intention to inform and seek feedback from the Membership during the development phase of this project.
 - f. The Committee acknowledges existing discussions on how export competition transparency requirements could be updated and streamlined and invites Members to continue these evidence-based discussions in light of the experience acquired in implementing the Nairobi Decision on Export Competition and the challenges and needs identified by Members.
 - g. The Committee commits to implement the relevant elements of an outcome on export competition that may result from the ongoing agriculture negotiations.
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