

Export Credit Working Group
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October 25, 2011

Ms. Amy Slusher
Deputy Director, Credit Programs Division
c/o Public Affairs Division, Foreign Agricultural Service
United States Department of Agriculture
1400 Pennsylvania Ave. SW, Stop 1004
Washington, DC 20240-1004

Subject: Comments on Proposed Rules as Published in Federal Register Vol. 76, No. 144
on Wednesday, July 27, 2011

Dear Ms. Slusher:

The Export Credit Working Group (ECWG) is an informal working group comprised of representatives from the undersigned organizations that has a particular interest in the GSM-102 Program (“GSM program”). As you are aware, the ECWG has engaged with USDA/FAS, USTR, and other policymakers to maintain the viability and enhance the effectiveness of the GSM program since the launch of the WTO Doha Round in 2001. We are gratified that the program has remained a key source of support for U.S. agriculture and the critical food and fiber needs of importing countries.

We appreciate USDA’s efforts to solicit comments from stakeholders on the proposed rule changes, citing the goals of putting in place a regulation that reflects changes to agricultural trade and financing practices, and to “enhance the overall clarity and integrity of the program.” We also appreciate the granting of an extension to the comment period so industry and other affected parties could fully analyze the implications of the proposal and provide thorough comments.

We are very concerned about the impact that many of the proposed rule changes will have on the GSM program. In our judgment, the proposed changes would render the program inoperable for program participants. This would be in direct contradiction to complying with section 202(k)(2) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(k)(2)), as amended by the 2008 Farm Bill, which in pertinent part reads:

“In administering the export credit guarantees authorized... the Secretary shall-

(A) Maximize the export sales of agricultural commodities; [and]

(B) Maximize the export guarantees that are made available and used during the course of the fiscal year.”

If the provisions contained in the proposed rule were to be implemented, the nature of the GSM-102 program would fundamentally be changed, undermining the viability of the GSM program and ultimately adversely affecting the competitiveness of U.S. agricultural exports.

Our first concern is that the proposed rule would render the GSM-102 program inconsistent with standard international banking practices and procedures for letters of credit; making it much less likely that banks, either domestic or foreign, will participate in the program. The International Chamber of Commerce first established standardized practices for handling letters of credit in 1933. Since that time, exporters, importers, and financial institutions have relied on these well understood practices. The proposed rule would, for the first time and contrary to international banking practice, insert banks into the underlying sales contract between buyers and sellers. Traditionally, banks, through letters of credit, have stood outside the sales contract terms and simply provided risk mitigation against failure of payment. Banks will be resistant to taking on the additional risk of handling letters of credit containing some of the language proposed by USDA. Instead of simplifying the transaction to encourage U.S. exports, the proposed rule would confront banks with additional risk and discourage use of the GSM program and, therefore, hurt U.S. exports. Therefore, we urge USDA to make changes to the proposed rule to bring it back into compliance with established international banking practice regarding letters of credit.

A second major concern is that CCC's payment guarantee will become revocable while the payment mechanism (letter of credit) that is required under the program is irrevocable. The greatest value of a letter of credit is its guarantee of payment. Especially in international transactions, where transporting goods can take days or weeks, exporters rely on letters of credit to guarantee that, upon the export of goods and subsequent presentation of documents that are compliant with the terms and conditions of the letter of credit, payment will be made. Pairing an irrevocable letter of credit with a revocable CCC guarantee would require financing banks to carry more capital, which is quite scarce these days, and charge higher lending margins to cover the additional cost of capital. This would make the financing under the program more costly thus reducing the attractiveness of the program to the foreign importer. Furthermore, the financing bank would likely be required to make their confirmation of the letter of credit conditional, which would not be acceptable to the exporters who rely on the letter of credit as their principal assurance of risk mitigation and payment upon shipment.

Further, section 1493.160 (c) would allow USDA, upon notice of a default by a foreign bank, to withdraw GSM-102 coverage for sales where shipment may be in progress when the letter of credit has been issued or will be issued by the defaulting bank. While this may appear like a good business practice, the exporter's payment guarantee -- which the exporter has paid a fee to receive -- has now been made conditional. Foreign bank defaults are very infrequent, and we agree that such banks should immediately be removed from participation in the GSM-102 program. However, making this payment guarantee conditional would add increased risk to the U.S. exporter and the financing bank assignee. Adding that risk to the transaction will make the program less workable for exporters and is not consistent with the objectives of the GSM-102 program. Shipments in progress with guarantees already issued should be allowed to proceed unaffected.

Additionally, we believe that many of the changes will make it operationally more cumbersome and costly for participants (exporters, assignees and issuing banks) and discourage small business from participation under the program. For example, the

requirement of proof of entry documentation as required under section 1493.150 will slow down the payment to exporters as this document is out of their control and therefore, will negatively impact cash flow that is extremely critical to small business. Additionally, the elimination of the 30 day grace period under the final date to export under a payment guaranty would impact small and large businesses alike as there are many issues out of their control when shipping such as delays in arrival of steamships, availability of containers and weather that can all be reasons for delays in shipment. This would be counter to the goals and objectives under President Obama's National Export Initiative, the Paperwork Reduction Act, as well as the rationale for proposing new regulations.

In closing, the ECWG wishes to reiterate our thanks for the excellent working relationship we have enjoyed with FAS/USDA over the past ten years, as well as our appreciation for the efforts and commitment of you and your staff. We look forward to continuing to work with USDA/FAS in pursuit of our shared goal of building markets for U.S. agricultural exports while supporting the food and fiber needs of importing countries.

Thank you for the opportunity to comment on this important issue. For further details, please contact us via Gary C. Martin at 202-682-4030.

Sincerely,

The Export Credit Working Group

American Farm Bureau Federation

American Soybean Association

CHS, Inc.

CoBank

Louis Dreyfus Commodities

National Council of Farmer Cooperatives

National Grain and Feed Association

National Oilseed Processors Association

North American Export Grain Association

U.S.A. Rice Federation

U.S. Grains Council

U.S. Wheat Associates

cc: Suzanne Heinen, Acting Administrator, Foreign Agriculture Service
Mark Rowse, Director, Credit Programs Division, Foreign Agriculture Service