

# Analysis of exchange rate intervention and export credit support under the SCM Agreement

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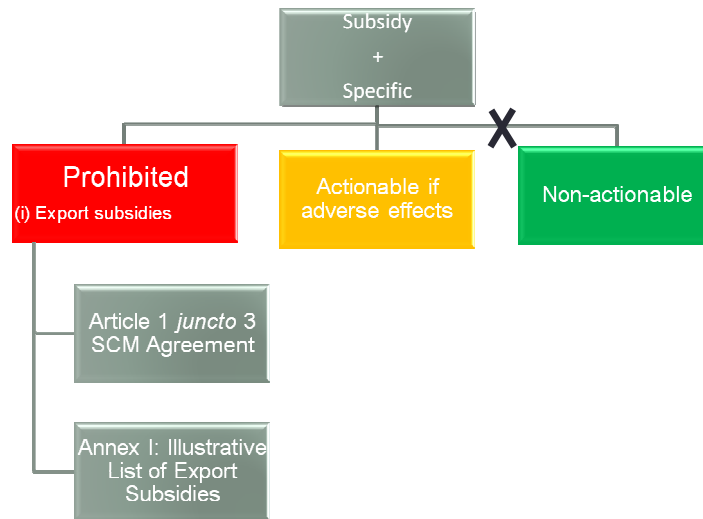
Dominic Coppens, Institute for International Law, K.U. Leuven, Belgium - contact: dominic.coppens@law.kuleuven.be

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## Overview

1. Legal and normative analysis of exchange rate intervention under the SCM Agreement
  2. Legal and normative analysis of export credit support under the SCM Agreement
- Are and/or should both types of interventions be prohibited export subsidies and countervailable under the SCM Agreement?

## Overview



Exchange rate intervention

## Scope of the SCM Agreement

### 1. Financial contribution (Art 1.1(a)(1) SCM)

- i. Transfer or potential transfer of *funds* and liabilities;
    - Funds: selling [renminbi](#) for dollars
  - ii. Provision of *goods* or *services*, or purchase of goods; except 'general infrastructure';
    - Goods: selling renminbi for dollars
    - Service: currency hedging
    - Exception: general infrastructure? (Panel, *EC – Aircraft*, para 7.1036)
  - iii. Government *foregoes revenue* which is otherwise due
    - Foregoing tariff revenue: imports more expensive
- = Exhaustive list (Panel, *US – Export Restraints*)

#### + By the government

- Directly by gvm or public body
- Indirectly through entrustment or direction private banks

### 2. Or income or price support (Art 1.1(a)(1) SCM)

## Scope of the SCM Agreement

### • Benefit (Art 1.1(b) SCM): where and what benchmark?

- Nature financial contribution: foreign exchange market
  - No private market
- Outcome financial contribution: undervalued exchange rate
  - Benefit to exporters: e.g., pass-through cases?
  - What is appropriate benchmark? No precise calculation needed

### • Specificity (Art 1.2 and 2 SCM)

- Export subsidies deemed to be specific (Art 2.3 SCM)
- Contingent upon exportation?
  - Across the board applicable
  - *De facto* tied to exportation

## Illustrative List of Export Subsidies

- Item (b): ‘Currency retention schemes or *any similar practices which involve a bonus on exports*’
  - Legal basis?
  - Contextual support?
- Proposal US in beginning 1970s to add

‘Special government measures to offset, in whole or in part, the price disadvantages on exports that result from its own or other countries’ exchange rate adjustments.’

  - Not devaluation *but* response to exchange rate adjustments would be prohibited
  - Not accepted but illustrates
    - How stance of WTO Members might change over time;
    - No intention to include undervalued exchange rate regime under Illustrative List or Art 1 *juncto* 3 SCM

## Conclusion

- Legal analysis
  - Exchange rate manipulation likely not an export subsidy in legal sense
- Normative analysis
  - Substantive arguments
    - Undervalued exchange rate could be sensible strategy to boost exports in first phase of development
    - Problematic in case sustained by countries having a substantive share in world trade
  - Institutional arguments
    - IMF should play more prominent role
    - WTO adjudicating bodies and CVDs authorities not well placed to make determination
- Future
  - Proposal by Brazil (April 2011) on WTO work programme
    - Pillar I: Economic approach
    - Pillar II: Institutional approach

# Export credit support

## Definition and rationale

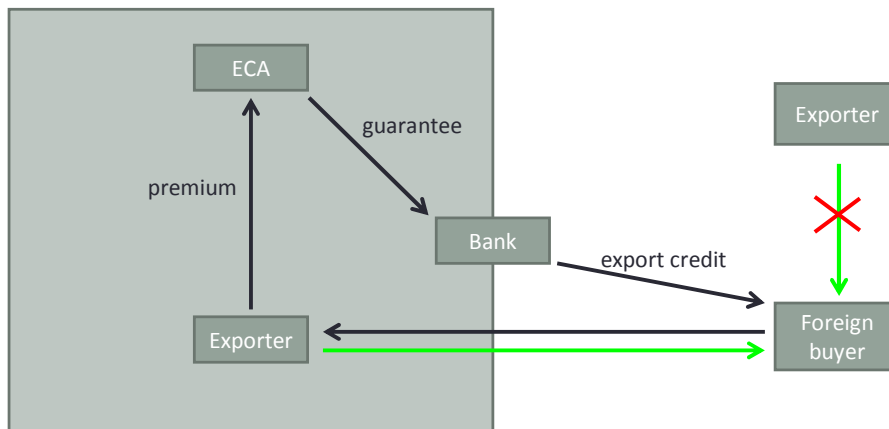
- Definition

**Export credits** = 'credits provided to foreign buyers' (Panel, *Korea – Commercial Vessels*)

**Export credit support** by Export Credit Agency (ECA)

1. Official financing support (e.g., direct credit, interest rate support, refinancing)  
e.g., Exim Bank China
  2. Pure cover support (guarantee or insurance)  
e.g., Sinosure
- Trade distortive potential but deemed legitimate if
    1. Self-defence instrument; or
    2. Correcting capital market failures

## Definition and rationale



## Analysis under SCM Agreement

- How to challenge export credit support?

1. Article 1 *juncto* 3 of the SCM Agreement

- Benefit-to-recipient approach: beneficial if aims at correcting market failures
- *Quid* by multilateral finance institutions?
  - ✓ '*raison d'être* of such organizations' but left undecided (Panel, *EC – Aircraft*, para 7.888)

2. Illustrative List: item (j) for pure cover support and item (k), para 1 for direct export credits

- Cost-to-government approach
- Item (j) calls for programme-wide analysis

➤ Relationship between both tracks

- No '*a contrario*' reading of items (j) and (k), para 1 of the Illustrative List
- Implementation extends to track 1 even if judicial economy (*Arbitrator, US – Upland Cotton*)

## Analysis under SCM Agreement

- Exceptions to principle prohibition
  1. Covered under the 'safe haven' (item (k), para 2): [OECD Arrangement](#)
    - Narrow reading in case law - outside its scope
      - i. Short term export credit support (<2 years)
      - ii. Pure cover support
      - iii. Matching
    - Potential complainants vulnerable for counterclaims by China!
  2. S&D for developing countries
    - Exception on export subsidy prohibition for group dev'ing countries but
      - Still vulnerable for actionable subsidy claims and CVDs action
      - China cannot benefit from this S&D treatment

## Conclusion

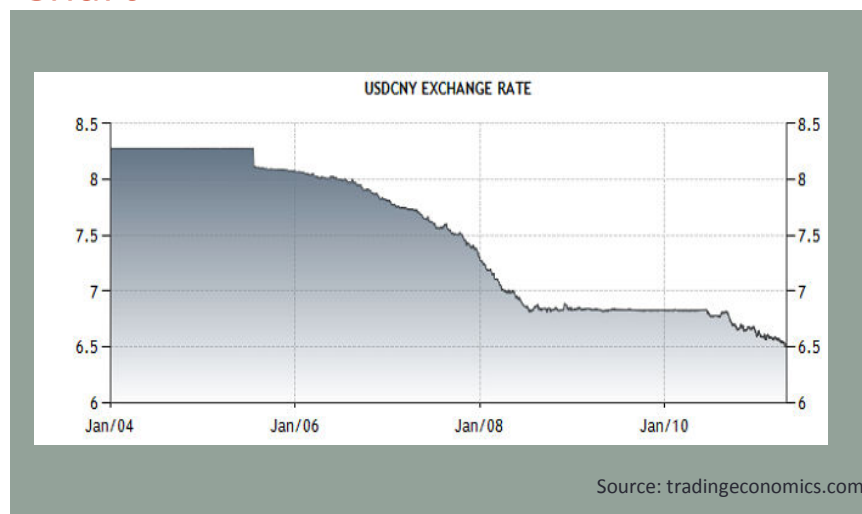
- Legal analysis
  - Call by DG Lamy to boost export credit support prohibited under own rules
  - Export credit support given by China and by other WTO Members is vulnerable
- Normative analysis
  - Substantive arguments: need for relaxing rules of the game in times of financial crisis?
    - ➡ Yes, correct market failure in financial sector
    - ➡ No, optimal policy is export credit support by multilateral finance institutions
  - Institutional arguments
    - Narrow reading safe haven justified: exception in the hands of subgroup WTO Members cannot be justified

Thank you!  
All comments welcome

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Dominic Coppens, Institute for International Law, K.U. Leuven,  
Belgium - contact: [dominic.coppens@law.kuleuven.be](mailto:dominic.coppens@law.kuleuven.be)  
Tel: (0032)-16325269

## Annex A - Renminbi Exchange Rate Chart





## Annex B - Main elements OECD

### Arrangement

- Scope
  - Support for exports of non-agricultural goods/services with repayment period  $\geq 2$  years
  
- Disciplines
  - 1.Repayment requirements
  - 2.Minimum interest rates (CIRR)
    - Except: pure cover support
  - 3.Minimum premium rates
    - a. Not be inadequate to cover long-term costs
    - b. Minimum premium rates (MPRs)
  
- If deviate: right to 'match'