

THE EARLY YEARS: FROM OEEC TO OECD, 1953 TO 1962



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In the reconstruction phase which followed World War II, most European countries set up specialised institutions (export credit agencies) which were tasked to support national exports through various financial mechanisms such as export credits or credit guarantees. By that time, these institutions were public and the modalities of official support that they offered were very soon considered as being artificial aid to exporters.

The first international efforts to regulate such export subsidies were undertaken from 1953 to 1959 in the framework of the Organisation for European Economic Co-operation (OEEC). At the same time, the young GATT was issuing its first general regulations on subsidy controls; subsequently, these regulations incorporated most of the prohibitions that had been issued by the OEEC, while the latter organisation became the OECD as of 1961¹. From that moment, the GATT (and thereafter the WTO) and the OECD played complementary roles in the international regulation of export credits.

The OEEC issues the first guidelines on phasing out aid to exporters

The OEEC first began working to improve the liberalisation of trade as far back as 1950. Then, on 24 March 1953, the Council of the OEEC adopted a Resolution on the “future of the liberalisation of trade”,¹ which requested the Steering Board for Trade – the predecessor of the OECD Trade Committee – to study, among other issues, “... means whereby artificial measures designed to aid exporters, which in the result tend to distort the normal pattern of competition, may be removed”. The issue in those days was not export credits, but more generally “artificial aid” which could distort competition. In response to the Council’s request, the Steering Board drafted a questionnaire which asked for factual information on the different

types of aid available to exporters at the time, including fiscal aid, supplies of raw materials on preferential terms, and direct and indirect subsidies. It also asked two questions on credit and credit guarantees:

“3. What measures in the field of credit policy, with a view towards the granting of credit facilities on more favourable terms (volume, rates of interest, duration of credit, etc.) than would have been obtainable under normal commercial conditions, are being taken by your Government or governmental agencies to aid exporters?

4. What guarantee systems for export credits, financed or subsidised by your Government, are at present in force in your country? What kind of risks are covered by the system (political and currency risks, risks of increases in prices of raw materials, wages, etc.)? How large a guarantee fund is available for the purposes of this scheme? What proportion of total exports have in recent years been covered by such guarantees?”

On 24 July 1953, the OEEC Council adopted a Recommendation on “measures designed to aid exporters”² in which it recommended that Member countries “... refrain, while the work of the Steering Board for Trade is in progress, from taking measures which might result in complicating still further any action which the Organisation may decide to take after the Board has terminated its work”. This standstill clause could be considered limited in impact since it appears in a non-binding Recommendation and because its wording is moderate, e.g. “refrain... from taking measures which might... any action which the Organisation may decide to take...”.² In addition, the standstill clause applied only to measures that Member countries might take in the future, not to existing measures that had already been implemented.

OEEC Council Decision of 14 January 1955, measures designed to aid exporters

In the light of the replies to the OEEC questionnaire, on 14 January 1954 the Council adopted a Decision on “Measures Designed to Aid Exporters”³ which is recorded as the first international text establishing disciplines on export credits practices. In this Decision the Council requested that Member countries discontinue, by 31 December 1955, artificial aid to exporters in the form of measures listed in Annex I. Until such discontinuation, the Decision included standstill clauses (Member countries should not further extend the application of existing measures of artificial aid to exporters or introduce further measures of the kind); paragraph (e) of Annex I of the Decision read as follows:

“In respect of Government export credit guarantees, the charging of insurance premiums otherwise than in accordance with sound insurance principles (i.e. lower than is appropriate to the costs and extent of the risks covered)”.

The 1955 Council Decision was legally binding: for the first time, member countries undertook to discontinue aid measures and to stop introducing new measures. In addition, the 1955 Decision marks the start of the OEEC's role as a supervisory body for international regulations in the export aid field: the text provided for an effective monitoring of the ban established. Measures deemed to be incompatible with the principles outlined in the Decision could be referred to the OEEC, which could then request the member country concerned to discontinue or modify the measure in question. In practice, the deadline for phasing out the listed artificial measures, initially 31 December 1955, was extended by successive Council Decisions until 30 June 1959. However, the Decision only mentioned credit guarantees. The Council asked that more work be carried out, in particular, "... the export incentives in the field of government credit for the financing of exports". This work resulted in two major new Council Decisions, adopted on 22 July 1958: the first to establish a consultation procedure and the second specifically focusing on export credits.

OEEC Council Decision of 22 July 1958 establishing a consultation procedure on aids to exports⁴

This Decision supplemented the January 1955 Decision and covered aid not prohibited under the first Decision and, in particular, aid or subsidies operating directly or indirectly to increase the exports of a member country. The Decision established a consultation procedure on request by any Member country which deemed that its interests were being seriously prejudiced or threatened by such aid; the purpose of the procedure, which was compulsory in this case, was to consult on the possibility of limiting such measures or their effects. The OEEC henceforward classified aid to exports into two categories: (1) "artificial" aid, prohibited under the 1955 Decision and (2) other aid which may be subject to consultation. In effect, this was the first version of a distinction between "prohibited" aid and "actionable" aid which would later appear in the GATT disciplines and in the WTO Agreement on Subsidies and Countervailing Measures (ASCM).

OEEC Council Decision of 12 July 1958 on measures to aid exporters in the field of export credits and export credit guarantees⁵

This important milestone extended the scope of application of the 14 January 1955 Decision in two ways: firstly, by extending prohibited aid to the export credit area and, secondly, by inviting Member countries to communicate the financial results of covering export risks for government export credit support programmes. The salient points of the Decision were:

- Paragraph (e) in the list of artificial aids to exporters was amended to "... In respect of Government export credit guarantees the charging of premiums at rates which are manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions."

- The following measures were added to the list: “g) The grant by Governments (or special institutions controlled by Governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed.” and “h) The Government bearing all or part of the costs incurred by exporters in obtaining credit”.
- The Council also recommended that Governments of Member countries communicate, confidentially and subject to reciprocal treatment, on request, the financial results of covering export risks (either by the Government or by institutions controlled by it).

The Council requested the Steering Board to continue its studies to determine which practices in the financing of export credits were likely to distort competition among exporters. In effect, the scope and types of discipline applicable to export credit systems were considerably extended by the Decision of 22 July 1958: the scope of application of prohibited measures included direct credit for exports at rates below the rates that Governments had paid to obtain the funds [paragraph g)], together with other subsidies where the costs to exporters of obtaining credit were borne by the Government [paragraph h)].⁶

In fact, two fundamental changes were made in respect of export credit guarantees. The first was that the criterion for benchmarking risk premiums was no longer “sound insurance principles”; instead, the prohibition was made more specific, applying to rates that “are manifestly inadequate to cover long term operating costs and losses of the credit insurance institutions”. The wording of the 1958 text clearly opted for a “long term”, “cost-based” approach. Furthermore, the introduction of the term “manifestly” allowed Governments a degree of discretion in setting premium rates; accordingly, only rates that were “manifestly” inadequate would be categorised as a prohibited subsidy (the word “manifestly” was subsequently deleted during the Uruguay Round). Thus, this fundamental OEEC Council Decision established two basic prohibitions in the export credit field, applying to credit guarantees and to direct financing, which are the origin of the prevailing (1995) ASCM, Items (j) and (k)-1 of the Illustrative List of Export Subsidies.

OEEC Council Decision of 17 February 1959 on measures designed to aid exports⁷ (including export credits and export credit guarantees)

Although the deadline for discontinuing certain aids to exporters set in the OEEC 1955 Decision was extended year-by-year until 1959, it became clear that not all OEEC Members complied with the Decision within this timeframe. The Council, therefore, decided to consolidate and strengthen OEEC regulations on aid for exports. Thus, this 1959 Decision reiterated the prohibition on granting artificial aid as defined in the list in the Annex (the list reprises the provisions of the Decision of 22 July 1958 concerning export credits and export credit guarantees), reaffirmed the compulsory standstill on other measures of artificial aid to exporters which distorted competition among

exporters and recapitulated the two consultation procedures open to Member countries. The consultations could also cover export credits and credit guarantees.

While not contrary to the prohibitions under paragraphs (f) – adequate risk premiums, (g) – loan rates higher than the cost of obtaining the funds and (h) – governments not to bear the costs incurred in obtaining credit, export credits and credit guarantees could, nonetheless, be prejudicial to the interests of another member country or directly or indirectly increase exports of a given product. However, the 1959 Decision also allowed Member countries to apply temporarily appropriate solutions to aid granted for agricultural and food products, provided that they complied with the appropriate OEEC Resolutions on the subject.

In addition, the Council also decided that every member country should communicate, confidentially and subject to reciprocal treatment, to any other member country which so requested, the financial results of its covering export risks (previously this was only a recommendation). Lastly, more work was mandated to determine which practices in the financing of export credits and the insurance of export risks were likely to distort competition.

OEEC Council Decision of 17 July 1959 on strengthening the consultation procedures on measures designed to aid exports

This Decision specified the scope of the consultation procedures, approved on 17 February 1959, and the methods for implementing them, including the extension of compulsory consultation to member countries that were importers of products benefiting from the aid in question. Previously the consultation procedure only applied to the member country granting the aid and the Member country referring the complaint. This last Council Decision closed the first, legally binding and intensive rule-making phase at the OEEC. In parallel, the GATT established in 1947, had started its work on export subsidies.

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The first GATT ban on export subsidies

The first, 1947, GATT rules on subsidies (Article XVI) did not incorporate any particular provisions on export subsidies, still less on export credits. The first bans on export subsidies appeared in Article XVI-B (3 and 4) of the GATT, which were added in April 1955. According to Article XVI-B, the GATT Contracting Parties were asked:

- To seek to avoid the use of subsidies on the export of primary products. (XVI-3).
- As from 1 January 1958, to cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. (XVI-4).

A standstill clause was added to the GATT so that the scope of application of the subsidies referred to in Article XVI-4 could not be extended beyond that existing on 1 January 1955. This standstill arrangement, initially intended to apply until 31 December 1957 – the date on which the restrictions under Article XVI-4 were to come into effect – was extended until 1967, when it expired. However, the 1 January 1958 deadline to implement the ban on subsidies for the export of products other than primary products was not met, and the implementation of Article XVI-4 was referred to a GATT Working Party which, on 19 November 1960, adopted a Declaration with a view to bringing Article XVI-4 into force.

In fact, the Declaration only became effective on 14 November 1962 for 16 out of the 43 Contracting Parties at that time (OECD members except Greece, Iceland, Ireland, Portugal, Spain and Turkey), plus New Zealand and Rhodesia. The GATT Article XVI-4 process was run in parallel with the extension until 1959 of deadlines for the prohibition of aid for exporters set out in the January 1955 OEEC Decision. This parallelism in both sets of disciplines is not surprising considering that a large proportion of the Contracting Parties to the 1947 and 1955 GATT were also Member countries of the OEEC and, from September 1961, of the OECD.

Export subsidy ban by the GATT and transition of rules to the OECD

The 1960 to 1962 period was transitional in respect of the OEEC Decisions. In December 1960, the OECD Preparatory Committee for Trade Issues examined the future of trade legal instruments adopted by the OEEC. It recommended that certain Acts, including the Decision of 17 July 1959 on aids to exporters, should not be maintained by the new OECD. In parallel, the negotiators in both the OECD and the GATT did not wish to lose the List in the Annex to the Decision of 17 July 1959, which contained concrete examples of prohibited export subsidies. During the discussions of the GATT Working Party on the implementation of Article XVI-4, it was noted that the list should not be considered exhaustive and that for governments which approved the Declaration, the practices described in the List should generally be considered as subsidies within the meaning of Article XVI-4.

The List was finally included in the November 1960 which entered into force in November 1962. The status and content of the List remained unchanged until 1979, when it was incorporated into an annex of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, a plurilateral agreement also known as the “Subsidies Code”. Article XVI-3 of the GATT on export subsidies for certain primary products was maintained and its provisions were transferred into Article 10 of the Code. Article XVI-4 was inserted into the Code as a new Article 9, and the three paragraphs (f), (g) and (h) in the initial List of export subsidies that related to export credits and credit guarantees became paragraphs (j) and (k) of the annex called the “Illustrative List of Export Subsidies”.

In 1979, paragraph (k)-2 was also added to the List of Export Subsidies, to take account of the fact that the Arrangement on Guidelines for Officially Supported Export Credits had been agreed in 1978 under the auspices of the OECD, with the implied reference of "...is a party to the international undertaking on official export credits to which at least twelve original signatories to this Agreement are parties as of 1 January 1979". Excerpts of the GATT Subsidies Code concerning export credits are shown in the box below.

The OECD Arrangement came into effect in April 1978 and over 30 years later it continues to be the internationally recognised set of rules governing the provision of official export credits.

Article 9 and Items (j) and (k) of the Illustrative List – 1979 GATT Subsidies Code

Article 9

1. Signatories shall not grant export subsidies on products other than certain primary products.
2. The practices listed in points (a) to (l) in the Annex are illustrative of export subsidies.

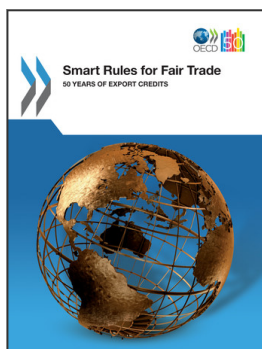
Annex: Illustrative List of Export Subsidies [Excerpts]

- (j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the costs of exported products or of exchange risk programmes, at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the programmes (5).
- (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve original signatories (6) to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

Notes

1. Document C(53)90 of 24 March 1953.
2. Document C(53)156(Final) of 24 July 1953.
3. Document C(55)6 of 14 January 1955.
4. C(58)16 Final of 22 July 1958.
5. Document C(58)138(Final) of 22 July 1958.
6. Paragraphs g) and h) of the Decision would later be merged in the Illustrative list.
7. Document C(58)271 (Final).



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