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Michelle Ratton Sanchez

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COLEÇÃO DE ARTIGOS DIREITO GV (WORKING PAPERS)

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The WTO and the OECD rules on export credits: a virtuous circle?
The example of the Embraer case and the 2007 Civil Aircraft Understanding[1]

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Summary

[1] I thank all those with whom I previously discussed this project and the officials that provided me with information and comments on the issue. As the paper is still under discussion, for the moment, no details on the interviews will be identified.

1. Introduction: where are we landing?

"Aperte o cinto, vamos chegar/ Água brilhando, olha a pista chegando/ E vamos nós Pousar..."[2] In July 2007, a group of officials from the Organization for Economic Cooperation and Development's (OECD) country-members and Secretariat landed in Rio de Janeiro, Brazil. They arrived to sign the new OECD Sector Understanding on Export Credits for Civil Aircraft (acronym ASU)[3]. This was received as an amazing piece of news by two distinct audiences: for the experts, why signing an OECD sector understanding[4]? For the general public, wow, how did Brazil get involved in such a negotiation?

Surprisingly, the answer to the experts is easier: the signature had no legal effects; above all it was a symbolic act. On the other hand, the answer to the general public is the one that takes up the remaining pages of this article.

Though Brazil is not a Member of the OECD, by the end of 2004, it was invited to be part of the revision of the ASU. Since the signature of the first ASU in 1986, Brazil became the first non-Member part of the arrangement.

There were two main reasons for this special invitation: firstly, Embraer, one of the largest Brazilian companies, had become the third largest producer of civil aircraft, since 2004[5]; secondly, in 2004 Brazil was still negotiating with Canada the implementation of the civil aircraft cases, concerning prohibited subsidies, under the World Trade Organization (WTO) dispute settlement proceedings[6].

Brazil was then welcome to the restricted group of civil aircraft and its spares largest world producers, as appointed in the speech of the OECD Secretary General, Angel Gurría, upon the signature of the new ASU in July 2007[7].

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[2] Lyrics of "*Samba do avião*", by Tom Jobim. This part translated into English corresponds to: "Fasten your seatbelt, we are arriving/ The water is shining, look at the runway/ Finally, we are landing...". To listen to it, as performed by Joao Gilberto, check: http://www.youtube.com/watch?v=ohgO72yfZHw (February 2008). *Joao Gilberto – samba do avião* (TV Cultura: August 9, 2006).

[3] According to Article 2 of the ASU: "This Sector Understanding is a Gentlemen's Agreement among its Participants and is Annex III to the Arrangement [on Guidelines for Officially Supported Export Credits]; it forms an integral part of the Arrangement and it succeeds the Sector Understanding which came into effect in March 1986." Accordingly, export credit is "an insurance, guarantee or financing arrangement which allows a foreign buyer of exported goods and/or services to defer payment over a period of time", OECD (1998). The Export Credit Arrangement: achievements and challenges 1978-1998. Paris, OECD. 17.

[4] According to OECD practice, these rules are not formally signed after negotiated.

[5] Embraer - Empresa Brasileira de Aeronáutica S.A. (2004). Annual Report. Available at: http://www.embraer.com (November 2007). At that moment, Embraer assumed the leadership of the regional jets of 70-110 seats market.

[6] The cases were: WT/DS46 – *Brazil-Export Financing Programme for Aircraft* (Claimant: Canada); WT/DS70 – *Canada-Measures Affecting the Export of Civilian Aircraft* (Claimant: Brazil); and, WT/DS222 – *Canada-Export Credits and Loan Guarantees for Regional Aircraft* (Claimant: Brazil). For additional information on the chronology of the WT/DS46 (Embraer case), see Appendix.

[7] OECD Trade and Agriculture Directorate (2007). Aircraft Sector Understanding on Export Credits for Civil Aircraft - Remarks made by Angel Gurría during the Signing Ceremony in Brazil. Paris. Available at: http://www.oecd.org (August 2007).

This paper intends to identify the reasons that for the invitation of Brazil to be part of the 2007-ASU negotiation, and in a second step to explore the peculiarities that came up with that in the WTO and the OECD, as well as to their relationship. The point of departure is the WTO Embraer-Bombardier case, its rulings and its connection with the ASU. As a consequence the first parts of the paper are mainly descriptive of the facts and rulings of both WTO and OECD. In a second moment, the paper addresses questions linked to the Global Administrative Law (GAL) debate, comparing the institutional characteristics of the WTO and the OECD, and examining the consequences for Brazil as a developing country in dealing with both forums. Final remarks will address a few conclusions of these analyses and point out the pending issues of the research.

2. The Embraer case: is that a WTO or an OECD rule?

In 19 June 1996, Canada formally requested consultations with Brazil under the WTO recently revised dispute settlement mechanism[8]. The consultation was about the export subsidies granted under the Brazilian Export Financing Programme (known by the acronym in Portuguese, PROEX) to foreign purchasers of Brazil's Embraer civil aircraft[9]. Due to the fact that Canada and Brazil failed to reach an agreement along the several meetings that took place from 1996 to 1998, on 13 July 1998 Canada requested the establishment of a WTO Panel[10].

Canada alleged that PROEX was a prohibited subsidy according to Article 3 of the Agreement on Subsidies and Countervailing Measures of the WTO (ASCM). Brazil, on the other hand, argued that PROEX was exempt from the prohibition of Article 3.1(a) amongst others by virtue of item (k) of the Illustrative List of Export Subsidies (Annex 1 to the ASCM) (hereinafter Item (k)).

An analysis of the Item (k) came up, then, for the first time in whole history of the multilateral trade system. The writing of Item (k) provision is the following:

> "The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates

[8] Although the cases mentioned on footnote 6 are interconnected, as well as their decisions, this paper will focus on the decisions of the Embraer case (WT/DS46) and its impacts in the OECD negotiations. The main reason is that this is the case that specifically analyzes the Brazilian regulation on export credits, a central aspect of the research.

[9] Request for Consultations by Canada ([21 June 2006]). Brazil Export Financing Programme for Aircraft. WT/DS46/1.

[10] Request for the Establishment of a Panel by Canada ([July 13, 1998]). Brazil - Export Financing Programme for Aircraft. WT/DS46/5. According to the request, "Canada and Brazil held consultations in Geneva on 22 July 1996 and 25 July 1996 with a view to reaching a mutually satisfactory resolution of the matter. Additional consultations were held in Geneva on 4 November 1996, Brasilia on 21-22 November 1996, Rio de Janeiro on 8-9 June 1998, and Washington D.C. on 25-26 June 1998. Unfortunately, the consultations have failed to settle the dispute." Further details are listed in Panel Report ([14 April 1999]). Brazil- Export Financing Programme for Aircraft. WT/DS46/R. WT/DS46/R. 1.1-1.10.

> 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 other credit terms 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 Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member 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."

The provision appoints a rule (an example of prohibited export subsidy) and, in its second paragraph, an exception to it. The Embraer case may be appointed – among few others – as one of the lengthiest cases in the WTO Dispute Settlement System: it ran for more than five years. In the case, the parties exercised their rights to all kinds of recourse – from the appellation to its reviewing and implementation proceedings – available under the Dispute Settlement Understanding. During the proceedings of decision and revision, the interpretation of the Item (k) became more and more sophisticated. And, as it will be described, the provision was increasingly brought into line with the terms of the OECD Arrangement on Officially Supported Export Credits (OECD Arrangement).

The linkage[11] with the OECD Arrangement changed even in the way the Panel addressed that issue. For example, in its first decision (on April 1999), the Panel mentioned that: "The second paragraph of item (k) provides that 'an export credit practice' which is in conformity with the "interest rate provisions" of the OECD Arrangement shall not be considered an export subsidy prohibited by the SCM Agreement"[12]. Compared to its last decision (on July 2001): "It is not in dispute that the phrase 'an international undertaking on official export credits [...]' *is a reference to* the OECD Arrangement"[13] (emphasis added). From my understanding, there is a slight difference on the use of the words by

[11] The use of the terminology "linkage" relates to the debate promoted in the Symposium *The Boundaries of the WTO* (published by the American Journal of International Law in 2002). According to Alvarez, J. E. (2002). "The WTO as linkage machine." American Journal of International Law **96**(1): 146-158.: "...linkages issues arise for the World Trade Organization, as they have with respect to a number of other intergovernmental organizations, precisely because centralized, quasi-autonomous institutions may be relatively effective vehicles for the promotion of interstate cooperation between rational, egoistic state actors" (footnote omitted) (p. 146).

[12] Panel Report ((14 April 1999)). Brazil-Export Financing Programme for Aircraft. WT/DS46/R. WT/DS46/R.

[13] Panel Report ((16 July 2001)). Brazil - Export Financing Programme for Aircraft - Second Recourse by Canada to Article 21.5 of the DSU. WT/DS46/RW/2.

the Panel, firstly valuing the OECD Arrangement as one reference and, secondly, as the reference of Item (k).

The questions that arose from the interpretation of Item (k) in the Embraer case were related to: (i) which are the references for the application of the rule; and (ii) how to implement the exception of the second paragraph. As methods of interpretation, while analyzing those questions, both parties (Brazil and Canada), the third parties to the case (United States and European Communities), the Panel and the Appellate Body carefully examined the words and their meaning in Item (k), its connection to the whole text of the ASCM and they also took into account the history of negotiation of this part of the WTO Agreement back to the General Agreement for Tariffs and Trade (GATT) era[14]. Additionally, they addressed the implicit link of the Item (k) to the OECD Arrangement on Officially Supported Export Credits (OECD Arrangement)[15].

There were four main topics in the whole case about Item (k). The first and the second regarding the methods of interpretation and calculation of the expression "material advantage" in the first paragraph: (i) which should be the reference to assess the advantage and (ii) whether it is a conditio sine qua non for the measure be considered as an example of prohibited subsidy (the a contrario interpretation).

The third and fourth topics were about the connection between the first and the second paragraphs of Item (k). One addressed how far the second paragraph exception satisfies developing countries needs – to the extent that the paragraph one should be read separately and in favor of developing countries in establishing the a contrario interpretation. The fourth requested an analysis about the standards mentioned in the second paragraph and how they should be also applied to paragraph one (especially in defining the material advantage content).

Taking into account those four topics, Brazil brought arguments to the case mostly in order to find another exception for export credit subsidies, besides those of the second paragraph of Item (k) (corresponding to the OECD Arrangement), arguing on behalf of developing countries non-OECD members. In addition to this, Brazil tried to secure how OECD standards should be taken into account in the interpretation of the ASCM – a WTO Agreement.

On the other hand, Canada, the European Communities and – to a certain extent – the United States – all OECD Members, claimed for a holistic interpretation of paragraphs one and two of Item (k). They advocate in favor of an interpretation that could take the allusion to the OECD Arrangement as the core part of Item (k), claiming for an equitable application to all WTO members of the reasoning, be they developed or developing countries.

[14] These methods correspond to the General Rule of Interpretation and the Supplementary Means of Interpretation of the Articles 31 and 32 of the Vienna Convention on the Law of Treaties, embraced by the WTO Dispute Settlement System, since its creation. For more details about these methods, check for Lennard, M. (2002). "Navigating by the stars: interpreting the WTO agreements." Journal of International Economic Law **5**(1): 17-89.

[15] Palmeter, D. M., Petros C. (1998). "The WTO legal system: source of law." American Journal of International Law **92**(3): 398-413. Interesting to note that the authors, whilst analyzing other agreements as source of law for the WTO, mention the OECD Arrangement example (p. 409).

At the end, the members of the Panel analyzed the case four times[16] and the Appellate Body, twice[17]. In the following paragraphs a brief description of the analysis of the four questions about Item (k) will be presented in order to evidence the evolution of the decisions supporting the linkage to between WTO and OECD rules on export credits – considering that not all decisions ruled on the four topics.

The first Panel started by deciding that the content of "material advantage" should be based on the strict meaning of these words: those "materially more favorable than the terms that would have been available in the absence of the payment"[18]. The Appellate Body, however, revised this decision and concluded that the reference to assess the advantage could be taken from the context of the second paragraph of Item (k), as per the following reasoning:

"The OECD Arrangement establishes minimum interest rate guidelines for export credits supported by its participants ("officially-supported export credits"). Article 15 of the Arrangement defines the minimum interest rates applicable to officially-supported export credits as the Commercial Interest Reference Rates ("CIRRs"). Article 16 provides a methodology by which a CIRR, for the currency of each participant, may be determined for this purpose."[19]

The Article 21.5 implementation Panel upheld that decision, later revised by the Appellate Body itself on the implementation recourse. At this point, the Appellate Body clarified that the CIRR is not the sole benchmark; nonetheless, in case another reference is to be used the Member has to provide evidence from comparable transactions in the marketplace[20].

Due to the fact that the first Panel found that a material advantage had been taken by Embraer under PROEX, it did not rule on the a contrario argument. This question was examined in detail only in the second Panel (implementation), which ruled on the sense that the first paragraph of Item (k) "does not contain any affirmative statement that a measure is not an export subsidy nor that measures not satisfying the conditions of that item are not prohibited" in order to be considered as an exception as per footnote 5 of the

[16] Besides the original analyses Panel Report (footnote 12), twice has the Panel revised the implementation under article 21.5 of the DSU – Panel Report ((9 May 2000)). Brazil - Export Financing Programme for Aircraft - Recourse by Canada to Article 21.5 of the DSU. WT/DS46/RW. and Panel report (art. 21.5, II), footnote 13. It is a remarkable the fact that the same members of the original Panel also examined, as arbitrators, the implementation under article 22.6 of the DSU – Decision by the Arbitrators ((28 August 2000)). Brazil - Export Financing Programme for Aircraft - Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement. WT/DS46/ARB.

[17] Appellate Body Report ((2 August 1999)). Brazil - Export Financing Programme for Aircraft. WT/DS46/AB/R. Appellate Body Report ((21 July 2000)). Brazil - Export Financing Programme for Aircraft - Recourse by Canada to Article 21.5 of the DSU. WT/DS46/AB/RW.

[18] Panel report, footnote 12, ¶7.23.

[19] Appellate Body report, footnote 17, ¶181.

[20] Appellate Body report (art. 21.5), footnote 17, ¶74.

ASCM[21]. In contrast, according to the Panel, there is the second paragraph of Item (k).

The two previous analyses moved forward in clarifying some aspects of the connection between the first and the second paragraph of Item (k). Nonetheless, further reasoning brought even more details about it: the line of reasoning critical of developing countries imbalanced position – that also defined the instruments comprehended by the second paragraph; and the interpretation of the valid rules from OECD to be taken into account[22].

The question about developing countries needs was understood in the following terms: developing countries, as any other WTO member, may use the exception allowed by the second paragraph of Item (k) – applying the OECD standards and Article 27 of the ASCM is the sole clause that provides developing countries with special and differential treatment[23].

Still analyzing the developing countries' needs, provoked by the claim from Brazil that paragraph two of Item (k) comprised too limited options on export credit, the Panel also advanced on the definition of the content of the second paragraph:

"(...) we believe that Brazil is incorrect in its underlying assumption that the second paragraph of item (k) provides a safe haven only with respect to direct export credit financing. The second paragraph of item (k) provides that 'an export credit *practice*'**"** (emphasis added)[24].

Being even more precise on that sense, in the second implementation report the Panel declared: "The term 'export credit practice' is a broad one which on its face encompasses *any practice relating to export credits*" (emphasis added)[25].

After having detailed the instruments part of the safe harbor of the second paragraph, the implementation Panels also specified to which extension the OECD Arrangement rules should be taken into account in the interpretation of the exception. The first implementation Panel when defining the interest rates applicable from the OECD Arrangement noted that not only the main Arrangement references should be taken into account, but also its annexes (i.e. the sector understandings)26. Subsequently, the second

[21] Panel report (art. 21.5), footnote 16, 6.36-6.37 and 6.42-6.45. The Second implementation Panel, footnote 13, incorporated this reasoning, when revising all the four questions about Item (k), 5.274-5.275.

[22] It is important to remark that both interpretations of Item (k) concerning the second paragraph influenced, as a consequence of the relationship developed with paragraph one, the aforementioned definition of "material advantage", its standards and use by a WTO member, either a developed or a developing country.

[23] Panel report, footnote 12, 7.29-7.32. Panel report (art. 21.5), footnote 16, § (v).

[24] Panel report, footnote 12, 7.31.

[25] Panel report (art. 21.5, II), footnote 13, 5.66.

[26] Panel report, footnote 12, 6.51 (footnote 51): "We note that several 'Sector Understandings' (relating to ships, nuclear power plants, and civil aircraft) are annexed to the *Arrangement*, and that for some products – not including regional aircraft – a minimum interest rate different from the CIRR applies. We

implementation Panel accepted the claim that the OECD Arrangement be taken into account for the application of Item (k) is the latest version of the agreement, considering its evolving character[27]. Therefore, the Panel was not convinced about the developing country claim concerning the limitations of paragraph two towards their needs.

Last but not least, the Panel also disagreed with Brazil that the safe haven for developing countries would be on the first paragraph of Item (k) based on the history of negotiation of the ASCM and, particularly, of Item (k)[28].

In a few words, the Embraer case rulings in the WTO dispute settlement system had the following outcomes: (i) named the undertaking of the second paragraph of Item (k) as the OECD Arrangement; (ii) decided on the extent that the standards of such Arrangement should be incorporated in interpreting Item (k) – i.e. the whole content of the Arrangement and its annexes; (iii) decided on the extension of the OECD Arrangement rationale to the first paragraph of Item (k) – including its connection to the "material advantage" issue; and (iv) confirmed that the allusion to the OECD Arrangement is to be understood to its dynamic negotiation, i.e., any new arrangement in the OECD replacing the 1979 undertaking is to be considered by the WTO (as well as the annexes in force).

Those interpretations were duly justified and mostly based on the history of the Item (k) negotiation. Nevertheless, they provoked a new debate in the WTO with spillovers to the OECD export credit arrangements. A few more details are described in the following sections of the article.

3. WTO ruling: from the historical roots of export credit rules to the next steps in the DDA

The question of who defined – and who is still defining – the export credit arrangements is a crucial question for the international trade system. The Brazil-Canada civil aircraft cases before the WTO Dispute Settlement System showed, though, that the players of that game have probably changed during the last decades.

As a rule, in the international finance system, the developing countries have been the recipients of export credits, instead of being the providers of such financial resources[29]. Therefore, the developed countries – relevant

assume – but need not here decide – that an export credit practice in conformity with the interest rate provisions of these Sector Understandings would also be entitled to the safe harbour of the second paragraph of item (k)."

[27] Panel report (art. 21.5, II), footnote 13, § (b).

[28] Panel report, footnote 12, ¶7.30.

[29] Brazil also plays this new role as a developing country – as a provider of credits – due to the fact that it has been trying to be a participant in the market of goods with high technology content that demanded long-term financing. According to Brazil's manifestations in the following documents: Committee on Subsidies and Countervailing Measures ([August 14, 2001]). Minutes of the Meeting Held on 2 - 3 May 2001. G/SCM/M/28.¶77; Dispute Settlement Body ([Sept. 9, 2000]). Minutes of Meeting Held in the Centre William Rappard on 4 August 2000. WT/DSB/M/87.¶81.

actors as providers of export credit – assumed the leadership of this debate throughout history. This is what the following statement by Brazil claims:

"(...) the dispute at hand involved provisions of the SCM Agreement in an area relatively new to developing countries, namely, official export financing"[30].

The history of international negotiations in the area of export credits date back to the 1950s. The forum in which it took place was the Organization for European Economic Co-operation – the OECD predecessor until 1961. At that point started the GATT-OECD marriage on the regulation of export credits.

Nonetheless, the GATT had been regulating subsidies since 1947, as per its Article VI and XVI[31]. Notwithstanding the critics to its unclear regulation – lacking even the definition of a subsidy – at the time, Article XVI.4 had established the commitment of eliminating export subsidies by 1958[32]. The first step on that direction was taken by a French proposal, in November 1960, to prohibit the Parties to grant export subsidies to non-primary products. France also suggested a list with a certain number of practices that should be prohibited by consensus[33] – this is known to be the origin of Item (k) of the ASCM the Illustrative List. As agreed at the time, those provisions would enter into force after the signature of the Declaration by the "industrialized countries" and they should not be applicable to developing countries[34].

Since then the rules on export credits have evolved significantly. In the alliance of the GATT/WTO and the OECD, the latter took over the role of the main forum for the creation of new rules, specifying the technicality of new terms and arrangements on the field. And, in 1978, OECD Members signed the first version of the OECD Arrangement– a set of rules aiming to secure the level playing field among its signatories on export credits[35]. This set of rules is

[30] Dispute Settlement Body ([4 August 2000]). Minutes of the meeting, Held in the Centre William Rappard on 4 August 2000. WT/DSB/M/87. ¶11.

[31] More on the history of the ASMC in Bossche, P. V. d. (2005). The law and policy of the World trade organization: text cases and materials. Cambridge, Cambridge University Press. §6.3.1.

[32] According to GATT-1947, Article XVI.4 "(...) as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall *cease to grant* either directly or indirectly *any form of subsidy on the export* of any product other than a primary product (...). (emphasis added)

[33] Contracting Parties ([August 1, 1960]). Subsidies - Action by the Contracting Parties under Article XVI:4. L/1260. As per the list incorporated in its footnote 1, "(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." This might be appointed as the basis of what later on became Item (k).

[34] Contracting Parties ([November 1960]). Seventeenth Session - Report of the Working Party on Subsidies. L/1381.

[35] Rolf Geberth explains the origin of the OECD Arrangement and the club format of the negotiation taking into account the historical context of the time: "In the beginning of the 1970s there was increasing competition in export financing, mainly between the Member States of the European Community, the United States and Japan. For the exporting countries, the situation deteriorated seriously after the beginning of the first oil crisis in 1973."Geberth, R. (1998). The Genesis of the Consensus. The Export Credit Arrangement: achievements and challenges 1978-1998. OECD. Paris, OECD: 27-31. 27.

known to be part of an evolving negotiation that benefits from OECD rationale as an international organization: technicality and flexibility[36].

The GATT/WTO has been the receptor of the ideas first defined in the OECD arena. This relationship became even more patent during the Tokyo Round (1973-1979), when in the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code")[37], its signatories revised the first list of prohibited subsidies (1960) and its export credit provision.

The Subsidies Code incorporated that list into its Annex, and the export credits provisions were revised on the following terms: (i) it incorporated the expression "material advantage" to the first paragraph of what then became an item (k) in the list[38] and (ii) it added the second paragraph to the item (k), granting an exception to practices conforming to the interest rate provisions of certain international undertakings on export credit (i.e. the 1978 OECD Arrangement). This was the first and sole revision of the export credits provisions on the list of prohibited subsidies in the multilateral system.

The Uruguay Round had the mandate to review the Articles VI and XVI of the GATT, as well as the Subsidies Code[39]. These negotiations resulted in the ASCM (in 1994), the first multilateral regulation of subsidies. As a result the modified list of the 1960s was incorporated into the ASCM as Annex 1, the Illustrative List on Prohibited Subsidies. As to export credits, no change was made in item (k) by the drafters of the ASCM[40].

Since the 1980s, but mostly throughout the 1990s, the regulation of export credits remarkably developed into details. In the OECD level, the members of the OECD Arrangement tried to encompass different forms and instruments – moving forward on new rules and defining the level of commitment by the parties; in the WTO level, there was a twofold

[36] For detailed information, OECD (1998). The Export Credit Arrangement: achievements and challenges 1978-1998. Paris, OECD. About their evolution and connection with the GATT/WTO multilateral trade system, see Appendix.

[37] Tokyo Round ((April 12, 1979)). The Tokyo Round - Statement by GATT Director-General and Publication of Agreements - Instrument-153: Agreement on Interpretation and Application of Articles VI, XVI of the General Agreement on Tariffs and Trade ("Subsidies Code"), GATT/1234. Though signed in the forum which was supposed to be the multilateral system, the Subsidies Code was a plurilateral agreement. It was signed for less than twenty-five contracting parties, according to (1995). GATT Analytical Index: Guide to GATT Law and Practice. 6th ed. Geneva, WTO and Bernan Press.

[38] Brazil during the Appellate Body review brought the idea that: "According to one of the negotiators at the time, the 'material advantage' clause was intended to provide 'a weak injury test in the event of a departure from the basic GATT [subsidy] standard." Appellate Body Report (Article 21.5), footnote 17, ¶20.

[39] General Agreement on Tariffs and Trade ((Sept. 20, 1986)). Multilateral Trade Negotiations - The Uruguay Round - Ministerial Declaration on the Uruguay Round (Punta Del Este Declaration), MIN.DEC. "Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues."

[40] For a compilation of the documents and proposals during the Uruguay Round concerning the ASCM negotiation, check: http://www.worldtradelaw.net/history/urscm/urscm.htm (database available upon subscription) (February 2008).

development: firstly the Members realized the significance of Item (k) to the multilateral trade system and its financing, and secondly this launched a new debate about the method of defining export credits and WTO members commitments on the issue.

Embraer and Bombardier cases brought to the table a highly contested point in the multilateral system: who is deciding about export credit rules. The aftermaths of the decisions evidence that the patterns for the exemption granted by the second paragraph of Item (k) have been given by the OECD Arrangement – interpreted as the whole set of rules on the issue – and, secondly, these clarifications were outlined by the WTO Dispute Settlement Body.

Reactions to those outcomes were put across by a limited group of WTO Members during the meetings of both the Dispute Settlement Body[41] and the Committee on Subsidies and Countervailing Measures[42]. Members discussed the issue not only on specific elements of the export credit regulation but also on the systemic impacts of the evidenced link between OCDE and WTO. These manifestations have even given rise to proposals of amendment of the ASCM in the Doha Development Round[43].

Concerning the proposals, basically Brazil and India claimed for more precise rules on Item (k), on behalf of non-OECD members and developing countries interests. More detailedly, they claimed for a clear wording to ensure that export credits are not supplied at rates below market level and rules for the non-application of the evolutionary interpretation of OECD rules, without WTO Members previous consent. The last consolidated draft of the negotiations comprehend these proposals, with the following text under negotiation (underlined where there are new insertions and in strikethrough the parts to be eliminated, if so agreed)[44]:

> "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 available to the recipient on international capital markets (absent any government guarantee or support), for funds of the same maturity and other credit terms and denominated in the same currency

[41] Dispute Settlement Body ([June 26, 2000]). Minutes of Meeting Held in the Centre William Rappard on 22 May 2000. WT/DSB/M/81, Dispute Settlement Body ([March 20, 2001]). Minutes of Meeting Held in the Centre William Rappard on 1 February 2001. WT/DSB/M/98, Dispute Settlement Body ([Oct. 2, 2001]). Minutes of Meeting Held in the Centre William Rappard on 23 August 2001. WT/DSB/M/108, Dispute Settlement Body ([Sept. 9, 2000]). Minutes of Meeting Held in the Centre William Rappard on 4 August 2000. WT/DSB/M/87.

[42] Committee on Subsidies and Countervailing Measures ([August 14, 2001]). Minutes of the Meeting Held on 2 - 3 May 2001. G/SCM/M/28, Committee on Subsidies and Countervailing Measures ([May 7, 2001]). Statement by Brazil on Export Financing at the Meeting of 2 May 2001. G/SCM/33. Committee on Subsidies and Countervailing Measures (July 29, 2004). Minutes of the Regular Meeting G/SCM/M50.

[43] The Members that have presented formal proposals are Brazil, India and the European Communities. Negotiating Group on Rules ([Aug. 22, 2003]). Note by the Chairman: Compilation of Issues and Proposals Identifies by Participants in the Negotiating Group on Rules. WT/RL/W/143.

[44] Trade Negotiations Committee ([Nov. 30, 2007]). Draft Consolidated Chair Texts of the AD and SCM Agreements. TN/RL/W/213.

as the export credit. 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 other credit terms 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 Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members)131, or if in practice a Member 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.

[131] The parties to such undertaking in effect as of the date of entry into force of the results of the DDA shall notify that undertaking to the Committee not later than 30 days after that date. Upon request by a Member, the Committee shall examine the notified undertaking.

Thereafter, any further successor undertaking shall be notified by the parties thereto to the Committee, and Members shall have a period of 30 days from the date of such notification to request examination by the Committee of the notified successor undertaking. Where no such request is made, the provisions of the second paragraph of item (k) shall apply to the notified successor undertaking as from the end of the 30-day period. Where such a request is made, the Committee shall examine the notified successor undertaking within 60 days following the receipt of the request, taking into account the need to maintain effective multilateral disciplines on export credit practices and to preserve a balance of rights and obligations among Members. The provisions of the second paragraph of item (k) shall not apply in respect of the notified successor undertaking until the requested examination has been completed."

Besides the debate among WTO and OECD members on the rulings of the export credits in their respective forums, the international organizations are trying to address cooperation issues among them. Since 1997, OECD has thus requested observer status in WTO meetings[45], facing the declared resistance of Brazil and India. The decision upheld since then is that OECD may have an ad hoc observer status and it may have access to unrestricted

[45] Based on Article III of the Agreement Establishing the WTO. Committee on Subsidies and Countervailing Measures ((Feb. 11, 1997)). International Intergovernmental Organizations - Requests for Observer Status in the Committee on Subsidies and Countervailing Measures. G/SCM/W/414.

and restricted documents of the Committee on Subsidies and Countervailing Measures, subject to objection by a Member in particular cases[46].

4. OECD ruling back again: Brazil as a new player

As previously mentioned, the negotiation of the ASU was inserted in a broader context. Inside the OECD it was taken along with the revision of the OECD Arrangement. Apart from that, it was discussed in parallel to the Embraer-Bombardier cases implementation process and, at the end, it accommodated spillovers of the WTO activities during the last ten years and so.

The OECD Arrangement was being revised once again as from 2004; differently the ASU revision started in 2005. Some speculate that this is due to the fact that its previous participants would like to have Brazil joining the negotiations. By the end of 2004, Brazil was then formally invited to be part of the ASU review and in February 2005 together with the other participants it started the joint work[47].

The ASU as one of the annexes to the OECD Arrangement, to a certain extent, assumes the same rationality of the latter[48]. Hence, it is negotiated by a restricted club of invited participants; it attaches a great importance to predictability and confidence; it is highly technical[49]; it depends on co-operation of participants and the containing system amongst participants and, finally, as part of its essence, it is a continuous and very dynamic regulation[50].

It is interesting to note that the "evolving" idea of the substantive content of the arrangements – sustained by the OECD members throughout the Embraer case proceedings – had an effect on the structure and possibly even in the international legal status of the arrangement[51]. This is probably what

[46] Committee on Subsidies and Countervailing Measures ([Feb.12, 1999]). Committee on Subsidies and Countervailing Measures - Minutes of the Regular Meeting Held on 2 November 1999. G/SCM/M/18, Committee on Subsidies and Countervailing Measures ([July 15, 1998]). Committee on Subsidies and Countervailing Measures - Minutes of the Meeting Held on 23-24 April 1998. G/SCM/M/16. Further details on the OECD-WTO relationship are available at: <http://www.wto.org/english/thewto_e/coher_e/wto_oecd_e.htm> (February 2008). One of the important issues raised by Members in those meetings was about reciprocity of observer status for the WTO in the Group of Participants to the Arrangement on Officially-Supported Export Credits and Export Credit Guarantees. Such status was later granted to the WTO, as detailed at <http://www.wto.org/english/thewto_e/coher_e/wto_observership_e.htm> (February 2008).

[47] As per information published by the OECD about the 19th meeting of the Group on Sector Understanding on Export Credits for Civil Aircraft, held 22-23 February 2005. Available at: http://www.oedc.org (November 2007). Brazil accepted to be part of the negotiations upon the condition that it would have access to all meetings and information available, and that it could leave the negotiations at any time.

[48] As previously mentioned, the ASU was considered as a constitutive part of the OECD Arrangement for the purposes of Item (k), second paragraph exception. V. footnote 26.

[49] Levit, J. K. (2005). "A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments." The Yale Journal of International Law **30**(winter): 125-209. 128. According to the author: "The Arrangement is the handiwork of an ad hoc institution, the Participants Group, composed of government technocrats associated with their home export credit agency. The lawmakers, once again, are practitioners, and once again, the rules are anchored largely in their practical experiences."

[50] For a description of the OECD Arrangement characteristics, Ibid.

[51] According to Ibid.164-165: "While the Arrangement has remained soft in terms of its entry, exit, and amendment procedures and in the text's unyielding insistence on its non-binding status, the

make experts sustain nowadays that the ASU current text is the best they ever had.

Therefore, the combination of a technical and clear text with their capacity of supervision and implementation, in addition to the increasing number of participants and linkages to the international system, the OECD export credit rules are definitely gaining relevance and the interest of a larger community.

Taking into account such context, three questions about the new rulings by ASU come up: (i) what was the difference of incorporating Brazil as a participant in the ASU to the OECD; (ii) what this might have changed to Brazil's international insertion; and (iii) what might be the implications of the reviewed ASU to the WTO, considering its current version and the status of the Item (k) interpretation. I will briefly address the two first questions and the third will be examined in the following section.

The fact that Brazil has become a participant of the ASU and its negotiation goes together with the OECD Membership policy of enlargement, aiming the integration of relevant economic actors. The economic importance of Brazil in the civil aircraft market is out of question, due to Embraer's performance during the last decades. Such importance had already been confirmed in the Embraer case in the WTO Dispute Settlement System. That is so to the extent that the implementation of the Embraer-Bombardier cases came to a deadlock. Brazil and Canada were trying – unsuccessfully – to negotiate a bilateral agreement.

The fact that Brazil is a developing country probably made a difference, according to experts, but not on the sense of capacity of negotiation, moreover due to the fact that Brazil is a new player in the long-term trade financing and as to the arrangement itself. Therefore, Brazil was the party requesting clarification on the dynamics of the OECD and whenever possible the clearest wording for the text. The preliminary conditions to participate in the negotiation (footnote 47) possibly restrain from a larger asymmetry of power and knowledge during the process.

Regarding Brazil's international insertion, in addition to enlarging its experience of negotiation in the OECD, specifically in this case in close consultation with the private sector, there are three gains to be mentioned: (i) the opportunity to join this set of rules (ASU); (ii) to be part of the club in order to get the knowledge of how it works and how to use the information provided by that system; and, finally (iii) to be in a better position to challenge the others relevant actors of the sector.

Arrangement's substantive and procedural rules have become increasingly specific and technical. The text now looks more and more like a formal agreement among states. (...) The dropping of the word "Guidelines" is more than a semantic opportunity to fix an awkward title (...) These shifts are deliberate signals that the Participants view the Arrangement as more than a mere set of guidelines. While international law may not have innovated an appropriately descriptive term for the Arrangement's status, from the Participants' perspective, it is approaching something that they might consider 'international law.'" On the same sense, Timothy Geithner refers to the evolution of the Arrangement "from a 'simple creditors' cartel' – intended to restrain excessive competition in export financing - to a powerful force for improved international and domestic economic policies world-wide", Geithner, T. (1998). The Economic Policy Benefits of International Co-operation. Paris, OECD. 87.

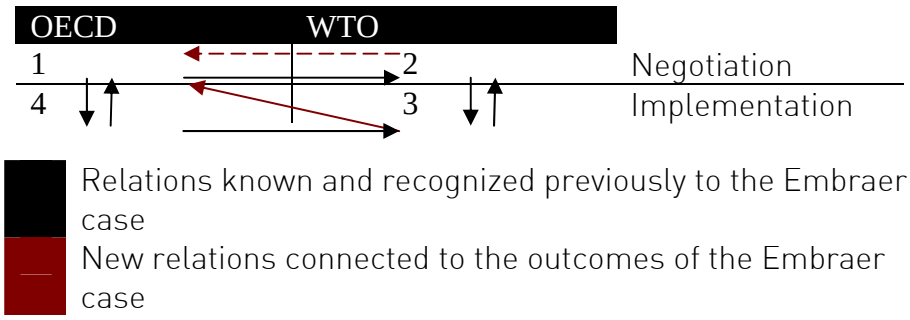
5. WTO and OECD interplay in the GAL project

The previous sections described how the Embraer case evidenced a link between the WTO and the OECD on the export credits field. Although the issue seems highly technical and restricted to a small group of actors, the interplay between those two forums may tell us a bit more about their potentialities.

Mapping the facts and decisions concerning the Embraer case in the WTO Dispute Settlement System and the OECD undertaking on civil aircraft evidence two aspects of WTO-OECD relationship: a multifaceted law-making process and its linkage patterns.

The truth is that the export credits regime is currently regulated by two main organizations with distinct modus operandi: the WTO and the OECD. It is most enriching, thus, to focus on the complementarily aspects of their relationship, as developed below.

Figure 1: Item (k) - lawmaking and linkages in the interplay of WTO-OECD



The creation of rules and their implementation inside each forum analyzed (Figure 1, squares 1 and 4; squares 2 and 3) are part of the essence of any organization – although each keeps its specificity, as described in the previous sections (§§3 and 4). The analyses of how the OECD regulation affected the WTO works were already developed either (§§2). However, the spillover of the WTO decisions is still to be examined and it may bring new aspects to the current debate on export credits regulation, as well as to the GAL literature and its empirical investigation.

As appointed in Figure 1 the WTO implementation level has influenced the OECD negotiation level on three elements: (i) changing its the transparency policy to non-members with respect to export credits[52]; (ii) stimulating new negotiations on that issue by the OECD participants (including the ASU); and finally, (iv) favoring the invitation for Brazil to be part of the ASU negotiation.

On the other hand, the WTO negotiation level may still influence the OECD counterpart level according to the Doha Round resolutions, in case they are approved by consensus of the WTO members. The new criteria for the definition of the prohibited export credits – eliminating the "material

[52] On that sense, Committee on Subsidies and Countervailing Measures (July 29, 2004). Minutes of the Regular Meeting G/SCM/M50.§2; article 4 of the Arrangement on Officially Supported Export Credits – 2008 Revision.

advantage" standards –, for example, may change the applicability of the OECD Arrangement. In addition to that, there are proposals for proceedings for the incorporation of the revised OECD arrangements[53].

If these two forums are competing for the export credit regulation, it is valuable to certify how much concurring their law-making processes may become. The OECD Arrangement is in charge of a much more detailed regulation on that field than the WTO. Besides, its coordination with the domestic regulation of participants – a tiny group[54] – is more frequent (on a transaction-basis) and it ensures a high degree of flexibility for its participants, both on what concerns their involvement with the law-making process and the change of the wordings of the rules and the set of financial instruments regulated. In that sense, OECD arrangements may well capture both the market dynamics in financing trade and the political and economic sensitiveness of the States to getting enrolled in binding rules.

In contrast, the WTO, due to its universal membership aspiration[55], has elevated the debate about export credits and the club-format of the OECD arrangements to a multilateral perspective. The impacts are still ongoing, but the first positive results were: the naming process of "who" had been defining the rules of the game on export credits, the clarification of the standards that might be applied for both prohibited and legal export credits, the opportunity of discussion of those rules again taking into account the outcomes of a real case – involving a non-OECD and developing member –, and, finally, of having these terms back in negotiation in the occasion of the Doha Round.

The interplay between the two forums is mostly indirect and still coordinated by limited but larger number of actors than before[56]. However, to what extent should that be different?

There are three analytical categories to be applied to the situation described as per the GAL debate: transparency, responsiveness and accountability[57]. Before examining these categories on the WTO-OECD relationship, it is worth remarking that they will be applied comparing past and present situations, in a way as to explore the potentialities of the interplay and they will not isolate one or another organization[58].

[53] See Item (k) draft version on §3 above.

[54] In the case of OECD arrangement, nine participants and in the case of ASU, ten. In both cases, they include the ECs and its members. Arrangement on Officially Supported Export Credits – 2008 revision, §3; ASU, §3.

[55] Currently, WTO has 151 Members and around 31 observer governments. See http://www.wto.org.

[56] Along with Brazil, India is another developing country that is also closely following this issue in the WTO. TRade Negotiations Committee - Negotiating Group on Rules ((Dec. 10, 2002)). Intervention by India on the proposal by the EU captioned WTO negotiations concerning the WTO Agreement on Subsidies and Countervailing Measures (TN/RL/W/30). TN/RL/W/40.

[57] A framework of the project is presented in KINGSBURY, B., KRISCH, Nico, STEWART, Richard, WIENER, Jonathan (2005). "The emergence of global administrative law." Law and contemporary problems **68**(3-4): 15-62.

[58] KINGSBURY, B., KRISCH, Nico, STEWART, Richard, WIENER, Jonathan (2005). "Foreword: global governance as administration - nation and transnational approaches to global administrative law." Law and contemporary problems **68**(3-4): 1-13. 3: "(...) instead of separated levels of regulation, a congeries of

Concerning transparency, the history of export credit rules had registered the mere incorporation of previous deliberations on the OECD forum by the multilateral trade system, until the Uruguay Round. The Embraer case drew WTO members' attention to that fact, as well as to its coordination with the entire set of rules of the ASCM. This situation called the attention of the non-participants of the OECD arrangements, who complained about the decision-making process of those rules, the transparency of the process and the publicity of the rules. As a response, the OECD created new rules on how to deal with non-participants and to provide them with the relevant information[59].

As previously mentioned in §3, the opportunity agreed for the WTO and the OECD to attend one another organization's meetings – even if in an ad hoc basis – might be also considered an improvement of the system on transparency.

One question that remains is how effective will the new provisions of transparency be. Although the arrangement proclaims itself as a "gentlemen's agreement", its compliance has been much superior than in other "hard law" agreements[60]; but no certainty is to be granted. It is hard to have a clue about it, the only guarantee is the consciousness that the whole process brought to the multilateral system.

Regarding responsiveness, the interplay between OECD and WTO increased, in the sense that since the implementation or negotiation process in one forum may influence decisions on the other – or at least call the attention for it.

The trustworthy image of the OECD being the forum for the coordination of participants on export credit issues comprises the responsiveness of the system itself[61]. Amongst the participants of the arrangements, the forum is known for building confidence, promoting communication and favoring egotiation instead of litigation between the participants[62] – these are elements

different actors and different layers together form a variegated "global administrative space" that includes international institutions and transnational networks involving both governmental and non-governmental actors, as well as domestic administrative bodies that operate within international regimes or cause trans-boundary regulatory effects." If the GAL tries to understand this new phenomenon, it will require the study of the whole systems under analysis.

[59] In that sense, Committee on Subsidies and Countervailing Measures (July 29, 2004). Minutes of the Regular Meeting G/SCM/M50.§2; article 4 of the Arrangement on Officially Supported Export Credits – 2008 Revision.

[60] Levit, J. K. (2005). "A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments." The Yale Journal of International Law **30**(winter): 125-209. 189 ff.

[61] According to Geithner: "The arrangement is an example of the more enlightened approach to resolving multilateral economic issues through discussion, negotiation and collaboration on which we must all increasingly rely in the new global economy." Geithner, T. (1998). The Economic Policy Benefits of International Co-operation. Paris, OECD. 87.

[62] According to the OECD Secretary General, Angel Gurría: "Very importantly, it will contribute to reducing the likelihood of bilateral trade disputes and litigation in the aircraft sector by providing an open space for systematic communication and, when necessary, the ability to have recourse to active transaction-based information exchange. Remarks by Angel Gurría. (2007). "OECD Secretary-General, during the Signing Ceremony of the "Aircraft Sector Understanding on Export Credits for Civil Aircraft"."

that prove a certain degree of responsiveness by the OECD. It is remarkable that such characteristics were also there when the linkage process to the WTO was provoked. All the dynamics and changes it undertook of its regulation are evidences of it.

Another example of OECD responsiveness in the linkage context was the invitation for Brazil to become part of the ASU. Since this country was considered a relevant player in the export credits field, it was incorporated into the negotiating process, regardless of the fact that it is not an OECD member and that still keeps a developing country discourse. This shows the pragmatic working style of the OECD.

In contrast, the WTO increased the degree of institutionalization of the multilateral trade system and granted to the asymmetric game of international trade open spaces for all actors interested in being part of it. Its responsiveness is to guarantee a whole set of rules, as clear as possible, with an institutional support that has been quite effective during the last years. Therefore, the interplay between these the organizations benefits from the dynamics from one side (OECD) and the security of a due process on the other (WTO).

Finally, the accountability of the system is a question that remains. There is neither a formal arrangement nor a practice between WTO and OECD that would assure accountability. As previously described, the OECD is particularly accountable to those that are identified as relevant for you, otherwise no more than transparency is guaranteed.

Though it is not the ideal system, the relationship between the WTO and the OECD has shown important progress during the following years of the Embraer case. The purpose of this section is not to conclude the analysis with an over idealistic view of the interplay in applying normative concepts from the GAL theory. Above all, the idea was to explore the potentialities that may be found on the intersections between the WTO and the OECD, which may even promote a better governance perspective of the export credits. Along with that, in detailing the interplay it is possible to identify new forms of coordination among international organizations and their lawmaking process that have been developed by the practice during the last few years.

6. Final remarks

This paper comprises an empirical analysis aiming to understand the mechanisms of interconnection between the WTO and the OECD that emerged from the Embraer case. In addition to that, the article emphasized the perspective of Brazil, as a developing country with little to no experience on the export credit field negotiation in the international level.

Understanding the challenges and opportunities that were identified in the case either for the international system or for a specific country (Brazil) enables me to advance on other steps of the research.

There are two other analyses that will be useful to better contextualize this paper on the GAL debate. One is to examine the impacts of that experience to the Brazilian domestic legal system on export credits. It includes

both the dynamics of work inside the government that the experience promoted (such as, are there non-usual organisms negotiating and implementing those rules? How do they interact? What kind of regulation are they issuing for that?).

The second analysis will explore the diversity of actors involved in the process, either public agents or private ones. The fact that the civil aircraft market operates with an oligopoly and that the international economic organizations favor the public-private partnerships raise the question of who is regulating. Being more precise, some of the questions to be addressed are: who are the actors part of this transnational interplay? What role do they perform? How can we address questions of legitimacy and accountability to those different groups and their partnerships?

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8. Appendix

APPENDIX OECD Export Credit Arrangements & The WTO item (k) of the ASMC Illustrative List

Date	OECD	GATT/ WTO
1950's (1958/1959)	Council Decision on Export credits	
1960		List of export credit - French proposal (first version of current items (j) and (k) of the ASCM Illustrative List of export subsidies) L/1260 L/1381
1976	(G7 Summit at Rambouillet - Consensus - certain OECD members)	
1978	First Arrangement on Guidelines for Officially Supported Export Credits (20 signatories): - applied to cases with a repayment term of two years and more.	
1979		Tokyo Round Subsidies Code (Annex I - Illustrative List, Item (k) current wording is agreed - L/TR/A/3 (less than 25 signatories)
1980-1987	Wallén Package - phase out matrix interest rate - DDR	
1983	Agreement to Uniform Moving Matrix	
1986	First OECD Sector Understanding on Export Credits for Civil Aicraft	
1986-1994		Uruguay Round - ASMC - Illustrative List of export subsidies - incorporation of items (j) and (k) of Tokyo Subsidies Code
1991	The Helsinki Package - phase out matrix interest rate - DDR - CIRR - untying of aid	
1994	Shaerer Package - last phase out of matrix IR = CIRR becomes the market reference	
1996	Ex Ante Guidance for Tied Aid	

1996-1998		DSS - Consultations Brazil Canada (Embraer case, WT/DS46/1)
1997	Knaepen Package - premium fees	
1997	New and revised Export credit arrangement (20 signing countries)	
13-Jul-98		DSS - Canada request for the Panel (Embraer case, WT/DS46/5)
14-Apr-99		DSS - Panel Report (Embraer case,
9-Aug-99		DSS - Appelate Body Report (Embraer case, WT/DS46/AB/R)
9-May-00		DSS - First Implementation Panel Report (Article 21.5 of the DSU) (Embraer case,
21-Jul-00		DSS - Appellate Body Implementation Report (Article 21.5 of the DSU) (Embraer case, WT/DS46/AB/RW)
28-Aug-00		DSS - Decision by the Arbitrators (Article 22.6 of the DSU) (Embraer case, WT/DS46/ARB)
26-Jul-01		DSS - Second Implementation Panel Report (Article 21.5 of the DSU) (Embraer case, WT/DS46/RW2)
(2001 - ...)		DDA - Ministerial Declaration (WTO Rules Review as part of the Working Programme)
2002	[OECD Arrangement - 2002 Revision]	Proposals on Item (k) review by Brazil, India and ECs
2003		Proposals on Item (k) review by ECs and India
2005		Proposal on Item (k) amendment by Brazil
2004-2007	OECD negotiations for the revision of both the Export Credits Arrangement and the civil aircraft export credit understanding	
29-Jun-05	Second civil aircraft export credit understanding agreed	
2008	OECD Arrangement agreed - 2008 Revision	