**A Brief Background Note on the ongoing negotiations of the International Working Group (‘IWG’) on Export Credit**

1. The International obligations on subsidies on exports are governed by the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM) of WTO. In terms of Article 3.1 (a), Subsidy contingent upon export performance is a Prohibited subsidy. However derogation from this provision has been provided to the countries falling under Annex VII list of the ASCM till they reach a GNI per capita of US$ 1000 for consecutive three years. As per the World Bank report received through WTO, India has achieved a level of US$ 1051 and US$ 1100 in the year 2013 and 2014 respectively. The figures for 2015 are due and would be released sometime in May-June 2017. Accordingly India would be able to provide export credits at concessional rates till it graduates from the Annex VII list.

2. Illustrative list of prohibited export subsidies are given in Annex I to the ASCM. The relevant provision from Annex I are reproduced below:

(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 cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long‑term operating costs and losses of the programmes.

(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 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.

3. The second para in clause (k) is a “safe heaven” for those countries who are not in Annex VII. These are primarily the developed countries. On clause (k) above, the Panel in Canada-Aircraft Dispute stated that “it is well accepted that the OECD arrangement is an international undertaking on ‘official export credits’ in the sense of the second paragraph of item (k). Moreover in practice, the OECD Arrangement is at present the only international undertaking that fits this description.” Panel also held that the conformity with the provisions of fixed interest rates along with the arrangements on other disciplines on financing terms, would qualify a practice for this “safe heaven” clause.

The Export credit practices are regulated by just a few provisions of the SCM Agreement. Insofar as export financing is specifically concerned, the SCM Agreement dedicates just a couple of items in the illustrative list of export subsidies found in Annex I to the Agreement. They are items (j) and (k).

4. Some of the countries in particular Brazil, after the Canada Aircraft Dispute raised the issue that the current disciplines stated in second para of clause (k) was mostly negotiated by a few countries outside the GATT/WTO system and hence do not take into account the contrasts among WTO Members and, in so doing, introduce asymmetries in the capacity of Members to compete on equal footing in the field of export credits. These asymmetries weaken the credibility of the multilateral trading system, which hinges on equitable conditions of competition for all Members. Therefore, Brazil's main objective while raising the issue was to establish truly equal conditions for all Members in the field of export credits, creating a "level playing field", through the recognition that the domestic macroeconomic environments vary considerably. Since then there have been discussion under the Rules negotiations to amend the existing “safe heaven” clause as per the present ground reality and to provide level playing field to developing countries as well. After China exceeded to WTO and became an active player in the exports, there have been movements for a successor arrangement to the OECD arrangement on Exports Credits amongst the group of countries to bring more discipline to the arrangement.

5. In brief, over the years, major international export credit providers have emerged outside the traditional "club" of the Participants to the OECD Arrangement. In order to have a level playing field on export credits, integrating these countries (which include for example China, Brazil, Russia) in the medium term into an international arrangement was considered imperative.

6. The International Working Group on Export Credits (IWG) has been developed further to an initiative by the United States and China in 2012: “To make concrete progress towards a set of international guidelines on the provision of Official Export Financing that, taking into account varying national interests and situations, are consistent with international best practices, with the goal of concluding an agreement by 2014”. The representatives of the two countries felt that a transparent and level playing field for Official Export Credits is key to ensuring that Government - Supported Export Financing does not result in trade distortions. The present arrangement through IWG is an attempt in that direction to replace the existing OECD arrangement for export credits with the IWG arrangement on export credits.

 **Overall Objectives of IWG**

7. While the IWG has adopted a formal mandate, wherein the following points could be of common interest:

1. Achieving a level playing field between the respective credit programs of the members; i.e. to ensure that exporters can compete properly on the basis of quality and the price of their products.
2. WTO compatibility; as participants are all WTO members, the IWG should aim for the creation of a new set of rules which are in line with WTO law, notably the Agreement on Subsidies and Countervailing Measures (ASCM). As stated earlier, presently, there is a provision that ASCM could provide cover to any “successor’ undertaking’ which has a comparable level of quality and detail as the current OECD arrangement on Export Credits.
3. Insuring that there is no crowding out of private financing; where private markets provide sufficient sources of financing, there is obviously no need for officially supported export credits programs to intervene.

8. A start in this field was made with the setting up of the International Working Group (IWG) of Major Providers of Export Finance. This new multilateral process intended to bring together the 9 Participants to the OECD Arrangement and the major emerging export credit providers. An informal Steering Group was formed consisting of the US, the European Union, China and Brazil who met for the first time on 14 September 2012 in Washington DC to discuss organizational issues related to this International Working Group (IWG).

9. The first plenary meeting of the new International Working Group (IWG) took place on November 9, 2012 (also in Washington DC and preceded by a second meeting of the informal Steering Group on November 8). Altogether 18 major export credit providers were invited, 15 of which attended the plenary: OECD Participants (US, European Union, Canada, Switzerland, Norway, Korea, Japan, Australia and New Zealand) as well as China, Brazil, the Russian Federation, Turkey, Malaysia and Israel. Many delegations in principle supported the view that the overall objective should be to eventually agree on a “successor undertaking” to the current OECD Arrangement, in sense of clause k of Annexure I of ASCM.

10.The EU and many other delegations preferred to start from a horizontal approach (i.e. to focus on general export credits issues, first), but – in an effort to accommodate China's preferences – agreed to consider the option of starting the process by looking at sectors.

11. The horizontal approach would have meant to look first at general provisions on maximum repayment terms, down payments, interest rates, premia etc. applicable to all export credit transactions (irrespective of the industrial sector concerned). Looking at sectors rather implies to look first at the specific financing conditions which exist in a few individual industrial sectors, and in a second phase to try to extrapolate from them to build a basis for general provisions applicable everywhere. China suggested to start with the ship sector, but other participants in the process (such as the US and Canada) did not have any export credit activities in the ship sector. During the 2nd meeting of the IWG medical equipment sector was identified as a second pilot sector for the IWG’s work as suggested by China.

12. It also has to be mentioned that China has been represented in the meetings of the IWG and the Steering Group by Export Credit Agencies. China’s interest in entering into such an agreement may be because -

* China has been a late entrant in the WTO and the subsidies that are provided by China are not very clear.
* China today is a major provider of finance in all sectors.
* With China becoming a major player in the global manufacturing sector and in international trade, it may be keen to play a leading role in framing new guidelines on export credit, to maintain its growth.

Brazil has repeatedly made it clear that it reserves to a full participation in the OECD Arrangement are maintained and its representatives were also reluctant to make any formal commitments under the new IWG process.

South Africa had stated its stand on the current proposals as follows: (i) reasons for exclusion of official support for any transaction for less credit period (minimum tenor was stated as 2 years) (ii) the understanding should gravitate higher thresholds for local costs from the present threshold of 15% to 30% in order to help developing countries to grow their own industries (iii) absence of level playing field for a non-Dollarized economy as majority of the transactions would be in Dollars.

13. In order to facilitate reflections on the sector approach and to keep the general process on track, the EU organized an informal workshop on March 18-19, 2013. This event allowed all parties involved to engage in technical exchanges of views at expert level and to promote a better understanding of their respective export credit systems.

14. Eleven official meetings (hosted by the USA, China, EU and Brazil respectively on rotation basis) of the IWG have so far taken place. The discussions on the horizontal as well as vertical (the shipping sector) have progressed since then and now the Text is under discussion. Since India is an Observer out of the 18 Members Group, India is not party to the discussions on the Text, and Members are reluctant to share their viewpoints on the ongoing negotiations. The other members, are not Annex VII countries and hence follow OECD guidelines on Export Credits.

**Impact of existing guidelines on India:**–

15. India had highlighted the issue of use of unreasonable benchmarks for the purpose of calculation of amount of subsidy in the case of loan by a government in a Countervailing Duties (CVD) investigation in respect of exports of developing countries. It needs to be recognized that exports credits can be provided for either in the currency of the exporting country or in foreign currency in accordance with the circumstances of each case. Generally for developing countries, the interest rate for loans in the currency of the exporting country is considerably higher than the interest rate for loans in foreign dominated currency.

16. The amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market requires use of appropriate benchmark. In India’s experience the investigating authorities have wide discretion in interpreting this provision and this has led to the use of unreasonable benchmark for the calculation of subsidy in the case of export credit of a period less than 2 years. India also recalls the submission made by Brazil on Benchmark estimation.

17. Under the provision of item (k) of Annex I of ASCM, the export credits at rates below those which governments/ government institutions have to actually pay for the funds so employed, is treated as export subsidy. The export credits under item (K) have been generally construed as those of a maturity of 2 years or more. The OECD Arrangements on Officially Supported Export Credits generally get covered by the provision item (K). These arrangements contain the guidelines for construction of Commercial Interest Reference Rates (CIRR), which inter-alia are based on three - year government bond yields for a repayment term of upto and including five years . Further CIRRs are fixed at a margin of 100 basis points above each Participant’s base rate.

18. Fading difference between Marketable and Non-marketable risks. Non-marketable risks under ST Communication are risks with a tenor equal to and above 2 years, and risks below two years in non-EU and non-OECD countries. Official support on ‘marketable risks’ on public and non-public debtors in the EU and OECD countries is prohibited but post 2008 it was not being adhered to. In crisis period, marketable risks are hard to cover. The ‘escape’ clause allows State intervention under conditions where markets are deemed as temporarily unavailable and State would be given a role to play to support, especially in credit insurance industry. High income OECD countries are rated Category ‘Zero’ despite economic crisis in Greece, Portugal, and Spain etc. OECD pricing system with respect to Category Zero countries creates opportunity for subsidizing export towards mature markets. This has serious implications for current ECA practices as relaxation of OECD guidelines allow providing services below market-level pricing.

19. **Issues raised during the internal discussion**

To understand the intention as well as the facts of the ongoing IWG meetings, a number of meetings were held in the Department of Commerce when the stakeholders from the concerned departments including EXIM Bank, ECGC, RBI, IBA, DFS, DEA etc. participated. One of the issues being discussed is the possible implications for India on the outcome of such an arrangement, especially when India graduates from the Annex VII country status in the near future and then the export credits will become prohibited unless we follow the OECD arrangement on export credit. Hence the question arises as to whether India would continue as an Observer or participate actively in the Negotiations to take care of certain deviations from the existing OECD guidelines on Export Credits. One of the Export Credit support being provided by GOI is through the interest equalization scheme which is a short term pre and post shipment credit, which is not presently covered under OECD guidelines.

During the internal discussions, it was evident that some of the practices in India significantly differ from the OECD guidelines such as that with respect to Scope, Down Payment, Non-Availability of Short Term Concessional Credit, Maximum Repayment, Principal/Interest Repayment, Minimum Fixed Interest Rate, Premium for Credit Risk, Tied Aid etc. A few provisions which would be effected in the times to come, could be:

* Short-term Export Credit - As per existing provisions of OECD, Rupee Export Credit should not be below the G-Sec rate + 100 bps (7.5%). Though even after interest equilisation scheme for pre-shipment and post-shipment credit, the interest rate would be above 7.5%, we would invariably cross it at any point of time, which would affect such concessional credits.
* Long-term Export Credit – In our case, the ROI under LOCs is not as per the CIRR calculation of OECD. Besides GOI provides interest equalisation support to neutralise the loss incurred by Exim Bank. Under the BC-NEIA, credit risk is underwritten by the NEIA Trust, and thus would not be compliant with the provisions of ASCM post-graduation from Annex VII.

Once India graduates from its Annex VII status, it would have two options:

* Either to bring all such Export Credits at par with the prevailing commercial rates in the country , or
* To bring them in line with such OECD guidelines (succeeding undertaking like the present one being discussed under IWG Forum).

20. Hence in the last meeting held on 21 November, 2016, the participants (i.e. RBI, EXIM Bank, ECGC Ltd.) stated that there is need for India to actively participate in the negotiations and use the opportunity through grouping of like-minded countries (viz. South Africa, Indonesia, Malaysia or even China) to address our concerns in the negotiations and calibration of the text being negotiated by IWG. An important aspect of the present negotiations on IWG on Export Credits is that Clause (k) of Annex I of WTO ASCM provides for automatic implementation of any successor undertaking formulated by these countries (12 original OECD countries), without the need for approval of all other WTO members.

It was decided to take the views of other key stakeholders, particularly that of FIEO, AEPC, TEXPROCIL, EEPC, CAPEXCIL etc.

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