A Survey of Views
Regarding Whether Exchange-Rate Misalignment
Is a Countervailable, Prohibited Export Subsidy
Under the Agreements of the World Trade Organization (WTO)[1]
(April 2007)

Commenter	Governmental Financial Contribution	Benefit	Specificity
David A. Hartquist Counsel China Currency Coalition[2]	Yes. The Chinese government provides a financial contribution of funds to the exporter in China by means of the service of converting U.S. dollars into yuan.	Yes. The Chinese government's financial contribution confers a benefit on the exporter in China that is equal to the difference between what the yuan would be worth if its value were set by the market and the yuan's artificially low value as the result of China's undervaluation of the yuan.	Yes. Receipt by the exporter in China is contingent upon export performance. Only after the exporter has been paid in U.S. dollars for the goods that have been exported to the U.S. does the exporter have the proceeds of the sale converted into yuan at the undervalued rate of exchange.
James L. Bacchus Ira Shapiro Counsel National Association of Manufacturers[3]	No. Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) should be viewed as an exclusive, exhaustive list of what constitutes a govern-	Probably or likely yes, if the facts are sufficient to show an advantage is conferred and exists in the marketplace for Chinese producers as a result of the Chinese currency regime.	No. Even if the yuan's undervaluation is considered to be a subsidy, and even though it is reasonable to assume that there are anticipated exportation or export earnings for the Chinese

[1] Exchange-rate misalignment is one term that can be used to describe the situation in which a foreign currency is undervalued as a result of protracted large-scale intervention by or at the direction of a governmental authority in the exchange market with the result that the observed exchange rate for a foreign currency is below the exchange rate that could reasonably be expected for that foreign currency absent the intervention.
[2] Prepared Statement dated April 4, 2006, for a hearing before the U.S.-China Economic and Security Review Commission.
[3] Letter dated September 12, 2006.

	mental financial contribution. The currency regime in China should be viewed as an exercise of China's general regulatory powers and does not fall under any of Article 1.1's list of items that constitute governmental financial contributions. Thus, China's currency regime does not involve a direct transfer of governmental funds by loans, grants, or equity infusion, does not forego governmental revenue otherwise due, does not involve the provision by the Chinese government of goods or services other than general infrastructure or payments from a funding mechanism, does not entail any cost to the Chinese government in economic resources or something of value as a consequence of a transfer to the recipient, and does not constitute a form of income or price support in the sense of Article XVI of the GATT.		exporter, such a subsidy is not specific. In particular, China's currency regime is not contingent <u>in law</u> on exportation. Nor is China's currency regime contingent <u>in fact</u> on exportation, because the Chinese government's payment of yuan to the exporter is not tied to exports, but instead is tied to the exporter's or any other person's having U.S. dollars that can and must be exchanged with the Chinese government for yuan. Exports are not singled out for special treatment. Lastly, the Chinese currency regime is not a specific domestic subsidy, because no specific enterprises or industries or regions in China have been targeted in a way that provides an advantage for some over their competitors in international trade.

Terence P. Stewart Stewart and Stewart[4]	Yes. A subsidy involves a transfer of economic resources from the grantor to the recipient for less than full consideration. Consistent with Article 1.1 of the SCM Agreement, the exchange of currency at an undervalued rate can be seen as either or both a "direct transfer of funds" and government revenue foregone. There is a payment, in the form of transfers of financial resources, financed by virtue of governmental action.	Yes.	Yes. A *de facto* export subsidy exists when the granting of the subsidy is in fact tied to actual or anticipated exportation or export earnings. Consistent with this standard in Article 3, footnote 4 of the SCM Agreement, the subsidy bestowed by China's currency regime is, in fact, tied to exports because without exportation there can be no subsidization. Moreover, the fact that the undervalued yuan's subsidy is also available to non-exporters or domestic, Chinese users (as when U.S. dollars are received from foreign direct investment in China or from repatriation of profits to China from abroad) does not dissolve the export-contingency for exporters. On at least two occasions (United States – Upland Cotton and United States – Tax Treatment for Foreign Sales Corporations) the WTO's Appellate Body has recognized that the granting of a subsidy under conditions

[4] Letter dated September 22, 2006.

			apart from exportation does not undercut the *de facto* export-contingent nature of the subsidy when the grant is tied to exportation.
Gary Hufbauer The Peterson Institute[5]	Likely no. In previous cases a governmental financial contribution has been found with the giving of grants, the making of loans at below-market rates, the provision of tax breaks or of transport at especially cheap rates for exports, or the granting of concessionary terms for exploiting natural resources. A similar on-budget cost or targeted concession cannot easily be associated with an off-budget, public policy of having an undervalued currency.	A qualified yes. For a benefit to exist, the SCM Agreement requires that a subsidy provide value to the recipient. Undervaluation of a currency definitely provides value to exporting firms, but the difficulty is in establishing that the currency is undervalued.	Perhaps. An argument can be made under Article 3, footnote 4 of the SCM Agreement that the payment of yuan is tied to exportation in fact. However, had the Member States of the WTO and the Contracting Parties of the GATT intended to cover currency undervaluation as a prohibited export subsidy rather than as a monetary measure at the International Monetary Fund (IMF), they would have said so explicitly in the texts of the GATT and the SCM Agreement.
Canada Border Services Agency (CBSA), Government of Canada[6]	A governmental financial contribution does not include the provision of goods or services	The CBSA stated that it was not convinced that the value of China's service of converting	The CBSA expressed its view that the mere fact that foreign currencies earned by export

[5] "U.S.-China Trade Disputes: Rising Tide, Rising Stakes," by Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth (Aug. 2006).

[6] In October 2004, the Canada Border Services Agency was asked by petitioner, but declined, to include as one issue to be investigated in a countervailing duty investigation against laminate flooring from China the question of whether fixed exchange rates constitute a countervailable prohibited export subsidy. In deciding not to investigate this issue, the CBSA noted a total absence of any case law or WTO dispute settlement jurisprudence and stated that the complexity of the matter and the broader policy and legal implications of the issue led it to believe the allegation should necessarily be approached with particular caution.

	that constitute general governmental infrastructure, and the petitioner did not address why the maintenance of China's fixed-rate exchange system would not constitute general governmental infrastructure.	U.S. dollars into yuan would include the underlying value of the currencies being traded, so that, in other words, it was not the rate of exchange *per se* that would be considered as conferring a benefit, but, rather, the price charged by the Chinese government in providing the actual currency-conversion service.	sales are convertible at China's fixed exchange rate does not by itself demonstrate contingency on export performance, so that more substantive information would be required to establish a clear link between the granting of a subsidy (assuming for the moment that a subsidy had been shown) and export performance in fact.
Wiley Rein & Fielding[7]	Yes. The Chinese government's transfer of cash to an exporter required to convert his export receipts into yuan at the prescribed rate of exchange is indistinguishable from and as much a governmental financial contribution as the situation in which a government transfers cash to a recipient in return for an equity interest in a company. Moreover, nothing in the language of Article 1 of the SCM Agreement requires that the transfer must be at a cost to the government.	Yes. The financial contribution by the Chinese government in cash yields a benefit to the recipient, because U.S. dollars are valued at a higher rate and the recipient receives more yuan than with a market-driven exchange-rate system. Again, the analogy with the transfer of cash by the government for equity pertains, because the recipient receives more, and so a benefit, than with a profit-motivated investor.	Yes. The grant to the exporter of the undervalued yuan's subsidy is contingent upon or tied to exportation and does not depend simply upon a person in China having U.S. dollars. The contingency on exports is demonstrated by various exceptions in China's regulations that allow domestic companies in China to retain and utilize foreign exchange, such as from overseas projects, foreign services, receipts of travel agencies, some insurance premiums, and foreign investment. Further, as the WTO's Appellate

[7] Response to the Bacchus/Shapiro Analysis of the Consistency of H.R. 1498, the Ryan-Hunter Bill, With The WTO Obligations of the United States (Sept. 2006).

			Body noted in United States – Tax Treatment for Foreign Sales Corporations, the granting of a subsidy in one set of circumstances without contingency on exports does not dissolve the export contingency arising in a second set of circumstances.
John Magnus President TRADEWINS, LLC[8]	Yes. The exchange by China's government of yuan for U.S. dollars is a financial contribution under Article 1.1(a) of the SCM Agreement, whether as a direct transfer of funds, as a provision or purchase of a good, or (if money is not seen as a good) provision of a service.	Perhaps, but there would be a challenge in quantifying the extent of any benefit, because – if the governmental financial contribution is viewed, on the one hand, as a direct transfer of funds or provision or purchase of a good - there appears to be no private market either in China or anywhere else for yuan-U.S. dollar exchanges at privately-negotiated rates. On the other hand, if the governmental financial contribution is viewed as the provision of a service, it might be easier to measure the benefit. China's currency regime can be seen as an exchange-risk program that appears to shield Chinese	Probably. If the yuan's undervaluation is deemed to be a subsidy, and even though all yuan-to-U.S. dollar conversions are made at the same rate of exchange, Chinese exporters might qualify as a discrete group of beneficiaries who can receive the subsidy *only* by exporting. Without exports, both expressly as a matter of law and in fact, exporters in China cannot be given or enjoy the subsidy. This outcome would be consistent with the Appellate Body's analysis at the WTO in United States – Tax Treatment for Foreign Sales Corporations.

[8] Prepared Statement dated April 4, 2006, for a hearing before the U.S.-China Economic and Security Review Commission.

		exporters from the expense of hedging against foreign-exchange losses or from purchasing guarantees to guard against exchange-rate fluctuations. If, as seems the case, Chinese exporters pay nothing for this service, that avoidance of all such costs could be seen as a benefit.	
Marc Benitah Professor of International Law University of Quebec[9]	Possibly. The yuan's undervaluation perhaps can be seen as a service given by the Chinese government, although China's exchange-rate system is not an exchange-risk program and it is difficult to speak in an economically meaningful sense of costs and losses of this system for the Chinese government.	Possibly. Whether a benefit is conferred by the yuan's undervaluation, so that the recipient is "better off" than otherwise absent the governmental financial contribution, would be difficult, because there is no currency-exchange market in China or elsewhere in which the yuan's value is determined by the interaction of the forces of supply and demand. The concept of benefit is not rigorously defined, however, so that a convincing economic demonstration that the yuan is grossly undervalued based upon market forces might support a finding	Possibly. It appears that the benefit to Chinese exporters of the yuan's undervaluation could be shown to be contingent upon exportation in fact.

[9] "China's Fixed Exchange Rate for the Yuan: Could the United States Challenge It in the WTO as a Subsidy? (corrected version)," ASIL Insights (October 2003).

		of benefit. At the same time, it seems unlikely that this means of establishing a benefit would be accepted in dispute settle-ment at the WTO.	
Erik Denters Associate Professor of International Law Vrije Universiteit Amsterdam[10]	No comment.	No, if the IMF were to find that China's exchange-rate policy is compatible with the IMF's Articles of Agreement, the WTO would be obligated to accept that conclusion, with the result that China's exchange-rate policy would not confer a benefit on exports and so would not be an export subsidy. More specifically, it does not seem very likely that the IMF would find that China engages in any manipulation of the yuan. The IMF's Articles of Agreement generally permit China to maintain an exchange-rate regime for the yuan as China deems fit. It is not clear that China manipulates the yuan's exchange rate to prevent "effective balance of payments adjustment" or to gain "an unfair competitive advantage."	No comment.

[10] "Manipulation of Exchange Rates in International Law: The Chinese Yuan," ASIL Insights (November 2003).

		Indeed, it is open to interpretation exactly what these terms mean, and China's purpose in its exchange-rate policy might be permissibly to be attractive for investors rather than to gain "an unfair competitive advantage."	
Jonathan Sanford Congressional Research Service[11]	Likely not. It is not clear that exchange-rate transactions involve a payment by or at the behest of the Chinese government. When an exporter in China sells U.S. dollars to a commercial bank in China, the implicit subsidy in the transaction is paid by that bank and not by the Chinese government.	No comment other than an observation that there is no indication in the rules that the WTO would accept as final a determination by the IMF that a country was manipulating its currency or that the WTO would be obligated to refer questions about exchange-rate policy to the IMF for the IMF's evaluation.	Likely not. The presumed subsidy in the yuan's exchange rate is not paid solely to exporters, but is available to anyone, including tourists, foreign investors, and banks, as well as exporters. Moreover, currency manipulation is not listed among the WTO's prohibited export subsidies.

[11] "China, the United States and the IMF: Negotiating Exchange Rate Adjustment," by Jonathan E. Sanford of the Congressional Research Service (updated July 19, 2006).