

# Currency Wars: Is it time for a fresh legal opinion?

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“The International Monetary Fund also could help set standards about exchange-rate policies and serve as a referee that blows a whistle, even if it cannot penalize. The IMF and the WTO should anticipate this risk and give effect to the existing WTO agreement that economies must ‘avoid manipulating exchange rates... to gain a competitive advantage.’”

Robert Zoellick “A New U.S. International Economic Strategy” WSJ, 2/6/2013

# What has changed?

- The financial crisis highlighted attention to the role of currency imbalances in causing the systemic failure of the global financial system.
- Emergence of a new principle of international economic law: “Thou shall not cause systemic failure.”
- All policies can be seen as contributing to either stability or systemic failure.
- Increasing use of massive currency intervention against a growing consensus that currency misalignments have major spillover effects.
- A great deal of legal and economic analysis to clarify the effect of currency misalignment on WTO obligations and the legal issues affecting the interplay of WTO and IMF rules.
- Still a great deal of antagonism between the IMF and WTO – and trade and financial officials – and very little creative thinking on how best to address coherently and collectively the currency wars.

# Rules of the Road on Currency Alignments



The gold standard: structural barrier



Article IV: elusive double yellow line

An existential question for the IMF and WTO?

# Currency Wars

## The Legal Brackets

IMF

WTO

Article IV manipulation

In accordance with  
IMF rules

Article IV compatible  
with the undertakings

Manipulation

Frustration

Article XV  
Frustration

Article II Tariff  
Impairment

Export Subsidy

Article XV(9) safe  
harbor

March Madness?

# Critical Legal Issues

- Does GATT Article XV(9) create a safe harbor for any and all exchange measures unless the IMF determines that they are manipulation?
- WTO Article XV(9) by its terms only provides a safe harbor for “exchange controls” and “exchange restrictions”; does it extend to massive currency intervention that results in systematic devaluation?
- If the IMF cannot conclude that the measures are in violation of IMF rules, must it conclude as a matter of international law that they are in accordance with the rules?
- Does an IMF determination that a measure is in accordance with IMF rules preclude further WTO determination that the measure has frustrated the intent of a WTO provision?

# Why might a WTO micro solution help address the macro currency misalignment problem?

- The WTO is all about the micro and a micro solution would preserve the fairness and equity of the WTO system particularly for countries with little other recourse, thereby moving the system away from a systemic failure.
- Even a micro solution would highlight the effects of currency interventions and would generate international pressure by publicizing the practice and its effects.
- The effects of even micro measures on the political economy can create political pressure for change at the macro level.