

EXPORT-IMPORT BANK OF THE UNITED STATES
ECONOMIC IMPACT PROCEDURES
April 2007

Introduction

The basis for Ex-Im Bank's Economic Impact Procedures is found in its Charter.¹ Congress requires Ex-Im Bank to assess whether the extension of Ex-Im Bank financing support is likely to cause substantial injury² to U.S. industry or would result in the production of substantially the same product that is the subject of specified trade measures. If a transaction is deemed by Ex-Im Bank to meet the legislatively specified standards, then economic impact can be the basis for denial of Ex-Im Bank support.³ The purposes of Ex-Im Bank's Economic Impact Procedures are: 1) to ensure that all transactions are screened for economic impact implications; 2) to identify those transactions that are subject to applicable trade measures or that pose a risk of substantial injury to the U.S. economy; and 3) to put only those cases that require further economic impact analysis through a more extensive process that is fair, consistent, and publicly transparent.

The Economic Impact Analysis

Ex-Im Bank reviews all transactions it receives for potential economic impact. Transactions are subject to screens designed to: (i) identify those transactions associated with specific legislative prohibitions (e.g., cases in which Countervailing Duties are applicable), and (ii) determine the potential of a transaction to cause substantial injury to the U.S. economy. The economic impact analysis proceeds in five stages, which are analyzed consecutively.

Stage I: Transactions Resulting in Production of an Exportable Good

The first stage of the economic impact analysis is to determine if the exports involved in a transaction will result in the production of an exportable good. Therefore, only exports of capital goods and services (e.g., manufacturing equipment, licensing agreements) that will result in the foreign production of an exportable good are subject to further economic impact analysis in Stage II of these procedures.⁴ The capital goods and services exports may be associated with

¹ Sections 2(b)(1)(B) and 2(e) of The Export-Import Bank Act of 1945, as amended. In addition, since 1978, economic impact language has also been included in Ex-Im Bank's annual appropriations bills (e.g., Fiscal Year 2001 Foreign Operations, Export Financing, and Related Programs Appropriations, Pub. L. No. 106-429, November 1, 2000). The requirement to establish procedures to implement Ex-Im Bank's economic impact analysis is set forth in 12 U.S. Code Section 635a-2.

² Congress defined the threshold for substantial injury in Ex-Im Bank's Charter. This standard/threshold is met if the buyer's new production is equal to or greater than one percent of U.S. production of the same, similar, or competing good.

³ Determinations shall be made by the Board of Directors of the Bank (or pursuant to Individual Delegated Authority or by the Credit Committee, as applicable).

⁴ However, the Board of Directors can periodically review an industrial sector to determine, based on economic analysis, if that sector is facing a long-term excess of demand over foreseeable available supply (i.e., "under supply") and additional production capacity would benefit the overall U.S. economy. If the Board makes such a determination for an industrial sector, transactions in that industrial sector would not be subject to further economic impact analysis (provided there are no applicable trade sanctions). The Board would review any such determinations with respect to an industrial sector on a periodic basis. At a meeting of the Board of Directors in August of 2002, the

new foreign production capacity or existing production capacity (e.g., applicable exports include replacement equipment in an existing production facility to maintain existing production capacity).

Stage II: Transactions that Result in the Production of a Good Subject to an Applicable Trade Measure

The second stage of the economic impact analysis is to determine if the exports involved in a transaction will enable a foreign buyer to produce an exportable good that is subject to a Specified Trade Order or a Preliminary Trade Action (see Categories B and C under Stage IV below.)

Stage III: Transactions that Establish or Expand Production Capacity

The third stage of the economic impact analysis is to determine if the exports involved in a transaction will enable a foreign buyer to establish or expand production capacity of an exportable good (see category A below). Relevant transactions involve capital goods and services exports that are associated with incremental production capacity (e.g., replacement equipment to maintain existing production capacity is not applicable).

Stage IV: Categorization of Transactions

The fourth stage of the economic impact analysis divides transactions into one of three categories for differentiated evaluation/analysis. Transactions can only be processed in a single category. Staff is required to determine in which category a transaction belongs by examining its characteristics before proceeding to Stage V of the analysis. These three categories are:

- **Category A:** Transactions Not Subject to Specified Trade Orders or Preliminary Trade Actions⁵
- **Category B:** Transactions Subject to Specified Trade Orders⁶
- **Category C:** Transactions Subject to Specified Preliminary Trade Actions⁷

Board exercised this authority to exclude transactions involving oil, gas and diamonds from further economic impact analysis.

⁵ Category A: Transactions **Not** Subject to (i) Anti-dumping or Countervailing Duty Orders or Preliminary Antidumping or Countervailing Duty Injury Determinations, (ii) Suspension Agreements Arising From Anti-dumping or Countervailing Duty Investigations, (iii) Section 201 Injury Determinations, or (iv) Section 201 Investigations initiated by the Executive or Legislative Branch.

⁶ Category B: Transactions Subject to (i) Anti-dumping or Countervailing Duty Orders, (ii) Suspension Agreements Arising From Anti-dumping or Countervailing Duty Investigations, or (iii) Section 201 Injury Determinations.

⁷ Category C: Transactions Subject to (i) Preliminary Anti-dumping or Countervailing Duty Injury Determinations or (ii) Section 201 Investigations initiated by the Executive or Legislative Branch.

Stage V: Analysis of the Economic Impact of Transactions by Categories

The fifth stage of the economic impact analysis consists of screens to determine whether a transaction requires a detailed economic impact analysis. The detailed economic impact analysis incorporates multiple components to determine the overall economic impact. No individual component of the analysis is determinative.

Category A: Processing Transactions **Not** Subject to Specified Trade Orders or Preliminary Trade Actions

1. Amount of Ex-Im Bank Financing:

a. Transactions for more than \$10 million in Ex-Im Bank financing⁸ are evaluated for substantial injury in screen 2.⁹

b. For purposes of determining whether a proposed transaction exceeds the \$10 million threshold, the Bank will aggregate the dollar amount of the proposed transaction and the dollar amounts of all loans and guarantees approved by the Bank in the preceding 24-month period that involved the same foreign entity and substantially the same product to be produced. If the aggregate financing exceeds \$10 million, the aggregate incremental production is subject to the substantial injury test in screen 2. However, only the proposed transaction will be affected by the result of the analysis.

2. Risk of Substantial Injury: Transactions that enable a foreign buyer to establish or expand foreign production by an amount that is equal to or greater than 1% of U.S. production (of the same, similar, or competing good) are subject to detailed economic impact analysis in screen 3. In determining “substantial injury”, the concept referred to as “proportionality” (i.e., where the relation of the dollar value of the Ex-Im Bank financed U.S. component to the overall cost of the transaction/project measures whether the 1% screen has been met) shall not be the only element used to avoid a full economic analysis. If a facility that would benefit from the provision of Ex-Im Bank financing is reasonably likely to produce a commodity other than, or in addition to, the commodity specified in the application, such commodity will also be subject to a substantial injury determination.

3. Detailed Economic Impact Analysis to Determine if the 2(e)(1) Prohibition is Applicable -Factors to be Evaluated:

a. **Public Notice and Comment:** When Ex-Im Bank determines that a transaction poses a risk of substantial injury (i.e., the resulting production is equal to or exceeds 1% of U.S. production), the Bank shall publish in the Federal Register and on its website a notice of intent, and provide a period of not less than 14 days (which, on written request by any

⁸ All dollar thresholds set forth in these procedures are exclusive of the exposure fee.

⁹ Applicable transactions supported by medium-term Credit Guarantee Facilities (CGF), Medium Term Repetitive (MTR) Sales, revolving Working Capital Guarantees and multi-buyer insurance are excluded from an upfront economic impact analysis because the buyer and/or exports are not known at the time of approval. However, for buyer specific facilities, if the buyer is subject to applicable trade measures, Ex-Im Bank excludes capital goods/services that will result in the production of sanctioned products from the facility.

affected party, shall be extended to a period of not more than 30 days), for the submission to the Bank of comments on the economic effect of the provision of the loan or guarantee, including comments on whether the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; and the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity. Concurrently, Ex-Im Bank will specifically notify relevant USG agencies and Congressional committees of the transaction and weigh carefully the analytical and policy views of such entities. The USG agencies and Congressional Committees to be notified include: the U.S. Department of Commerce; the U.S. Department of Treasury, the U.S. Department of State, the Office of Management and Budget, the Office of the U.S. Trade Representative, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives. The content of the notice shall include appropriate, nonproprietary information about: (i) the country to which the goods involved in the transaction will be shipped; (ii) the type of goods being exported; (iii) the amount of the loan or guarantee involved; (iv) the goods that would be produced as a result of the provision of the loan or guarantee; (v) the amount of the increased production that will result from the transaction; (vi) the potential sales market for the resulting goods; and (vii) the value of the transaction. The buyer's and the applicant's names, as well as any proprietary information, will not be released. The economic impact analysis will include a summary of the comments received. The full text of comments received by the Bank will be attached as an appendix to the Board memo.

If a material change is made to an application for Ex-Im Bank financing subsequent to the public notice, the Bank shall publish a revised notice and shall provide for a new comment period. The term material change with respect to an application includes: a change of at least 25% percent in the amount of Ex-Im Bank financing requested in the application; or a change in the principal product to be produced by the foreign buyer.

b. Oversupply and Competition: For a transaction to be eligible for denial based on economic impact, Ex-Im Bank's Charter requires that – in addition to meeting the criteria for substantial injury – the foreign buyer's resulting production must either likely be in surplus on world markets at the time it will first be sold (hereafter called oversupply) or compete with U.S. production of the same, similar or competing good.¹⁰

i. Assessment of oversupply: Ex-Im Bank's Charter requires the economic impact analysis to address whether the foreign buyer's production resulting from Ex-Im Bank support may come on-stream during a period of oversupply. There are no generally accepted definitions of oversupply, so each transaction is analyzed on a case-by-case basis. Anti-Dumping or Countervailing Duty Orders against a product shall be factored as a consideration into any extensive economic impact analysis of a similar product elsewhere as a possible indicator of oversupply. Section 201 investigations initiated at the request of the President, the U.S. Trade Representative, the Senate Committee on Finance, the House Committee on Ways and Means or by the International Trade Commission on its own motion shall be considered by Ex-Im

¹⁰ All analysis will be based on reasonably available data and information.

Bank as indicators of oversupply. Other possible indicators of oversupply that Ex-Im Bank may consider on a case-by-case basis include: (i) stagnating or falling global prices and/or falling gross margins (price minus variable cost) of domestic producers; (ii) industry bankruptcy trends and/or industry unemployment trends; (iii) Trade Adjustment and Assistance (TAA) Program petitions; and (iv) preliminary Anti-Dumping or Countervailing Duty determinations; and (v) multi-lateral production limitation agreements.¹¹

ii. Valuation of broad competitive impacts to U.S. industry: The foreign project's potential impact on U.S. industry is analyzed in a cost-benefit framework. The economic impact analysis weighs the quantitative benefits (e.g., the value of the U.S. exports, follow-on spare parts sales) and costs (e.g., the value of the displaced U.S. sales or lost market share) of the transaction. In addition to measuring whether the foreign buyer's increased production could displace U.S. production of the same, similar, or competing good in markets where the foreign buyer directly competes head-to-head with U.S. production, the economic impact analysis will also consider other secondary factors and impacts of the proposed transaction. These other factors include: concurrent additions to production capacity of the product in the U.S., buyer's country and any markets that may directly affect the prospects for current U.S. producers, the current and expected international trade flows of the product including the possibility that the foreign buyer's production may displace production from a third-country resulting in displaced U.S. production, or reduced U.S. market share. The time horizon for measuring the economic impact is the length of Ex-Im Bank support.

c. Evaluation of Quantitative and Qualitative Information: The next step in the economic impact process is the weighing of the analytical findings of the preceding steps and the qualitative information received through the notice and comment period (e.g., views from other USG agencies and affected parties) to determine the overall impact of Ex-Im Bank financing on the U.S. economy. At the conclusion of the economic impact analysis, staff makes a recommendation based on its evaluation of the various components. The Board takes all these components into account in reaching a decision.

4. Publication of Conclusion: Within 30 days after a written request by a party affected by a final decision of the Ex-Im Bank Board of Directors, Ex-Im Bank will provide to the affected party a non-confidential summary of the facts found and conclusion reached in any detailed economic impact analysis conducted and submitted to the Ex-Im Bank Board of Directors.

Category B: Processing Transactions Subject to Specified Trade Measures

1. Anti-Dumping (AD) or Countervailing Duty (CVD) Orders and Suspension

Agreements arising from AD/CVD investigations: Unless the Board of Directors of Ex-Im Bank applies the Section 2(e)(3) exception (screen 5) contained in Ex-Im Bank's Charter,

¹¹ By policy and practice, Ex-Im Bank is directly and unexceptionally constrained by guidelines established by the Export Credit Group, a body of the Organization for Economic Cooperation and Development.

Ex-Im Bank is prohibited from supporting exports to foreign buyers that are currently subject to an AD or CVD order, or a suspension agreement arising from an AD/CVD investigation, if the transaction would result in the production of substantially the same product that is the subject of such AD/CVD order or suspension agreement.¹² This prohibition is country and firm specific (i.e., the prohibition applies to each country and firm that is the subject of the order).

2. Section 201 Injury Determinations: Unless the Board of Directors of Ex-Im Bank applies the Section 2(e)(3) exception (screen 5), Ex-Im Bank is prohibited from supporting exports to foreign buyers covered by a Section 201 injury determination by the International Trade Commission (ITC), if the transaction would result in the production of substantially the same product that is the subject of the ITC injury determination. The following additional procedures apply to transactions subject to Section 201 Injury Determinations:

a. Procedure for determining the length of time that a Section 201 injury determination prohibits Ex-Im Bank financing: Once the ITC has issued a Section 201 injury determination, the length of time during which this prohibition will apply to Ex-Im Bank's ability to finance transactions that establish or expand production capacity of a product subject to such Section 201 injury determination will match the relief period implemented by the President. In the case where the President does not implement relief for a product, the length of time for Ex-Im Bank's prohibition of support is the lesser of the ITC's recommended relief period or the longest period of relief time implemented by the President for a similar product(s).

b. Procedure for determining if a tie vote by the ITC on a Section 201 injury determination prohibits Ex-Im Bank financing: In the event that a vote by the ITC on a Section 201 injury determination results in a tie, the President's determination as to whether to consider an equally divided ITC determination to be an affirmative injury determination is controlling for purposes of applying the prohibition on Ex-Im Bank financing.

3. Anti-Circumvention: Ex-Im Bank will not provide financing support if the Bank determines that providing such support will facilitate circumvention of a specified trade measure as described in 1 and 2 above. For example, an integrated manufacturer with a product subject to a specified trade order should not be eligible for Bank financing for the purpose of transforming or further processing the product under order into a related product, which is not subject to an order.

4. Substantially the Same Product: Ex-Im Bank staff will make case-by-case determinations on which items could be reasonably viewed as "substantially the same product" as those covered by an applicable trade measure. Under this approach Ex-Im Bank would start with product descriptions, and then consult with a number of sources, including other USG agency industry experts, trade associations and other relevant experts to see if

¹² During consideration of an application for financing, when Ex-Im Bank staff determines that the transaction covered by such application involves products subject to the trade measures listed in Section 2(e)(2)(A), staff shall notify all Board members by memorandum that such an application is pending and provide a brief summary and status report.

broader interpretations are appropriate in the case. Procedurally, judgments as to reasonableness shall be inclusive rather than exclusive.¹³

5. Section (2)(e)(3) Exception: Section 2(e)(3) of the Charter provides that the economic impact prohibitions shall not apply in any case where the Board of Directors of Ex-Im Bank determines that the transaction is likely to have net economic benefits. However, in transactions in which trade measures are applicable, Ex-Im Bank automatically denies a transaction, unless the applicant shows that the exporter and/or the U.S. economy will be extraordinarily harmed by denial of Ex-Im Bank support. This test is more restrictive than the statutory exception, and extraordinary harm is narrowly construed to require a showing of irreparable harm such as imminent bankruptcy.

6. Public Notice and Comment: Since transactions in which trade measures are applicable are subject to automatic prohibition, detailed economic impact analysis is not performed and a notice and comment period is not provided. In all other circumstances (Categories A and C) in which the exception may be applicable, a full economic impact analysis including notice and comment would already have occurred. Although the exception is limited in transactions involving trade measures to circumstances where the applicant demonstrates extraordinary harm to the exporter and/or the U.S. economy, a 14-day notice and comment period is required prior to Board action on transactions subject to the trade measure prohibition to provide an opportunity for interested parties to comment on those issues and on the economic impact of applying the exception.¹⁴ Upon written request, the comment period shall be extended to a period of not more than 30 days.

a. Procedure for Notice and Comment: Ex-Im Bank will provide a 14-day notice and comment period prior to Board action on transactions subject to the trade measure prohibition. Ex-Im Bank will announce its intention to consider a transaction subject to the trade measure prohibition and the potential applicability of the Section (2)(e)(3) exception on Ex-Im Bank's website and in the Federal Register. Ex-Im Bank will follow the notice and comment procedures outlined in Category A, 3a (see pages 3 and 4 of these procedures).

Category C: Processing Transactions Subject to Specified Preliminary Trade Actions

1. Preliminary AD/CVD Injury Determination: On all transactions over \$5 million to an entity subject to a preliminary AD/CVD injury determination, if the transaction would result in the production of substantially the same product that is covered by the preliminary determination, Ex-Im Bank will provide a 14-day notice and comment period. To ensure the

¹³ After Ex-Im Bank staff has made its judgment as to whether goods are "substantially the same product," staff shall notify all Board members of its decision in writing. In the case of transaction where staff decides that the product is not "substantially the same" and the transactions will be considered through Individual Delegated Authority, by the Credit Committee, or by the Board, the appropriate memorandum shall include a brief summary of the staff decision and rationale. In the case of transactions where staff determined that the product is "substantially the same," staff shall notify all Board members by memorandum as to the decision and the status of the application (e.g., recommendation for denial, withdrawn, pending).

¹⁴ In addition to the standard 14-day notice and comment period described below, Ex-Im Bank will notify and extend an opportunity for a briefing to Ex-Im Bank's Ex Officio Directors and other relevant agencies.

efficient processing of small business transactions a \$10 million threshold will apply to the working capital program and short-term insurance transactions. The information obtained from this comment period will be used by Ex-Im Bank to help determine whether a transaction is likely to result in a significant increase in imports of substantially the same product covered by the preliminary determination¹⁵ and to have a significant adverse impact on the domestic industry. In addition, a full economic impact analysis will be conducted if Ex-Im Bank staff determines, based on such comments and other available information, that the transaction poses a risk of substantial injury (1% test).¹⁶

2. Section 201 Investigations: On all transactions involving more than \$10 million that involve products for which a Section 201 investigation has been initiated at the request of the President, the U.S. Trade Representative, the Senate Committee on Finance, the House Committee on Ways and Means or by the ITC on its own motion, Ex-Im Bank will provide a 14-day notice and comment period. The information obtained from this comment period will be used to help Ex-Im Bank determine whether a product is likely to be in oversupply at the time the resulting production will come on-line. Ex-Im Bank shall consider Section 201 investigations as indicators of oversupply in making economic impact determinations in all transactions involving more than \$10 million. A full economic impact analysis will be conducted if Ex-Im Bank staff determines, based on such comments and other available information, that the transaction poses a risk of substantial injury (1% test).

3. General Procedure for Public Notice and Comment for Preliminary AD/CVD Injury Determinations and Section 201 Investigations: As soon as possible after Ex-Im Bank staff determines that a preliminary AD/CVD determination or a Section 201 investigation applies to a transaction, an announcement of the transaction will be made on Ex-Im Bank's website and in the Federal Register. Ex-Im Bank will follow the notice and comment procedures outlined in Category A, 3a (see pages 3 and 4 of these procedures).

4. Risk of Substantial Injury: If Ex-Im Bank staff determines, based on the comments received during the comment period and other available information, that the transaction would enable a foreign buyer to establish or increase foreign production by an amount that is equal to or greater than 1% of U.S. production (of the same, similar, or competing good), the transaction will be subject to further economic impact analysis. In determining "substantial injury", the concept referred to as "proportionality" (i.e., where the relation of the dollar value of the Ex-Im Bank financed U.S. component to the overall cost of the transaction/project measures whether the 1% screen has been met) shall not be the only element used to avoid a full economic analysis. The procedures used for conducting the detailed economic analysis shall be the same as those set forth under Category A, screen 3. The public notice and comment under this Category C shall be used by Ex-Im Bank to inform its judgment during the detailed economic impact analysis.

¹⁵ Ex-Im Bank will utilize the procedures described under Category B, screen 4 in making determinations with respect to substantially the same product.

¹⁶ To determine whether a proposed transaction exceeds the \$5 million and \$10 million thresholds, the Bank will follow the same aggregation procedures established for Category A transactions. See page 3 of the Economic Impact Procedures.