

Ch. VI Public Policies: Stakeholder Considerations

Section A: Introduction

Ex-Im Bank is the official export credit agency of the U.S. government. In this capacity, the Bank is directed by Congress to provide export financing assistance to the U.S. exporting community that is competitive with, and serves to neutralize, financing offered by the major foreign government ECAs. Congress has effectively found that government intervention is in the national interest if it is to ensure that purchase decisions be made on the basis of market factors such as price, quality and service.

Hence, Ex-Im Bank is entrusted with public funds to carry out its mission. In exchange for the access to public funds, Ex-Im Bank is expected to adhere to broader U.S. policy in a variety of areas. Some areas are specified in Ex-Im Bank's Charter (e.g., economic impact and PR 17 on U.S. shipping). Other issues, such as content requirements, reflect the intent of Congress regarding the support of U.S. jobs and attempts to balance U.S. labor and industry interests.

In general, other G-7 ECAs have few such broad public policy considerations, with the exception of domestic content guidelines. Hence, these public policy interests represent those features of Ex-Im Bank financing that are most challenging from a competitive perspective.

The following sections of this chapter present a contextual description of each public policy aspect and some general comments on the competitive implications related to each issue.

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Section B: Economic Impact

INTRODUCTION

Economic impact refers to the Congressional mandate that requires Ex-Im Bank to assess whether the extension of its financing is likely to cause substantial injury to U.S. industry or would result in the production of a good that is subject to a trade measure⁷. A transaction that has either one of these two characteristics may be denied Ex-Im Bank support. Ex-Im Bank's economic impact procedures are designed to ensure that all of the transactions it supports meet the Bank's Congressional mandate. Cases subject to analysis include all capital equipment transactions that enable foreign buyers to establish or expand production capacity of goods that may compete with U.S. domestic production.

EX-IM BANK'S POLICY AND PRACTICE

The requirement to consider the adverse economic impact of transactions was first incorporated into Ex-Im Bank's Charter in 1968, with subsequent legislation in 1974, 1978, 1986 and 1988. In January 1999, Ex-Im Bank adopted an economic impact policy that required that transactions resulting in the production of a good subject to an anti-dumping (AD) or countervailing duty (CVD) order would be subject to denial based upon economic impact. In 2001, Ex-Im Bank revised its economic impact policy to add section 201 trade measures under the Trade Act of 1974 and suspension agreements from AD/CVD investigations as relevant trade measures that could result in the denial of a transaction. Congress's June 2002 amendments to Ex-Im Bank's Charter codified, with some modifications, the trade measures prohibitions. In addition, to increase the operating transparency of the Bank, Congress also now requires the Bank to provide a public notice and comment period for those transactions that result in the manufacture of a product subject to a relevant preliminary trade action.⁸

G-7 ECAS' POLICIES AND PRACTICES

With respect to the other G-7 ECAs, Ex-Im Bank's economic impact policy is unique. Several ECAs have a broad economic mandate that the transactions they support should benefit their domestic economies. However, only Ex-Im Bank weighs the potential negative economic impacts of its support against the benefits and considers the relevance of trade measures to a transaction, both of which could result in the denial of support. As a consequence, Ex-Im Bank's economic impact mandate initiates a process that has operational consequences (requires Ex-Im

⁷ Anti-dumping (AD) or countervailing duty (CVD) orders, suspension agreements arising from AD/CVD or section 201 injury determinations under the Trade Act of 1974.

⁸ A public notice and comment period is required when there is: 1) a relevant preliminary AD/CVD injury determination and Ex-Im Bank support exceeds \$5 million (or \$10 million for short-term insurance and working capital transactions); or 2) a petition for a section 201 investigation and Ex-Im Bank support exceeds \$10 million.

Bank to dedicate staff and other resources to the issue), may result in processing delays and carries the real risk of denial.

SUMMARY DATA

In FY2002, the Bank processed 491 medium-term insurance and medium- and long-term loan and guarantee transactions. Of these transactions, 238 were applications for loans and guarantees at the Preliminary Commitment (PC) and Final Commitment (AP) stages, and 253 were applications for medium-term insurance. An economic impact analysis was required in 69 of these cases, or 14% of the total number of transactions acted upon. Six of these 69 transactions required a detailed economic impact analysis. Of these six cases, one was eventually denied because of an applicable trade measure, two were found to have a net positive economic impact, and three transactions were delayed, resulting in the applicants' no longer pursuing Ex-Im Bank support.

Since January 1999, Ex-Im Bank's economic impact policy has resulted in the Board of Directors denying nine transactions because of an applicable AD/CVD order or section 201 injury determination (six in FY1999, two in FY2000 and one in FY2002). No transactions have been affected by the notice and comment period for applicable preliminary AD/CVD injury determinations since the Congress amended the Charter in June 2002.

EXPORTER AND BANKER VIEWS

Before adopting the new economic impact procedures in response to the June 2002 changes in Ex-Im Bank's Charter, the Bank held an open meeting for interested parties to express their opinions about how the proposed economic impact procedures would affect them. Several U.S. exporters expressed concern that Ex-Im Bank would deny transactions that other ECAs could support, making them less competitive. In response to the exporter and banker survey, one bank noted that the economic impact policy resulted in the denial of a \$16 million transaction. Additional survey comments included a bank noting that some of its clients preferred not to work with U.S. companies because of Ex-Im Bank's economic impact policy. One exporter reported that the economic impact policy (and other policies) put greater restrictions on Ex-Im Bank vis-à-vis other ECAs and noted that these restrictions make Ex-Im Bank less competitive, because they result in case processing delays and the possibility of lost or denied transactions.

CONCLUSION

With expanded procedures incorporated into Ex-Im Bank's practice as a result of the 2002 Charter renewal, the volume of potential Ex-Im Bank transactions that could be subject to additional review has increased. No other G-7 ECA has similar requirements, but the issue applies to only 10% to 20% of medium- and long-term activity. Therefore, the economic impact element could be seen as a limited detractor on Ex-Im Bank's competitiveness, leaving Ex-Im Bank a notch below the typical G-7 ECA.

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Section C: Foreign Content

INTRODUCTION

Foreign content is the portion of the export that originated both outside of the United States and the buyer's country, whereas local costs are incurred in the buyer's country. U.S. content is the portion of the export that originated in the United States.

EX-IM BANK'S FOREIGN CONTENT POLICY AND PROCEDURES

In keeping with its objective of maintaining or increasing U.S. employment through the financing of U.S. exports, the Bank has adopted a policy to ensure that its export financing targets the U.S. content associated with goods and services exported from the United States. In order to accommodate the financing of U.S. export contracts that contain goods and services that are not completely U.S.-produced, the Bank's policy allows for the inclusion of some foreign content within the scope of a U.S. export contract with certain restrictions and limitations. Ex-Im Bank's policy on non-U.S. content stems from its Charter but has no specific statutory requirement *per se* as it relates to non-U.S. content; rather, it reflects a concerted balance between labor and industry interests.

For all medium- and long-term transactions, the Bank's foreign content policy *restricts* the scope of its financial support to cover only those products that are shipped from the United States to a foreign buyer, and then it *limits* the level of its support to the **lesser of**: (i) 85% of the value of all eligible goods and services contained within a U.S. supply contract; or (ii) 100% of the U.S. content of that export contract.

G-7 ECAS' POLICIES AND PROCEDURES

In general, all export credit agencies (ECAs) seek to maximize the national benefit for their respective activities. However, context for that evaluation varies widely and has led to very different content policies.

All OECD Participants recognize that each country has developed its content policy to further unique domestic policy goals. Hence, the OECD Participants have not pursued common ECA rules on foreign content, and there are no Arrangement guidelines governing the scope or design of foreign content in an officially supported export credit. Thus, given the vastly different sizes of the G-7 economies and their respective views of national interest, it is not surprising that foreign content policies vary widely and substantially.

Figure 28: ECA Foreign Content Support – Comparison of Policy Parameters

	Ex-Im Bank	EDC	European ECAs	JBIC & NEXI
Application of the policy	In aggregate per U.S. supply contract	In aggregate	In aggregate	In aggregate
Requirement to ship foreign content from the ECA's country?	Yes	No	No	No
Policy implications if foreign content exceeds 15%	Cover reduced	Decided on a case-by-case basis	Decided on a case-by-case basis* *Cover is not reduced for transactions that include up to 30% EU content	Decided on a case-by-case basis *Cover is not reduced for transactions that include up to 70% foreign content
Minimum amount of domestic content	No minimum threshold	If domestic content is less than 50%, coverage terms are set on a case-by-case basis	Generally, domestic content needs to be at least: (i) 85%-90% in the case of non-EU foreign content; and (ii) 60%-70% in the case of EU foreign content	If domestic content is less than 30%, coverage terms are set on a case-by-case basis

Figure 28 compares the main aspects of the content policies of the G-7 ECAs in 2002. The data illustrate that Ex-Im Bank's content requirements do appear far more restrictive than Canada's and Japan's but are not so different overall than those of its European counterparts. The following two points should be noted:

- Most ECA policies are not transparent. In practice, ECAs are not always willing to provide the maximum amount of support for foreign content, particularly in the higher risk markets where ECAs generally have country exposure limits.
- Minimum domestic content requirement: To be eligible for any support, Ex-Im Bank does not have any minimum of domestic content required, while European ECAs

require 60%-90% domestic or EU content. Nevertheless, **Figure 28** shows that though Ex-Im Bank's implementation procedures appear to be generally competitive with the Europeans, the requirement that the foreign content be shipped from the United States is a constraint unique to Ex-Im Bank.

SUMMARY DATA

As shown below in **Figure 29**, the average percent of Ex-Im Bank's foreign content per transaction stayed generally within the 10%-12% range for the last five years. However, the export value (as a percentage) for transactions containing foreign content has increased significantly, from 81% in 2001 to 95% in 2002. This increase is due to the fact that in 2002, Ex-Im Bank support for large aircraft constituted approximately one half of Ex-Im Bank's medium- and long-term activity. Large aircraft transactions are typically high dollar value and include, on average, 11% eligible foreign content.

Figure 29: Recent Trends in Ex-Im Bank Foreign Content Support for Medium- and Long-Term Activity*

	Authorizations	1998	1999	2000	2001	2002
Total activity	Export value (\$MM)	\$6,612	\$10,500	\$9,455	\$7,109	\$8,212
	Number of transactions	225	211	267	227	222
Transactions containing foreign content	Export value (\$MM)	\$5,602	\$9,001	\$7,759	\$5,757	\$7,842
	% Of total value	85%	86%	82%	81%	95%
	Number of transactions	81	92	100	80	96
	% Of total number	36%	44%	37%	35%	43%
Foreign content	Volume (\$MM)	\$542	\$1,076	\$805	\$631	\$836
	Average per transaction	10%	12%	10%	11%	11%

* These figures exclude medium-term insurance. **Appendix F** provides a more detailed listing of Ex-Im Bank foreign content support for medium- and long-term transactions for 2002 (excluding medium-term insurance) at the time of authorization.

EXPORTER AND BANKER VIEWS

Of the 20 survey respondents who commented on the Bank's foreign content policy, 18 indicated that the policy was uncompetitive. Several exporters indicated that the European ECAs are more flexible in terms of directly financing other European Union countries' content as domestic

content. On the positive side, exporters acknowledged that the revised foreign content policy procedural changes were “a significant improvement” over the former procedures.

CONCLUSION

Ex-Im Bank’s approach to foreign content appears to be more transparent and predictable than the approaches taken by our G-7 counterparts. Moreover, the Bank’s approach is viewed as more competitive in 2002 than before the changes in 2001. On the other hand, the other ECAs still have more flexibility and a broader band within which they permit foreign content to be included. Consequently, Ex-Im Bank is marginally competitive as compared to the typical ECA competitor with regard to allowable foreign content.

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Section D: Local Costs

INTRODUCTION

In contrast to foreign content, the OECD Arrangement sets the basic parameters on official local cost support, which includes the ability of ECAs to provide local costs support for costs related to an officially supported export transaction. This support may not exceed the amount of the cash payment, typically 15%. All ECAs adhere to the local costs parameters set forth in the Arrangement. In fact, most major ECAs allow local costs support only when necessary. Their ability to do future business is constrained by country exposure limits and thus requires that local costs be explicitly included in the scope of the exporter's contract, i.e., for which the exporter bears the entire payment risk.

EX-IM BANK'S LOCAL COST POLICY AND PROCEDURES

When Ex-Im Bank provides medium- or long-term guarantee, loan or insurance support for U.S. exports, it may also provide up to 15% of the value of the U.S. exports for project-related local costs for goods and services that are directly related to the U.S. exporter's contractual responsibilities.

In early 2001, Ex-Im Bank approved changes to its local costs policy and procedures. While maintaining the 15% maximum, the changes were intended to make local costs support more readily available, provide greater flexibility for local costs financing in limited recourse project finance transactions and allow the exporter to minimize uncompetitive expenses associated with unintended taxes on locally procured goods and services. This change enabled Ex-Im Bank to capitalize on the absence of country exposure limits, versus our G-7 counterparts who regularly take this factor into consideration.

G-7 ECAS' POLICIES AND PROCEDURES

Nonetheless, there are some ECAs that would like to revise and/or abolish the local cost financing limitation in the OECD Arrangement. Most notably, the Norwegians recently proposed abolishing the OECD local cost limitations based on their view that: (1) such restrictions are no longer necessary to protect the local banking system; and (2) lifting the limit on official support for local costs could reduce the buyer countries' payments in foreign currency.

SUMMARY DATA

As **Figure 30** illustrates, since the 2001 local costs changes, there has been a significant increase in the number of transactions (but a modest increase in dollar volume) that have received local costs support. This increase may be attributed to the fact that the revised procedures provided more small and medium-sized U.S. exporters with greater certainty that local costs support would generally be available provided that the local costs are linked to the U.S. exporter's ability to secure the export sale.

Figure 30: Recent Trends in Ex-Im Bank Local Costs Support

	Authorizations	2000	2001	2002
Total medium- and long-term activity	Export value (\$MM)	\$9,455	\$7,109	\$8,212
	Number of transactions	267	227	222
Medium- and long-term activity containing local costs	Number of transactions	11	18	31
	% Of total number	4%	8%	14%
Local costs	Volume (\$MM)	\$183	\$192	\$213
	% Of total medium- and long-term activity	2%	3%	3%

EXPORTER AND BANKER VIEWS

More than half of the respondents who commented on the local costs policy in Ex-Im Bank's competitiveness survey indicated that the Bank's local costs policy in 2002 was as or more competitive than those of its counterparts. Exporters and bankers alike indicated the 2001 changes "have improved our ability to compete."

CONCLUSION

Based on both comparative information regarding our G-7 ECA counterparts and on the exporting community's actual experience with Ex-Im Bank's revised local costs policy, Ex-Im Bank is considered to be fully competitive with the best ECAs in its local costs support.

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Section E: U.S. Shipping Requirements

INTRODUCTION

In accordance with policies implementing Public Resolution No. 17 (PR 17) of the 73rd Congress, certain ocean-borne cargo financed by loans or credit guarantees from a U.S. government instrumentality, such as Ex-Im Bank, must be transported on U.S. flag vessels, unless a waiver of this requirement is obtained from the U.S. Maritime Administration (MARAD). Exports financed through Ex-Im Bank's medium- and long-term loan and long-term guarantee programs are subject to the U.S. flag vessel requirement, while exports financed under Ex-Im Bank's short- and medium-term insurance and medium-term guarantee programs are not required to be shipped on U.S. flag vessels.

PR 17 and other cargo preference legislation exists to ensure the continued viability of the U.S.-flagged commercial fleet. This fleet provides American jobs and essential marine services at U.S. ports and is an essential national security asset during times of war or national emergencies. Without cargo preference, the U.S. commercial fleet may decline due to competition from vessels operating under a "flag of convenience", because such vessels are subject to lower taxes and less stringent safety, labor and environmental standards. From the perspective of U.S. exporters, however, the U.S. flag vessel requirement can make U.S. exports less competitive vis-à-vis foreign competitors who have no similar requirements due to, among other things, the higher rates charged by U.S. shippers.

POLICY AND PRACTICE

Exporters are responsible for ensuring that they comply with Ex-Im Bank policy implementing PR 17. Pursuant to PR 17, upon request, MARAD may waive the U.S. flag vessel requirement on a case-by-case basis. There are four types of waivers:

- **General Waiver** allows the recipient country's merchant fleet to carry up to 50% of the cargo when the recipient country provides similar treatment to U.S. flag vessels in its foreign trade.
- **Statutory Waiver** is granted when it appears that a U.S. flag vessel will not be available within a reasonable amount of time or at a reasonable rate.
- **Compensatory Waiver** relates to situations in which goods are shipped on non-U.S. flag vessels, in honest error or through extenuating circumstances, prior to obtaining U.S. government financing, where such goods are otherwise subject to the U.S. flag vessel requirement. In such circumstances, the exporter may apply for a compensatory waiver whereby the exporter agrees with MARAD to ship an equivalent or greater amount of non-U.S. government impelled cargo on U.S. flag vessels within a specific time period.

- **Conditional Waiver** is granted for specific oversized cargoes if no U.S. flag vessel service capable of accommodating multiple shipments of oversized cargoes will be available during a proposed project time period.

If a waiver is obtained, Ex-Im Bank may provide financing for goods shipped on vessels of non-U.S. registry.

G-7 ECAs' POLICIES AND PROCEDURES

After consulting with the other G-7 ECAs, it has been determined that none of the other G-7 ECAs have similar cargo preference restrictions.

SUMMARY OF WAIVER DATA

Data on Ex-Im Bank financed loans provided by the Maritime Administration indicate that over the last five years (1998- 2002), 100% of the general waivers requested have been granted and approximately 93% of statutory waivers have been approved. Specifically, for general waivers, a total of 30 requests were submitted over the five-year period with none denied. For statutory waivers during the same time period, 362 requests for waivers were submitted with 23 denied and the remaining 339 approved. The highest number of statutory waiver requests submitted to MARAD in any year since 1990 was in 1996, totaling 327. Since then, the number of requests has declined from 326 in 1997, 137 in 1998, 66 in 1999, 76 in 2000, 60 in 2001 and 23 in 2002.

VIEWS OF INTERESTED PARTIES

The following comments are from both exporters on the Ex-Im Bank Advisory Committee and respondents to the banker and exporter competitiveness survey:

- Shipping costs for non-container cargo on U.S. flag vessels can be more than double that of non-U.S. flag carriers, and there is no clear definition or application of MARAD's "reasonable costs" doctrine, leaving the exporter open to seriously uncompetitive pricing.
- The age of the U.S. fleet makes the vessels very difficult to insure. While Ex-Im Bank does not require cargo insurance as a condition of cover, exporters feel the need to obtain it for their own risk management purposes.
- Lack of adequate U.S. flag vessels and ship-based loading facilities for the weights and dimensions of the goods being exported have caused exporters to risk damage to goods being shipped on vessels of inadequate dimensions.
- The inability to ship directly from the desired point of departure to the desired port of delivery, solely because of unavailability of U.S. flag carriers in a given port, causes exporters to pay much higher transportation costs, and it lengthens the shipping time and risks damage to sensitive goods.

- One exporter has reported it expects to lose export sales potentially financed by Ex-Im Bank due to higher costs associated with having to comply with PR 17.
- Another exporter explained that when they have a contract valued at greater than \$10 million, they now manufacture and source this equipment from their Canadian production facility rather than from the U.S. facility due specifically to PR 17 requirements. This exporter further explained that, with regard to the contracts that they now source from Canada (i.e., over \$10 million), they have also switched their purchase of components from U.S. suppliers to Canadian suppliers.

On the other hand, maritime unions and other supporters of cargo preference requirements believe that:

- Cargo preference costs are not a significant burden to Ex-Im Bank operations or to the competitiveness of Bank generated projects.
- Cargo preference may help U.S. exporters meet Ex-Im Bank domestic content requirements.

CONCLUSION

As a condition of Ex-Im Bank's direct loan and long-term guarantee financing, U.S. exporters are required to comply with U.S. flag vessel requirements. As no other G7 ECA has similar requirements related to shipping, the cargo preference rules clearly create competitiveness issues for U.S. exporters. Moreover, for large capital goods that cannot use container shipping, U.S. line availability and cost are frequently a competitive problem for U.S. exporters. While MARAD data indicate that the waiver process may be an effective means of addressing such problems, exporters believe that the U.S. flag vessel requirement has a significant impact on their competitiveness. Hence, the U.S. flag vessel equipment renders Ex-Im Bank much less competitive than our major ECA counterparts in this area.

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Section F: Ex-Im Bank's Public Policy Competitiveness

Public policy requirements tend to be, for the most part, unique to Ex-Im Bank vis-à-vis the other G-7 ECAs. With the exception of local costs support, where Ex-Im Bank is as competitive as its official counterparts, the other public policy factors can and have had an adverse effect on the overall competitiveness of transactions.

However, because any one or a multiple of these requirements affects only a certain portion of cases in any given year (vs. broad and deep impact), the overall impact of the policy factor on Ex-Im Bank support is less than the impact of the core financing elements. This limited impact is reflected in the relatively lower weighting that this category receives (see **Appendix A**), as shown in the summary report card in Chapter 7.

Figure 31: Grading of Ex-Im Bank's Public Policy Competitiveness

Policy	G-7 ECAs have similar constraint (Y/N)	Grade
Economic Impact	N	B
Foreign Content	Y	B+
Local Costs	Y	A+
PR 17	N	C
Total Average Grade		B+