Chapter 6: Public Policies – Stakeholder Considerations
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 entity, 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. 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.

The stated goal of PR-17 and other cargo preference legislation is to support the continued viability of the U.S.-flagged commercial fleet, which among other things, serves as an essential national security asset during times of war or national emergency. From the perspective of U.S. exporters, however, cargo preference requirements can make U.S. exports less competitive vis-a-vis foreign competitors, because, among other things, foreign competitors have no similar requirements and U.S.-flagged shippers generally charge higher rates than their competitors.

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 Waivers** may be granted to a recipient country's merchant fleet to carry up to 50% of the cargo under an Ex-Im Bank supported transaction, when the recipient country agrees to provide similar treatment to U.S.-flagged vessels in its foreign trade.

- **Statutory Waivers** may be granted if MARAD determines that a U.S.-flagged vessel will not be available within a reasonable amount of time or at a reasonable rate.

- **Compensatory Waivers** may be granted in situations where goods otherwise subject to the U.S.-flagged vessel requirement are, in honest error or through extenuating circumstances, shipped on non-U.S.-flagged vessels, prior to obtaining U.S. government financing. In such circumstances, MARAD may grant a waiver where the exporter agrees 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 Waivers** may be granted for specific over-dimensional cargoes if MARAD determines that no U.S.-flagged vessel service capable of accommodating multiple shipments of over-dimensional 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 Practices

None of the other G-7 ECAs have similar cargo preference restrictions.

Summary Data

Figure 30 illustrates the number of waivers approved and denied in the last four years.

Figure 30: PR 17 Waiver Data

Waivers		2000	2001	2002	2003	Total
General Waivers	Approved	8	4	3	0	15
	Denied	0	0	0	0	0
Statutory Waivers	Approved	74	54	22	29	179
	Denied	2	6	1	5	14
Compensatory Waivers	Approved	13	7	10	11	41
	Denied	0	0	0	0	0
Conditional Waivers	Approved	0	7	0	0	7
	Denied	0	0	0	0	0

According to MARAD, all applications for statutory waivers that were denied were due to a determination by MARAD that U.S.-flagged vessels were available to carry the cargo within a reasonable amount of time and/or at a reasonable rate.

Exporter and Lender Survey Results

Ex-Im Bank customers who had experience with MARAD PR 17 requirements on specific transactions indicated that this policy had a negative impact on their business. Two exporters cited the MARAD requirement as the source of multiple lost sales, all of which occurred in the Latin American markets. The following comments, taken from the survey illustrate the strong views that some Ex-Im Bank customers have with respect to PR 17:

- "The MARAD requirement is a bear and really a turn off to our exporters I have dealt with and adds additional burden, expense and complexity to their export."

- "PR 17 shipping requirements are putting exporters at a disadvantage due to the higher cost of using U.S. flag carriers and the administrative work placed on exporters/borrowers to obtain a waiver."

- "MARAD policies continue to cost lost sales from customers."

- "MARAD requirements [are] known to be one of the main reasons sponsors, exporters, and borrowers do not want to use Ex-Im. The cost of U.S. flagged vessels and hassle of trying to get a MARAD waiver make the export uncompetitive (the deal becomes too uncertain)."

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. The cargo preference rules do appear to present a competitive problem for U.S. exporters, because none of the other G-7 ECAs have similar requirements related to shipping. Moreover, for large capital goods that cannot use container shipping, U.S. line availability and cost are frequently cited as a competitive problem for U.S. exporters. The MARAD waiver data appear to present the waiver process as an effective means of addressing any potential hardship or limitation placed on exporters by PR 17. However, Ex-Im Bank's customers' perception of the costs of PR 17 to their business strongly indicates that the U.S. flag shipping requirements has a negative influence on Ex-Im Bank's competitiveness.