

John E. Robson
Chairman and President

July 16, 2001

The Honorable Doug Bereuter
United States House of Representatives
2184 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bereuter:

We are pleased to report to you that the Export-Import Bank of the United States and the U.S. Treasury Department have reached agreement on the principles and procedures for administration of the Tied Aid Credit Program which are attached hereto.

We are optimistic that these will facilitate a responsible but purposeful administration of the Tied Aid War Chest, and we look forward to continuing to work with you, your committee and other members of Congress.

John E. Robson
Chairman
Export-Import Bank of the United States

John B. Taylor
Under Secretary (International Affairs)
U.S. Department of the Treasury

PRINCIPLES AND GUIDANCE ON THE TIED AID WAR CHEST

Principle #1: The Tied Aid War Chest is a resource that should be used purposefully and selectively, with the simple standard being that applications would be where there is a clear and precise purpose evidenced. Such use not only maximizes the probable value of its employment, but also enhances the actual deterrence value of the amounts remaining.

Principle #2: The War Chest is not to be applied “offensively”; that is, there will be no initiation of Tied Aid using the War Chest. Rather, the War Chest will be used to counter situations where there is a reasonable evidentiary basis that there is (either formally or informally) a foreign tied aid offer. In countering such offers the U.S. offer is not necessarily constrained by the terms of the original offer. Moreover, the “no initiation” principle does not preclude technical initiation when that approach is the only way to effectively counter the offer of another country.

Principle #3: A prime use of the War Chest is to “police” the Helsinki accords – aggressively counter such actions as *defacto* tied aid (so called “untied” aid), absence of mandated notification rules, or refusal to abide by Consultation findings. In this context, Treasury has an explicit right (or “put”) to recommend Tied Aid use for specific cases – or categories of cases – in support of Tied Aid Negotiating objectives.

Principle #4: Another prime (not secondary) use is in defending U.S. exporters from examples or patterns of use that effectively (whether intentional or not) form a threat to long-run U.S. market share/access in emerging markets. The idea is to respond to reasonable evidence of tied aid use that may create long-run trade advantage for foreign exporters.

Principle #5: Any use of the War Chest should be for a project which meets Ex-Im Bank’s environmental guidelines.

TIED AID DEFINED

Tied aid is government-to-government concessional financing of public sector capital projects in developing countries. Tied aid is provided by the aid agencies of OECD member governments, sometimes in joint financing packages with their national export credit agencies (their Ex-Im Banks), or by their export credit agencies alone. Tied aid terms are much more concessional than the typical export credit terms offered by Ex-Im Bank and its counterparts. Tied aid usually involves total maturities longer than 20 years; interest rates equal to one-half to two-thirds of market rates in the currency of denomination; or large grants (equal to 35 percent or more of contract value) offered in conjunction with regular export credits. Regular export credits – involving terms up to and including 10-12 years – are not tied aid, and are not the subject of this Fact Sheet.

PRINCIPLES FOR USE OF THE TIED AID WAR CHEST

1. The Tied Aid War Chest is a resource that is governed by the simple standard of purposeful and selective use to deter or defend against foreign tied aid that distorts trade, and it is utilized so as to maximize the value of these resources. A prime use of the War Chest is to leverage OECD

negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, and to police existing multilateral rules. Another prime use is to defend U.S. exporters from examples or patterns of foreign tied aid use that effectively (whether intentional or not) form a significant threat to U.S. market share/access in emerging markets. In this regard, its aim is to deter, or if not possible, to match trade distorting foreign tied aid offers by reopening bid opportunities closed to U.S. exporters by foreign tied aid offers.

2. The War Chest is not to be applied “offensively” to introduce tied aid into an export competition; that is there will be no initiation of tied aid using the War Chest to give exporters an advantage over standard export credits. Rather, the War Chest will be used to counter situations where there is credible evidence that a foreign government is offering tied aid (formally or informally) to distort trade to provide a significant competitive advantage for foreign exporters. The War Chest is not an instrument for the routine support of U.S. exports and jobs. However, the “no initiation” principle does not preclude technical initiation when that approach is the only way to effectively counter the offer of another country.

3. The War Chest will be used aggressively to counter violations of the OECD tied aid rules. In pursuing this objective, the War Chest will be used to counter uses of *de facto* tied aid (so-called untied aid), absence of mandated notification rules, exploitation of the OECD exemption for small projects, or refusal to abide by Tied Aid Consultations findings. More generally, Ex-Im Bank will consider matching a foreign tied aid offer if it receives credible evidence that another OECD member government’s export credit agency or aid ministry is violating the internationally-agreed rules in letter or in spirit for competitive gain. In using the War Chest to leverage negotiations for multilateral agreements to restrict aid-financed trade distortions, Ex-Im Bank will work with Treasury to identify projects or categories of projects where such financing can advance U.S. international negotiating objectives.

4. Any use of the War Chest should be for a project which meets Ex-Im Bank’s environmental guidelines.

IMPLEMENTATION OF WAR CHEST MATCHING POLICY

Determination of Eligibility for Tied Aid Under the OECD Rules

Before a foreign tied aid matching offer will be made, the Treasury Department (in coordination with Ex-Im) will try to determine whether or not the project is eligible for tied aid under the OECD rules. If the project appears ineligible for tied aid, Treasury will “challenge” the project in the OECD in order to have it formally declared ineligible for tied aid. In this case any OECD government would be prevented from offering tied aid for the project under the OECD tied aid rules and competition would proceed on market, or standard Ex-Im Bank, financing terms. If the donor persists in an offer determined by the OECD to be ineligible for tied aid, whether through a direct violation of the rules or by seeking formally to derogate from the rules, Ex-Im Bank will automatically offer matching financing.

If the project is eligible for tied aid, Ex-Im Bank will proceed consistent with timing needs of the case to evaluate the matching request against its principles.

Ex-Im Bank requires credible information about foreign tied aid offers before offering specific matching terms. Ex-Im Bank has access to formal prior notifications of foreign tied aid offers required under OECD tied aid rules. Ex-Im Bank will also review recipient governments' written or oral (e.g., to Ex-Im Bank or U.S. Embassy) confirmations; press reports; and/or copies of correspondence or bilateral aid protocol agreements among foreign exporters, donor, and recipient governments. Ex-Im Bank seeks as much of the following information as practicable regarding each foreign tied aid credit for which matching is requested: specific financing terms (including currencies of denomination, grace periods, repayment terms, interest rates, grant amounts); amounts of tied aid financing; dates of foreign tied aid offers; descriptions of projects; names of donor agencies; names of recipient government agencies; names of foreign exporters.

Ex-Im Bank carefully screens tied aid matching requests. Tied aid matching cases are reviewed by Ex-Im Bank's Board of Directors, with input from other agencies, especially from the Treasury Department, which has policy oversight responsibility. Ex-Im Bank prefers to use standard export credits and does not seek competitive advantage in approving tied aid. Ex-Im Bank does not offer tied aid in order to reserve otherwise competitive contracts solely for U.S. exporters, nor to induce approval of contracts that would not otherwise be approved.

Ex-Im Bank will consider as many of the following factors as may be relevant to a specific case at a particular time.

- ◆ total budget cost of the transaction;
- ◆ clarity and extent of any pattern or trend indicating intent to use tied aid funds to acquire commercial advantage for specific exporters or products;
- ◆ clarity and extent of any pattern or trend indicating intent by donor country to use tied aid funds as part of a national strategy of trade promotion;
- ◆ nature of the export of project in terms of environmental benefits;
- ◆ economic/developmental feasibility of structuring such transactions in the specific market on standard export credit terms;
- ◆ possible effect of the loss of the sale/access to market/market share on the medium- and long-term viability of the supplier(s) as an entity or exporter;
- ◆ small business status of the supplier(s);
- ◆ The existence/reality of International Competitive Bidding procedures;
- ◆ extent of competitor displacement;
- ◆ clarity and specificity of documents relating to the foreign tied aid offer;
- ◆ existence and extent of any pattern or trend in terms of tied aid use by the donor country (i.e., is it a "spoiled market");
- ◆ ability of any War Chest use to be successful within the bounds of the Helsinki rules;
- ◆ ability of any War Chest use to be successful without posing a danger to the parameters to tied aid use derived from case precedent and laid out in the Ex Ante Guidance; and
- ◆ available War Chest resources.

PROCEDURES FOR ENHANCED EX-IM BANK/TREASURY COOPERATION ON TIED AID TRANSACTIONS

1. Ex-Im and Treasury staffs shall promptly share with each other all written materials received from exporters, other government agencies, or third parties relating to proposed or pending Ex-Im Bank tied aid transactions. In particular, Ex-Im staff shall provide Treasury staff with a copy of each tied-aid application received by Ex-Im Bank within 5 business days of receipt.
2. Within 10 business days of receiving an application or inquiry on possible tied aid use, Ex-Im staff (after consulting with Treasury staff) will contact the exporter/applicant and either provide a preliminary indication on the likelihood that the transaction would meet the parameters for tied aid use or identify specific information needed for Ex-Im and Treasury staff to provide such an indication.
3. In order to further the negotiations of improved OECD tied aid rules or enforce compliance with existing OECD rules, Treasury staff may recommend that the Bank support specific tied aid applications or that the Bank support tied aid applications countering certain categories of foreign aid credits.
4. Ex-Im staff shall send Treasury staff a report at each month's end indicating the status of pending and outstanding tied aid transactions. Where there is a significant mid-month status change, Ex-Im staff shall alert Treasury staff
5. Within 30 business days of receipt of a tied aid application, Ex-Im and Treasury staffs shall meet to discuss their preliminary views on the merits of the application and to develop an approach regarding processing of the application.
6. Ex-Im staff shall provide Treasury staff drafts of all tied-aid Board memos at least 10 business days before the projected date for final-memo distribution. Within 5 business days of receiving such drafts, Treasury staff shall either provide written comments to Ex-Im Bank staff or provide written notice that Treasury staff has no comments. Written comments or a statement of Treasury staff views shall be attached to the Board memos. Treasury staff may request in writing that distribution of the final memo and Board consideration of the application be delayed for up to 10 business days in order to provide additional time for consultation or for Treasury to submit written comments. Any such written request received prior to the close of the business day immediately preceding the scheduled Board meeting will be honored by Ex-Im Bank. If, after these consultations, Treasury and Ex-Im staffs disagree on the merits of a particular matching tied aid offer, Board consideration of the application shall be delayed for up to an additional 10 business days during which time the Under Secretary of the Treasury for International Affairs and the Ex-Im Bank Chairman will meet to seek to resolve the differences. Should agreement not be reached following such consultation, within 10 business days the Secretary of the Treasury and the Ex-Im Bank Chairman shall exchange letters setting forth their written views on how agreement might be reached.
7. Ex-Im Bank's Board will not take any final action on any tied aid application unless the

procedures for Ex-Im Bank/Treasury cooperation described above have been followed.

Review

1. Treasury and Ex-Im Bank staff will meet on an annual basis to review and discuss data and trends on the application for and use of the War Chest and the use of tied aid credit financing by foreign governments.
2. Treasury and Ex-Im Bank staff will meet on a semi-annual basis to review Ex-Im Bank and Treasury cooperation with respect to the administration of the War Chest and to discuss any changes to the procedures outlined above that may be necessary to improve cooperation and more effectively administer the program.
3. The Annual Tied Aid Report to Congress, which Ex-Im Bank staff and Treasury together prepare, will henceforth contain a section reviewing Ex-Im and Treasury cooperation with respect to this Understanding.