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EXPORT-IMPORT BANK
OF THE UNITED STATES

December 5, 2008

Re: FOIA Request #20090006

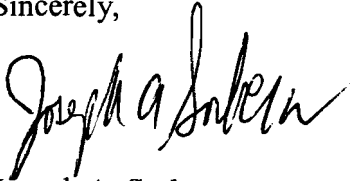
This is in response to your Freedom of Information Act (FOIA) request to the Export-Import Bank of the United States, which we received in our FOIA Office via Electronic Mail on November 3, 2008. You asked for copies of (1): "the Trinidad report completed during the past year by the Office of the Inspector General (OIG)"; and (2): "the report on evaluation of Ex-Im Bank's economic procedures conducted by the OIG".

We are releasing the "Trinidad Report" to you in its entirety. The second item of your request is still a working draft and we are therefore withholding it in its entirety under FOIA Exemption 5 (5 U.S.C. 552(b)(5)), which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency" and which incorporates the deliberative process privilege, whose general purpose is to "prevent injury to the quality of Agency decisions."

You have the right to appeal the decision regarding non-disclosure of withheld information by writing to the Export-Import Bank of the United States, Attention: Assistant General Counsel for Administration, 811 Vermont Avenue, N.W., Washington, D.C., 20571. Any appeal must be received by that office within 30 days from the date of this letter. The phrase "FOIA APPEAL" should appear on the letter and on the outside of the envelope containing the appeal.

Should you have any questions about your request, you may call me at (202) 565-3241 or Ms. Dawn Kral, FOIA Specialist, at (202) 565-3248.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph A. Sorbera". The signature is written in a cursive, flowing style.

Joseph A. Sorbera
FOIA Public Liaison

Enclosure



MICHAEL W. TANKERSLEY
INSPECTOR GENERAL

EXPORT-IMPORT BANK
OF THE UNITED STATES

November 5, 2007

The Honorable Max Baucus, Chairman
Senate Committee on Finance
SD-219 Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Chairman Baucus:

The Export-Import Bank of the United States (Bank) Office of Inspector General (OIG) has completed its analysis of issues related to medium-term credit insurance provided to an ethanol dehydration plant in Trinidad and Tobago (the "Trinidad Project"), and related matters. The OIG initiated this special project at the direction of the Congress. Specifically, Conference Report 109-265, dated November 2, 2005 (the "November 2005 Conference Report"), included the following language:

The conferees direct that the Inspector General shall provide a written analysis to the Committees on Appropriations and other appropriate committees, including the Senate Finance Committee, within 90 days of appointment as to whether loan guarantees provided to an ethanol dehydration plant in Trinidad and Tobago met the conditions of section 2(e)(4) of the Export-Import Bank Act of 1945 or any provision in the Bank's charter. This analysis shall include whether "value added" methodology is routinely used by the Bank to determine whether or not a proposed loan guarantee or export credit meets the statutory test found in section 2(e)(4). The Inspector General shall also make recommendations as to whether it is appropriate to use such methodology in making determinations of substantial injury.

In responding to the November 2005 Conference Report, the OIG focused its attention on the three specific issues which are analyzed herein:

- (1) Whether the medium-term credit insurance provided by the Bank in support of the Trinidad Project met the conditions of Section 2(e)(4) or any other provision of the Export-Import Bank Act of 1945 (the "Charter") (see Appendix A for relevant provisions of the Charter).
- (2) Whether the Bank routinely uses "value added" methodology to determine whether a proposed loan guarantee or export credit meets the statutory test of substantial injury, as specified in Section 2(e)(4) of the Charter.

- (3) Whether it is appropriate for the Bank to use “value added” methodology in making determinations of substantial injury.

Results in Brief

Following is a brief synopsis of our conclusions. A more comprehensive discussion of our findings begins on page 6.

Issue 1. We have concluded that as a legal matter the Trinidad Project met the conditions of Section 2(e)(4) of the Bank’s Charter and other related provisions pursuant to procedures authorized by the Bank in the exercise of its discretion. Under these procedures, as a transaction involving less than \$10 million of financing, (i) the Trinidad Project was not evaluated by the Bank’s staff to determine whether it would result in the production of dehydrated ethanol in an amount that would equal or exceed 1% of United States production and (ii) the transaction was authorized by the Bank’s Credit Committee.

Issue 2. We have concluded that value added methodology is not routinely used by the Bank to determine whether or not a proposed loan guarantee or export credit meets the statutory test found in Section 2(e)(4) of the Charter. We identified no transactions during the period we examined of 2002 to present which have been authorized by the Bank based upon use of value added methodology. Value added methodology was used by the Bank in a 2005 report to Congress, after the Trinidad Project had been authorized (referred to herein as the “2005 Response”), to support the proposition that the Trinidad Project had not resulted in substantial injury to any U.S. producers of ethanol under the standards set forth in the Charter.

Issue 3. Based upon the limited procedures performed in support of this analysis, we have concluded that the use of value added methodology with respect to the Trinidad Project as expressed in the 2005 Response was not appropriate. In particular, the OIG does not believe that it was appropriate for the Bank in its 2005 Response to Congress to suggest that value added methodology be used to determine whether the 1 % threshold set forth in Section 2(e)(4) of the Charter had been crossed.

As noted in a recently released report prepared by the U.S. Government Accountability Office (GAO), *Export-Import Bank – Improvements Needed in Assessment of Economic Impact* (GAO-07-1071) (September 2007 GAO Report), which addressed the Bank’s economic impact procedures more generally, the determination of economic impact required of the Bank pursuant to the Charter is challenging and complex. The OIG is performing additional procedures with the objective of making recommendations to management regarding certain aspects of the Bank’s economic impact procedures based upon further review of the conceptual basis for value added methodology, issues raised in the September 2007 GAO Report and other matters identified by the OIG in the course of preparing this analysis.

Background

In March 2004 the Bank approved the issuance of a medium-term insurance policy with a credit limit of \$9.87 million to support the export of U.S. manufactured equipment to a company in Trinidad and Tobago to be used in a new ethanol dehydration facility. The equipment supported by the Bank was to be used to produce “anhydrous” ethanol by removing water from “hydrous” fuel-grade ethanol produced in Brazil, with the intent of exporting up to 100 million gallons of anhydrous fuel-grade ethanol to the U.S. In accordance with the Bank’s policies, because the amount of financing supported by the Bank was less than \$10 million, no public notice was provided in the Federal Register during the Bank’s consideration of whether to provide financial support for the project, no detailed economic impact analysis was conducted to determine whether the transaction would cause substantial injury to U.S. producers of fuel-grade ethanol and the transaction was approved by the Bank’s Credit Committee.

In September 2004, Senator Charles E. Grassley sent a letter to the Bank questioning the Bank’s support for the Trinidad Project. In particular, Senator Grassley cited the “substantial injury” language contained in Section 2(e)(4) of the Bank’s Charter. Shortly thereafter Division D of the Consolidated Appropriations Act, 2005 (PL 108-447) (2005 Appropriations Act) was enacted, which required that the Bank submit a report to the Appropriations Committees of the Senate and House “containing an analysis of the economic impact on United States producers of ethanol of the extension of credit and financial guarantees for the development of an ethanol dehydration plant in Trinidad and Tobago, including a determination of whether such extension will cause substantial injury to such producers, as defined in section 2(e)(4) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(4)).”

In January 2005 the Bank delivered a report responding to Senator Grassley’s letter and the 2005 Appropriations Act. The 2005 Response considered the question of adverse economic impact relative to the Trinidad Project from three perspectives: (1) substantial injury based on a comparison of the production capacity of the Trinidad Project as a percentage of U.S. production; (2) whether there would be an “oversupply” of ethanol on U.S. markets, which would be exacerbated by the Trinidad Project; and (3) substantial injury as measured by net trade flows, comparing the dollar value of exports being financed against the dollar value of U.S. production that might be “displaced” by imported ethanol from the Trinidad Project. The Bank’s 2005 Response concluded:

- The 100 million gallon per year production of the Trinidad Project would not cause substantial injury to U.S. producers because (i) the Bank supported equipment did not produce ethanol, but only added value to an existing stock of fuel grade ethanol by reducing its water content and (ii) the exported equipment would add only 10% to the value of the final product and therefore only 10% of the output, or 10 million gallons, should be considered as “associated” with the Bank’s support. When 10 million gallons was measured against U.S. production of 2.8 billion gallons, the resulting 0.35% of U.S. production was described in the 2005 Response as being substantially below the 1%

threshold of Section 2(e)(4) of the Charter. We note that this determination represented the application of “value added” analysis and that without the application of value added analysis the annual output of the Trinidad Project would equal 3.5% of U.S. production, well above 1% threshold.

The 2005 Response stated “Since the additional value associated with this new production is less than 1% of U.S. production, the transaction does not require an economic impact analysis. However, pursuant to the requirement in the Consolidated Appropriations Act, 2005, the standard economic impact procedures are applied to this case and are presented below.”

- Based on price trends and indicated levels of demand for fuel grade ethanol in the United States at the time and predicted in future years, ethanol would not be likely to be in “oversupply” in the United States when the Trinidad Project commenced operation in 2005.
- The result was indeterminate based on analysis of trade flows from the Trinidad Project. A positive trade flow effect was predicted if a proposed 90 million gallon cap on duty-free imports of ethanol from Caribbean Basin countries was implemented, effectively blocking the Trinidad Project’s ability to sell ethanol in the U.S. A negative trade flow effect was predicted if the cap was not implemented. This analysis also adopted a “value added” approach in quantifying the negative trade flow by considering only 10% of the anticipated production of the Trinidad Product over the seven year term of the financing. We note that had 100% of the output of the Trinidad Project been considered, the potential negative trade flow considered in the 2005 Response would have been much higher.

After consideration of the Bank’s 2005 Response and other information, Congress directed in the November 2005 Conference Report that this written analysis be submitted to Congress within 90 days of the Inspector General taking office. Senators Grassley and Crapo later requested that the GAO review the Bank’s economic impact analysis process, resulting in the September 2007 GAO Report described in more detail below. Congress also made significant changes in the Bank’s economic impact review standards and policies in amendments to the Charter in connection with the Bank’s 2006 reauthorization (P.L. 109-438, December 20, 2006). The Bank revised its published economic impact review policies in response to these developments in April 2007. The Bank’s Policy Analysis Division has undertaken an ongoing process to revise its economic impact methodology in view of these developments, and has implemented a number of changes informally, with a formal process to revise the Bank’s economic impact procedures planned following receipt of this analysis and management recommendations expected to result from the OIG’s continuing review of the Bank’s economic impact procedures.

Methodology

To conduct our analysis of the issues raised in the November 2005 Conference Report, we performed the following work:

- Reviewed in detail the Bank's files pertaining to the medium-term credit insurance provided in support of the Trinidad Project.
- Reviewed additional Bank files related to other transactions that were subjected to economic impact review.
- Reviewed the Bank's 2005 Response and supporting documentation.
- Reviewed the Bank's Charter and its policies and procedures for approving transactions involving less than \$10 million of financing and for determining economic impact.
- Interviewed various officials regarding the methodology and interpretation of economic impact analyses, including (1) all five members of the Bank's Board of Directors; (2) the Bank's General Counsel; (3) senior Bank officials in its Policy Analysis Division; and (4) officials from other U.S. government agencies that provide comments on the Bank's draft economic impact analyses, including the Treasury and Commerce Departments, and the Office of the U.S. Trade Representative.

Further, we considered the September 2007 GAO Report and reviewed the documentation provided by the Bank to GAO upon which that report was based. GAO conducted its work from September 2006 through August 2007 in which it reviewed: (1) the Bank's overall policies and procedures for determining economic impact; (2) the extent to which the Bank's procedures provide for the identification and appropriate analysis of projects that could potentially cause adverse economic impact; and (3) the extent to which the Bank's policies, procedures and decisions are transparent to interested and affected parties.

Overall, GAO reported that the Bank has established procedures to identify applications for projects that have the greatest potential to adversely affect U.S. industry and to conduct detailed analyses on those identified projects. GAO found challenges and areas for improvement in the screening and detailed analysis of projects for economic impact. They also found limitations in the transparency of the Bank's economic impact process. Based on its work, GAO made several recommendations in each of two areas: (1) improving the Bank's identification and analysis of applications for economic impact and (2) improving the public transparency of the economic impact process for interested and affected parties.

Relevant to the first issue addressed in this analysis, GAO concluded that "The effectiveness of the \$10 million screen, introduced under Ex-Im's statutory authority, is uncertain. Ex-Im has not determined whether it removes from review those projects that could meet the statutory definition of substantial injury (producing 1% or more of U.S. production in an industry)." In reaching this conclusion, GAO referenced two circumstances where transactions involving financing of less than \$10 million appeared to support the production of exportable goods exceeding 1% of U.S. production, one of them being the Trinidad Project.

In conducting our analysis, we considered but did not attempt to duplicate GAO's work.

Findings and Conclusions

Question 1: Did Bank medium-term credit insurance provided to an ethanol dehydration plant in Trinidad and Tobago meet the conditions of Section 2(e)(4) or any other provisions of the Bank's Charter?

OIG Response: We have concluded that as a legal matter the Bank's extension of medium-term credit insurance in support of the Trinidad Project met the conditions of Section 2(e)(4) of the Charter and other related provisions of the Charter describing factors the Bank is required to consider in evaluating whether individual transactions will result in substantial injury to U.S. producers. Under procedures authorized by the Bank in the exercise of its discretion, as a transaction involving less than \$10 million of financing, (i) the Trinidad Project was not evaluated by the Bank's staff to determine whether it would result in the production of dehydrated ethanol in an amount that would equal or exceed 1% of United States production and (ii) the Trinidad Project was authorized by the Bank's Credit Committee, rather than the Board, pursuant to authority delegated to the Credit Committee by the Board. Transactions under \$10 million generally are not reviewed for their economic impact, or under other policy directives applicable to larger transactions, such as review for environmental impact.

Paraphrased, Section 2(e) of the Bank's Charter sets forth the following key propositions:

The Bank is not authorized to extend any direct credit or financial guarantees to support the establishment or expansion of production of any commodity for export (Exportable Goods) if the resulting production will compete with U.S. production of the same, similar or competing commodity if the Bank determines that substantial injury to U.S. producers of the Exportable Good will result.

Substantial injury will be presumed to exist if the amount of new or expanded production of the Exportable Good exceeds 1% of U.S. production.

Notwithstanding the fact that the 1% threshold may be exceeded, the Board of the Bank is authorized to approve a transaction if it determines that the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment resulting from the transaction.

The Bank is authorized to implement regulations and procedures as may be appropriate to carry out Section 2(e) so long as they do not contravene an express statutory requirement.

The Bank's authority to exercise discretion as an independent executive agency of the government in implementing regulations and procedures is confirmed by decisions of the U.S. Supreme Court in

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) and U.S. v. Mead Corporation, 533 U.S. 218, 121 S.Ct. 2164 (2001).

Interviews with the Board and management of the Bank and review of economic impact reports in other transactions confirmed that preparing an economic impact report is a labor-intensive undertaking. The Board and staff of the Bank have for many years relied upon the \$10 million of financing threshold as a rough “rule of thumb” dividing line where it was determined that the likelihood of missing a transaction that would in fact result in substantial injury to U.S. producers was sufficiently low that it was not deemed to be an effective use of the Bank’s limited resources to subject these smaller transactions to a detailed review.

The September 2007 GAO Report accepts the fundamental legality and legitimacy of the \$10 million screen, while criticizing the Bank for not undertaking to validate the \$10 million screen, a comment with which the OIG concurs. GAO identified the Trinidad Project and one other as examples of transactions approved by the Bank that would result in Exportable Goods exceeding 1% of U.S. production. At the same time, the September 2007 GAO Report noted that of the 19 cases subjected to a full economic impact report between 2003 and 2005, only two were denied.

The September 2007 GAO Report suggests that it might be possible to implement other cost-effective procedures that would identify transactions below the \$10 million threshold, such as transactions affecting smaller U.S. industries, where there was a greater risk of the resulting Exportable Goods exceeding 1% of U.S. production. In the Bank’s response to the GAO report, and in discussions with the OIG relating to this analysis, the management and Board of the Bank have expressed interest and commitment to evaluate the effectiveness of the \$10 million screen and to consider other cost-effective measures to address the potential for substantial injury to U.S. producers in smaller transactions.

Question 2: Does the Bank routinely use “value added” methodology to determine whether or not a proposed loan guarantee or export credit meets the statutory test found in Section 2(e)(4)?

OIG Response: We found that the Bank does not routinely use value added methodology to determine whether or not a proposed loan guarantee or export credit meets the statutory test of substantial injury found in the Charter. We identified no transactions during the period we examined of 2002 to present which have been authorized by the Bank based upon use of value added methodology. Value added methodology was used by the Bank in the 2005 Response, after the Trinidad Project had been authorized, to support the proposition that the Trinidad Project had not resulted in substantial injury to any U.S. producers of ethanol under the standards set forth in the Charter.

As part of our work, we reviewed a list of transactions requiring detailed economic impact analysis between 2002 and June 2007. Of the 31 detailed analyses included on the list, a senior Bank official reported that only one, in 2006, had considered value added methodology at the

draft report stage, and that the value added methodology was not reflected the final report. We inquired as to the origin of the use of the value added methodology set forth in the Bank's 2005 Response to Congress. The Bank's use of value added methodology as expressed in the 2005 Response was identified by a senior Bank official as a logical extension of another methodology, known as proportionality, which the Bank's Policy Analysis Division has considered in a limited number of other economic impact reports but which has not been relied upon by the Board to approve any transactions subject to economic impact analysis.

Question 3: In the opinion of the OIG, is it appropriate for the Bank to use "value added" methodology in making determinations of substantial injury?

Based upon the limited procedures performed in support of this analysis, we have concluded that the use of value added methodology described in the Bank's 2005 Response with respect to the Trinidad Project was not appropriate. The 2005 Response applied value added methodology to conclude that the Bank's financing should only be associated with 10% of the 100 million gallon annual production of the Trinidad Project because the exported equipment would not produce ethanol from feedstock, but instead would merely add 10% to the value of existing hydrous ethanol purchased from Brazil. The 2005 Response asserted that when 10 million gallons was considered as "associated" with the Bank's support and compared to U.S. production of 2.8 billion gallons, the resulting 0.35% of U.S. production was substantially below the 1% threshold for substantial injury set forth in Section 2(e)(4) of the Charter. The 2005 Response stated "Since the additional value associated with this new production is less than 1% of U.S. production, the transaction does not require an economic impact analysis."

Interviews with Bank staff, reviews of supporting materials for the Bank's 2005 Response and reviews of other economic impact analyses prepared by the Bank's staff confirm that the economic impact analysis expressed in the 2005 Response, and particularly the use of value added methodology, was not representative of the Bank's then existing policies and procedures for undertaking economic impact analysis.

The OIG's review of the 2005 Response and interviews with senior bank officials indicate that the work performed by the Bank's policy analysis group as set forth in the 2005 Response was not fully reflective of the work that would have been done had the Trinidad Project been presented for review as a transaction involving more than \$10 million of financing. Because of a number of issues relative to the Bank's economic impact procedures that are noted in the September 2007 GAO Report, including a lack of transparency and certain inconsistencies between the Bank's published procedures and how they were implemented in practice, it is difficult to draw clear distinctions between the work supporting the 2005 Response and the work that would be done for transactions involving more than \$10 million of financing. Among differences noted between the work supporting the 2005 Response and the Bank's regular economic impact review practices were:

- The value added analysis used in the 2005 letter had not previously been used by the policy analysis staff in preparing economic impact reports, and particularly had not been used in assessing whether the 1% threshold of Section 2(e)(4) of the Charter had been crossed.
- The value added analysis expressed in the trade flow portion of the 2005 Response was not among the methodologies that had been used previously to support adjustments decreasing the dollar value of trade flows from a Bank supported project deemed to “displace” U.S. production. For example, in one section of the 2005 Response, the expected volume of ethanol that would be produced by the Trinidad Project over the seven year life of the loan was calculated to be 440 million gallons. That amount was then reduced to 44 million gallons (10% of the predicted volume) in the trade flow analysis based on the 10% value added to the hydrous ethanol by the equipment supported by the Bank’s medium-term credit insurance.

Also, the Trinidad Project was not considered under the procedures applicable to transactions involving more than \$10 million of financing when initially approved, and the Bank did not consider it feasible to recreate that process after the fact. As a result:

- Agencies that normally provide the Bank with market data analysis to support economic impact reports were not consulted regarding the 2005 Response.
- The Bank’s analysis reflected in the 2005 Response was not reviewed by any of the agencies that typically review and comment on draft economic impact reports.
- The Trinidad Project was not published in the Federal Register, so that no comments from the public, industry or Congress were received to be taken into account in preparing the 2005 Response.
- The Board of the Bank is charged by the Charter with making the determination as to whether an adverse economic impact will result from a proposed transaction. In this instance, the Board was not consulted relative to the preparation of the 2005 Response and it does not reflect their judgment of the matter.

The OIG has concluded that it was inappropriate to apply value added analysis as set forth in the 2005 Response in assessing whether the 1% threshold established by Section 2(e)(4) of the Charter had been crossed because that usage conflicts with Congressional intent. The Supreme Court in American Tobacco Co. v. Patterson, 456 U.S. 63, 102 S.Ct. 1534, 71 L.Ed.2d 748 (1982) instructed that in cases involving statutory construction, the starting point must be the language employed by Congress, which assumes that the legislative purpose is expressed by the ordinary meaning of the words used. Absent a clearly expressed legislative intent to the contrary, the plain language should be controlling.

The OIG's reading of Congressional intent as expressed in the plain language of Section 2(e)(3) and (4) of the Charter and their legislative history is that Congress intends the Bank's Board, a politically accountable body appointed by the President and confirmed by the Senate, to make the difficult balancing judgments of when a given export transaction should be approved or declined in circumstances where more than a very small amount of new production of an Exportable Good will result. A determination that the Bank will not support an export transaction on economic impact grounds will injure the exporter directly and certainly. Under the Bank's Charter, this must be balanced against the economic injury that may accrue to U.S. producers if an export transaction is approved, which will generally be indirect and less certain.

Applying value added methodology to determine whether the 1% threshold of Section 2(e)(4) has been crossed, a methodology that has not been approved for such use by the Board, would undercut this important check and balance. It is important to note that the Bank's management has confirmed that value added analysis has not been used to remove transactions above the \$10 million threshold from economic impact analysis and consideration by the Board. Because the \$10 million threshold has been approved by the Board, as noted above in the response to Question 1, the legality and legitimacy of the approval of the Trinidad Project by the Credit Committee, without an economic impact analysis, is not subject to the same criticism.

The OIG has not undertaken an exhaustive legal analysis of the construction of the language used in Section 2(e)(1), (3) and (4) of the Charter. At the same time, it is plain from the words that Congress used in those provisions that the key issue linking a Bank sponsored transaction to the substantial injury that the Bank is obligated to avoid, and the determinations that Congress charged the Board with making, is assessing causation of production and causation of substantial injury:

(1) The Bank may not extend any direct credit or financial guarantee . . if: . . (B) . . . the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers . . .

(4) . . . the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production . . . (emphasis added).

Causation is an inherently factual inquiry that depends as much or more on common sense and logic than it does on specialized knowledge of industrial processes. This is why the job of deciding economic impact cases was assigned by Congress to the Board, not to the Bank's expert staff.

The OIG has concluded that it is difficult, and may be disingenuous, to assert that the Bank's financing has caused either 0% or 10% of the production attributable to a project for purposes of applying Section 2(e)(3) and (4) of the Charter in a transaction such as the Trinidad Project,

where (i) it appears that 100% of the anticipated output is intended to be exported to the United States, (ii) but for the creation of the new capacity for anhydrous fuel-grade ethanol output resulting from the Bank's support of the Trinidad Project in a country qualifying for favorable U.S. import duty treatment, the trade flow of the product was unlikely to occur, and (iii) the Bank's financing supports equipment that was integrally responsible for producing the Caribbean Basin Initiative qualified dehydrated ethanol that was the core reason for constructing the Trinidad Project. For these reasons, the OIG believes that it was inappropriate for the 2005 Response to assert that the Bank's support was either causative of none of the Trinidad Project's dehydrated ethanol production, or at most 10% of the Trinidad Project's production.

In the course of the interviews conducted in support of this analysis, the OIG encountered a range of views as to whether value added methodology, and the related analytical tool of proportionality, may have appropriate application in contexts that are factually distinct from the circumstances of the Trinidad Project. The OIG has not reached a conclusion as to whether these concepts would be appropriate for inclusion among a larger set of considerations that the Bank's staff and the Board consider as mitigating factors when evaluating an export transaction for its potential for substantial injury to U.S. producers under Section 2(e)(3) and (4) of the Charter. While proportionality analysis has been discussed among the staff of the Bank for a number of years, and has been included in a small number of draft economic impact reports, it has not appeared in any final economic impact report for any transaction approved by the Board during the period that was reviewed in preparing this analysis. Accordingly, the OIG determined not to address these concepts in detail in this analysis.

The conceptual argument underlying both value added and proportionality methodology is that there are some transactions where the portion supported by the Bank is so small relative to the entire project, and where the equipment supported by the Bank is so tangential or incidental to the production process, that it does not make sense to conclude that the Bank's support has caused 100% of any adverse economic impact that might result from the output of the project. As noted in the September 2007 GAO Report, the Bank has not defined in a clear and consistent way how and when these concepts might be appropriate to use. The Bank's management, in response to the September 2007 GAO Report, and in interviews in support of this analysis, has undertaken to perform a careful review of the use of these concepts and to work to develop written policies for their use that will support increased transparency in the future, for the benefit of the public and of other interested parties such as the recipients of this analysis.


Additional Work to be Performed

The Inspector General is continuing its review of certain aspects of the Bank's economic impact procedures with the objective of developing recommendations to management addressing the conceptual basis for value added methodology, issues raised in the September 2007 GAO Report and other matters identified by the OIG in the course of preparing this analysis.

This analysis is not an audit and it was not prepared in accordance with Generally Accepted Government Auditing Standards. Given the limited time and scope of this analysis, it does not include any recommendations to the Bank's management.

We are also providing copies of this analysis to the Ranking Member of your Committee and to the Senate Committee on Appropriations, Senate Committee on Banking, Housing and Urban Affairs, House Committee on Appropriations, and House Committee on Financial Services. Should you or your staff have any questions or wish to discuss the results of our analysis, please call me at (202) 565-3923.

Sincerely,


Michael W. Tankersley
Inspector General

Attachments

Appendix A
Export-Import Bank Act of 1945, as amended

Sec. 2(e) Limitation on assistance which adversely affect[s] the United States.

(1) In general. The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if –

(A) the Bank determines that –

(i) the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

In making the determination under subparagraph (B), the Bank shall determine whether the facility that would benefit from the extension of a credit or guarantee is reasonably likely to produce a commodity in addition to, or other than, the commodity specified in the application and whether the production of the additional commodity may cause substantial injury to United States producers of the same, or a similar or competing, commodity.

(3) Exception. Paragraphs (1) and (2) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment of the same, similar, or competing commodity.

(4) Definition. For purposes of paragraph (1)(B), the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production.

**Export-Import Bank
Office of the Inspector General
Report Dated November 5, 2007
Regarding Trinidad Ethanol Project**

Distribution:

Senator Robert C. Byrd, Chairman, Senate Committee on Appropriations
Senator Thad Cochran, Ranking Member, Senate Committee on Appropriations
Senator Max Baucus, Chairman, Senate Committee on Finance
Senator Charles E. Grassley, Ranking Member, Senate Committee on Finance
Senator Christopher J. Dodd, Chairman, Senate Committee on Banking, Housing and Urban Affairs
Senator Evan Bayh, Senate Committee on Banking, Housing and Urban Affairs
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ExIm Bank:

Chairman Jim Lambright
Jim Cruse
Howard Schweitzer
Stephen Myrow

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