Description of document: The Export-Import Bank of the United States (Ex-Im Bank) Policy and Planning Division Policy Handbook, June 2005

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Source of document: Freedom of Information and Privacy Office
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From: Dawn Kral <Dawn.Kral@exim.gov>
Date: Wed, 16 Sep 2009 12:12:36 -0400
Cc: Joe Sorbera <Joe.Sorbera@exim.gov>
Subject: FOIA Request #200900084F

Attached is Ex-Im Bank's response to your above-numbered FOIA request!

If you have any questions, please do not hesitate to contact us!

Sincerely,

Dawn R. Kral
FOIA Specialist
Ex-Im Bank
(202) 565-3248

(See attached file: Policy Handbook.pdf)

September 16, 2009

Via Electronic Mail

Re: FOIA Request #200900084F

This is in final response to your Freedom of Information Act (FOIA) request to the Export-Import Bank of the United States (Ex-Im Bank), which we received in our FOIA office via Electronic Mail on July 20, 2009.

You asked for an electronic or digital copy of Ex-Im Bank's policy handbook.

We are releasing the requested document to you in its entirety. For your convenience, we are attaching it to this letter as a PDF document. We hope you will find it helpful.

Thank you for your interest in Ex-Im Bank.

Sincerely,

/s/

Joseph A. Sorbera
FOIA Public Liaison

Attachment

THE EXPORT-IMPORT BANK OF THE UNITED STATES

POLICY AND PLANNING DIVISION

POLICY HANDBOOK

POLICY HANDBOOK: TABLE OF CONTENTS

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

IMPORTANT NOTICE

"This Handbook is primarily for internal Ex-Im Bank use. It is being made available solely for informational purposes to the users of Ex-Im Bank's programs to provide guidance on Ex-Im Bank's policies that are in effect as of the date noted on each policy. These policies are subject to change without notice. Accordingly, outside parties should not rely upon the information contained in this Handbook for the purpose of processing individual cases, but instead should follow regular Ex-Im Bank procedures for handling inquiries and processing applications."

GUIDE TO THE POLICY HANDBOOK

The Policy Handbook has been designed as a reference manual to provide Ex-Im Bank management and staff with a set of policy guidelines that present and explain the individual policies. It should act as a resource to Ex-Im Bank employees in explaining the policies of Ex-Im Bank to exporters, buyers, and lenders, and can help users to implement applicable policies or to determine exceptions, as appropriate.

The Policy Handbook is organized in alphabetical order by topic. Each policy has a concise definition, details of the policy and a rationale for the policy's existence. The Handbook has an Index that lists all of the policies, and also lists "substitute" names by which some policies may be known.

Because new policies will be generated and existing policies will be revised, this Handbook will be updated, as needed, by the relevant policy analyst in the Policy Group. This Handbook should be used in conjunction with other Ex-Im Bank Manuals and reference guides as indicated throughout the Policy Handbook. In addition to keeping the Policy Handbook up-to-date, the Policy Group maintains files with information on the background and historical evolution of the policies contained in the Policy Handbook. These files are available to Ex-Im Bank staff who are interested in obtaining more detail and perspective on issues. Please contact the Policy Group for information on the location and use of these files (565-3760).

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ADDITIONALITY

Definition

Additionality is defined as the probability that a transaction would not go forward without Ex-Im Bank support. A variety of influences and circumstances can affect the degree of additionality associated with a given transaction. These factors typically include:

1) The existence of foreign officially supported export credit competition.

2) The existence of financing gaps, where commercial financing is not available on economically viable terms, but Ex-Im Bank can still find a reasonable assurance of repayment.

Because the factors that influence the degree of additionality present in a given transaction are not always quantifiable or precise, the measurement of additionality is typically a "probability" of additionality related to an export transaction rather than an absolute.

Policy

It is the policy of Ex-Im Bank that each transaction it supports fosters additional exports. Therefore, it is necessary to determine that the export would likely not go forward without Ex-Im Bank financial support. This determination begins at the application stage. Ex-Im Bank's application forms outline the additionality policy and ask the applicant to indicate the rationale for Ex-Im Bank support. Relationship managers then confirm the information provided and report the reason Ex-Im Bank is needed in the final decision memo.

Rationale

In determining the need for Ex-Im Bank support, Congress has instructed the Bank to fulfill several mandates. In particular, Ex-Im Bank has been directed to fill a fundamental market imperfection: foreign government export credit financing. Also, Congress has directed that Ex-Im Bank should meet these gaps in the market only so long as a reasonable assurance of repayment determination could be made, and only to the extent that the private market could not or would not meet these needs on their own. Specifically, 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended directs that "the Bank...should supplement and encourage, and not compete with, private capital." Additionally, Ex-Im Bank is directed in the Export Trading Company Act of 1982, Section 206(2), to use its working capital guarantees "to facilitate expansion of exports which would not otherwise occur."

The concept of additionality has its roots in broad U.S. economic policy and is not limited to trade/Ex-Im Bank policy. U.S. economic policy states that U.S. government resources are a limited commodity and only in rare cases should these limited resources be used on an entitlement basis. Rather, taxpayers dollars ought to be channeled to those entities that actually need the support. Thus, Ex-Im Bank programs reflect both the broad philosophical concept of additionality as well as specific congressional directives.

Related Policies

Policy Handbook: Parent-Subsidiary/Corporate Affiliation

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

AGRICULTURE

Definition

Financing support for the export of agricultural commodities.

Policy

Ex-Im Bank's support of agricultural commodities is typically provided through its short-term insurance program on terms between 30 and 180 days; cover for bulk agricultural commodities is generally 98%. Terms beyond 180 days typically require a specific justification (e.g., in cases where the buyer's business cycle is such that revenues materialize only after 180 days, such as the breeding and sale of livestock). Ex-Im's support, however, should supplement, not compete, with private capital or the programs of the Department of Agriculture's Commodity Credit Corporation (CCC) as prescribed in Ex-Im Bank's Charter. When Ex-Im Bank support for agricultural commodities is requested, it is incumbent upon staff to verify the need for Ex-Im Bank support and the reason(s) why CCC cannot be used.

Rationale

The majority of agricultural exports are sold on a cash basis or financed on terms of less than one year. However, when not financed by the private sector, official export credit support for agricultural commodities is offered by the Department of Agriculture's Commodity Credit Corporation's export credit guarantee programs. The CCC typically has the capacity and flexibility needed to support farm products to select markets that require special financing that cannot be provided by the private sector. However, under certain circumstances Ex-Im Bank may be able to offer its financing support for agricultural commodities. Circumstances where Ex-Im Bank may offer financing are if CCC's:

1) capacity for a market is fully utilized;
2) financing allocation for a particular commodity is no longer available;
3) financing support is not available under any circumstances to a particular country; or
4) programmatic requirements do not support the structure of the transaction.

In essence, Ex-Im Bank is a safety valve for agricultural exports when the CCC country/commodity allocations are exhausted in a given year or if no allocation was made for any given commodity. Also, Ex-Im Bank support for agricultural commodities may not be used in conjunction with CCC.

Section 2(b)(8) of the Export-Import Bank Act of 1945, as amended, directs Ex-Im Bank not to compete with the CCC.

Exceptions

Terms may be granted beyond 180 days if they warrant specific justification.

Related Policies

None

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

AIRCRAFT: OECD SECTOR UNDERSTANDING

Introduction

The guidelines in this understanding apply to officially supported export credits related to the sale or lease of new or used civil aircraft. Specifically, there are three parts of the understanding:

Part I – New Large Aircraft and Engines for Such Aircraft. (This chapter is better known as the Large Aircraft Sector Understanding, or LASU.)

Part II – All New Aircraft Except Large Aircraft.

Part III – Used Aircraft, Spare Engines, Spare Parts, Maintenance and Service Contracts.

Please see the following sections for definitions and terms related to each of the three parts of the sector understanding on export credits for civil aircraft. Note: this sector understanding applies to standard export credits only; tied aid is prohibited for civil aircraft exports.

Policy

Ex-Im Bank's export credit support for civil aircraft and related parts and services complies with the terms and conditions of the Sector Understanding on Export Credits for Civil Aircraft as follows:

Part I: New Large Aircraft and Engines for Such Aircraft (LASU)

1) Definition and scope: "Large aircraft" applies to civil aircraft with over 70 seats. LASU covers large aircraft (including the installed engines) as well as any spare engines and spare parts included in the original order for large aircraft. However, in the case of asset-backed aircraft transactions, Ex-Im Bank takes the overall risk rating of the potential transaction into consideration before deciding whether or not to support the financing of spare engines and/or spare parts, and the terms of such support (i.e., on the same terms as the large aircraft or on less favorable terms). See Part III below for more information on the financing of spare engines and other spare parts.

2) Cash payment: Minimum cash payment of 15% of the net contract price of the aircraft.

3) Maximum repayment term: 12 years.

4) Financing options: There are three financing options available under LASU, all of which stipulate a maximum financing support of 85% of the net contract price of the aircraft.

   a) The first option is to combine an Ex-Im Bank direct loan for 62.5% of the net contract price of the aircraft with an Ex-Im Bank guaranteed loan for 22.5% of the net contract price of the aircraft. Under this option, both the direct loan and the guaranteed loan are repaid over the entire term of the financing and Ex-Im Bank receives payment on the direct loan on a pari-passu basis with the guaranteed lender under the Ex-Im Bank guaranteed loan.

   b) A second option is to combine an Ex-Im Bank direct loan for 42.5% of the net contract price of the aircraft with an Ex-Im Bank guaranteed loan for 42.5% of the net contract price of the aircraft. In this case, the principal of the Ex-Im Bank guaranteed loan is repaid during the first half of the repayment period and the principal of the Ex-Im Bank direct loan is repaid during the second half of the repayment term.

   c) The third option (which is the predominant choice among airlines) is an Ex-Im Bank guaranteed loan for 85% of the net contract price of the aircraft.

5) Minimum interest rates for Ex-Im Bank direct loans: For the Ex-Im Bank direct loan portion of an aircraft financing package, interest rates are determined every two weeks and are based on 10-year Treasury bond yields (TB10). For loans with repayment terms up to and including 10 years, the interest rate is TB10+120 basis points. For loans with repayment terms over 10 and up to 12 years, the interest rate is TB10+175 basis points. The duration of interest rate offers may not exceed three months.

6) Interest rates for Ex-Im Bank guaranteed loans: As noted above, Ex-Im Bank primarily finances aircraft exports using Ex-Im Bank guaranteed loans. Private sector lenders covered by the Ex-Im Bank guarantee determine interest rates for transactions that are fully (85%) or partially (22.5% or 42.5% as discussed under "Financing options" above) financed with an Ex-Im Bank guaranteed loan.

7) Exposure fee: Ex-Im Bank's minimum exposure fee for financings of large aircraft is 3.00%, although high-risk transactions may be charged a higher fee. See Exceptions below for Cape Town Treaty fee discount.

Part II: All New Aircraft Except Large Commercial Aircraft

1) Definition and scope: With the exception of repayment terms, all new civil aircraft not covered by the LASU are supported on standard Arrangement terms. Aircraft covered by Part II of the sector understanding on civil aircraft have been categorized as follows:

   a) Category A: turbine powered aircraft, including helicopters, with generally between 30 and 70 seats.
   b) Category B: other turbine powered aircraft, including helicopters.
   c) Category C: other aircraft, including helicopters.

2) Maximum repayment terms:

   a) Category A: 10 years.
   b) Category B: 7 years.
   c) Category C: 5 years.

Part III: Used Aircraft, Spare Engines, Spare Parts, Maintenance and Service Contracts

1) Definition and scope: Similar to Part II, standard Arrangement financing terms and conditions apply to support for exports of used aircraft, spare engines, spare parts, and maintenance and services contracts with the exception of the repayment terms stated below.

2) Used aircraft – maximum repayment terms: the table below sets out the maximum repayment terms for which different types of used aircraft are eligible.

Age of aircraft (years)	Maximum repayment term (years)			
	Large Aircraft	Category A	Category B	Category C
1	10	8	6	5
2	9	7	6	5
3	8	6	5	4
4	7	6	5	4
5-10	6	6	5	4
Over 10	5	5	4	3

3) Spare engines and parts – financing value for spares ordered with original aircraft: As noted in the section on Part I (LASU), under certain circumstances spare engines and spare parts may be financed on the same terms and as part of the original aircraft order. For spare engines and spare parts ordered in connection with the aircraft order, the terms of the financial support available for the spares depends on the number of the related type of aircraft in the airline's fleet. Specifically, the financial support for spares may be on the same terms as the related aircraft if the cost of the spares constitute:

   a) up to 15% of the net aircraft price, in the case of the first five of that aircraft type in the fleet; and
   b) no more than 10% of the net aircraft price, for all subsequent aircraft of that type in the fleet.

4) Spare engines and parts – maximum repayment terms for spares not ordered with the original aircraft:

   a) Engines: 5 years. Up to 8-year terms may be offered under the following limited circumstances:
      i. the contract has a minimum value of over $20 million; or

   ii. the contract includes at least 4 new spare engines.

b) Parts, maintenance and service contracts: 2 years.

Rationale

The sector understanding on civil aircraft limits the terms and conditions available for official export credits for a very significant sector and promotes the general U.S. government policy of establishing market-based terms and conditions for official export credit support.

Exceptions

The following enhanced terms are available through September 30, 2006 for asset-backed transactions of large commercial aircraft or spare engines for buyers that are based in countries that ratify and implement the Cape Town Treaty, including certain optional provisions ("Cape Town Treaty Country"):

1) **New large aircraft for an airline or other buyer (other than an aircraft leasing company)**: Ex-Im Bank will offer a one-third reduction in the exposure fee that would otherwise have been charged.

2) **New spare engine for an airline or other buyer (other than an aircraft leasing company)**: Ex-Im Bank will offer a three-year extension of the maximum repayment term (i.e., from 5 years to 8 years) and will charge an exposure fee equal to the lesser of (a) the same exposure fee as for the related new aircraft, if any, and (b) the applicable exposure fee for the transaction resulting from using Ex-Im Bank's exposure fee calculator.

3) **New large aircraft for an aircraft leasing company**: Ex-Im Bank will reduce its exposure fee by up to one-third for the aircraft leasing company but only if the aircraft leasing company and the airline lessee under the initial operating lease are both based in a Cape Town Treaty Country. The one-third reduction will be prorated according to the ratio of the term of the initial operating lease to the term of the Ex-Im Bank supported financing.

Related Policies

Aircraft Chapter of the Loan and Guarantee Manual: For more details on the terms and conditions by which Ex-Im Bank provides support for aircraft transactions.
Policy Handbook: Spare Parts

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ANCILLARY SERVICE FEES

Definition

For Ex-Im Bank purposes, ancillary fees are charges for services directly related to the structuring, evaluation, and documentation of financing for an export transaction. These fees include banking, legal, and advisory services.

Policy

Ancillary fees are normally eligible for short-term financing. However, Ex-Im Bank will consider including the fees in medium-term and long-term transactions if they meet the following criteria:

1) The ancillary service fees must be directly related to the structuring, evaluation, documentation and/or implementation of the financing for the Ex-Im Bank supported portion of the export transaction[1];

2) The ancillary services must meet Ex-Im Bank's U.S. content requirements or one of the following three exceptions to those requirements:

   a) Ex-Im Bank affirmatively selected the ancillary service provider and required that the borrower or the other party pay for the services.
   b) The ancillary services giving rise to the fees are necessary in order for the underlying export transaction to go forward and such services cannot reasonably be obtained in the United States.
   c) The ancillary service fee is a bank-funding fee. Note: If a bank-funding fee includes separable bank advisory fees, the bank advisory fees must qualify separately under the U.S. content requirements or must meet the second exception (above) to those requirements.

3) The ancillary service fees must not fall within any of the excluded categories of fees (e.g. commitment fees, L/C fees, swap breakage costs);

[1] If a particular ancillary service is provided jointly to Ex-Im Bank and other lenders/ECAs, Ex-Im Bank will finance (as part of the transaction for which the ancillary services were provided) only those ancillary service costs attributable to the Ex-Im Bank supported portion. An exception to this Proportionality Rule is that when a U.S. ancillary service provider is providing legal or engineering services in connection with a project which Ex-Im Bank is supporting, Ex-Im Bank will treat the ancillary services as if they related solely to the Ex-Im Bank supported portion. This exception is based on the rationale that these are the types of ancillary services Ex-Im Bank expects project parties to procure to ensure the proper structuring of the project financing; and it is not standard commercial practice to specifically allocate the costs of these ancillary services among the separate lending portions on the basis of their respective financing portions.

4) The ancillary service fees must be reasonable[2] based on the nature of the ancillary service fees and the individual transaction requirements; and

5) The ancillary service fees must be "one-time" (i.e., non-recurring) and incurred (i.e., the ancillary services have actually been performed) prior to the end of the disbursement period.

Rationale

The current ancillary service fee policy is intended to give Ex-Im Bank medium- and long-term programs the widest possible access to private sources of professional services. These services are deemed essential to structuring and maintaining creditworthy export finance transactions.

Exceptions

None

Related Policies

Services

[2] The determination of "reasonableness" is made by the Ex-Im Bank engineer and loan officer in consultation with the attorney at the authorization/operative stage of the transaction.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

CAPITALIZATION OF INTEREST (INTEREST DURING CONSTRUCTION – IDC)

Definition

Capitalization of interest refers to the practice of allowing the borrower to accrue interest due on disbursements made during the construction of a project, and then incorporate the accumulated interest into the loan/guarantee amount, which is repaid with interest. The payments made on the capitalized interest are included with the payments due on the original loan/guarantee in support of the exports for the project.

Policy

Ex-Im Bank generally supports IDC only in project finance cases and where it is offered as an incentive under a special program (i.e., the Environmental Exports Program and the Medical Equipment Initiative). IDC has also been allowed in the past on an exceptional basis. The factors that the Board of Directors take into consideration when deliberating on whether an exception for IDC is appropriate include:

1) The availability of such support from competing ECAs;

2) If a U.S. exporter is bidding as part of a consortium, and all members of the consortium are offering capitalization of interest support. (If others are not offering IDC, Ex-Im Bank is less likely to offer such support.);

3) The significance of the U.S. supplier's share of a project. (If the U.S. is an insignificant supplier and no competition exists for that portion of the project, Ex-Im Bank is less likely to support IDC.); and

4) Whether the U.S. supplier is competitive with regard to price, quality, technical ability, and other market determined factors, thereby making IDC a critical competitive factor.

Project Finance: Ex-Im Bank generally offers IDC support for project finance transactions because, prior to completion, the project does not generate any cash flow, which is the source of repayment. Hence, IDC support is often a critical factor in a non-recourse financing structure.

Special Programs: environmental exports and medical equipment. IDC is automatically available for projects that meet Ex-Im Bank's criteria for having a beneficial impact on the environment and for medical equipment exports when there is an extended installation and/or construction period. Hence, IDC support is an incentive to both exporters and buyers, pursuant to Ex-Im Bank's Environmental Export Program and Medical Equipment Initiative.

Rationale

Ex-Im Bank limits its support for IDC because:

1) marginally creditworthy obligors and highly leveraged projects, where the ability to repay is uncertain, are frequently the subject of such requests; and

2) capitalization of interest has the potential to consume a disproportionate level of resources relative to the volume of U.S. exports supported.

Exceptions

None

Related Policies

Environmental Effects; Project Finance.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

CO-FINANCING/REINSURANCE (“ONE-STOP-SHOP”)

Definition

“Co-financing” or “reinsurance” refers to “one-stop-shop” financing arrangements that cover procurement from two or more countries in a single ECA financing package. The term “co-financing” describes the provision of export credit insurance or guarantee support by two or more ECAs for exports that are being sourced from more than one country. Ex-Im Bank uses the terms co-financing and reinsurance interchangeably. Co-financing represents an unconditional commitment between ECAs to cover procurement from the countries of the lead and follower ECA.

Policy

Ex-Im Bank is willing to offer co-financing as an option for applicants seeking one financing package for goods and services being sourced from two or more countries. Co-financing is not intended to serve as a “bundling” tool for financial institutions or buyers seeking to avoid paperwork. Rather, co-financing is intended to provide US exporters an additional financing option in order to enhance their competitiveness. However, co-financing is not a mandatory structure and should not be imposed on an applicant who would prefer parallel, joint or other financing structures.

The location of the largest share of the sourcing and/or the location of the main contractor will generally determine which ECA leads the transaction. The lead ECA provides the applicant (buyer, bank or exporter) with export credit support for the entire transaction. Behind the scenes, the follower ECA provides reinsurance (like a counter-guarantee) to the lead ECA for its share of the procurement. Thus, the lead ECA is able to document the credit under a single loan agreement having one set of terms and conditions, and one set of disbursement procedures for the entire transaction. All parties benefit from the administrative ease of a streamlined financing package.

With respect to fees, Ex-Im Bank will use a case-by-case pricing analysis for all co-financed transactions that should result in a subsidy-neutral impact on the Ex-Im Bank budget. That is, a co-financed transaction should cost Ex-Im Bank no more of its program budget than a standard transaction covering US content only. Moreover, Ex-Im Bank will also examine the reason for outsourcing the foreign ECA share with the review by Engineering and Environment. This information will be included in the decision memo (Board or Credit Committee).

As the lead ECA, Ex-Im Bank will provide its standard cover for the entire transaction under its guarantee or insurance program. Ex-Im Bank will seek a separate financial commitment (e.g., reinsurance) from the follower ECA for the value of the exports to be covered by it. Ex-Im Bank will require use of its standard credit and insurance/guarantee documentation, appropriately modified. Certain Ex-Im Bank policies, such as U.S. vessel shipping requirements, would not apply to the follower ECA supported portion. In the case of economic impact and environmental reviews, however, Ex-Im Bank will continue to evaluate the entire project to ensure compliance with statutory and policy requirements.

As the follower ECA, Ex-Im Bank will provide a commitment to the lead ECA for the U.S. portion. Prior to Ex-Im Bank approval of the transaction, the U.S. exporter will be required to complete and submit a Co-financing Certificate to Ex-Im Bank which will provide U.S. content information and confirm compliance with statutory and policy requirements. The lead ECA will be responsible for documenting the transaction and administering disbursements using its standard procedures. Ex-Im Bank will require, however, compliance with U.S. vessel shipping requirements (MARAD, if applicable) with respect to the U.S. exports. The U.S. exporter will be required to submit a revised Co-financing Certificate to Ex-Im Bank if there are material changes to U.S. content or to the other certifications. [Note: To date, Ex-Im Bank has had limited experience as a Follower ECA.]

Agreements With Foreign ECAs

Ex-Im Bank has established four bilateral framework agreements. Bilateral framework agreements establish terms and conditions that govern the relationship between the lead and follower ECAs and make co-financing on specific transactions a more expeditious process. Ex-Im Bank currently has a bilateral agreement with ECGD, (U.K.) EDC (Canada), SACE (Italy) and NEXI (Japan)[1] and is in discussions with other ECAs to sign additional bilateral agreements. Moreover, Ex-Im Bank has signed a co-financing agreement with K-Exim for the purchase of cargo aircraft where Ex-Im Bank is the lead ECA and the buyer is located in Korea.

Ex-Im Bank will consider co-financing transactions without a formal bilateral agreement on a case-by-case basis with ECAs from countries classified as a risk level 1 or 2[2]. In fact, Ex-Im Bank concluded a number of one off co-financing arrangements with several ECAs, such as COFACE (France), GIEK (Norway), EKF (Denmark), and IFTRIC (Israel).

Rationale

The co-financing policy was established in response to exporting community competitiveness concerns. Co-financing allows an exporter to market a single ECA financing package to a buyer when procuring goods and services originate from two (or more) countries. Without co-financing, the parties would need to secure separate financing arrangements with each ECA to ensure support for exports from various countries. Growth of intra-European and international co-financing evidences that availability and ease of ECA co-financing has become an important competitive issue.

[1]The Ex-Im Bank-NEXI agreement currently allows for Ex-Im Bank to lead in every case. However, the goal is to revise the agreement over time to make it reciprocal.
[2]Note: The country risk level classifications are CONFIDENTIAL and should not be disclosed outside the Bank.

Related Policies

Policy Handbook: Basic Foreign Content.
Additional Reference: Checklist, documents, forms, and instructions for case processing are located in the “K:\co-financing\” folder.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

COMMITMENT FEES

Definition

A fee that Ex-Im Bank charges under its loan and guarantee programs on final commitments for Ex-Im Bank support. In most cases, the borrower is obligated to pay the Ex-Im Bank commitment fee.

Policy

Ex-Im Bank's standard commitment fees are ½ of 1% per annum on the un-disbursed balance for a direct loan and 1/8 of 1% per annum on the un-disbursed balance for a guarantee. The applicable commitment fee starts to accrue 60 days after the authorization date on the un-disbursed and un-cancelled balance of the direct loan or guarantee. The fee continues to accrue until the earlier of:

1) the date the un-disbursed and un-cancelled portion of the direct loan or guarantee is zero; or

2) the final disbursement date of the direct loan or guarantee.

Accrual of the commitment fee is not suspended during any period of suspension of the borrower's right to utilize the financing.

The commitment fee policy for Project Finance differs from customary policy. Project Finance transactions involving pre-completion coverage (direct loans and comprehensive or political risk only guarantees) are 1/2 of 1%. This fee includes one post-completion option for either a guarantee or a direct loan. There is an additional commitment fee of 1/8 of 1% for each additional option. For transactions without any pre-completion coverage, the commitment fee is 1/8 of 1%. All commitment fees are charged on the full, un-disbursed portion of a loan.

For example, a borrower requesting a guaranteed loan without any additional take-out options would pay a ½% commitment fee on the un-disbursed balance of the pre-completion commitment. If the same borrower wanted a comprehensive guarantee pre-completion, and had they had the option to keep the guarantee or convert it to a direct loan post-completion, the commitment fee would be .625%, of which 1/8 of 1% would be charged on the entire un-cancelled amount of the post-completion commitment.

In terms of a Credit Guarantee Facility (CGF), there is a flat facility fee (instead of a commitment fee) of 1/16 of 1% per annum charged on the total financed portion of the credit facility. The fee is charged in two semi-annual installments. The first payment date is 90 days after the CGF is approved, and the second payment date is 270 days after the the CGF approval date.

The commitment fee is payable in arrears on the interest payment dates, beginning with the first interest payment date which occurs at least 105 days after the AP authorization date.

The borrower is responsible for paying the commitment fee on a direct loan. In the case of a guarantee, the borrower is responsible for the fee if they are the applicant or if they sign Ex-Im Bank's standard form fee letter or the credit agreement. If the applicant is the guaranteed lender, the lender is responsible for the fee if it has not included with the application Ex-Im Bank's standard form fee letter signed by the borrower committing the borrower to pay the fee.

Rationale

Ex-Im Bank charges commitment fees for keeping that portion of direct loan and guarantee authority for exclusive use of the borrower/lender.

Related Policies

None

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

COUNTERTRADE

Definition

Countertrade is a broad technical term used to describe a general practice whereby a supplier commits contractually, as a condition of sale, to reciprocate through some commercial action that benefits the buyer. Predominant countertrade methods include barter, buy-back, or production sharing. While countertrade appears in a variety of forms, the one feature that is common to all is the existence of some performance requirement upon which the sale is conditioned.

Policy

In the broadest sense, Ex-Im Bank policy can be viewed as "neutral" with regard to countertrade. Specifically, this means that Ex-Im Bank does not preclude support for transactions with a countertrade aspect (which often takes the form of a side contract), and, by the same token does not accept countertrade as security. In practice, Ex-Im Bank requires that all loans that it guarantees or provides be repaid in an approved currency. Additionally, the obligation to repay may in no way be conditioned upon the successful completion of a side contract associated with countertrade.

Rationale

Countertrade, in all of its forms, is recognized to be an inefficient trade mechanism. In the past, buyers who have limited access to hard currency have sought countertrade agreements. In this light, U.S. government policy specifically prohibits agencies from promoting countertrade as it is viewed as being generally contrary to an open free-trading system. In turn, Ex-Im Bank policy reflects overall U.S. government policy -- while it in no way encourages the practice, it does not preclude its support for individual transactions that may have an associated countertrade aspect.

Related Policies

None

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

DEFAULT POLICY

Definition

A reasonable series of responses to default situations that occur in medium, long and selected short-term transactions, which intend to [1]carefully balance the interests of all parties, (i.e. obligors, exporters and Ex-Im Bank).

Policy

This policy describes the approach that Ex-Im Bank would take in absence of special circumstances. However, nothing in the policy would restrict Ex-Im Bank from exercising its full rights under the loan documents and imposing more stringent or earlier actions where appropriate.

In medium, long and selected short-term[2] transactions, when a debtor's[3] aggregate arrears to Ex-Im Bank exceed $50,000 for at least 90 days, Ex-Im Bank may take necessary prudent steps in responding to non-administrative/technical payment arrears.

This policy applies to all arrears on funds due to Ex-Im Bank.

Ex-Im Bank will make its best efforts to notify exporters who may be affected by the actions described below as soon as possible after it is determined that a non-administrative/technical arrearage of more than 90 days exists.

The following actions will be initiated at the times indicated:

Lower Risk Sovereign Transactions:

[1] "Events of default" are defined in the legal documentation of each specific transaction. These include but are not limited to: a failure of the borrower to pay on time any amount that is due, insolvency of the borrower and borrower breach of the Credit Agreement. According to Ex-Im Bank's Long Term Credit Agreement, in any event of default, Ex-Im Bank may declare immediately due all or any portion of the principle amount of the credit then outstanding.

[2] Special Buyer/Issuing Bank Credit Limits: Insurance policies that have default provisions which prohibit entering into further insured transactions if a buyer is in arrears 90 days or more on shipments under the insurance policy. The default policy does not affect transactions committed under the discretionary credit limit provisions of short-term multi- buyer policies.

[3] Debtor refers to an individual obligor and guarantor(s) (private, public and public non-sovereign), as well as to multiple parties representing the same credit risk. Thus, if a country's ministry of transportation or energy and ministry of finance each convey the government's sovereign obligation, transactions with both entities would be affected by a payment default involving either entity.

1) 150 days after date of default:

   a) Suspend issuance of all Letters of Interest (LIs) and Preliminary Commitments (PCs).
   b) Suspend authorizations of pending applications for final commitments (APs) with or without a PC, pending applications (including renewals) for Short-term Special Buyer/Issuing Bank Credit Limits and applicable (i.e. unless otherwise prohibited by commitment terms and conditions), Short and Medium term Single Buyer Commitments and Policies.
   c) Suspend amendments (including extensions), document executions, and operative declarations for authorized non-operative APs.

2) 180 days after date of default (prorated default):

   a) Suspend actions under operative APs, such as AP amendments (including extensions), letter of credit (L/C) approvals and amendments, and reimbursements, except as committed under L/Cs. (Note: medium term guarantee transactions generally lack cross-default provisions; therefore, suspension of utilization is possible only when there is a default on the transaction itself, not when there are arrears on other transactions.)
   b) Suspend amendments of applicable Short-term Special Buyer/Issuing Bank Credit Limits and Short and Medium-term Single Buyer Policies.
   c) Suspend availability for uncommitted amounts under medium-term Repetitive Insurance Policies.
   d) A review by the Default Policy Committee (the Committee)[4] will be made to determine the need for recommending cancellation of existing authorizations (including un-disbursed balances of operative cases), a formal cover policy change or other appropriate actions for consideration by the EMC and the Board of Directors. This review should include consideration of relevant aspects of the debtor and the affected transactions such as, portfolio exposure, collection status and strategy, project termination and its impact on collection, and exporter considerations. Exporter claims of potential loss should be detailed and verified.

High Risk Sovereign Transactions and Private and Public Non-sovereign Risk Transactions[5]:

1) 90 days after date of default:

   a) Suspend issuance of all LIs and PCs.
   b) Suspend authorizations of pending applications for APs with or without a PC, pending applications (including renewals) for Short-term Special

[4] For all borrowers the $50,000/90 days will trigger a review by the Default Committee chaired by the Chief Financial Officer, and composed of the Vice President-Operations, the Vice President-Credit Administration, the Vice President-Insurance, the Vice President -Country Risk Analysis Division, the Vice President-Asset Management Division, and the Secretariat. The Committee will recommend what course of action the Exposure Management Committee (EMC) should consider with respect to that specific arrears situation.

[5] High risk transactions are those risk-rated risk level 5 or more risky.

Buyer/Issuing Bank Credit Limits and applicable (i.e. unless otherwise prohibited by commitment terms and conditions), Short and Medium term Single Buyer Commitments and Policies.

c) Suspend amendments (including extensions), document executions, and operative declarations for authorized non-operative APs.

2) 150 days after date of default:

   a) Suspend actions under operative APs, such as AP amendments (including extensions), L/C approvals and amendments, and reimbursements, except as committed under L/Cs. (Note: medium term guarantee transactions generally lack cross-default provisions; therefore, suspension of utilization is possible only when there is a default on the transaction itself, not when there are arrears on other transactions.)
   b) Suspend amendments of applicable Short-term Special Buyer/Issuing Bank Credit Limits and Short and Medium-term Single Buyer Policies.
   c) Suspend availability for uncommitted amounts under medium-term Repetitive Insurance Policies.

3) 180 days after default (protracted default):

   a) A review by the Committee (see footnote 4) will be made to determine the need for recommending cancellation of existing authorizations (including undisbursed balances of operative cases), a formal cover policy change or other appropriate actions for consideration by the EMC and the Board of Directors. This review should include consideration of relevant aspects of the debtor and the affected transactions such as, portfolio exposure, collection status and strategy, project termination and its impact on collection, and exporter considerations. Exporter claims of potential loss should be detailed and verified.

Rationale

Ex-Im Bank seeks to

1) ensure consistency among its divisions and programs in its responses to default situations;

2) provide a structured method of making the obligors and exporters aware of the actions Ex-Im Bank may take in default situations, with delinquent debtors, until arrears are resolved.

Exceptions

1) An approval of the Senior Vice President of the Export Finance Group or Board of Director is required for any waiver to this policy. Proposals to waive any of the aforementioned actions should address relevant aspects of the debtor and the affected transactions; such as, portfolio exposure, collection status and strategy, prospective impact of exceptional treatment on collection effort, and exporter considerations. Exporters claims of potential loss should be detailed and verified.

All waivers will be reported to the Exposure Management Committee and the Board of Directors.

2) Short-term transactions committed under the discretionary credit limit provisions of short-term multi buyer policies.

Related Policies

None.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

DOWN PAYMENT (CASH PAYMENT)

Definition

Down payment refers to the amount owed by the buyer/obligor at or prior to the starting point of credit for medium and long-term transactions, e.g., a down payment. In OECD and Berne Union terms, a minimum down payment of 15% of the export contract value[1] is required. Official support for down payments can only take the form of insurance and guarantees (i.e., pure cover) against pre-credit risks. If an export contract includes goods and services from a third country that are not officially supported, the export contract value can be reduced proportionally when calculating the required down payment.

Policy

Ex-Im Bank follows the OECD and Berne Union guidelines as noted above. Ex-Im Bank does not stipulate the form of the down payment, nor does Ex-Im provide any support for the down payment; that is, whether the buyer pays down or finances the 15% down payment is determined by the buyer and seller of the goods and/or services. Hence, Ex-Im Bank covers 85% of the export contract value, but a maximum of 15% of the export contract value can be included as eligible foreign content and/or local cost. (In the event that the foreign content or local cost exceeds 15%, it is deemed ineligible.)

Rationale

As a member of the OECD and Berne Union, Ex-Im Bank is obliged to adhere to the respective guidelines.

Exceptions

The OECD Sector Understanding on Ships provides for 20% down payment. Although Ex-Im Bank and the U.S. government are not signatories to the Sector Understanding, Ex-Im will consider matching an officially supported offer of 20%.

Related Policies

OECD Sector Understanding on Ships

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[1] Export contract value is the total amount to be paid by or on behalf o the purchaser for exported goods and/or services, excluding local costs. In the case of a lease, export contract value excludes the portion of the lease payment that is equivalent to interest.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ECONOMIC IMPACT

Definition

Economic Impact refers to a statutory provision in the Ex-Im Bank charter that requires the Bank to assess the net impact of its financing on U.S. production and employment. Ex-Im Bank is prohibited by statute from extending support for U.S. exports that are likely to yield a net negative impact on U.S. production and employment.

Policy

To determine the likely economic impact of transactions seeking Ex-Im Bank support, the Bank subjects Preliminary and Final Commitment applications and insurance policies[1] to the following series of questions:

1) Does the transaction support capital equipment to produce an exportable good? (If the transaction does not support capital equipment to produce an exportable good, the economic impact issue is not relevant to the transaction; if the transaction supports capital equipment to produce an exportable good, the transaction is subjected to the next question.)

2) Are there anti-dumping, countervailing duty orders, or suspension agreements applicable to both the buyer and the buyer's resulting production, or are Section 201 of the Trade Act of 1974 trade measures applicable to the product? (If the referenced trade measures are applicable, Ex-Im Bank staff will recommend that the Board deny the transaction. However, the applicant will be given the opportunity to appeal the recommendation for denial by demonstrating that the lack of Ex-Im Bank support would cause the exporter extraordinary harm -- e.g., imminent bankruptcy. If there are no applicable trade measures, the transaction is subjected to the next question. If there are applicable trade measures and the applicant demonstrates extraordinary harm due to the lack of Ex-Im Bank financing, the transaction is subjected to the next question.)

3) Is Ex-Im Bank financing more than $10 million? (If the Ex-Im Bank financing is $10 million or less, the transaction is not subject to further economic impact analysis prior to Ex-Im Bank consideration of the transaction, but will be included in the Economic Impact Annual Review. If the Ex-Im Bank financing is more than $10 million, the transaction is subjected to the next question.)

[1] Short- and medium-term insurance policies, and medium- and long-term loans and guarantees are subject to the economic impact procedures.

4) Does the transaction pose the risk of substantial injury? (Per Ex-Im Bank's charter, substantial injury may occur if the foreign production made with the Ex-Im Bank financed equipment is equal to 1% or more of U.S. production. If the transaction meets the substantial injury test, Ex-Im Bank subjects applications for Preliminary and Final Commitments and Insurance policies to a full economic impact analysis, including an assessment of whether the foreign project will produce a commodity in oversupply. If the transaction does not meet the substantial injury test, the transaction is not subject to further economic impact analysis prior to Ex-Im Bank consideration of the transaction.)

If it is determined that a transaction poses the risk of substantial injury, staff from the Policy and Planning Group, in conjunction with the Engineering and Environment Division, will conduct a detailed economic impact analysis. This analysis weighs the benefits to the U.S. economy associated with the Ex-Im Bank supported U.S. exports against the potential negative effect of displaced U.S. production on the U.S. economy associated with the transaction[2]. The full analysis assesses:

1) the global supply and demand for the product in question (e.g., by considering indicators of oversupply such as price trends, U.S. employment trends, bankruptcy, and merger activity); and

2) the broad competitive impacts on U.S. industry arising from the new foreign production (e.g., whether U.S. production would be directly or indirectly displaced as a result of the new foreign production).

Note that if Ex-Im Bank determines that a proposed transaction poses a risk of substantial injury, or if the proposed transactions contain elements that are the subject of a Final Trade Measure or Preliminary Trade Action, notice of the proposed transaction will be made on Ex-Im Bank's website and in the Federal Register and a request for public comments will be made. Concurrently, Ex-Im Bank will specifically notify relevant USG agencies of the transaction and weigh carefully the analytical and policy views of such agencies. The buyer's and the applicant's names, as well as any proprietary information, will not be released. Interested parties have two weeks from the date of the Federal Register announcement in which to submit their views to Ex-Im Bank. All information gathered from such public comments, including the potential beneficial impact of the export on the U.S. economy, are presented to the Ex-Im Bank Board of Directors for consideration in determining the net impact of the proposed transaction on the U.S. economy.

Rationale

Ex-Im Bank is legislatively required to perform economic impact analyses per the Export-Import Bank Act of 1945 (see sections 2 (e) (1), 2 (e) (1) (A), 2 (e) (1) (B), and 2 (e) (3)).

[2] Transactions that enable foreign buyers to establish or expand production capacity of an exportable good with exposure values of $10 million or less are subject to the Bank's economic impact annual review. This is a post audit review which is conducted to determine if, on an aggregate basis, Ex-Im Bank support to an individual buyer is significant and, hence, likely to result in an adverse impact on the U.S. economy.

Related Policies

Countertrade

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ENGINEERING MULTIPLIER PROGRAM

Definition

The Engineering Multiplier Program (EMP) finances feasibility studies and pre-construction design, engineering and architectural services with a U.S. export value typically up to $10 million. These services involve projects that have the potential of generating subsequent U.S. export orders of at least the export value or double the original export contract, whichever is greater.

Policy

The EMP provides added advantages over standard Ex-Im Bank support, including automatic entitlement to 15% local cost support, a relaxation of the requirement of providing confirmed financing competition (although evidence of technical competition must be evident), and the buyer's right to "roll over" medium-term EMP financing into a long-term credit if Ex-Im Bank finances the U.S. export orders associated with the project.

Rationale

The EMP helps stimulate exports of U.S. architectural, industrial design, and engineering services and thus increases the potential for future U.S. exports. It aims, in the short term, to expand the sales of project-related feasibility studies and pre-construction engineering services by offering guarantees and fixed-rate loans to foreign buyers of these services. In the long term, the program is designed to generate additional overseas sales of U.S. goods and services (the "multiplier effect"), since the foreign buyer is more likely to order U.S. equipment and services for a construction project on which U.S. engineers, designers, and architects did the feasibility and design work.

Exceptions

Eligible transactions exceeding $10 million may also be eligible for support under the EMP. Each transaction is evaluated on a case-by-case basis.

Related Policies

Local Cost, Services.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ENVIRONMENTAL EXPORTS PROGRAM

Definition

The Environmental Export Program (EEP) provides enhanced levels of support for transactions covering the exports of U.S. goods and services that have beneficial environmental effects or are destined for projects (such as renewable or clean energy plants, waste-water treatment or solid waste clean-up activities) that are environmentally beneficial.

Policy

Ex-Im Bank is committed to increasing the level of support it provides to U.S. exporters of environmentally beneficial goods and services as well as to exporters participating in foreign environmental projects. To achieve this objective, Ex-Im Bank's Environmental Exports Program provides enhanced levels of support for a broad range of renewable energy and other environmentally beneficial exports.
EEP Qualifying Exports: Exports qualifying for enhanced support under the Environmental Export Program (EEP) include products or services for foreign environmental or renewable energy projects or facilities, or the export of products and services specifically used to aid in the prevention, abatement, control, or mitigation of air, water and ground contamination or pollution, or which provide protection in the handling of toxic substances and wastes, subject to Ex-Im Bank's determination. The following lists are examples of the types of exports considered eligible[1]:

Exports of the following types of products are generally considered eligible:

1) Instruments to measure or monitor air or water quality;
2) Emission or effluent pollution control equipment;
3) Equipment for waste collection and disposal systems;
4) Services to upgrade environmental regulations;
5) Environmental assessments, ecological studies, environmental engineering and training services;
6) Ecological monitoring equipment;
7) Hazardous and toxic material handling devices;
8) Water purification devices and wastewater treatment systems; and
9) Certain energy efficiency enhancement devices, services to improve energy efficiency.

Exports for the following types of projects are generally considered eligible:

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[1] These examples are illustrative and are not intended to be all-inclusive. Transactions are generally not limited with respect to size. Eligibility is subject to existing Ex-Im Bank policies including foreign content guidelines and adherence to Ex-Im Bank's environmental guidelines and objectives.

1) Air, water and soil pollution cleanup;
2) Ecology management or forestry management;
3) Certain renewable or alternative energy projects, including photovoltaic, wind, hybrid, biomass, fuel cells, waste to energy, hydroelectric, coal gasification and geothermal;
4) Projects specifically undertaken to bring existing plants/facilities into conformance with current local and/or Ex-Im Bank environmental guidelines;
5) Wastewater, sewage or waste treatment projects;
6) Toxic waste or substance cleanup projects; and
7) Drinking-water treatment facilities.

Levels of Support: The following are the levels of support to the insurance, loan and guarantee programs:

Short-Term Environmental Export Insurance Policy: Ex-Im Bank provides enhanced short-term, multi-buyer and single-buyer insurance coverage for small business environmental exporters. The policy provides the exporter with the ability to offer credit terms to its foreign customers for up to 180 days. The features include:

1) 95% commercial coverage and 100% political coverage with no deductible;

2) minimum annual premium of $500; and

3) enhanced provision for assignment of insured receivables.

Medium- and Long-Term Programs: Ex-Im Bank offers enhanced medium- and long-term support for environmental projects, products and services. The enhancements include:

1) local cost coverage equal to 15 percent of the U.S. contract price;

2) capitalization of interest during construction;

3) maximum allowable repayment terms permissible under OECD guidelines. Maximum repayment terms are 8.5 years for Category I countries, 10 years for Category II countries, 12 years for power plant (regardless of buyer country) and 15 years for certain renewable energy and water projects (see below).

Longer Terms for Certain Renewable Energy and Water Projects: Under an OECD agreement effective on July 1, 2005, and for a trial period lasting two years, exports related to certain renewable energy and water projects will be eligible for repayment terms of up to 15 years. This extended term is in addition to the other enhancements available under the Environmental Exports Program. The following sectors are eligible for the 15-year repayment terms:

1) Wind energy
2) Geothermal energy
3) Tidal and tidal stream power
4) Wave power
5) Solar photovoltaic power

6) Solar thermal energy
7) Ocean thermal energy
8) Bio-energy: all sustainable biomass, landfill gas, sewage treatment plant gas and biogas energy installations. 'Biomass' shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.
9) Projects related to the supply of water for human use and wastewater treatment facilities:

    a) Infrastructure for the supply of drinking water to households, i.e. water purification for the purpose of obtaining drinking water and distribution network (including leakage control);
    b) Wastewater collection and treatment facilities, i.e. collection and treatment of household and industrial wastewater and sewage, including processes for the re-use or recycling of water and the treatment of sludge directly associated with these activities.

Note: In all cases, repayment terms may not exceed those specified in Ex-Im Bank's Country Limitation Schedule, nor may they exceed the useful life of the export. The following cases must be notified to the OECD 10 calendar days prior to final approval:

1) repayment terms over 5 years for a Category I country;

2) repayment terms of up to 12 years for power plant; and

3) repayment terms of up to 15 years for qualifying renewable energy and water projects.

Rationale

As required by Section 11 (b) of the Export-Import Bank Act of 1945, as amended, Ex-Im Bank shall encourage the use of its programs to support the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects. In addition, Section 2(b)(1)(k) of the Export-Import Bank Act of 1945, as amended, states that Ex-Im Bank shall promote the export of goods and services related to renewable energy sources.

Related Policies

Policy Handbook: Local Cost; Capitalization of Interest (Interest During Construction); Environmental Procedures and Guidelines; Renewable Energy; Standard Repayment Term (Fact sheet found on www.exim.gov).

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

ENVIRONMENTAL REVIEW POLICY

Definition

When Congress revised the Ex-Im Bank Charter in 1992, it required the Bank to take into account the positive and negative environmental effects of its actions. This included giving the Board of Directors the authority to withhold financing based on a transaction's adverse environmental effects. In response to that directive, Ex-Im Bank established the Environmental Procedures and Guidelines (EP&G) in February 1995 (following implementation of interim procedures in October 1993) to identify the potential for adverse environmental effects of projects.

To fulfill its statutory mandate of maintaining exporter competitiveness while ensuring that its actions were environmentally responsible, Ex-Im Bank entered into an agreement among the members of the Export Credit Group of the Organization for Economic Cooperation and Development (OECD ECG) on "Common Approaches" that export credit agencies would use to review the adverse (and beneficial) impacts of projects for which official export credit support was being sought. The agreement, which included the United States, was reached in December 2003. Ex-Im Bank's policy reflects its international commitment to the OECD as well as its legislatively mandated objective to maintain U.S. exporters' competitiveness in the global marketplace in an environmentally responsible way. In 2006, the Common Approaches are expected to be reviewed for their effectiveness by the Export Credit Group of the OECD.

Policy

The current Ex-Im Bank Environmental policy was approved by the Board on July 1, 2004 and is described in the Ex-Im Bank Environmental Procedures and Guidelines. The application of Ex-Im Bank's Environmental Procedures is tailored to the characteristics of the various Bank programs, in a form consistent with the OECD ECG Common Approaches. In addition, the EP&G list qualitative and quantitative limits for elements such as air and water quality against which the Engineering and Environment Division will evaluate the environmental effects of projects within these industrial sectors[1]. If a project does not meet the Ex-Im Bank EP&G, Ex-Im Bank will work with the exporter to implement mitigating measures. Ex-Im Bank's E&E Division will provide guidance to exporters and borrowers unfamiliar with the requirements of these procedures, especially in cases involving small and medium-sized exporters.

Applicants requesting <u>long-term financial support</u> for a transaction must include a completed "Environmental Screening Document" with their applications to Ex-Im Bank.

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[1]Comprehensive environmental review information can be viewed at http://www.exim.gov/products/policies/environment/environment.html

Depending on the information provided in the screening document, Ex-Im Bank will categorize the transaction as either A, B, C or N [Please refer to the EP&G on http://www.exim.gov/products/policies/environment/environment.html for a definition of the categories and the level of information generally needed to review transactions within the categories].

All applications for which the Ex-Im Bank financial exposure is greater than $10.0 million will be formally screened and categorized as to their potential for environmental impact and the extent, if any, of subsequent environmental review. Only those transactions pertaining to a physical project (any commercial, industrial or infrastructure undertaking that results in the construction or the extraction of a tangible asset at an identified location), which has the potential for adverse environmental effects, will be subject to an environmental review.

For medium-term transactions, including those covered under Credit Guarantee Facilities (CGFs), an environmental review will be undertaken only for those transactions that, upon screening based upon application information, are categorized as pertaining to projects which have the potential for significant adverse environmental effects because they are to be carried out in a sensitive area or are likely to have an adverse impact on such an area. Chemicals, pesticides and other such commodities and nuclear related exports are not eligible for medium-term financing under CGFs.

Short-term transactions and transactions having a repayment term of less than two years, including Working Capital transactions, generally will not be subject to environmental screening or review, with the exception of nuclear related exports. Chemicals, pesticides and other such commodities that are banned or severely restricted are ineligible for export credit insurance.

For those applications relating to nuclear projects, Ex-Im Bank has formulated separate Nuclear Procedures and Guidelines.

For those projects that Ex-Im Bank determines may significantly affect the quality of the human environment of the U.S., its territories or possessions, or Antarctica, Ex-Im Bank will require adherence to the environmental review procedures required by the National Environmental Policy Act (NEPA), as stipulated in 12 CFR, Chapter IV, Part 408.

Ex-Im Bank's E&E Division is responsible for transaction environmental reviews and management of the Environmental Policy. The Division's Environmental Analysts, together with the engineer assigned to evaluate the technical aspects of a project, are available to provide guidance on matters related to Ex-Im Bank's environmental information requirements. Please contact the E&E Division with further questions.

Rationale

The Charter of the Export-Import Bank, as revised by Congress in June 2002, requires the Bank to establish environmental review procedures consistent with the Bank's overall competitiveness mandate.

Exceptions

If a project does not meet the applicable environmental guidelines, Ex-Im Bank's Board of Directors will take account of the environmental impact and other factors relevant to the project in determining whether to provide financial support, to provide financial support conditioned on the implementation of measures to mitigate the project's adverse environmental effects, or to decline financial support.

Related Policies

Environmental Exports Program (EEP); Renewable Energy; Nuclear Exports

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

EXCHANGE RISK PROTECTION

Definition

If a U.S. based exporter chooses to make a bid for a contract in a foreign currency, there are two periods during which the exporter is taking foreign exchange risk on the conversion of the foreign currency into U.S. dollars:

1) from bid to contract; and

2) from contract award to delivery.

Policy

The Ex-Im Bank does not provide exchange risk protection for either guarantees or insurance.

Rationale

Ex-Im Bank does not offer exchange risk protection for the following reasons:

1) Most U.S. exporters invoice in U.S. dollars; thus, there has been little need for such a program at Ex-Im; and

2) Costs of such programs are typically so high that there is a growing allegation that fees cannot cover costs, making the program potentially prohibited by the WTO. (Foreign exchange risk insurance may produce trade distortions as it, in effect, may operate as an export subsidy. This would be the case if the fee/premium charged to the exporter for this type of coverage is much less than the actual costs involved in covering the exchange loss resulting from the devaluation. The program could not operate within the WTO stipulated expectation of breaking even.)

Exceptions

None

Related Policies

Foreign Currency Cover

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

EXPORT EXPANSION FACILITY
(SUFFICIENT LIKELIHOOD OF REPAYMENT)

Definition

The Export Expansion Facility (EEF) is a mechanism that enables Ex-Im Bank to undertake transactions which "foster the foreign trade and long-term interest of the United States" by setting a different eligibility standard -- “sufficient likelihood of repayment” -- to support transactions which might not otherwise qualify as creditworthy under the “reasonable assurance of repayment” standard. The EEF has a $500 million limit on the amount of transactions that may be outstanding at any time and losses under the EEF are shared between Ex-Im Bank and the U.S. Department of Treasury. Ex-Im Bank assumes the first $100 million of losses, the U.S. Department of Treasury assumes the second $100 million of losses, and any losses above $200 million are to be borne by Ex-Im Bank. The EEF has not been utilized since the enactment of the Credit Reform Act of 1990 and it is unclear how transactions under EEF would be treated for budgetary purposes.

Pursuant to Executive Order No. 11420, the President established an Export Expansion Advisory Committee (EEAC) to guide Ex-Im Bank in evaluating transactions under the EEF. The EEAC is comprised of the Secretary of Commerce, Secretary of Treasury, Secretary of State, Chairman of the Federal Reserve and Chairman of Ex-Im Bank. On August 12, 1968 Ex-Im Bank and the Secretary of Commerce entered into a memorandum of understanding regarding the EEAC.

Policy

As mandated by Congress, Ex-Im Bank may consider loans, guarantees, and insurance for those transactions which the Board of Directors have judged to foster the foreign trade and long-term interest of the United States and offer a "sufficient likelihood of repayment" (as opposed to a "reasonable assurance of repayment"). All other terms and conditions of Ex-Im Bank's standard programs (e.g., fees, 15% down payment, interest rates, etc.) apply.

Rationale

The U.S. Congress, through Public Law 90-390, 90th Congress, July 7, 1968, as amended, 12 U.S.C. 635j-n, directed Ex-Im Bank to create a special facility that would enable Ex-Im Bank to support transactions that could serve the long-term national interest and offered, over the long-term, an expectation of repayment.

Related Policies

None

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

EXPOSURE FEES FOR MEDIUM- AND LONG-TERM FINANCING (PREMIA, MINIMUM PREMIUM RATES)

Definition

Exposure fees, also known as risk premia, are charged on financing packages as compensation for the repayment risk assumed by the lender, insurer, or guarantor.

OECD Policy

OECD ECAs must charge at least the Minimum Premium Rate (MPR) for any export credit transaction to which it is providing financing support.

The OECD has developed a methodology for calculating the applicable MPR for a transaction. This methodology includes adjustments for differences in percentage of cover, the relative quality of the ECA's financing product (e.g., guarantees are "above standard" and insurance is generally "standard"), mitigated or excluded risks, and the absence of cover for commercial risks. The MPR charged by an ECA must also be adjusted to account for premium that is financed or that is collected over the drawdown period.

The OECD Arrangement allows for a reduction in the MPR under certain mitigation techniques. Those techniques are believed to reduce the country credit risk, and therefore warrant a lower exposure fee. For an OECD member state to be able to take advantage of those reductions, it must give prior notification to the OECD and provide explanation if such is requested. If two or more techniques are used, a discount can be taken only for the best quality security.

The OECD has established a series of evaluative "feedback" tools for judging the relative accuracy and appropriateness of the MPRs. As a result, ECAs are required to report every transaction they supported in the year, certain characteristics of each transaction, and the exposure fee charged on each transaction. The fee that is reported is then compared to the applicable MPR for that transaction. The OECD Secretariat flags all deviations from the Minimum Premium Rate for further attention.

Ex-Im Bank Policy

Ex-Im Bank is required by the OECD Arrangement to charge no less than the applicable MPR for all medium- and long-term transactions, irrespective of whether the buyer/borrower is a private or public entity. To ensure compliance with this requirement, Ex-Im Bank has built an Exposure Fee Calculator for use by staff and customers to determine the appropriate MPR.

Ex-Im Bank's exposure fee calculator takes into account the need for various adjustments to the basic exposure fee formula to address differences in cover (percentage and quality) and the timing of collection of the fees. Although the OECD rules require that guarantees be priced as an "above standard" product, direct loans as a "standard" product, and insurance with interest coverage during the claim payment waiting period as a "standard" product, Ex-Im Bank's practice is to classify both guarantees and loans as "above standard" products and all insurance as "standard" products.

For private credit risk an incremental surcharge to the MPR is frequently applied. Ex-Im Bank has its own internal rating system whereby borrowers from each country are compared with the sovereign risk in that country and a 10% surcharge is added to the MPR for each level that the borrower is considered to be riskier than the sovereign. The extent of credit risk associated with the borrower is reflected in the Transaction Risk Increment (TRI). If a borrower is considered to be a strong buyer, but not on the par of the sovereign, the TRI for the borrower might be 1, which requires a 10% surcharge. If a borrower is considered to be on the par of the sovereign, the TRI would be 0 and no surcharge would be applied.

The exposure fees for Project Finance transactions may differ from fees charged in Ex-Im Bank's other programs for several reasons, including:

1) different all-in-cost assumptions for determining exposure fees (i.e. commitment fees are deducted from the total exposure fee);

2) tailored repayment profiles and grace periods under the Project Finance Framework Agreement: exposure fees are determined using a special spreadsheet that allows for tailored amortization and drawdown schedules; and

3) different levels of coverage for pre- and post-completion periods: separate fees may be charged for pre- and post-completion coverage, for example to allow for differences in the kinds of coverage (comprehensive vs. political only coverage) being offered in the pre- and post-completion periods.

While the Project Finance Exposure Fee Calculator Model must be used to formally calculate fees, minimum exposure fees may be estimated through the following steps:

1. estimate the MPB by using the Fee Calculator on Ex-Im Bank's external website. Note that the MPB includes both exposure and commitment fees;

2. deduct from the result in Step 1, the commitment fees as a percent of the amount of Ex-Im Bank financing (excluding the exposure fee); and

3. discount the result in Step 2 by the appropriate percentage (if any) for projects, which qualify for the OECD Permitted Exceptions.

Rationale

In order to "level the playing field" and maintain appropriate credit practices, Participants of the OECD Arrangement negotiated minimum premium rates. In the introduction of the section that addresses the MPRs, the Arrangement states, "The Participants shall charge premium, in addition to interest charges, to cover the risk of non-repayment of export credits. The premium rates charged by the Participants shall be risk based, shall converge and shall not be inadequate to cover long-term operating costs and losses."

Exceptions

The OECD Arrangement has not established premium rates for transactions in OECD high-income countries, but does state that ECAs operating in these countries should price transactions so that they do not undercut the private market (i.e. those rates should be in line with what the private market would charge for such risk).

Related Policies

OECD Arrangement on Officially Supported Export Credits, sections 22-28 and Annexes V – VIII; Project Finance

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

FOREIGN CONTENT SUPPORT

Definition

Foreign content refers to the cost of goods and services produced outside the US and outside the country of the buyer.

Policy

To be eligible for inclusion in Ex-Im Bank's financing package, foreign content must be shipped from the United States. Ex-Im Bank's foreign content policies for long-, medium- and short-term financing follow:

Medium- and Long-Term Loans, Guarantees and Medium-Term Insurance: Ex-Im Bank will support the lesser of 85% of the U.S. Net Contract Price[1] or 100% of the U.S. content in a U.S. supply contract;

Short-Term Insurance: (up to 180 days, exceptionally 360 days), Ex-Im Bank will support 100% of the export sale provided that the production cost (which excludes the U.S. supplier's profit margin) of the goods and services is at least 51% U.S. content.

[Note: Please refer to Foreign Content-Expatriate Services and Foreign Content-Inland freight/transshipment below, for additional guidance.]

Rationale

Because many U.S. exports contain some foreign content, Ex-Im Bank allows the inclusion of eligible foreign content in the U.S. supply contract.

EXPATRIATE SERVICES

Definition

Expatriate Services refer to services performed by non-U.S. persons employed by U.S. firms who render their work outside the U.S. For example, expatriate engineering services refers to services performed by non-U.S. engineers employed by U.S. engineering firms.

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[1] The U.S. Net Contract Price is the aggregate price of all goods and services in the supply contract less:

1) goods and services that are not eligible for Ex-Im Bank support (e.g., the cost of foreign goods not shipped from the United States); and
2) the aggregate price of all goods and services originated in the Purchaser's country.

Policy

Ex-Im Bank will consider expatriate services as eligible foreign content provided they are part of a U.S. contract for services. Basic foreign content rules apply.

Rationale

Ex-Im Bank accepts the principle that, in the case of services, foreign components in the form of non-U.S. personnel costs are accepted as eligible foreign content when they are added as part of a U.S. contract for services. This treatment of foreign content for services is consistent with and comparable to Ex-Im Bank’s treatment of foreign content for goods and takes into consideration the unique nature of services.

INLAND FREIGHT/TRANSSHIPMENT

Definition

That portion of the shipping costs associated with exports financed by Ex-Im Bank, which occur through an intermediate country or the buyer's country on a foreign carrier.

Policy

For shipment to land-locked countries, the inland freight costs through an intermediate country are considered eligible foreign content. The costs associated with inland freight occurring in the buyer's country, are considered eligible foreign content, rather than local content.

In both cases, in order to qualify as eligible foreign content, the inland freight would have to be included in the exporter's invoice price, (e.g., the export would be shipped on a C.I.F. basis) and a "through bill of lading" or a comparable transport documentation (e.g., ocean bill of lading and railway bill of lading) to the site or to a standard point of delivery at the destination would need to be obtained. If the through bill of lading is issued by a U.S. carrier, and paid for in the U.S., the transport provided by subsequent foreign carriers are considered eligible foreign content.

Shipping services for goods shipped on a FOB basis would be eligible for such support provided that the services met Ex-Im Bank’s foreign content policy requirements and were included in the list of goods and services to be financed.

[Note: All Ex-Im Bank direct loans and long-term guarantees above $20 million are subject to the U.S. Maritime Administration (MARAD) shipping policies. For more information, see the Basic Foreign Content Policy and Shipping Requirements section of the Policy Handbook.]

Rationale

If the exporter's price includes the cost of freight, such costs are considered eligible for inclusion in the U.S. Net Contract Price.

Exceptions

Ex-Im Bank may directly provide support for foreign content in two circumstances:

1) transactions that contain foreign content supported by a tied aid credit; and

2) short-term insurance transactions that contain foreign content.

Related Policies

Ancillary Services; Appendix 1 for 3/18/92 Policy Review Committee Decision on Local Cost; Services; Shipping Requirements (MARAD); Used and Refurbished Equipment.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

FOREIGN CURRENCY COVER

Definition

Insurance or Guarantee of a loan denominated in a foreign currency.

Policy

Ex-Im Bank will insure (short- and medium-term transactions) or guarantee (medium- and long-term transactions) the repayment of a loan denominated in a number of currencies, depending on whether or not they have been approved by the Bank's senior staff. (Please see http://www.exim.gov/products/guarantee/foreign_curr.html for a complete list of approved currencies.)

The Bank is willing to consider coverage in any currency. If an exporter or lender requests a transaction denominated in a currency that is not on the list of approved currencies (see website for list of approved currencies), Ex-Im Bank will conduct an analysis to determine whether the requested currency should be approved. Factors that go into such a decision include volatility of the currency, applicable laws and regulations of the country in question, and (in the event of a claim) amounts of the foreign currency to pay the claim without significantly disrupting the market for that currency.

Ex-Im Bank's medium-term foreign currency coverage follows the guidelines of the medium term insurance and medium term guarantee program with four notable exceptions.

1) For foreign currency coverage involving a commercial contract denominated in U.S. dollars, Ex-Im Bank will authorize both a specific foreign currency amount and a dollar disbursement limit.

   In the Event of a Claim…

2) Ex-Im Bank will make the payment in the foreign currency.

3) Ex-Im Bank retains the right to accelerate the debt or pay in installments.

4) All foreign currency obligations will convert automatically to dollar obligations as of the date Ex-Im Bank pays a claim; therefore, the foreign obligor or the guarantor must pay Ex-Im Bank in U.S. dollars.

As for short-term foreign currency coverage, Ex-Im Bank retains the option to pay claims in either the foreign currency or U.S. dollars.

Rationale

The foreign currency guarantee program was introduced in 1980 in response to a request that Ex-Im Bank extend U.S. dollar loans at the same nominal fixed rates as those offered by lower interest rate competitors. While Ex-Im Bank refused to match the lower fixed rate loans, a foreign currency guarantee was introduced as a vehicle to meet the exporters' need for financing at a specific rate, irrespective of currency. (Since this program was put in place, Ex-Im Bank has found that very few exporters needed financing at a specific rate that could be met by a change in the currency.) However, a foreign currency program does provide exporters and lenders with an option to enhance exports by financing export credits in currencies other than U.S. dollars. It also has implications for co-financing. Without a foreign currency guarantee program, Ex-Im Bank could not be the follower ECA if the transaction was in a currency other than the U.S. dollar.

Exceptions

None.

Related Policies

Exchange Risk Protection.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

HUMAN RIGHTS

Definition

Human rights are basic protections to which a human being in a given country has a just claim. The United Nations Universal Declaration of Human Rights outlines very broad human rights principles, such as freedom of expression, religion, and assembly, and proscriptions against torture, discrimination and arbitrary arrest. However, there is no internationally accepted definition of what constitutes human rights.

Policy

The Export Import Bank Act of 1945, as amended, provides that the Export-Import Bank should deny applications for credit for non-financial or non-commercial considerations only where the President, through authority delegated to the Secretary of State, determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in a number of specified areas, including human rights. 12 U.S.C. 635(b)(1)(B) (Ex-Im Bank Charter - "The Chafee Amendment")

Ex-Im Bank has developed procedures with the State Department, including the Bureau for Democracy, Human Rights, and Labor, for regular consultation regarding human rights concerns. According to these procedures, Ex-Im Bank periodically receives a list of countries where the State Department has found no "consistent pattern of gross violations of internationally recognized human rights." Where a proposed transaction over $10 million dollars involves goods or services to be exported to a country that has not received "pre-clearance" on such list, Ex-Im Bank refers the transaction to the State Department for human rights review. In addition, Ex-Im Bank country economists may work in concert with the State Department to, where appropriate, examine human rights and other foreign policy considerations in their assessment of the risks associated with transactions in specific countries.

Note 1: Various other statutory provisions implicating human rights and other foreign policy concerns may also impact Ex-Im Bank programs. For example, with respect to Ex-Im Bank's approval of support for the sale of defense articles or services for anti-narcotics purposes, Ex-Im Bank may approve such a transaction only following satisfaction of a number of statutory criteria, including a determination by the President, after consultation with the Assistant Secretary of State for Democracy, Human Rights and Labor, that "the purchasing country has complied with all restrictions imposed by the United States on the end use of any defense articles or services for which a guarantee or insurance was [previously] provided, and has not used any such defense articles or services to engage in a consistent pattern of gross violations of internationally recognized human rights" and a report of such determination to the Speaker and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and to the Committee on Banking, Housing and Urban Affairs and the Committee on Foreign Relations of the Senate, not less that 25 days of continuous session of the Congress before the date of such approval. 12 U.S.C. § 635(b)(6)(D)(i)(II) (Ex-Im Bank Charter - Defense Articles, Anti Narcotics)

The "Leahy Amendment", a statutory provision that has appeared in each of Ex-Im Bank's annual appropriations acts since 1997, prohibits the provision of any Bank support for goods and/or services intended for use by any "unit" of a country's "security forces", where the Secretary of State has determined that there is "credible evidence that such unit has committed gross violations of internationally recognized human rights" (unless the Secretary reports to Congress that the government of such country is taking effective measures to bring the members of such unit to justice). The responsibility for making this determination rests solely with the State Department. Therefore, any application for a final commitment involving a "security force"[1] is relayed to the designated State Department representative and Ex-Im Bank will supply any available technical information (including information about the security force) that could facilitate State Department's review and determination process. If clearance is denied, the relationship officer responsible for the transaction should inform the applicant immediately.

Note 3: The Human Rights determination should not be confused with the Ex-Im Bank Environmental Review. Pursuant to the Ex-Im Bank Procedures and Guidelines, that refer to seven Environmental Principles, one of which is "Involuntary resettlement, Indigenous Peoples and Cultural Property", Ex-Im Bank may examine the social impacts of a particular project on the community directly affected by the project and address concerns, as needed.

Rationale

Ex-Im Bank's statutory obligation for human rights issues is found in : Export-Import Bank Act of 1945, as amended, Section 2(b)(1)(B); Export Import Bank Act of 1945, as amended, Section 2(b)(6)(D)(i)(II)(B); and "Leahy Amendment", most recently at Public Law 108-447, Consolidated Appropriations Act of 2005, Division D - Foreign Operations, Export Financing And Related Programs Appropriations, Title V, Sec. 570

Related Policies

Military/Defense Articles, Environmental Procedures and Guidelines

[1] Security forces include any military organization and any arm of the foreign country's federal, regional or local police force. This includes anti-drug forces, customs police, national guard, internal security forces and investigative police. If there is ambiguity with respect to whether an applicant is a security force, the determination will be made by the State Department.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

INTEREST RATES (DIRECT LENDING, COMMERCIAL INTEREST REFERENCE RATE--CIRR)

Definition

Commercial Interest Reference Rates (CIRRs) are the minimum lending rate Export Credit Agencies must charge when providing official financing support for fixed rate loans (through, for example, direct loans or interest makeup).

OECD Policy

CIRRs are based on government bonds issued in the country's domestic market for the country's currency, plus a fixed margin of 100 basis points. Other OECD ECAs must use the CIRR set for a particular currency should they decide to finance a transaction in that currency and the provision of a CIRR loan cannot “offset or compensate, in part or in full, for the appropriate credit risk premium (i.e., exposure fee) to be charged.”

The OECD Arrangement states “a margin of 20 basis points shall be added to the CIRR if the terms and conditions of the official financing support are fixed before the contract date.” Rates that are fixed prior to the contract date are called “CIRR hold rates”. It also states that CIRR hold rates “shall not be fixed for a period longer than 120 days.”

Ex-Im Bank Policy

Ex-Im Bank provides direct credits at the U.S. dollar CIRR, according to the rules set forth in the OECD Arrangement. These interest rates apply only to direct lending. Separate interest rate structures exist for large aircraft and nuclear power plants (see OECD Sector Understanding: Civil Aircraft and Nuclear sections of the Policy Handbook). There are no set interest rates for guarantees or insurance products, as the private lenders determine those rates according to market terms.

Ex-Im Bank offers both a loan and a guarantee option in Letters of Interest (LI) and Preliminary Commitments (PC). Letters of Interest specify that should an Ex-Im Bank direct loan be chosen, Ex-Im Bank will fix the interest rate at the time of final authorization of the loan. An indicative CIRR is provided in an LI based on the lending rate in effect at the time the LI is issued.

Preliminary Commitment applicants have the choice between receiving:

1) a PC with a six-month availability period and no firm CIRR quote; or

2) receiving a PC with a four-month availability period and a quote for the CIRR hold rate.

In certain bid circumstances, it is important for an exporter to lock in the interest rate. Ex-Im Bank's CIRR hold rate serves as an “interest rate cap”, which provides the exporter with the necessary information to make a bid.

All applicants for a final commitment (AP) for a direct loan can set the rate at any time between the signing of the commercial contract and the date of final Ex-Im Bank Board approval.

For standard medium- and long-term direct loans, applicants can choose to set the CIRR rate, on a prospective basis, any time between the date of the completed AP application and the date of final Board approval. Applicants must notify Ex-Im Bank in writing during this time period of the day they want the rate set. This decision is irrevocable.] Should an applicant not make an explicit choice, the rate applied will be the rate in effect as of final Board approval. Note: Since Ex-Im Bank requires a signed commercial contract for submission of an AP application, the date of receipt of a completed AP application falls, by definition, after the signing of the commercial contract.

All project finance applicants may set the CIRR any time from the date that Ex-Im Bank has received a signed commercial contract to the date of final Board approval.

Applicants may also obtain, for a 20 basis points surcharge, a CIRR hold rate (see above) at any time prior to final Board approval. If the transaction reaches final approval within the 120-day hold period, the applicant has the option of choosing the lower of the CIRR hold rate or the CIRR in effect at the time of final Board approval.

Rationale

The CIRR system was created by the OECD as a way of leveling the playing field among the different OECD ECAs – as all ECAs lending in a specific currency will charge the same interest rate – and to facilitate ECAs lending at or above their cost of funds. See the OECD Arrangement for Export Credits, articles 18 through 21.

In 2001, Ex-Im Bank management established Ex-Im Bank’s procedures for holding and setting the CIRR. The basic OECD rule is that the CIRR can be set at "time of contract". Some ECAs interpret this to mean the signing of a commercial contract (i.e., the export contract) and others as meaning the signing of a financial contract (i.e., loan signing). In 2001, Ex-Im Bank established a policy for holding and setting the CIRR to follow the former interpretation.

Also, in applying the “hold” rate, many ECAs, including Ex-Im Bank, allow the applicant to choose the better of the hold rate and the rate in effect at the time of contract (if within the four month hold period). See the Policy Committee Minutes for January 10, 2001.

Related Policies

OECD Sector Understanding: Civil Aircraft and Nuclear

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

LOCAL COST

Definition

Local costs are expenditures for goods and services supplied from the buyer's country. [3]

Policy

Ex-Im Bank can support up to 30% of the value of the US exports (i.e., US and eligible foreign content) for locally originated and/or manufactured goods and services.[4] The local costs policy is divided into two broad categories:

1) availability for obtaining local cost support; and

2) eligibility requirements for inclusion of local costs in Ex-Im Bank's financing package.

Availability: For long-term transactions, Ex-Im Bank may provide local cost support for all long-term transactions that meet the eligibility criteria (see below). Ex-Im Bank offers "automatic" local cost support for all environmental exports, medical equipment exports, transportation security exports, exports that fall under the engineering multiplier program, and project finance transactions (including medium-term transactions).

For medium-term transactions, Ex-Im Bank may provide local cost support for medium-term transactions as long as the U.S. exporter can prove that either: (1) the case is facing confirmed officially supported local cost support or (2) private market financing of local costs is difficult to obtain for the transaction.

Eligibility*:* If Ex-Im Bank provides local cost support for medium- and long-term transactions, then the local costs must be:

1) "functionally" connected to costs the US exporter needs to incur to complete the contractual obligations of its export;

2) certified by the U.S. exporter in the Exporter's Certificate;

3) detailed in the Acquisition List; and

[3] If the products originated in the buyer's country meet Ex-Im Bank foreign content policy requirements (i.e., if the products are brought back to the U.S. prior to final shipment from the U.S. back to the buyer's country), such costs may be eligible for foreign content support.

[4] For those transactions where official support for local costs exceeds 15 per cent of the export contract value, notification to the OECD 10 calendar days prior to final approval is required.

4) originated in the host country.

Project Finance Transactions: The local costs may or may not be related to the U.S. exporter's scope of work. For those local costs which are not related to the U.S. exporter's scope of work, the local costs must be:

1) beneficial to the project;

2) detailed in the Acquisition List; and

3) originated in the host country.

In-Buyer-Country Costs: The following guidance addresses how Ex-Im Bank treats in-buyer-country costs such as:

1) import taxes & custom duties;

2) inland (non-U.S.) and local transportation costs; and

3) incidental local costs.

Import Taxes and Custom Duties: Import taxes and custom duties could be considered eligible local costs for transactions in which Ex-Im Bank has authorized local cost support (e.g., "project" transactions where such local costs are included in the U.S. supplier's scope of work).

Inland (non-U.S.) and local transportation costs: In the case of the U.S. exporter's freight and shipping costs, the amount of the shipping costs that cover local in-country transportation (port of entry to destination of final delivery, as it appears on the U.S. Bill of Lading) will be treated as eligible foreign content.

Incidental local expenses: Incidental local expenses associated with U.S. service costs (e.g., lodging, living expenses, local transportation expenses, secretarial or minor administrative expenses), which are billed in U.S. dollars and listed on the invoice of the U.S. exporter will be treated as eligible foreign content with respect to the services. The supplier should disclose the costs of the incidental non-U.S. expenses incurred with respect to the undertaking of the respective service on the Exporter's Certificate. These costs, specific to the execution of the particular service, will be treated as eligible foreign content.

If the invoice for an eligible U.S. service is based on a flat fee, consistent with the terms of the service contract between the U.S. exporter and the buyer, and does not include a provision for repayment of incidental local costs, (i.e., the invoiced cost of the services was meant to cover all potential overhead associated with the undertaking of the service), then, the total invoiced U.S. cost will be treated as U.S. content.

Rationale

Ex-Im Bank's local cost policy seeks to provide local cost financing to those transactions where local costs support is crucial to the U.S. exporter's ability to secure the export sale and maximize U.S. exports.

Exceptions

None

Note: In accordance with the OECD Arrangement, Ex-Im Bank does not offer local costs support for direct loans made to OECD Category I countries.

Related Policies

Basic Foreign Content Support; Engineering Multiplier Program; Environmental Effects; OECD Arrangement; minutes from a Policy Review Committee Meeting Decision on 3/18/92 for background on the development of the Local Cost policy available in the Policy Group.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

MARKET WINDOWS

Definition

Market window refers to a function performed by a government-related financial institution that provides medium-/long-term credits to foreign buyers for purchases of capital equipment and services, but claims exemption from OECD Arrangement disciplines because the support is on "market" terms (e.g., priced on a market basis and break-even financially). Although market window credits are not programmatically tied to a minimum amount of domestic content, they usually involve domestic content or are linked to some form of national interest. The two institutions with the largest market window functions are EDC of Canada and KfW of Germany.

Policy

Matching: Ex-Im Bank's medium- and long-term programs comply with the OECD Arrangement in that the Bank does not offer market window financing. However, in 2000, Congress authorized Ex-Im Bank to match market window financing. Specifically, the Bank is permitted to match market window terms that are inconsistent with the Arrangement if matching provides leverage for negotiating multilateral disciplines on market windows or if sufficient transparency exists to verify that terms are being offered that are more favorable than those offered by the private financial market. In addition, Ex-Im Bank may provide non-Arrangement terms against suspected market window competition even if the market window institution does not provide sufficient transparency to verify the exact terms of the transaction.

If a U.S. exporter provides Ex-Im Bank with information suggesting market window competition, Ex-Im Bank will approach the institution allegedly offering the support and ask for the terms of the transaction. If Ex-Im Bank determines that the offered terms are more favorable than terms offered by the market or that the market window institution is not providing sufficient information, Ex-Im Bank will process a request to match the transaction on market window terms under the Bank's standard credit criteria.

Guaranteeing: Occasionally, market windows approach Ex-Im Bank with the request to be the direct beneficiary of Ex-Im Bank's guarantee. With some exceptions (see below), Ex-Im Bank does not allow market windows to be the direct beneficiary of an Ex-Im Bank guarantee.

Rationale

Matching: Ex-Im Bank does not initiate market window financing, because of the threat that such practices pose to the breadth and depth of the private financial sector. Market windows have great potential to be trade distorting and to tilt the playing field in the favor of the institution's domestic exporters. Ex-Im Bank seeks to level the playing field for

U.S. exporters; hence, Ex-Im Bank received the authority to match market window transactions in Section 15 of the Export-Import Bank Act of 1945, as amended.

Guaranteeing: Ex-Im Bank does not allow market windows to be the direct beneficiary of Ex-Im Bank's guarantee for the following reasons: First, treating market windows like pure private lenders would undermine the long-standing U.S. policy that market windows are official export credit providers and should be subject to the rules of the Arrangement. Second, market windows discriminate in terms of which companies will receive their support; only companies with a national connection to the market window (e.g., facilities in Canada or Germany) would be eligible. Finally, market windows would displace private sector lenders.

Exceptions

There are two exceptions to Ex-Im Bank's policy not to allow market windows to directly benefit from Ex-Im Bank's guarantee.

1) Market windows can be the guaranteed lender when a U.S. export sale is otherwise unable to obtain a comprehensive financing package.

2) Market windows may be the beneficiary of Ex-Im Bank's guarantee when they participate in a syndicated transaction as long as they are not the structuring bank.

Note: Ex-Im Bank has concluded a co-financing agreement with EDC, in which case EDC operates in compliance with the Arrangement. Ex-Im Bank will not co-finance with EDC when it operates out of its market window.

Related Policies

Cofinancing

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

MILITARY
(DEFENSE ARTICLES AND SERVICES, MUNITIONS LIST, NARCOTICS CONTROL/DRUG INTERDICTION)

Definition

In general, any good or service used by a military organization, or designed primarily for military use, is considered a defense good or service. Ex-Im Bank bases its determination of whether a good or service should be considered a defense article/service on the following: the identity of the end-user; the nature of the item; and the use to which it will be put.

Policy

Ex-Im Bank is prohibited by law, with limited exceptions, from financing defense articles and defense services. The Engineering and Environment Division (E&E) has been delegated the authority to review transactions with military sales potential to determine whether prohibited defense articles and services are involved.

The criteria used in the E&E review to determine if a good or service is a defense article/service, can be summarized as follows:

1) If the items are sold to a military organization, they are considered to be defense article/service until proven otherwise;

2) If the item is designed primarily for military use, it is presumed to be a defense article/service; with the exception that both
   a) <u>humanitarian items</u>, i.e. those related to lifesaving, health and medical purposes, including hospital equipment, medical laboratory equipment, ambulances, fire engines, and rescue aircraft and
   b) <u>small marine vessels and aircraft</u> used for coast guard/border patrol, rescue, or lifesaving services to international shipping, even where sold to a military purchaser

   are, *per se*, <u>not</u> considered defense articles even if sold to military buyers.

No more than 5% of Ex-Im Bank's loan, guarantee and insurance authority for a fiscal year may be used by the Bank to support the sale of defense articles and services. In addition**,** Ex-Im Bank is required to report quarterly to Congress on items supported by the Bank that appear on the Munitions Control List[1]. However, Ex-Im Bank does not use the Munitions List to define a defense article or service.

Note 1: The “Leahy Amendment”, a statutory provision that has appeared in each of Ex-Im Bank’s annual appropriations acts since 1997, prohibits the provision of any Bank support for goods and/or services intended for use by any "unit" of a country's "security forces", where the Secretary of State has determined that there is "credible evidence that such unit has committed gross violations of internationally recognized human rights" (unless the Secretary reports to Congress that the government of such country is taking effective measures to bring the members of such unit to justice). The responsibility for making this determination rests solely with the State Department. Therefore, any application for a final commitment involving a "security force" is relayed to the designated State Department representative and Ex-Im Bank will supply any available technical information (including information about the security force) that could facilitate State Department's review and determination process. If clearance is denied, the relationship officer responsible for the transaction should inform the applicant immediately.

Security forces include any military organization and any arm of the foreign country's federal, regional or local police force. This includes anti-drug forces, customs police, National Guard, internal security forces and investigative police. If there is ambiguity with respect to whether an applicant is a security force, the determination will be made by the State Department.

Rationale

Section 2(b)(6) of the Export Import Bank Act of 1945, as amended, prohibits Ex-Im Bank from providing support for the sale of defense articles or services, with specific exceptions set out below.

Exceptions

Statutory exceptions exist for support of military goods and services. These exceptions are:

1) **Narcotics Control/Drug Interdiction:** The Anti-Drug Abuse Act of 1988, as amended, grants a limited exception, under specific statutory conditions, to allow Ex-Im Bank assistance in financing the sale of defense articles and services used for drug interdiction purposes. Small scale aircraft and marine vessels used for drug interdiction, safe-guarding natural resources, and providing lifesaving services to international shipping may be financed even though sold to military entities and used primarily for routine patrol activities. Under this exception a Presidential Determination is required accounting that the:

    a) Defense articles that are being sold primarily for anti-narcotics purposes; and the sale would:
        i. be consistent with the anti-narcotics policy of the U.S.;
        ii. involve the end use of a defense article/service in a major illicit drug producing or major drug-transit country; and
        iii. be made to a country with a democratic form of government.

    The Presidential National Interest Determination must be reported to Congress (Speaker, House Banking, House Foreign Relations, Senate Banking and Senate Foreign Relations Committees), with a 45-calendar day waiting period prior to final approval of the transaction. Once Congress has been notified, this decision is published in the Federal Register. [By means of Executive Order 12680, dated

07/05/89, the President of the U.S. delegated that authority to the Secretary of State. The Secretary makes a case-by-case determination, pursuant to Ex-Im Bank legislation and the criteria set forth therein.]

2) **Civilian Purpose (Dual Use):** If the item has dual-use of commercial and military applications, Ex-Im Bank financing is available if an investigation yields evidence that the item is non-lethal and that it will be used primarily for civilian activities, and the buyer or user provides a certificate to that effect. Specifically, the investigation must indicate that the:

   a) User has a legitimate civilian requirement which the dual use item will indeed meet;
   b) Primary motivation for the purchase appears to be the civilian requirement; and

   c) Primary use for the product by the intended customer will be civilian in nature. (Ex-Im Bank will monitor the actual use of financed items and take appropriate action with respect to the financing and principles involved if the intended use has been misrepresented).

3) **Other Specific Legislative Authority**: Where specific legislation allows Ex-Im Bank to support the export of military items. Such authority has existed in the past and been used to support, for example, Black Hawk helicopters to Turkey.

OECD Rules as they apply to Military Equipment

The OECD Arrangement defines the disciplines, principles and procedures by which member ECAs may provide export credit support. With respect to military equipment, the OECD Arrangement states the following: "The Arrangement does not apply to exports of Military Equipment." Although the Arrangement offers no clear definition of "military equipment" it implies a focus on the nature of the export, not on the end-user.

Competitor practice/interpretation: Those OECD ECAs that support military equipment (UK and France, primarily) usually provide Arrangement consistent terms for military equipment. However, there are two circumstances where Arrangement terms have been exceeded: (1) In Category 1 countries, where the rules limit repayment to 5 years (8.5 years with notification) and (2) when supporting small aircraft or helicopters with a maximum repayment term of less than 10 years (e.g., 5 or 7 years). In both cases foreign ECAs tend to offer 10-year repayment terms.

Ex-Im Bank is not bound by any OECD rule with respect to support for military equipment. However, if Ex-Im Bank were to use competitor practices as a guide, the following could apply:

1) For defense articles and services that are by their nature military items (e.g., military equipment), OECD Arrangement terms would generally apply.

   Exceptions: Case-by-case determinations with respect to the appropriate terms (e.g., extending repayment terms to 10 years) could be made in the following situations:

a) The military exports were being made to a Category 1 country, in which case a term longer than 8.5 years could be offered; and

b) The exports were small aircraft or helicopters that usually have a maximum repayment term of 5-7 years.

2) For defense articles and services defined as such by Ex-Im Bank due to the type of buyer/end-user (i.e., military buyer; e.g., pencils to the army), OECD Arrangement terms would generally apply, as the OECD does not consider these items top be “military equipment” and would therefore be subject to Arrangement disciplines.

Statutory Citations: Export Import Bank Act of 1945, as amended, Sections 2(b)(6)(A), (B), (C), (D), (E), (F), (G), (H) and Section 2(b)(7)

“Leahy Amendment”, most recently at Public Law 108-447, Consolidated Appropriations Act of 2005, Division D - Foreign Operations, Export Financing And Related Programs Appropriations, Title V, Sec. 570

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

MIXED CREDITS

Definition

A mixed credit is a form of tied aid as it involves concessional financing support provided by donor governments. A mixed credit "mixes" a grant (usually offered by an aid ministry, or USAID for 35% of the contract amount) offered in conjunction with a standard export credit for the balance.

Policy

US Ex-Im Bank does not initiate tied aid. However, the USG developed the concept of a mixed credit to be able to respond to foreign government's use of concessional credits (tied aid) for commercially sound and developmentally related projects. The decision to offer a mixed credit is made by USAID on the basis of developmental objectives. Ex-Im Bank may approach USAID with information about a project that it considers to be a possible candidate for a mixed credit (e.g., in a market and/or sector where foreign tied aid offers for projects involving capital goods are prevalent). If USAID agrees to commit staff and budget resources to a particular project that has been identified as a candidate for a mixed credit, Ex-Im Bank can begin examining the project to determine whether its credit and legal criteria (e.g., reasonable assurance of repayment) can be met.

Note that no transaction experience has yet been developed in regard to mixed credits. In addition, even though US Ex-Im Bank would be drawing from its program budget to authorize the export credit portion of the mixed credit (and not the Tied Aid budget), because mixed credits are a form of tied aid, USG mixed credit offers must comply with the OECD tied aid disciplines and the OECD rules pertaining to country and sector eligibility (see Tied Aid section of the Policy Handbook). In addition, USAID country restrictions must be observed as USAID is the agency "initiating" the mixed credit offer to the foreign buyer.

Rationale

Responding to U.S. exporters' demands for a U.S. government response to foreign governments' use of concessional financing for development-related capital projects, in 2002 Trade Promotion Coordinating Committee (TPCC) initiative led to the introduction of a U.S. government mixed credit concept. The idea is to combine grants from the U.S. Agency for International Development (USAID) with Ex-Im Bank standard export credit financing for development-related projects that are identified as priorities by USAID and consistent with the OECD tied aid rules. (When combined, the two funding sources create a tied aid credit.)

OECD Rules For Tied Aid

In 1991, the OECD agreed to rules governing the use of tied aid (also known as the Helsinki Package). The rules are aimed at reducing the use of concessional financing for projects that should generate sufficient cash flows that would support the use of commercial – rather than concessional – financing. The Helsinki Package established:

1) country and project eligibility requirements for the provision of tied aid;

2) rules requiring notification of tied aid offers; and

3) mechanisms for consulting on (and in some cases challenging whether) tied aid offers conform to established guidelines. The Helsinki rules on country and project eligibility basically resulted in two disciplines to restrict the use of tied aid:

   a) no tied aid in "rich" countries; and
   b) no tied aid for "commercially viable" (CV) projects.

In addition, since the mid-1980s, the Arrangement has required that tied aid contain a minimum concessionality level of 35% as measured with a market-based discount rate.

References

See Tied Aid and Untied Aid Chapters; Title 12, Chapter 6A, Subchapter III – Tied Aid Credit Export Subsidies and Sections 10(G) and 2(b)(1)(A) of the Export-Import Bank Act of 1945, as amended.

Related Policies

Tied Aid; Untied Aid

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

NUCLEAR EXPORTS: EX-IM BANK and OECD GUIDELINES

Introduction

Ex-Im Bank is subject to three sets of rules regarding nuclear-related exports:

1) The Congressional mandate, reflected in Section 11 of Ex-Im Bank's Charter, to consider the potential positive and negative environmental impacts of the projects it supports. Due to the unique nature of the environmental impacts associated with nuclear projects, Ex-Im Bank established the Nuclear Procedures and Guidelines (NPG) to assess the environmental issues associated with nuclear projects;

2) Mandatory Congressional notification procedures as noted in the Export-Import Bank Act of 1945, as amended (Ex-Im Bank Charter); and

3) The OECD Sector Understanding on Export Credits for Nuclear Power Plant.

Definitions

Ex-Im Bank's definition of nuclear related exports encompasses the definitions provided by the Ex-Im Bank Charter, the NPG, and the OECD Sector Understanding. The definition stated in the Ex-Im Bank Charter, and reflected in the NPG, encompasses all types of nuclear reactors and nuclear fuel. The OECD generally limits the sector definition to power plants that operate on nuclear fuel.

Ex-Im Bank Charter: Nuclear or nuclear-related transactions are defined as exports of technology, fuel, equipment, materials or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities.

Nuclear Procedures and Guidelines: These guidelines are applicable to transactions involving the sale of equipment or services related to commercial nuclear power plants used for producing electric power, the supply of the initial nuclear fuel, nuclear fuel reloads and related equipment for operating nuclear power plants and nuclear research reactors and related facilities, including reactors used to produce radioisotopes for medical and other uses. Transactions exempt from these nuclear guidelines include those reflecting exports such as nuclear simulators designed for training purposes, environmental or radiation monitoring equipment, plant surveillance equipment and other equipment not directly connected with the operating systems of a nuclear facility, as well as pre-project services such as feasibility studies or site evaluations.

OECD Sector Understanding: A nuclear power plant is defined as encompassing any and all equipment, materials and services, including the training of personnel, directly required for construction and commissioning of a plant that operates on nuclear fuel. As such, the sector applies to everything inside the plant security fence. It does not apply to such associated costs as feasibility studies, land development, roads, construction villages, power lines, and water supply, nor does it apply to costs arising in the buyer's country due to official approval procedures such as site permits, construction permits, etc.

Policy

***Nuclear Procedures and Guidelines**:*

The Nuclear Procedures and Guidelines (NPG) are intended to ensure that the nuclear projects Ex-Im Bank supports are carried out in an environmentally responsible manner and that the projects include reasonable measures and provisions to address public health and safety. The NPG are intended to conform, to the extent possible, with applicable International Atomic Energy Agency (IAEA) and other relevant guidelines, as will as reflect input from other U.S. government agencies, U.S. exporters and non-governmental organizations.

In all transactions involving an export to a nuclear facility, a "Nuclear Screening Document" (online at http://www.exim.gov/products/policies/nuclear/envnucs.html) must be submitted by the applicant. The transaction is then initially reviewed by the Engineering and Environment Division (E&E Division) and either assigned to one of four review categories or determined to be exempt from further review under the NPG. The Bank will inform the applicant of the relevant guidelines for the transaction and will describe the information it will require in order to complete its review at both the preliminary commitment and final commitment stages.

***OECD Nuclear Sector Understanding**:*

The OECD Nuclear Understanding sets out specific guidance regarding the terms and tenor of financing of nuclear related exports, as follows:

Nuclear Power Plants - Maximum repayment term is 15 years. The interest rate is the Special Commercial Interest Reference Rate (SCIRR). The SCIRR is the standard CIRR plus 75 basis points.

Nuclear Fuel - The initial fuel load shall consist of no more than the initially installed nuclear core and two subsequent reloads, together consisting of up to two-thirds of a nuclear core. The maximum repayment term is four years, and support will be financed on standard Arrangement terms. The maximum repayment term for subsequent reloads is six months; under exceptional circumstances, subsequent reloads may receive a repayment term of up to two years. Reprocessing and spent fuel management shall be paid on a cash basis.

***Congressional Notification Procedures**:*

Under Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended, any Ex-Im Bank loan, loan guarantee, or guarantee or insurance facility in support of nuclear or nuclear-related transactions, regardless of size, must be notified to Congress before final approval. Individual Ex-Im Bank insurance policies, as opposed to insurance facilities, are not subject to this notification requirement.

Those items defined in the NPG as exempt from review because they are not associated with the physical operation of a particular nuclear project or facility, such as nuclear simulators designed for training purposes, environmental or radiation monitoring equipment and plant surveillance equipment, may not require Congressional notification. However, guidance on the matter of Congressional notification for transactions of this nature should be sought from the Office of the General Counsel.

Rationale

Ex-Im Bank's Charter indicates that the financing of exports of nuclear-related goods and services is of a particularly sensitive nature. Further, nuclear power plants, nuclear fuel and other nuclear facilities covered by the NPG present unique environmental issues. In addition, nuclear power plants, as defined by the OECD, are treated differently from standard export credits due to the high capital costs of these plants. The sector understanding is a result of efforts to limit export credit competition among the few countries that produce nuclear fuel and related services.

Related Policies
Interest Rates (Direct Lending), Environmental Procedures and Guidelines.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

PARENT-SUBSIDIARY/CORPORATE AFFILIATION

Definition

An affiliated sale is identified by common ownership between the exporter and buyer.

Policy

When a corporate affiliation exists between the exporter and the buyer, the initial position taken by Ex-Im Bank is that political-only coverage is available for single sale, short-term and medium-term insurance and medium-term and long-term guarantee transactions. However, there can exist a variety of circumstances that would demonstrate the appropriateness of comprehensive cover in specific transactions. Because of Ex-Im Bank's initial position of providing political-risk only in affiliated sales, it is then up to the exporter to establish that one or more of these circumstances exists and that comprehensive coverage is justified.

Rationale

This policy is intended to ensure that Ex-Im Bank only provides the type and extent of cover consistent with the needs of a transaction. The starting point of the corporate affiliation policy is the hypothesis that common ownership obviates the existence of commercial risk in the transaction. That is, the only risk of non-payment not controllable by the exporter is political interference by the host government. Moreover, based on the assumption that the affiliated parties share a unique technical standard for which there are no alternative foreign products, there is no competitive need for the rates potentially generated by comprehensive cover.

Establishing need for comprehensive cover in an affiliated sale should begin by proving the absence of technical dominance. With foreign competition, the need for competitive rates supercedes the absence of commercial risk and justifies the availability of comprehensive cover. Once Ex-Im Bank is satisfied that viable foreign competition exists, the availability of comprehensive cover is restored and analysis of the proposed sale proceeds as in non-affiliated transactions.

Examples

Because of the range of possible factors and combinations of factors that would contribute to the presence of additionality, investigation on an individual basis will be required. As a guideline, some of these factors include:

1) Existence of foreign competition with ECA support – If it can be established that a viable alternate product is available for purchase (i.e., technical pressure is

minimal) from a foreign competitor with ECA support, then the transaction might not occur without Ex-Im Bank support and additionality may therefore be present.

2) Exporter is a related party, but the manufacturer is not a related party – In this case there may be no technical pressure exerted on the buyer, because the equipment is supplied by a non-related party and therefore more likely to conform to uniform industry design. In the absence of technical pressure, further investigation of potential additionality is warranted.

3) Presence of a bank intermediary – The presence of a financial intermediary who is lending funds to the buyer for the purchase of U.S. exports may partially demonstrate additionality – e.g., the lender may/would not be willing to lend without Ex-Im Bank's comprehensive cover of the borrower. In conjunction with an absence of technical pressure, additionality may therefore be present.

Exceptions

None

Related Policies

Additionality, Guarantee Technical Handbook – Related Lender/Obligor

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

PROGRESS PAYMENTS

Definition

For Ex-Im Bank purposes, progress payments are contractual provisions for partial periodic payments (e.g. monthly or quarterly) made in support of work performed on a product during the time that the product is in its production stages in advance of export.

Policy

For long-term transactions only, Ex-Im Bank may allow disbursements for progress payments for up to 85% of the Net Contract Price and Ex-Im Bank will finance or guarantee up to 85% of each such progress payment prior to export. The engineer must determine that the progress payment schedule is reasonable and consistent with normal industry practice.

Rationale

Specialized products (e.g. satellites or large turbines) that take a long time to produce may require the buyer to make periodic partial payments to the exporter prior to the final delivery of the product. A progress payment schedule, for example, could call for payments amounting to 10% of the net contract price several months following contract signing, followed by 10% every quarter for two years, with the payment balance due upon export of the product. Ex-Im Bank's policy allowing it to finance, guarantee, or insure such progress payments enables the U.S. Exporter to recoup some of these production costs before final delivery in accordance with the payment terms of the commercial contract with the foreign buyer.

Exceptions

For medium-term transactions, Ex-Im Bank may approve progress payments if specific approval is obtained from the Credit Committee.

Related Policies

None

NOTE: Progress payments as used by Ex-Im Bank refer to payments to an exporter in advance of export of the U.S. goods. Milestone payments generally refer to the payment schedule for large projects involving a combination of U.S. goods and services and work performed both in the U.S. and at the project site prior to contract completion.

Requirement for an Exporter's Certificate: The Exporter's Certificate covers the requirement that at the time progress payment invoices are submitted for payment, the value of work performed equals or exceeds the amount invoiced.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

PROJECT FINANCE
(LIMITED RESOURCE PROJECT FINANCE)

Definition

Ex-Im Bank project finance (or limited recourse project finance) generally involves a special purpose company borrower where the lenders derive their credit comfort primarily from the income generated by the project. The lenders look to the project cash flow during the repayment term to cover operating costs and debt service. While most project financings are for construction of a new facility, in some cases, the expansion of an existing project may qualify for project finance treatment. The lenders have limited or no recourse to the project sponsors/equity participants in the event of a default once construction is complete. There is no sovereign guarantee of repayment of the project debt, although there may be offtake contracts with sovereign entities. Projects covered under this financing structure are normally large, long-term natural resource development or infrastructure projects that benefit from ECA support because financing in the private market is unavailable in sufficient amounts or unfavorable due to the time and risk associated with such projects in developing countries.

OECD Policy

The OECD also allows for certain flexibility when structuring a project finance transaction in order to better match the cash flow of the project and ensure proper repayment of the loan. The flexibilities[1] are:

1) the timing of the first repayment of principal;

2) the repayment profile (i.e., other than equal semi-annual payments); and

3) the maximum repayment term.

There are specific rules to follow when making use of these flexibilities. In particular:

1) The maximum repayment term is 14 years.

2) The maximum weighted average life is 7.25 years.

3) The first principal repayment must take place no later than 24 months after the starting point of credit *and* must be at least 2% of the principal amount.

[1] Please see “Exceptions” below for separate rules that apply to project finance transactions in High-Income OECD countries.

4) No one principal repayment or series of principal repayments within a 6 month period may exceed 25% of the principal amount.

5) The first interest payment must take place no later than 6 months after the starting point of credit, and interest must be paid at least annually thereafter.

6) For direct loans with a repayment term over 12 years, the interest rate must be CIRR + 20 basis points. For direct loans with repayment terms of 12 years or less, the standard CIRR will apply.

7) ECAs must notify other OECD participants of the ECA's intent to use the project finance flexibilities at least 10 days prior to approval, and if any other ECAs have any questions, ECAs must wait another 10 days before issuing a commitment. Therefore, Ex-Im Bank interprets this provision to mean a 20-day prior notification.

Ex-Im Bank Policy

The Bank provides 100% support for all risks (political and commercial) during both the construction and repayment periods and finances local country costs (up to 15% of total financing). There are no project or country ceilings and capitalization of interest support is available during construction. Ex-Im Bank is willing to use all of the three project finance flexibilities for project finance deals.

Similar to all other products offered, Ex-Im Bank charges exposure fees for project finance transactions. Project finance exposure fees may differ from fees charged in Ex-Im Bank's other programs for several reasons outlined in the Exposure Fees for Medium- and Long-Term Financing Chapter.

Rationale

Limited recourse project finance allows for large projects to benefit from ECA support since private financing for such projects is often unavailable or the terms are unfavorable. The OECD created the project finance flexibilities as a way of decreasing defaults, and ECAs have used these flexibilities extensively. See the OECD Arrangement on Officially Supported Export Credits, Annex X.

Exceptions

For transactions in High-Income OECD countries, certain additional rules apply. Specifically:

1) Total ECA participation in a High-Income OECD project finance transaction must be less than 50%.

2) To qualify for a 14-year repayment term and/or a 7.25 year weighted average life, total ECA participation in the project must be 35% or less.

3) When total ECA participation in the project is more than 35% and less than 50%, the maximum repayment term is 10 years and the maximum weighted average life is 5.25 years.

4) ECAs must be minority partners with pari passu status throughout the life of the loan.

5) The exposure fee charged by ECAs for such transactions must not undercut available private market financing and must be commensurate with the rates charged by the private financial institutions participating in the project.

Related Policies

Exposure Fees for Medium- and Long-Term Financing

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

REACHBACK

Definition

Reachback refers to the amount of time that may elapse between “shipment” of goods and services and the date Ex-Im Bank receives an application (e.g., a request for a final commitment or medium term insurance).

Policy

For all medium- and long-term transactions, other than transactions supported via Credit Guarantee Facilities (CGFs)[5], shipment of goods and services that occurred prior to the submission of a final commitment or insurance application to Ex-Im Bank may be eligible for Ex-Im Bank financing provided the shipments occurred within one of the following allowable time frames:

1) Shipments that occurred on or after the date Ex-Im Bank issued the initial Letter of Interest. For such transactions, only shipments that occurred up to 24 months before Ex-Im Bank received a final commitment application are eligible;

2) Shipments that occurred on or after the date Ex-Im Bank received the initial Preliminary Commitment application. For such transactions, only shipments that occurred up to 24 months before Ex-Im Bank received a final commitment application are eligible; and

3) Shipments that occurred up to 12 months prior to the date Ex-Im Bank received the final commitment application or insurance application for the transaction.

The maximum reachback period is the earlier of the three dates summarized above.

OECD guidelines require, in article 13, repayment of an official export credit to start no more than six months after a specified date. This date is referred to as the “starting point” of the credit. The starting point is determined by the nature and timing of the transaction, not by the export credit agency.

Rationale

Ex-Im Bank management decided in 2000 to provide flexibility in the reachback policy to include early shipments in Ex-Im Bank financing, provided that OECD starting point guidelines are respected. This flexibility was introduced in recognition of commercial

[5]For CGFs, the reachback policy is to allow shipments to be included in the facility that occurred up to six months prior to the operative date of the facility.

realities that require exporters to ship prior to finalizing Ex-Im Bank financing. See the Policy Committee minutes from May 17, 2000 and May 24, 2000 for more information.

Exceptions

Credit Guarantee Facilities (see above footnote)

Note: When reachback is a relevant consideration in a transaction, it is possible that the date of final authorization could be past the starting date. Ex-Im Bank policy is to reduce both the repayment term and the amount of cover by the number and amount of the installments that should have been paid according to the OECD prescribed repayment term schedule.

Related Policies

Starting Point of Credit, Guarantee Technical Handbook – First eligible shipment date (CGFs)

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

RENEWABLE ENERGY

Definition

Renewable energy transactions include the sale of goods and services for foreign projects involved in the generation of energy by sources including photovoltaics, wind, certain bio-mass, hydroelectric and geothermal.

Policy

Ex-Im Bank's Environmental Exports Program applies to most renewable energy projects and products, making it eligible for the following enhancements to the standard loan and guarantee programs:

1) Local cost coverage equal to 15 percent of the U.S. contract price

2) Capitalization of interest during construction

3) Maximum allowable repayment terms permissible under OECD guidelines. (Repayment terms may not exceed those specified in Ex-Im Bank's Country Limitation Schedule.) [1]

   a) Maximum repayment terms are 8.5 years for Category I countries,
   b) 10 years for Category II countries, and
   c) 12 years for power plant (regardless of buyer country).

Under an OECD agreement effective on July 1, 2005, and for a trial period lasting two years, certain renewable energy exports will be eligible for repayment terms of up to 15 years. Qualifying sectors are the following.

1) Wind energy
2) Geothermal energy
3) Tidal and tidal stream power
4) Wave power
5) Solar photovoltaic power
6) Solar thermal energy
7) Ocean thermal energy
8) Bio-energy: all sustainable biomass, landfill gas, sewage treatment plant gas and biogas energy installations. ‘Biomass’ shall mean the biodegradable fraction of

[1] The following transactions must be notified to the OECD 10 calendar days prior to final approval:
1) repayment terms over 5 years for a Category I country;
2) repayment terms of up to 12 years for power plant; and
3) repayment terms of up to 15 years for qualifying renewable energy and water projects.

products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.

Note: These sectors are also eligible for other benefits under Ex-Im Bank's Environmental Exports Program. Please see the Environmental Exports Program policy for other sectors eligible for program benefits but not eligible for 15-year repayment terms.

Rationale

As required by Section 2(b)(1)(k) of the Export-Import Bank Act of 1945, as amended, Ex-Im Bank shall promote the export of goods and services related to renewable energy sources.

Related Policies

Local Cost; Capitalization of Interest (Interest During Construction); Environmental Procedures and Guidelines; Environmental Export Program; Standard Repayment Terms (Fact sheet found on www.exim.gov)

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SECTION 1912

Definitions

Section 1912 is a provision of law which pertains to the use of the Bank's financing to counter foreign official export credit support of foreign sales into the United States on terms which exceed limits to which the United States and other major exporting countries have agreed (regardless of whether the government offering the credits has agreed to such limits). Upon receiving information that foreign export credit financing which exceeds such limits is being offered, the Secretary of the Treasury will conduct an inquiry to determine whether "noncompetitive financing" is being offered. The inquiry must be completed within 60 days of the receipt of such information.

Policy

If the Secretary determines that such foreign "noncompetitive" financing is being offered, the Secretary shall request the immediate withdrawal of such financing by the foreign official export credit agency involved. If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary shall notify the country offering such financing and all parties to the proposed transaction that the Export-Import Bank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance, and credits to competing United States sellers, unless the Secretary determines that:

1) the availability of foreign official noncompetitive financing is not likely to be a significant factor in the sale; or

2) the foreign noncompetitive financing has been withdrawn.

Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: Provided, however, that loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

Statutory Citations

See 12 U.S.C. • 635a-3 (Section 1912 of the Export-Import Bank Act of 1978)

Related Policies

Tied Aid

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SECTIONS 936 AND 30A (PUERTO RICO)

Definition

Sections 936 and 30A of the Internal Revenue Service tax code were created in 1948 to boost the economic development of Puerto Rico. Section 936 provides a tax credit against income earned by a U.S. corporation's operations in Puerto Rico, as well as the interest it earns on profits that remain in Puerto Rico. Section 30A is a tax credit against wages earned by the U.S. subsidiary's operations in Puerto Rico.

At their inception, both of these tax credits were 100%. However, in 1995 the U.S. Congress agreed to slowly "phase-out" these two tax incentives over a ten-year period. As of December 31, 2005, neither of these incentives will be available to U.S. corporations any longer.

Policy

Ex-Im Bank will not provide support for projects financed by loans based on Section 936 or 30A funding.

Rationale

The Treasury Department considers the guaranteeing of Section 936 funds to be "double-dipping" (i.e., taking advantage of U.S. government supported financing twice for the same purpose).

Exceptions

None

Related Policies

None

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SERVICE EXPORTS

Definition

Eligible "services" for Ex-Im Bank programs include any service performed by a U.S. firm and paid for by a foreign entity. These services include both stand-alone services (e.g. repair services) and services associated with a project or equipment sales (e.g. feasibility studies).

Because services are generally intangible (as opposed to goods), they can be performed either in the U.S. or in a foreign country.

Policy

Ex-Im Bank's support for services includes both stand-alone services and services associated with a project or equipment sale. Some costs associated with the export of services may also be eligible for Ex-Im Bank support. These costs include salaries and bonuses of U.S. personnel, overhead and profit of the U.S. based company, transportation on U.S. air carriers, and in, general, fees (e.g., training documentation, etc.) which reflect eligible personnel costs, overhead and profit.

Ex-Im Bank normally provides short terms to services exports because the useful life of the export expires at the time the service is consumed. However, Ex-Im Bank may also provide medium or long-term financing to service exports as follows:

1) Service exports associated with (but sold separately from) medium- and long-term equipment sales are eligible for medium- and long-term support to the extent that:

    a) the sale supports a capital project;
    b) the sale does not constitute an ongoing or recurring sale to support a buyer's operations; and
    c) the service will have a useful life and maintain its value to the foreign buyer for at least the requested payment term.

2) Stand-alone service exports are eligible for medium- and long-term support provided they meet the latter two criteria above. That is,

    a) the sale does not constitute an ongoing or recurring sale to support a buyer's operations; and
    b) the service will have a useful life and maintain its value to the foreign buyer for at least the requested payment term.

Rationale

Ex-Im Bank provides support for U.S. services to meet the financing needs of U.S. service companies in the absence of private capital and/or when facing foreign officially supported financing. Ex-Im Bank's Charter explicitly includes services as an industry sector eligible for Ex-Im Bank support on the same basis as support for goods, and independently or, in conjunction with, the export of manufactured goods, etc. Section 2 (b)(1)(D)(i) of the Export-Import Bank Act of 1945, as amended.

Exceptions

While there are no exceptions to this policy, it should be noted that Ex-Im Bank does not support personnel per-diems, overhead associated with overseas operations, in-country expenses and any related expenses considered as local costs. Also, advance royalties payable to a U.S. supplier and related to production are not eligible for Ex-Im Bank support.

Related Policies

Foreign Content-Expatriate Services; Ancillary Service Fees; Engineering Multiplier Program.

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SHIPPING REQUIREMENTS
("MARAD")

Definition
Rules identifying under what circumstances exports must be transported exclusively in U.S.-flag vessels to be eligible for Ex-Im Bank support.

Policy

The following transactions are required to be shipped exclusively in U.S.-flag vessels in order to be eligible for Ex-Im Bank support:

1) Direct loans, regardless of term or amount; and

2) Guarantee transactions with either

    a) a financed amount in excess of $20 million (excluding Ex-Im Bank's exposure fee, if financed), or
    b) a repayment period of greater than seven (7) years.

The following transactions are not required to be shipped exclusively in U.S.-flag vessels in order to be eligible for Ex-Im Bank support:

1) Credit Guarantee Facilities, regardless of amount;

2) Short-term insurance, regardless of amount;

3) Medium-term insurance, regardless of amount or term;

4) Guarantees with both a financed amount up to $20 million (excluding Ex-Im Bank's exposure fee, if financed) and a repayment period of seven (7) years or less;

5) Guarantees with a financed amount up to $20 million (excluding Ex-Im Bank's exposure fee, if financed) under the Environmental Exports program, the Transportation Security Export program, or the Medical Equipment initiative, regardless of term.

6) Exports shipped via non-marine transportation equipment, regardless of registration and/or ownership of the shipping company or equipment.

Rationale

Public Resolution 17 ("PR 17"), originally adopted in 1934, reflects a sense of Congress that certain transactions supported by Ex-Im Bank should be subject to U.S.-flag shipping requirements. Ex-Im Bank and the U.S. Maritime Administration ("MARAD") have periodically come to mutual understanding about the proper application of PR 17 to Ex-Im Bank's programs, most recently, in October 2004.

The purpose of PR 17 is to support the U.S. strategic objective of maintaining a merchant marine sufficient to carry a substantial portion of its waterborne foreign commerce, and capable of service as a naval and military auxiliary in time of war or national emergency.

Exception

Requests for Waivers of PR 17 may be submitted to MARAD, a branch of the U.S. Department of Transportation. Waivers can be obtained for a variety of reasons (e.g. if a U.S. vessel is unavailable or unsuitable, etc.) If a waiver is obtained, goods shipped on vessels of non-U.S. registry are eligible for financing by Ex-Im Bank.

The costs of the shipping on foreign vessels may be eligible for financing by Ex-Im Bank if such costs meet Ex-Im Bank's foreign content rules. Shipment on a Cost, Insurance and Freight (CIF) or Cost and Freight (C&F) basis permits the costs of the foreign freight to be treated as a component of the cost of the good and, therefore, the shipping costs may be eligible foreign content. If shipments are made on non-U.S. vessels without a waiver, the goods will not be eligible for Ex-Im Bank financing.

Related Policies

Basic Foreign Content

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SHIPS: OECD SECTOR UNDERSTANDING

Definition
On 15 April 2002, the Sector Understanding on Export Credits for Ships took effect as an Annex to the Arrangement on Guidelines for Officially Supported Export Credits. This Sector Understanding sets common rules for government-supported export credits for ships, in particular concerning interest rates and the duration of credits. Financing terms are available for any contract relating to:

1) any new sea-going ship of 100 gross tons or more used for the transportation of goods or persons or for the performance of a specialized service (for example, fishing vessels, fish factory ships, ice breakers and as dredgers, that present in a permanent way by their means of propulsion and direction (steering) all the characteristics of self-navigability in the high sea);

2) tug boats of 365 kw and over;

3) unfinished shells of ships that are afloat and mobile;

4) the conversion of a ship (for sea-going vessels of more than 1,000 gross tons on the condition that the cargo plan, hull, or propulsion system is radically altered).

Hovercraft-type vessels[1] may also be financed under the terms of the understanding when facing ship-competition. However, floating docks, mobile offshore units, etc. are excluded. Should problems arise in connection with export credits for such structures, a decision could be made (in consultation with the OECD Participants to the Sector Understanding – which does not include the United States) that these structures may be covered. Military vessels are excluded in this Sector Understanding.

Policy

The United States abstained from this Sector Understanding (see "Rationale" below) and has typically provided support for ships at Standard Arrangement terms. However, Ex-Im Bank will consider matching Sector Understanding terms from a competing export credit agency on a case-by-case basis.

[1] Hovercraft is defined as follows: amphibious vehicle of at least 100 gross tons designed to be supported wholly by air expelled from the vehicle forming a plenum contained with a flexible skirt around the periphery of the vehicle and the ground or water surface beneath the vehicle, and capable of being propelled and controlled by aircrews or ducted air from fans or similar devices. Only those hovercraft vessels used on maritime routes are eligible for special ship financing terms.

OECD Terms:		Arrangement	Ship Understanding
	Repayment Term:	Up to 10 years	Up to 12 years
	Frequency and Structure:	Semi-annual	Semi-annual
	Cash Payment:	15%	20%
	Interest Rate:	CIRR or market for pure cover transactions	CIRR or market for pure cover transactions
	Tied Aid Eligibility:	Under discussion	Will follow general guidelines set for export credits

Rationale

Shipbuilding is considered to be a critical industry in some countries and is treated as a special sector because of its strategic importance. The U.S. chose not to join the OECD Sector Understanding for Ships because the Maritime Administration has a program for ship financing known as "Title XI" that offers foreign buyers repayment terms of up to 25 years, which does not conform to the terms of the OECD Sector Understanding. However, the Title XI program has been slated for termination and, subsequently, received no new budget authority in 2005, with the exception of an administrative budget to continue servicing existing business. As of June, 2005, no determination had been made with respect to the US decision to adopt the OECD Ship Understanding but a decision may be necessary if the Title XI program results in termination.

Related Reference

OECD Arrangement

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SIDE FINANCING
(PART PERIOD COVER)

Definition

Side financing (also referred to as part period cover) refers to:

1) additional financing provided in combination with an officially supported export credit; or

2) the refinancing of an officially supported export credit which yields an effective total financing package with better than OECD Arrangement terms.

Policy

Ex-Im Bank opposes the use of side financing to achieve better than Arrangement terms, whether it takes the form of refinancing or additional financing. Ex-Im Bank has, in the past, informed both buyers and exporters that side financing which aims at circumventing Arrangement rules is not permissible.

Side financing is, however, a legitimate method by which costs associated with the transaction but not covered by Ex-Im Bank (e.g., cash payments, local costs, ineligible foreign content) may be financed.

Rationale

Side financing can be used to circumvent the intent of the rules of the OECD Arrangement, thereby undermining its effectiveness in minimizing the overall subsidization of officially supported export credit.

Exceptions

Exceptions to this policy have been made in the past for a handful of large aircraft transactions for competitive reasons. These financings yielded an effective repayment term of 15 years.

Related Policies

Credit Policy and Procedure Manual: OECD Arrangement Guidelines

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

SPARE PARTS

Definition

Spare parts are extra components furnished by the supplier to make repairs on a piece of machinery.

Policy

Ex-Im Bank does not set a percentage limit on the amount of spare parts that are eligible for support as a part of a transaction. However, if the value of the spare parts package exceeds 15% of the U.S. contract price, the package is closely examined to determine the necessity of the additional parts. If the spares are not part of a larger transaction involving the machinery in which they will be used, the Bank will only support them on terms and conditions appropriate to the amount, type and use of the designed equipment spares.

Rationale

Unless the spares are an integral part of a contract, the Bank position is that normal spares beyond the initial complement constitute an inventory item and as such should be paid for on a cash or short-term basis. This philosophy does not hold true with aircraft engines or large capital items because of the large price of each unit, long lead times, intrinsic capital nature of the items, and critical on-site need for operational stability.

Exceptions

For large commercial aircraft transactions, the amount of financial support available for spares specified in the OECD Large Commercial Aircraft Sector Understanding (LASU). In asset-based transactions, particularly in large aircraft transactions, Ex-Im Bank determines the financial support available for spare parts on a case-by-case basis. Specific large component or subassembly items, with extensive lead times and/or complexity of manufacture may receive medium or long-term support. This is decided on a case-by-case basis.

Related Policies

Policy Handbook: Foreign Content; OECD Aircraft

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

STANDARD INSTALLMENT PAYMENT PERIOD

Policy

The standard installment payment period for medium and long-term transactions is for semi-annual payments. Exceptions to this policy may emerge through two avenues:

1) For specific classes of transactions (e.g. asset-based aircraft) where the Board has approved a generic exception for explicit alternative terms (e.g. quarterly), the operating staff may select an approved alternative term without further approvals by any party/entity.

2) For individual transactions where the legal/financial nature of the case is so unique as to create a need for alternative terms that is unlikely to be repeated regularly (and therefore, it is not an emerging "class" issue as noted above) and is administratively manageable, exceptional term periods of quarterly -- and in very rare instances, monthly -- may be recommended on the basis of a written justification of need to the Senior Vice President for Credit and Risk Management. If the exception request is based on the unique legal nature of the case, the Legal Division shall be consulted on whether the "unique nature" of the case should be allowed and/or merits the exception. Copies of these actions should be provided to Claims and Recoveries of the Asset Management Division, Credit Administration of the EFG Operations, Legal, and Policy and Planning.

Rationale

Because the OECD Arrangement requires that repayments not be any less frequently than six months, semi-annual repayments are the commercial standard for most medium and long-term transactions. [The workload of the Treasurer-Controller's Office and the Claims and Recoveries Division increases as the number of required repayment periods increase. Thus, a semi-annual repayment period is a preferred standard from a payment-tracking and claims perspective.]

Although very few applicants have requested shorter repayment terms, special circumstances may arise from time to time that merit the use of quarterly or monthly repayment periods. In addition, Ex-Im Bank may require more frequent repayment installments for other medium and long-term credit enhancement reasons. For instance, Ex-Im Bank imposed the use of a quarterly repayment period for asset-based aircraft transactions for credit reasons. Accordingly, there is no absolute prohibition against shorter repayment periods, because Ex-Im Bank may benefit from a buyer’s improved the debt service ability when making smaller payments more frequently.

However, in order to ensure that shorter repayment periods are only used in appropriate circumstances, exceptions for individual transactions must have the recommendation of the Senior Vice President for Credit and Risk Management and the approval of the appropriate decision –making body (e.g., Credit Committee, Board of Directors, or under Individual Delegated Authority.

Semi-annual repayment terms are a "guideline" for medium-term insurance, but variations may be made as deemed appropriate by Ex-Im Bank staff to accommodate buyer circumstances, use of leases, and the impact of supplier financing.

Related Policies

Starting Point of Credit

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

STARTING POINT OF CREDIT

Definition

The starting point of credit (SPOC) refers to the date from which cover takes effect on a given export credit transaction and the basis upon which the repayment term calculation and premia determination begins. The OECD Arrangement and the Berne Union use the following definitions to determine the SPOC, depending on the nature of the transaction:

1) Parts or components (intermediate goods): In the case of parts or components (intermediate goods, including related services), the SPOC is not later than the actual date of acceptance of the goods or the weighted mean date of acceptance of the goods (including services if applicable) by the buyer or, for services, the date of the submission of the invoices to the client or acceptance of services by the client.

2) Quasi-capital goods (including related services): In the case of quasi-capital goods (including related services), the SPOC is not later than the actual date of acceptance of the goods or the weighted mean date of acceptance of the goods by the buyer or, if the exporter has responsibilities for commissioning, then the latest SPOC is at commissioning, or for services, the date of the submission of the invoices to the client or acceptance of the service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest starting point is commissioning.

3) Capital goods and project services:

    a) In the case of a contract for the sale of capital goods consisting of individual items usable in themselves, the latest starting point is the actual date when the buyer takes physical possession of the goods, or the weighted mean date when the buyer takes physical possession of the goods.
    b) In the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the latest SPOC is the date at which the buyer is to take physical possession of the entire equipment (excluding spare parts) supplied under the contract.
    c) If the exporter has responsibility for commissioning, the latest SPOC is at commissioning.
    d) For services, the latest SPOC is the date of the submission of the invoices to the client or acceptance of service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest SPOC is commissioning.

4) Complete plants or factories:

a) In the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the latest SPOC is the date when the buyer takes physical possession of the entire equipment (excluding spare parts) supplied under the contract.
b) In the case of construction contracts where the contractor has no responsibility for commissioning, the latest SPOC is the date when construction has been completed.
c) In the case of any contract where the supplier or contractor has a contractual responsibility for commissioning, the latest SPOC is the date when he has completed installation or construction and preliminary tests to ensure it is ready for operation. This applies whether or not it is handed over to the buyer at that time in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier or contractor may have e.g., for guaranteeing its effective functioning or training local personnel.
d) Where the contract involves the separate execution of individual parts of a project, the date of the latest SPOC is the date of the SPOC for each separate part, or the mean date of those SPOC dates, or, where the supplier has a contract, not for the whole project but for an essential part of it, the SPOC may be that appropriate to the project as a whole.
e) For services, the latest SPOC is the date of the submission of the invoices to the client or the acceptance of service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest SPOC is commissioning.

Policy

Ex-Im Bank has adopted the date of shipment as its SPOC rather than the date of acceptance as a general rule in the case of individual items useable within themselves. In the case of transactions that involve installation, commissioning, etc., in which the exporter has a responsibility to implement/install the equipment and/or ensure its operational capabilities, Ex-Im follows the OECD/Berne Union SPOC definitions.

Rationale

The reason Ex-Im Bank has adopted the date of shipment vs. date of acceptance by the buyer for individual capital goods is because it provides a date certain for the purposes of determining cover and premia/exposure fees due and payable and documentary ease.

Related Policies

Standard Installment Repayment Period

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

TIED AID

Definition

Tied aid is concessional financing support provided by donor governments in the form of a grant or a "soft" loan for which capital goods procurement by developing countries is contractually linked to procurement from firms located in (or in some way benefiting the economy of) the donor country. Tied aid credits by their nature can be trade distorting.

Note: There are various forms of aid that can be generally grouped into bilateral aid (to be used at the discretion of the buyer) and trade-related aid (that involves procurement of capital equipment). Trade-related aid may be either "tied" or "untied" to procurement from the donor country and can be provided in two forms: credits or grants[1]. For definitions and a detailed description of the various forms of aid, please refer to Appendix H of the Ex-Im Bank Competitiveness Report to Congress, 2004.

Policy

US Ex-Im Bank does not <u>initiate</u> tied aid, but it may <u>match</u> a foreign tied aid offer. An interagency coordination and consultation process is set forth in the Export-Import Bank Charter, which requires Ex-Im Bank and Treasury to promptly exchange information on tied aid transaction requests in order to process requests and inform applicants/exporters of issues associated with their tied aid request in a timely manner. In addition, staff is expected to engage OECD ECAs regarding confirmation of competitive offers and/or issuing no aid "common lines". The Ex-Im Bank Tied Aid Coordinator works closely with the Policy Office in processing OECD communication.

The decision to match is made by Treasury and Ex-Im Bank based on the following broad criteria used to determine whether:

(1) a foreign tied aid offer that is being made in compliance with the OECD- tied aid rules will distort commercially-financed trade in favor of donor country firms [Note: Some recent tied aid inquiries have implied that foreign governments are using their tied aid program for commercial gain. However, when these offers are OECD compliant, Treasury has generally been reluctant to agree to match. Nevertheless, staff should identify these situations per our legislation and track outcomes for future reference rather than discourage applicants. Of course, applicant expectations should be managed accordingly.];

[1] Credits with a concessionality level of 80% or more are viewed as grants and are not considered trade distorting.

(2) a USG tied aid matching offer provides negotiating leverage to the US to induce foreign donors to introduce new OECD rules or disciplines; or

(3) a USG tied aid matching offer helps enforce existing OECD rules or disciplines. See "Tied Aid Capital Projects Fund" Fact Sheet dated 12/19/02 for more details.

Note that in a special effort to facilitate small business access to competitive financing, the U.S. Government would generally not require multiplier criteria, like evidence of follow on sales to be done on commercial (instead of concessional) terms to match *de minimus* tied aid offers for commercially viable projects.

Tied aid can only be offered in certain countries and for certain projects. **Attachment 1** is a list of key markets for which tied aid is prohibited and key markets that are eligible for tied aid support. **Attachments 2 and 3** are lists of projects generally not eligible and generally eligible for tied aid, respectively.

Rationale

The USG favors aid that represents bona fide development assistance and has established USAID as the agency responsible for managing USG aid efforts around the world. Ex-Im Bank's tied aid authority has been granted to reduce and ideally eliminate aid that is trade distorting because it

1) disadvantages U.S. exporters, i.e., redirects business away from U.S. and other suppliers whose products are superior in quality, price, and service; and

2) closes markets and misallocates both international and developing country resources.

Furthermore, trade-distorting aid results in higher contract prices, a capital-intensive development bias, skewed technology choices, and an increased debt burden.

OECD Rules For Tied Aid

In 1991, the OECD agreed to rules governing the use of tied aid (also known as the Helsinki Package). The rules are aimed at reducing the use of concessional financing for projects that should generate sufficient cash flows that would support the use of commercial – rather than concessional – financing. The Helsinki Package established:

1) country and project eligibility requirements for the provision of tied aid;

2) rules requiring notification of tied aid offers; and

3) mechanisms for consulting on (and in some cases challenging whether) tied aid offers conform to established guidelines. The Helsinki rules on country and project eligibility basically resulted in two disciplines to restrict the use of tied aid:

   a) no tied aid in "rich" countries; and
   b) no tied aid for "commercially viable" (CV) projects.

In addition, since the mid-1980s, the Arrangement has required that tied aid contain a minimum concessionality level of 35% as measured with a market-based discount rate.

References

Title 12, Chapter 6A, Subchapter III – Tied Aid Credit Export Subsidies and
Sections 10(G) and 2(b)(1)(A) of the Export-Import Bank Act of 1945, as amended

Attachment 1

Key Markets Where Tied Aid is Prohibited	
Americas*	Argentina, Mexico, Venezuela
Asia*	Hong Kong, Korea, Malaysia, Singapore; Taiwan
Middle East*	Bahrain, Israel, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, United Arab Emirates
Africa*	Botswana, Gabon,
Eastern Europe	Czech Republic, Hungary, Poland, Slovakia; Belarus**, Bulgaria**, Latvia, Lithuania, Romania**, Russian Federation**, and Ukraine**.

*These markets are not eligible for tied aid because their Gross National Income (GNI) per capita was sufficient to make them ineligible for 17-year loans from the World Bank for at least two consecutive years (using 2003 data, those countries with a GNI per capita above U.S.$3,035).

**These markets are covered by a Participants' agreement to try to avoid tied aid credits other than outright grants, food aid and humanitarian aid, known as the "soft ban". The decommissioning of nuclear power plants for emergency or safety reasons, or due to serious cross-border pollution caused by a major industrial accident, can be regarded as humanitarian aid. Such projects would be eligible for tied aid in these markets despite the soft ban.

Key Tied Aid Eligible Markets	
Asia	China, India, Philippines, Thailand, Vietnam
Americas	Colombia, Ecuador; El Salvador; Guatemala; Paraguay; Peru
Africa	South Africa; Egypt, Namibia
Middle East	Jordan; Turkey

Note: In addition to OECD tied aid eligibility, additional U.S. Government criteria are applied to transactions to determine whether tied aid can be made available (e.g., follow on sales criteria and "dynamic market" evaluation).

Attachment 2: Projects Generally NOT Eligible for Tied Aid

Projects Generally Considered Commercially Viable (Helsinki-Type Tied Aid Prohibited)	
Power	▪ Oil-fired power plants ▪ Gas-fired power plants ▪ Large hydropower plants ▪ Retrofit pollution-control devices for power plants ▪ Substations in urban or high-density areas ▪ Transmission and/or distribution lines in urban or high-density areas
Energy Pipelines	▪ Gas transportation and distribution pipelines ▪ Gas & oil transportation pipelines
Telecommunications	▪ Equipment serving intra and interurban or long-distance communications ▪ Telephone lines serving intra and interurban or long-distance communications ▪ Switching equipment serving urban or high-density areas ▪ Radio-communications equipment serving urban or high-density areas
Transportation	▪ Freight railroad operations (locomotives, cars, signaling)
Manufacturing	▪ Manufacturing operations intended to be profit-making ▪ Privately-owned manufacturing operations ▪ Manufacturing operations with export markets ▪ Manufacturing operations with large, country wide markets

Attachment 3: Projects Generally Eligible for Tied Aid

Projects Generally Considered Commercially Non-Viable (Helsinki-Type Tied Aid Permitted)	
Power	▪ Power projects that are isolated from the power grid ▪ Distribution lines to low-density, rural areas ▪ Some transmission lines to low-density, rural areas ▪ District heating systems ▪ Renewable energy (e.g., geothermal power plants; small wind turbine farms; small hydropower plants connected with irrigation)
Telecommunications	▪ Telephone switching equipment serving low-density, rural areas ▪ Switching equipment serving low-density, rural areas ▪ Radio-communications equipment serving low density, rural areas
Transportation	▪ Road and bridge construction ▪ Airport terminal and runway construction ▪ Passenger railroad operations (locomotives, cars, signaling) ▪ Urban rail and metro systems
Manufacturing	▪ Highly-localized, small scale cooperatives ▪ Highly-localized, small scale food processing ▪ Highly-localized, small scale construction supply
Social Services	▪ Sewage and sanitation ▪ Water treatment facilities ▪ Firefighting vehicles ▪ Equipment used for public safety ▪ Housing supply ▪ School supply ▪ Hospital and clinic supply

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

UNTIED AID

Definition

Untied aid credits refer to financing that is not contractually conditioned upon the purchase of goods and/or services from any particular country. Untied aid is often referred to as Official Development Assistance (ODA). ODA is concessional financial support of which at least 25% is intended to carry no repayment obligations (i.e., contains 25% concessionality or grant element)[1], and the vast majority of it is 100% pure grant. Note that USAID programs are generally 100% grants BUT they are usually tied to US procurement.

Aid from a donor government to a recipient developing country government normally supports either "general" uses (e.g., balance of payments support) or the purchase of specific goods and/or services (local, donor country and/or third country) necessary for the completion of an investment or specific project. The latter, with the exception of some local purchases, is trade-related aid.

Policy

The Ex-Im Bank Charter authorizes Ex-Im Bank to match foreign export credit agencies and aid agencies when they use untied aid to promote exports as if it were tied aid. This authority has never been tested and would require inter-agency and OECD coordination to be able to process such a request.

Rationale

By definition, untied aid should not be trade distorting because it should be equally accessible to exporters from all countries. However, through influence exerted indirectly (e.g., through lack of transparency, special procedures, required designs and specifications, promises of additional aid, political pressures, gratitude shown by the recipient, lack of multilateral accountability, etc.), untied aid can become effectively tied while it nominally escapes the Arrangement rules for tied aid. All such aid that is effectively tied must be considered trade distorting.

OECD rules for Untied Aid

This form of aid has historically fallen under the purview of the OECD Development Assistance Committee (DAC) rules, which differ from the OECD Arrangement rules in

[1] The technique for measuring concessionality (grant element) of ODA is antiquated and results in one half of annual ODA levels having a concessionality level below 25%, and some substantially less.

that the DAC provides virtually no restrictions on untied aid use. However, in 2004 the United States successfully promoted an agreement to enhance transparency of untied aid offers. That is, untied aid donors will make their offers public to allow for competitive international bidding and to report the nationalities of bid winners. The transparency agreement will allow OECD Members to:

1) access information that will help all exporters (not just exporters from donor countries) compete for sales financed with foreign untied aid; and

2) compile any evidence of de facto tying of “untied” aid to procurement from the donor country.

Thus, the transparency agreement would facilitate the disclosure and dissemination of technical details associated with each untied aid notification to US exporters. U.S. exporters will be in a better position to bid on projects financed with foreign untied aid and donors may be under pressure to avoid unfair bid awards. Any allegations of untied aid competition can be reported to the Policy Group for follow up action, i.e., confirmation whether a foreign untied aid notification was made prior to contract bid award and/or that the bid award was made in a fair and transparent manner.

Related Policies

Tied aid; mixed credits

"Please refer to 'Important Notice' in the "Guide to the Policy Handbook."

USED AND REFURBISHED EQUIPMENT

Definition

Goods that have been previously owned or placed in service.

Policy

Equipment that has been previously owned or placed into service is generally eligible for support under Ex-Im Bank's loan, guarantee and insurance programs, provided certain criteria are met. To be eligible for Ex-Im Bank support, used equipment, including equipment that has been refurbished in the U.S., must meet the following eligibility criteria:

1) U.S. Content: If the original equipment is to be considered U.S. content, the used equipment must be of original U.S. manufacture, AND, if previously exported, must have been in use in the U.S. for at least one year prior to export[1].

2) Refurbishment: The U.S. costs associated with the refurbishment of the equipment are eligible for Ex-Im Bank support, provided they meet Ex-Im Bank's foreign content policy parameters. Ex-Im Bank can support the lesser of 85 percent of the U.S. Contract Price of the item or 100 percent of the actual U.S. content of the item (including refurbishment costs) provided shipment occurs from the U.S.

3) Eligible Foreign Content: If the used equipment is of either original foreign manufacture or original U.S. manufacture, previously exported and has not been in use in the U.S. for at least one year prior to its proposed export, then Ex-Im Bank will treat it as foreign content and the following applies:

   a) If the equipment is to be refurbished, the used equipment procurement cost is considered eligible foreign content provided that this cost is less than 50 percent of the total procurement and refurbishment cost.
   b) If the foreign content of the used equipment exceeds 50 percent of the cost associated with the procurement and refurbishment of the equipment, such foreign costs will be considered ineligible for Ex-Im Bank support.

[1]If staff has reason to believe that equipment is being brought back into the U.S. for the sole purpose of obtaining Ex-Im Bank financing, staff should consider the equipment as foreign content and the entire transaction – including refurbishment – should be subject to Ex-Im Bank’s foreign content policies.

4) Previously exported goods that benefited from Ex-Im Bank financing in the past will be considered eligible for Ex-Im Bank support provided that the original financing has been paid in full and that the equipment has been in use in the U.S. for at least one year.

5) The repayment term that Ex-Im Bank offers for used and refurbished equipment will be consistent with Ex-Im Bank's international agreements for repayment terms based on contract value, and shall not exceed the effective remaining useful life of the transaction's scope of supply. Ex-Im Bank, at its sole discretion, will determine the effective remaining useful life of the scope of supply according to the following:

   a) The remaining **useful life** of an individual piece of equipment shall reflect the remaining portion of "first life" expected for a similar piece of new equipment. "First life" is defined as the typical expected operating life of a piece of equipment prior to major overhaul milestones or the need for significant refurbishment.
   b) If the sale includes more than one item, including a mixture of new and used items, a dollar-weighted average of the individual useful lives of each item in the scope of supply will be calculated.

6) Foreign Content for used pieces should be determined by contacting the original manufacturer to ascertain the value on a percentage basis of foreign components contained in the equipment during the manufacturing process. This percentage should be applied to the suppliers purchase price to determine the current value of foreign components. This value should then be adjusted to account for the value of any additional foreign components installed during the refurbishment process.

Rationale

The rationale for Ex-Im Bank's support for used equipment is that

1) used equipment is an export that generates income to the U.S. economy by supporting non manufacturing jobs; and

2) there is a higher probability that the export of U.S.-made used equipment (versus foreign made used equipment) will generate future U.S. manufacturing jobs associated with replacement and/or follow-on sales.

Ex-Im Bank requires previously exported used equipment to have been in use in the U.S. for over one year to ensure that the equipment was not brought back into the U.S. for the sole purpose of obtaining Ex-Im Bank support.

Related Policies

Foreign Content

POLICY HANDBOOK: INDEX