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Eximbank Exporter Assistance Program

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EXIMBANK EXPORTER ASSISTANCE PROGRAMS

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INTRODUCTION

United States exporters desiring to market their products and services abroad frequently require financial or other support of their export transactions. The ability of such exporters to structure an export financing package which will provide repayment or other terms required by competition or by the buyer to meet his cash flow projections is often as important as the price of the product or project being sold and may be determinative of success of the export sale. Many foreign buyers, particularly those purchasing expensive U.S.-origin technology-intensive products and large projects, do not have access to sophisticated capital markets[1] or financing sources such as pension funds, insurance companies and other institutional investors[2] available to finance sales in the U.S. market. United States commercial banks are often reluctant to finance export transactions at reasonable rates or maturities, especially where long-term credit is needed,[3] in part because of an exaggeration of the risks involved in such transactions or due to lending or other limits on their capacity to do so.[4]

The Export-Import Bank of the United States (Eximbank)[5]

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1. EXPORT-IMPORT BANK OF THE UNITED STATES, ANNUAL REPORT 6 (1975) [hereinafter cited as 1975 EXIMBANK REPORT].

2. *Id.* These sources are not available to foreign buyers partly because of regulations limiting their involvement overseas, and partly because of custom.

3. *Id.*

4. Commercial banks are normally unwilling to extend unguaranteed loans other than to known borrowers in politically and economically stable countries. Moreover, such banks are reluctant to lend on terms exceeding five to seven years from date of authorization even when justified by cash flow projections.

5. Eximbank is one of several agencies established to supplement private capital in the expansion of foreign commerce and economic development. Other significant

is an important financing institution which provides substantive support of U.S. export transactions. Eximbank fosters the expansion of U.S. exports by making dollar loans directly to public and private foreign buyers of United States goods and services; by insuring, in cooperation with the Foreign Credit Insurance Association (FCIA), the political and credit risks on short- and medium-term export transactions; by the issuance of guarantees to approved lenders of debt obligations arising out of export sales; and by lending to commercial banks and other financing institutions against their holdings of export debt obligations. The purpose of this article is to provide lawyers and their exporting clients with a current review of the legislative authority for and background of Eximbank (part I), and the loan programs (part II), guarantee programs (part III), insurance programs (part IV), and certain other exporter support programs offered by Eximbank (part V). A bibliography of selected reference materials is set forth at the end of this article.

I. Background

A. *Authority; Purposes; General Guidelines*

Eximbank was established in 1934[6] as a wholly-owned, dependent agency of the United States Government and now operates under the authority of the Export-Import Bank Act of 1945,[7] as amended (Act). Pursuant to the Export-Import Bank

agencies are: Agency for International Development, Overseas Private Investment Corporation, International Finance Corporation, International Monetary Fund, World Bank, International Development Association, and Inter-American Development Bank. For further information about such agencies, *see* BANKERS TRUST COMPANY—NEW YORK, WASHINGTON AGENCIES THAT HELP TO FINANCE FOREIGN TRADE (7th ed. 1974). *See also* U.S. DEPARTMENT OF COMMERCE, OFFICIAL U.S. & INTERNATIONAL FINANCING INSTITUTIONS (1976).

6. Pursuant to Exec. Order No. 6581, Feb. 2, 1934, Eximbank was first organized as a District of Columbia banking corporation and originally called the Export-Import Bank of Washington. That name was changed to the Export-Import Bank of the United States by Act of Mar. 13, 1968, Pub. L. No. 90-267, 82 Stat. 47. Subsequent to its organization, Eximbank was continued as a United States agency by Act of Jan. 31, 1935, Pub. L. No. 74-1, 49 Stat. 4, as amended by Act of Jan. 26, 1937, Pub. L. No. 75-2, 50 Stat. 5; Act of Mar. 4, 1939, Pub. L. No. 76-3, 53 Stat. 510; Act of Mar. 2, 1940, Pub. L. No. 76-420, 54 Stat. 38; Act of Sept. 26, 1940, Pub. L. No. 76-792, 54 Stat. 961; and repealed by Sec. 10 of the Act of July 31, 1945 Pub. L. No. 79-173, 59 Stat. 526. The second Export-Import Bank of Washington, D.C. was established under Exec. Order No. 6638, Mar. 9, 1934 and abolished under Exec. Order No. 7365, May 7, 1936.

7. Originally enacted as Act of July 31, 1945, Pub. L. No. 79-173, 59 Stat. 526.

Amendments of 1974, the corporate existence of Eximbank was extended through June 30, 1978.[8]

The statutory purposes of Eximbank are "to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof."[9] To meet these objectives, Eximbank is directed by the Act to provide guarantees, insurance and extensions of credit upon conditions which are competitive with government-supported conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters.[10] Eximbank's role in assisting export trade is to supplement and encourage, but not compete with, private capital.[11] The basic philosophy of Eximbank, as evidenced by its current exporter support programs and policies, reflects the belief that the proper function of the government in export financing is to use its limited resources to encourage maximum private participation in risk-taking and in the mobilization of funds, to assume political and commercial credit risks which the private sector cannot absorb, to stretch out commercial bank maturity limitations for larger projects, to assist exporters in competing with export financing offered by governments or agencies of other countries and to provide leadership and guidance in export financing both to the U.S.

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8. Act of Jan. 4, 1975, Pub. L. No. 93-646, 99 Stat. 2333.

9. The Export-Import Bank Act of 1945 § 2(a)(1), 12 U.S.C. § 635 (Supp. 1975) [hereinafter cited as Bank Act].

10. Bank Act, § 2(b)(1)(A). Eximbank is required by the Act to seek to minimize competition in government-supported export financing. For a discussion on the competition issue, *see* EXPORT-IMPORT BANK OF THE UNITED STATES, REPORT TO THE U.S. CONGRESS ON EXPORT CREDIT COMPETITION AND THE EXPORT-IMPORT BANK OF THE UNITED STATES, (1976) [hereinafter cited as COMPETITION REPORT]. In an effort to meet this mandate, Eximbank announced guidelines designed to reduce official export credit competition by providing standards covering cash payments, interest rates, repayment terms and mixed credits. Canada, West Germany, Japan and the United Kingdom announced that they will also adhere to the guidelines which are in effect on a trial basis until June 30, 1977. For additional background on Eximbank's participation in discussions with members of the Berne Union, an international association of public and private export credit insurers, and the Organization for Economic Cooperation and Development, to establish standards of official export credit support, *see* Statement of R. Alex McCullough, Director of Eximbank, before the Subcomm. on International Trade, Investment and Monetary Policy of the House Comm. on Banking, Currency and Housing, 94th Cong., 2d Sess., May 10, 1976; MACHINERY AND ALLIED PRODUCTS INSTITUTE, A HANDBOOK ON FINANCING U.S. EXPORTS 82 (2d ed. 1976).

11. Bank Act, § 2(b)(1)(B).

exporting and banking community and to foreign borrowers.[12]

The operating guidelines of Eximbank are in accord with legislative mandates and can be summarized as follows:

1. Eximbank extends financial assistance for specific purposes[13] in connection with the overseas sales of United States goods and services;

2. When authorizing financial assistance, Eximbank takes into consideration any possible adverse effects thereof on the competitive position of United States industry, the availability of materials which are in short supply in the United States and the national employment situation;[14]

3. Only transactions offering reasonable assurance of payment will be financed by Eximbank;[15]

4. Fees and premiums for guarantees and insurance are charged at rates commensurate with the risks covered; and

5. As previously noted, Eximbank supplements and encourages private capital and endeavors not to compete with it.[16]

B. *Restrictions*

Primary restrictions on Eximbank's activities take the form of budgetary constraints (discussed in subpart C below), total or limited prohibitions against doing business with nationals, agencies or governments of certain specified countries, and statutory guidelines respecting extensions of credit. Eximbank is prohibited from participating in any extension of credit to a communist country[17] or to any foreign country, agency or

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12. Eximbank News, April 21, 1976, Summary of Remarks by Stephen M. DuBrul, Jr., President and Chairman, Export-Import Bank of the United States at the Chicago World Trade Conference, April 21, 1976. Eximbank estimates that about 16% of United States non-agricultural exports require some form of Eximbank assistance to share risks or to overcome maturity or other limitations in the private market. 1976 EXIMBANK REPORT, *supra* note 1, at 2.

13. Bank Act, § 2(b)(1)(A).

14. *Id.* In the fiscal year ending June 30, 1976, Eximbank authorized assistance of export sales which related to an estimated 500,000 American jobs. 1976 EXIMBANK REPORT 4.

15. Bank Act, § 2(b)(1)(A).

16. *Id.* All transactions of Eximbank are subject to review by the National Advisory Council on International Monetary and Financial Policies consisting of the Secretaries of the Treasury, State and Commerce Departments, the Chairman of the Federal Reserve System and the President of Eximbank. The Council was established pursuant to Exec. Order No. 11269, 31 C.F.R. 2813 (1966), 22 U.S.C. § 2866 (1966).

17. Bank Act, § 2(b)(a)(A). Communist countries are defined in § 620(f) of the Foreign Assistance Act of 1961, as amended, Act of Aug. 1, 1962 Pub. L. No. 87-565, 76 Stat. 261; Act of Oct. 7, 1964, Pub. L. No. 88-633, 78 Stat. 1013, codified at 22 U.S.C.

national thereof if the product to be purchased or leased by such party is, to the knowledge of Eximbank, principally for use in or sale or lease to a communist country, unless the President determines that such participation would be in the national interest.[18] Loans to communist or other prohibited countries in an amount of $50,000,000 or more require a separate presidential "national interest" determination.[19] As a general rule, each determination must be reported to Congress not later than the earlier of thirty days following the date of such determination or the date on which Eximbank takes final action on the transaction involved.[20] Additional restrictions are placed on business with the Soviet Union, including a ceiling of $300,000,000 for financing of exports to that country.[21] Currently, no exports to the Soviet Union are being financed with Eximbank support due to provisions of the Trade Act of 1974 prohibiting the extension by the U.S. Government of credits or guaranties to nonmarket countries which do not recognize the right of emigration. This restriction could be waived by the President if he determined that a waiver would substantially promote the objective of freer emigration or if he received assurances that the policies of a communist country would lead to achieving the objective of freer emigration.[22] Eximbank has a relatively small involvement ($679,000,000 at December 31,

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§ 2570 (1964) to include:

> Peoples Republic of Albania, Peoples Republic of Bulgaria, Peoples Republic of China, Czechoslovak Socialist Republic, German Democratic Republic (East Germany), Estonia, Hungarian Peoples Republic, Latvia, Lithuania, North Korean Peoples Republic, North Vietnam, Outer Mongolia-Mongolian Peoples Republic, Polish Peoples Republic, Rumanian Peoples Republic, Tibet, Federal Peoples Republic of Yugoslavia, Cuba, and Union of Soviet Socialist Republics (including its captive constituent republics).

18. Bank Act, § 2(b)(2)(B).

19. *Id.*

20. *Id.* At present, Eximbank is supporting financing of U.S. exports to only three communist countries, Poland, Rumania and Yugoslavia. At December 31, 1975, Eximbank's exposure in those was as follows: Poland—$139,000,000; Rumania—$72,000,000; and Yugoslavia—$909,000,000.

21. Bank Act, § 7(b). In addition, no loan or financial guarantee, or combination therof shall be for the purchase, lease, procurement of any product or service for production of fossil fuel energy resources and not more than $40,000,000 shall be for projects relating to the research or exploration of fossil fuel energy resources. These restrictions only come into play after the provisions of the Trade Reform Act of 1974 relating to emigation policies of Communist countries have been complied with or amended.

22. The Trade Reform Act of 1974, Act of Jan. 4, 1975, Pub. L. No. 93-646, 88 Stat. 2333.

1975) in financing capital goods exports to communist countries, a factor which sharply contrasts with the high level (approximately $20 billion at December 31, 1975) of involvement in such financing by agencies of other major industrial countries.[23]

Eximbank is also prohibited by the Act from: (a) making any loan or granting a guarantee, or any combination thereof, to any person or country, including any communist country, in an amount of $60,000,000 or more unless Eximbank has submitted specified information respecting each such transaction to Congress for at least twenty-five days of continuous session prior to final Eximbank approval;[24] (b) financing, insuring or guaranteeing any amount in connection with the purchase or use of any product or technology by a national or agency of any nation which engages in armed conflict with the United States;[25] and (c) granting any guarantee, insurance or credit in connection with sales of defense articles and defense services to countries designated by Executive Order of the President as being economically less developed,[26] except in certain events where a presidential determination that the transaction would be in the national interest has been made.[27]

Prior to granting any support for energy-related exports, Eximbank makes a determination that the equipment and services involved are not in actual or potential short supply in the United States. All applications for Eximbank assistance in financing nuclear power are reviewed by the Department of State and the Inter-Agency Nuclear Non-Proliferation Backstopping Committee, thereby assuring that Eximbank's participation in the export transaction conforms to established national policy respecting exports of United States nuclear equipment and technology.

23. Statement of Raymond J. Albright, Vice-President, Export-Import Bank of the United States, before the Subcomm. on International Trade, Investment and Monetary Policy, House Comm. on Banking, Currency and Housing, (May 10, 1976).

24. Bank Act, Sec. 2(b)(3).

25. Bank Act, Sec. 2(b)(4).

26. Bank Act, Sec. 2(b)(5). I.R.C. § 4916(b) defines less developed country as any foreign country (other than an area within the Sino-Soviet bloc) or any possession of the United States with which there is in effect an Executive Order designating such country as an economically less developed country for purposes of the tax imposed by I.R.C. § 4911.

27. Bank Act, § 2(b)(5). *But see*, Foreign Military Sales Act of 1968, Pub. L. No. 90-629, § 24, which prohibits Eximbank from participating in transactions involving sales of defense articles and services to less developed countries, without provision for a Presidential determination.

C. *Financial Resources*

Funding for Eximbank operations is derived from subscription to the capital stock of Eximbank by the government in the amount of $1,000,000,[28] borrowings from the United States Treasury, which are repaid with interest at market rates,[29] the issuance of securities in the public and private markets, borrowings from the Federal Financing Bank,[30] net income and repayment of loans. Eximbank does not receive an annual appropriation from Congress,[31] a situation which makes it difficult for Eximbank to offer interest rates and other terms below market rates, unlike most of Eximbank's competitors whose operations are underwritten through annual appropriations. As of October 1, 1976, its annual expenditures and lending, guarantee and insurance authorizations are subject to limitations imposed on the budget of the government.[32] This return to the federal budget requires Eximbank to take a harder look at its resources available to assist United States export trade[33] and means that Eximbank's allocation of government-backed resources will be made in competition with all other federal programs.

Eximbank is a self-sustaining institution. In order to build up an adequate reserve for possible future losses and to preserve its capital, Eximbank must maintain interest rates it

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28. Bank Act, § 4.

29. Bank Act, § 6. The Secretary of the Treasury is authorized to purchase debt obligations of Eximbank up to an aggregate amount of $6 billion at any time outstanding. During the fiscal year ended June 30, 1976, the largest amount of borrowings from the U.S. Treasury which Eximbank had outstanding was about $295,000,000.

30. The Federal Financing Bank is a U.S. Government corporation established to coordinate the funding of various government corporations and agencies. Eximbank refunds its borrowings from the U.S. Treasury by periodically borrowing from the Federal Financing Bank.

31. Most other major trading countries, except Canada, use appropriated funds to subsidize low interest rates, while Eximbank is required to borrow funds required by it. COMPETITION REPORT, *supra* note 10, at app. 2.

32. Subsequent to September 30, 1976, § 2(a)(2) of the Bank Act, excluding (since 1971) Eximbank receipts and disbursements from the U.S. Government budget but requiring certain annual reports respecting Eximbank activities to be submitted to Congress, was deleted in its entirety by Eximbank Amendments of 1975. Under regulations relating to the federal budget, Eximbank's disbursements are considered debit entries to the extent that they are not offset by receipts of principal and interest on its loans. Since Eximbank's disbursements usually follow its commitments by a number of years, annual budget ceilings on disbursements imposed by the budget could hinder Eximbank's planning and operations.

33. Interview with Warren W. Glick, General Counsel, Eximbank, in Washington, D.C. (October 8, 1976).

charges sufficiently above the rate it pays for funds.[34] Confronted with a generally increasing demand for its services,[35] an increase in the cost of borrowed money,[36] and recommendations of the General Accounting Office,[37] Eximbank raised its long- and medium-term interest rates and its financial guarantee fees. Presently, such rates range from 8% to 9% per annum depending on the term of the loan.[38] A primary purpose of these increases and other measures designed to increase earnings[39] was to bring Eximbank's rates closer to commercial rates in order to provide additional funds to assist United States exporters in meeting foreign official export credit competition.[40]

II. LENDING PROGRAMS

A. *Direct Loans*

Direct loans are made by Eximbank to foreign public and

34. Statement of Stephen M. DuBrul, President and Chairman, Eximbank, before the Subcommittee on Foreign Operations, Committee on Appropriations, U.S. House of Representatives (March 10, 1976).

35. Eximbank authorizations totalled $8.6 billion in its fiscal year ended June 30, 1976, up from $8.3 billion during the previous year. These authorizations supported about $12 billion in U.S. export sales to 157 markets. Eximbank's guarantee and insurance authorizations rose to $5.1 billion in 1976, up from $4.5 billion in 1975. Loans, other than discount loans, made by Eximbank declined to $2.3 billion in 1976, from $2.7 billion in the prior fiscal year. This decline was due to: a world-wide decrease in development projects; Eximbank's grant of credit support to those transactions where it was needed most; and, greater selectivity with respect to authorizations for countries where Eximbank already had a substantial commitment. Discount loan commitments rose to $1.2 billion in 1976, from $1.1 billion in 1975. 1976 EXIMBANK REPORT 4.

36. COMPETITION REPORT, *supra* note 10, at 1.

37. In October 1975, the General Accounting Office issued a report entitled "Weakened Financial Condition of the Export-Import Bank of the United States" wherein recommendations, among others, were made that Eximbank should raise its interest rates on direct credits where there was little or no foreign competition and that it should better correlate the terms of its borrowing and lending repayment periods.

38. In January, 1977, Eximbank's direct credit interest rates dropped one-half to one-fourth of one percent lower than the rates in effect since September, 1975. Credits of 6 years or less from the date of authorization will have an 8% rate; for each additional year the rate will increase one-eighth of one percent to a maximum of 9% for loans repayable over 13 years from date of authorization. 2 Eximbank Record (No. 2, 1977).

39. Eximbank also introduced a commitment fee for financial guarantees of ⅛% and for advance commitments for discount loans of ¼% and increased its short- and medium-term guarantee and insurance fees by 50%.

40. 1975 EXIMBANK REPORT, *supra* note 1, at 1; Statement of Stephen M. DuBrul, *supra* note 34, at 9; Letter of then President of Eximbank William J. Casey, to the Chairman of the Senate Committee on Government Operations, (December 15, 1975), responding to the GAO report referred to *supra* note 37.

private borrowers[41] for the purpose of financing on a long-term basis (ranging from five to fifteen years) the purchase of products and services originating in the United States and to enable U.S. suppliers to provide terms competitive with those offered by government supported export financing institutions in other countries.[42] Such loans generally are made in connection with export sales of expensive (generally not less that $2 -$3 million) capital goods such as heavy equipment or airplanes, or of large projects like power plants, steel mills or utilities.[43] When determining the length of a direct loan, Eximbank reviews, among other factors, the nature of the project, its useful life and cost, and the terms offered by competing governmental export credit agencies. The amount of the loan depends primarily on the cost of the U.S. goods and services involved in the export transaction, the extent of private participation in the financing of such transaction, the foreign purchaser's cash payment and the amount of exposure of Eximbank in a given market.

Eximbank's lending policies are characterized by close attention to the creditworthiness of the borrower and the risk of default in a particular transaction and by a concern with

41. Foreign firms with United States ownership may borrow from Eximbank. However, such borrowings may not be used to finance intercorporate transactions between United States companies and their overseas subsidiaries.

42. Interest rates charged by Eximbank are generally higher than those charged by competing agencies. Moreover, Eximbank supports a smaller percentage of the contract value and of total exports. However, for technology-intensive products or large projects requiring longer maturities, Eximbank is somewhat more flexible than many of its competitors in adjusting its repayment terms to meet the financing requirements. COMPETION REPORT, *supra* note 10, at 13.

43. EXPORT-IMPORT BANK OF THE UNITED STATES, EXIMBANK: WHAT IT IS, WHAT IT DOES, WHAT IT CAN DO FOR YOU [hereinafter cited as EXIMBANK BROCHURE]. Eximbank authorized approximately $2 billion in equipment and service loans under its Direct Credit Program during fiscal year 1976. Examples of direct credits as reported in recent editions of Eximbank News include:

Date Reported	Country	Eximbank Credit/Total Sale	Cash Payment by Obligor	U.S. Export	Terms
9/27/76	Taiwan	$16 Million/ $40 Million	$8 Million	Phone system equipment	9%, 8 yrs.
9/27/76	England	$23.8 Million/ $62.4 Million	$14.7 Million	Jet aircraft	9%, 8 yrs.
8/30/76	Brazil	$9 Million/ $20 Million	$3 Million	Manufacturing equipment	8¾%, 7 yrs.
7/19/76	Israel	$9.4 Million/ $21 Million	$3.1 Million	Petrochemical equipment	8¾%, 8½ yrs.

whether the sale to be financed will benefit the national economy, further other national objectives and keep Eximbank competitive with foreign export financing organizations.[44] The participation of private lenders in Eximbank loans is encouraged in order to allow Eximbank to spread its resources more effectively among exporters.

In a typical direct credit transaction, the foreign borrower will make a cash down payment of at least 15% of the cost of the United States export with the balance being financed by a "mix" of private and Eximbank resources. Generally, Eximbank will finance from 35% to 55% of such cost at a fixed interest rate ranging from 8% for loans maturing within six years to 9% for loans with a maturity of fourteen years or more.[45] The balance of the cost is financed by the private market, generally commercial banks, with a portion of such financing at the risk of the private lender and the remainder thereof supported by an Eximbank guarantee against political and commercial losses.[46] All repayments of loan principal and interest are made by the foreign obligor in dollars in the United States.[47]

In support of its direct credit program, Eximbank will, in appropriate cases, issue, without charge, a preliminary commitment setting forth the amount, terms and conditions of the assistance Eximbank will provide to buyers of United States goods and services.[48] The commitment is, for many United

44. 1975 EXIMBANK REPORT, *supra* note 1, at 3.

45. Statement of Stephen M. DuBrul, President and Chairman, Eximbank, before the Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Currency and Housing, U. S. House of Representatives (May 10, 1976). The percentage of Eximbank support varies from transaction to transaction with the higher levels (*i.e.* above about 40-45%) only being authorized to match terms offered by a foreign governmental export credit agency.

46. *Id.* Eximbank's involvement in any direct credit transaction has dropped from about 90% of the value of such transaction about two years ago to about 60% of such value at this time, due primarily to Eximbank's requirement for increased participation of the private sector in export credit financings. Exceptionally, Eximbank might finance an entire feasibility or engineering study if the amount thereof is small—usually less than $1,000,000. Generally, the exporter is not required by Eximbank to participate in the financing under the "participation financing" method unless technically unproved projects are involved.

47. EXPORT-IMPORT BANK OF THE UNITED STATES, WHAT IS EXIMBANK (1975) [hereinafter cited as WHAT IS EXIMBANK].

48. EXPORT-IMPORT BANK OF THE UNITED STATES, EXIMBANK—HOW IT WORKS 2. The preliminary commitment, generally issued for a sixty-ninety day period, places no obligation on the applicant to proceed with the export transaction.

States suppliers, a significant selling point in negotiations with foreign buyers in highly competitive international markets. Commitments are beneficial to Eximbank in that they indicate in advance the demand for its resources. A request for a preliminary commitment may be submitted in letter form to Eximbank by the prospective borrower, exporter or a participating financial institution and should include information necessary to allow Eximbank to assess the financial, economic and technical aspects of the proposed transaction[49] and whether a reasonable assurance of repayment exists. Generally, the following information[50] is required:

1. Country name, address, ownership and brief history of the foreign borrower.
2. The purpose of the proposed financing and its relationship to total project cost; description, if known, of the overall financing plan for the transaction including amount of equity investment, local or foreign borrowings and their terms and conditions and provisions for coverage of cost overruns.
3. A description of items to be purchased with Eximbank financing including information respecting the United States supplier, if designated, and dates of estimated delivery, project completion and start up of commercial operations.
4. An indication whether the loan repayment will be unconditionally guaranteed by the government of the foreign obligor or other guarantor.
5. Audited financial statements of the borrower for the past three years and the latest audited financial statements of the guarantor, if any.
6. A summary of engineering and marketing data, showing the economic and technical feasibility of the transaction with detailed supporting information to be supplied at the time of application for a final commitment.
7. The borrower's projected financial data (earnings, cash flow and surplus statements and balance sheets) for the next five years, demonstrating the financial soundness of the project and the borrower's ability to service all existing and proposed indebtedness.

49. *Id.* The length of time needed by Eximbank to process preliminary commitment applications varies from project to project. Each application receives detailed attention in view of the difficulty of determining reasonable assurance of repayment, the need to reduce Eximbank's participation as much as possible to preserve its resources and the requirement that Eximbank comply with increasingly restrictive statutory mandates.

50. *Id.* at 2-4.

8. Information, if known, respecting foreign competition for the United States business including the availability of similar equipment from other countries, whether such equipment is in short or plentiful supply in the United States and the effect that the export of such equipment would have on national employment.
9. An indication of efforts made to obtain the requested financing from private capital sources and why Eximbank assistance is required.
10. Such additional information as may be reasonably required to determine the creditworthiness of the proposed transaction and the appropriateness of the terms and conditions of the financing requested.

The above information is important to Eximbank since it determines export loan repayment terms based on cash flow, rather than on wealth of the borrower's country, which is a common practice in Europe. This approach facilitates United States exporters in offering foreign purchasers longer terms than their competitors, particularly where high-technology projects are involved.[51]

Applications for direct loans are made in letter form by the prospective borrower. In addition to much of the information contained in the application for a preliminary commitment described above, the loan request will generally set forth:

i. The names and positions of the persons responsible for the project being financed.
ii. The borrower's organization and legal basis for operation; its present and contemplated activities; and information about its plant location, products or services and markets.
iii. The purpose of the proposed loan, including a list of equipment to be procured in the United States and in other countries, proposed local currency or other expenditures, the anticipated volume and kind of goods which would be produced and the benefits accruing to the host country, the relation to the host country's overall development program, if any, and the effect of the transaction on the host country's foreign exchange position, if any.
iv. Total cost of the project showing national, foreign and

51. COMPETITION REPORT, *supra* note 10, at 21. This method of fixing loan maturities is especially significant due to the traditional reluctance of commercial banks to extend terms beyond five years from date of authorization.

local funds required and all sources of such funds and an indication of sources of any funds in excess of estimated project costs that may be required later to complete the project and place it in operation.[52]

In the event that any information is left out of the application, it is advisable for the applicant to explain why it cannot be obtained thereby avoiding lost time in processing the application due to the need for follow-ups by Eximbank staff.

If the direct loan is approved, Eximbank will enter into a credit agreement with the borrower wherein the terms and conditions of the financing are described. Loan disbursements generally are made by Eximbank directly to the United States exporter. In certain cases, where the foreign purchaser has paid the United States supplier directly, Eximbank will reimburse the borrower.[53]

In some cases involving large project financing with extended repayment terms, Eximbank will finance through direct loans to the foreign purchaser the later maturities of the total credit arrangement. This later maturity financing by Eximbank allows the private lender to have its loan repaid in a shorter time period. Normally, Eximbank prefers to be paid out simultaneously with the private lender.

B. Discount Loans

Eximbank also makes discount loans at fixed interest rates, in amounts up to $5,000,000 to commercial banks[54] against medium-term (271 days to 5 years) eligible debt obligations arising from current exports of United States goods or services. Eximbank will issue advance commitments (before shipment of the products) to make loans against a bank's promissory note(s) for up to 100% of the obligations and will also issue advance commitments to purchase the obligations with full and unconditional recourse to the bank.[55] Once the advance

52. EXIMBANK—HOW IT WORKS, *supra* note 48 at 4, 5.

53. EXPORT-IMPORT BANK OF THE UNITED STATES, PROCEDURES FOR DISBURSEMENTS 1.

54. Edge Act and "Agreement" corporations operating under §§ 25, 25(a) of the Federal Reserve Act are also eligible recipients of discount loans. The discount loan program was established by Eximbank in 1966.

55. EXPORT-IMPORT BANK OF THE UNITED STATES, MEDIUM-TERM DISCOUNT LOAN PROGRAM, INSTRUCTIONS TO BANKS 1 [hereinafter cited as MEDIUM-TERM DISCOUNT LOAN PROGRAM]. Generally, a loan would be carried on the books of the bank as a direct liability while a purchase would be carried as a contingent liability. Since the conditions relating to a purchase are similar to those for a loan, the reference in this article

commitment is received, and before the obligation has been repaid, the commercial bank may borrow from Eximbank up to the outstanding amount of the loan.[56] The purposes of the discount loan program are to encourage small- and medium-sized banks to participate in export financing at fixed rates of interest[57] and to provide such banks firm assurances of liquidity in connection with such participation.[58]

The procedures[59] for obtaining a commitment for a discount loan include:

1. Making an application by letter or telex for an advance commitment prior to shipment of the products or services to which the commitment relates setting forth information about: the exporter; the guarantor, if any; the contract price; cash payment; financed portion; products or services involved; foreign purchaser; non-United States content, if any, included in the contract price; term of repayment and interest rate; interest yield per annum to the applicant bank; final shipment date; Eximbank guarantee or FCIA insurance number, if any; the relationship among the United States exporter, foreign obligor and guarantor, if any; and a statement that the bank has been informed by the exporter that the loan is necessary to complete the export transaction and that the bank will not finance the transaction on the terms indicated unless Eximbank commits to make the discount loan.[60]

2. Paying a one-time, front-end commitment fee pursuant to a sliding-scale schedule related to the repayment term of the

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to "discount loans" includes the purchase arrangement.

56. EXIMBANK BROCHURE, *supra* note 43.

57. Statement of Stephen M. DuBrul, President and Chairman, Eximbank, before the Subcommittee on Foreign Appropriations, U.S. Senate (May 4, 1976). Foreign purchasers resist financing at floating rates which do not allow them to know what the costs of their financing will be. Eximbank authorized over 1,226 discount loan transactions totalling $1.2 billion during fiscal year 1976, an increase of 6.1% from fiscal year 1975. Actual disbursements under this program totaled only about 9% of advance commitments.

58. The discount loan program is not as attractive as comparable programs offered by competing agencies in part because it does not include any interest rate subsidy. Rather, Eximbank supports commercial bank export lending by providing standby liquidity for the full term of the financing. The program compares well with its competition as to the proportion of the credit which may be refinanced. There is no requirement as a prerequisite to qualification under the program that the private lender be insured or guaranteed. COMPETITION REPORT, *supra* note 10, at 14.

59. MEDIUM-TERM DISCOUNT LOAN PROGRAM, *supra* note 55, at 2-6.

60. *Id.* at Annex A and B.

underlying loan.[61]

3. Assuring that the foreign country in which the buyer is located is acceptable to the bank-applicant and Eximbank.

4. Conforming the transaction to Eximbank's standard terms and conditions for medium-term export credit financing.[62]

5. Evidencing the financed portion of the transaction by negotiable promissory notes of the foreign purchaser, payable in United States dollars in the United States at a specified rate of interest.[63]

Transactions insured by FCIA or guaranteed by Eximbank under its bank guarantee program are eligible for assistance under the discount loan program.[64] Export debt obligations generally eligible for financing under the discount loan program are indebtednesses of a foreign obligor incurred in financing the acquisition of goods or services exported from the United States. Transactions ineligible for discount loan financing include, among others, those wherein the related debt instrument has a floating interest rate; overseas sales of product normally sold on terms not exceeding 270 days (*i.e.*, consumables, spare parts, raw materials, etc.); export transactions in connection with which Eximbank has authorized a direct loan

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61. As of January, 1977, the commitment fees ranged from $.15 per $100 in the case of a six month credit to $.55 per $100 for a five year credit. The minimum interest rate charged by Eximbank under its discount loan program is 8% which is substantially higher than rates charged by Eximbank's major foreign competitors. COMPETITION REPORT, *supra* note 10, at 15. There is no refund on expired, unused, cancelled or reduced discount loans. Commitment fees are payable within 120 days of the date of Eximbank's commitment letter, except in special cases where a longer period of time is granted by Eximbank. Interest is also charged on outstanding commitments currently equal to 1% below the yield on the commercial bank's export loan, but not lower than the stated minimum discount loan rate in effect on the date of the commitment.

62. Eximbank generally only finances exports of 100% U.S.-origin, except in some instances considered on a case-by-case approach, where a small portion of foreign components is involved. Restrictions imposed by the Bank Act, the Trade Act of 1974 and other U.S. legislation are also applicable to this program (*see* Part I of this article). A cash payment of at least 15% of the contract price must be made by the foreign purchaser on or before delivery of the products to him and the promissory note evidencing the financed portion of the transaction must be dated within 30 days of the date of shipment.

63. In certain cases, Eximbank will consider the use of drafts instead of notes.

64. Sales by a U.S. exporter to its foreign subsidiary, if insured by FCIA or guaranteed by Eximbank, will be eligible for a 50% discount loan. If there is no such insurance or guarantee, up to 100% of the financed portion of the transaction will be considered eligible for financing under the discount loan program. Only 50% of the financed portion of transactions suitable for direct loan financing will be eligible for discount loans. MEDIUM-TERM DISCOUNT LOAN PROGRAM, *supra* note 55, at 5.

or a financial guarantee, or both; exports of defense articles or services to less developed countries; sales to certain communist countries; and sales subject to statutory prohibitions.

III. Guarantee Programs

A. Commercial Bank Exporter Guarantee Program

Eximbank will guarantee to commercial banks and other financial institutions the repayment by foreign purchasers of medium-term (181 days to 5 years) export debt obligations acquired by such banks from United States exporters.[65] The purpose of this program is to encourage United States commercial banks to provide non-recourse financing of medium-term export credits. Eximbank guarantees furnish protection against defined commercial credit risks (such as the foreign buyer's protracted default or insolvency) and political risks (including inconvertibility of currency, cancellation of import licenses, expropriation or confiscation and losses due to war, revolution or civil disturbance) which private financial institutions or exporters are unwilling or unable to accept.[66] A further purpose is to expedite the export transaction by permitting the United States supplier to deal with his bank rather than directly with Eximbank.[67]

In a typical transaction, a United States exporter would consult with his commercial bank upon receipt of an overseas order, invitation to bid or other sales inquiry, for the purpose of determining, prior to performance of the contract, the availability and expenses of guarantee financing. If the overseas sales transaction is acceptable, the bank would apply to Exim-

65. Eximbank—How It Works, *supra* note 48, at 18. About 250 commercial banks participate in the guarantee program. Set forth below are statistics relating to Eximbank guarantee authorizations in 1976.

Commercial Bank and Other Guarantees

Number of Authorizations	Amount Authorized	Exposure as of 6/30/76
744	$579	$999

Source: 1976 Eximbank Report 15.

66. Eximbank Master Guarantee Agreement.

67. Export-Import Bank of the United States, Program of Assistance to Banks Providing Non-Recourse Financing for Exporters, Instructions to Banks 1 [hereinafter cited as Bank Guarantee Instructions].

bank for the desired guarantee coverage against the credit and political risks of nonpayment. Normally, Eximbank would issue the guarantee at the time of shipment if the prerequisites to such issuance had been satisfied and upon receipt of notice from the bank that it had purchased the foreign buyer's promissory note without recourse to the exporter, except that if Eximbank's guarantee covers political risks only, the bank may take recourse against the exporter for the commercial risks.

Prerequisites to the issuance by Eximbank of its guarantee under this program are summarized as follows:[68]

1. Prior approval must be forthcoming from Eximbank except where the bank has been granted discretionary authority to commit Eximbank to the issuance of guarantees, within specified limits, without advance approval.[69]

2. The country wherein the foreign buyer is located must be acceptable to Eximbank and the commercial bank.

3. The underlying transaction must conform to the standard terms and conditions of Eximbank for export credit financing. For example, generally, only exports of 100% United States-origin are eligible for Eximbank assistance;[70] only the contract sale price can be financed including freight and marine insurance paid in United States dollars, but excluding import duties and the like; the foreign purchaser must normally make a cash payment of not less than fifteen percent of the contract price before or at the time of delivery; and the terms of the transaction must be those "commercially customary in international trade."[71]

4. The United States exporter must retain for his own ac-

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68. *Id.* at 4-9. Additional prerequisites apply to special transactions such as those involving foreign governmental purchasers, used equipment, large foreign procurement programs, cattle and agricultural commodities, automobiles and aircraft.

69. *Id.* at 4. Eximbank relies to a large extent on the credit judgment of the commercial bank in approving the transaction. Where shipments are on a continuous basis to distributors or other buyers, a revolving guarantee can be obtained from Eximbank thereby avoiding a separate guarantee for each shipment.

70. *Id.* Eximbank may make an exception to the U.S.-origin rule if the foreign component is *de minimis*, or not available in the U.S., or does not represent a high proportion of the total contract price.

71. *Id.* at 6. Customary terms vary by product and by accepted export practice. For example, raw materials and consumer goods are not sold overseas on terms exceeding 180 days; automobiles sold in foreign markets usually have terms of 24 months or less; sales to foreign distributors of agricultural and construction equipment have terms normally not exceeding 3 years while terms for the same equipment sold to end-users may be slightly longer.

count not less than ten percent of the financed portion (contract price less cash payment) of each export transaction.

5. The purchase by the bank from the United States exporter of the foreign buyer's obligation must be on a nonrecourse basis. The exporter has no liability to the bank for payments due on such obligation from the buyer. The nonrecourse provision does not restrict the lender to the foreign buyer's paper if such buyer has been able to obtain guarantees thereof by his own bank or other overseas entities. A bank may purchase the United States exporter's retained portion on a "with recourse" basis.

6. Eximbank will not guarantee a transaction insured by FCIA.

7. The "financed portion" of the transaction generally must be evidenced by a negotiable promissory note of the foreign obligor, payable in United States dollars at a United States bank, in approximately equal, not less than semiannual, installments.[72]

Banks may choose to assume all of the commercial credit risks on the early installments of a foreign buyer's obligation (*i.e.*, the first half of the installments of credits up to three years, but not more than eighteen months of longer credits up to five years) with Eximbank guaranteeing the bank against commercial credit risks on all other installments and covering the political risks on all installments. This is referred to as Plan I.[73] Alternatively, under Plan II, Eximbank will grant 85% commercial credit risks coverage and 100% political risks coverage of the commercial bank's participation in all installments with the provision that, at the mid-point in payment of three year or longer obligations, the bank can receive full coverage on the last half of installments thereof if Eximbank is satisfied that the remaining installments will be promptly paid and that the credit will otherwise continue to operate satisfactorily.[74]

In certain cases, commercial banks may exercise discretion-

72. Eximbank does not restrict the rate of interest to be paid by the foreign obligor on the notes. However, Eximbank's guarantee of interst is limited to 1% above United States Treasury borrowing rates for comparable maturities with a minimum coverage of 6% per annum or such lesser rate as the notes may bear. The interest rate to be covered by the guarantee will be fixed at the time of authorization by Eximbank.

73. EXIMBANK—HOW IT WORKS, *supra* note 48, at 19. Only 3% of commercial bank guarantee transactions in Eximbank's fiscal year were under Plan I.

74. *Id.* Most banks prefer the fuller coverage of Plan II.

ary authority to commit Eximbank without obtaining prior approval of Eximbank. Limitations are placed on this authority with respect to, among other matters, dollar amounts, types of products and markets.

Eximbank also offers to commercial banks special guarantee packages such as those available to cover the commercial bank's financing of service contracts being repaid on deferred terms, or to protect against insolvency of the foreign purchaser and political risks occurring during the period of fabricating special products, or to provide coverage with respect to deferred overseas sales from consignment, or in connection with sales to foreign governmental buyers.[75] Fees are payable by the bank receiving the guarantee at the time it is issued and in accordance with a fee schedule published by Eximbank.[76] The fees vary with the length of the credit and the exposure of Eximbank in the importing country.

B. *Financial Guarantees*

In connection with long-term financing of the overseas sale of high-technology, expensive capital goods and other large export transactions, Eximbank may provide a guarantee of repayment of amounts loaned by United States or foreign financial institutions to foreign purchasers of such goods. Guarantees of this type are often combined with Eximbank direct loans[77] or are used as substitutes for direct lending by Eximbank. The commitment fee for this type of guarantee equals 1/8 of 1% of the amount guaranteed. The prerequisites are similar under the financial guarantee and direct loan programs. Preliminary commitments may be issued by Eximbank upon submission of an application for a guarantee.

75. *Id.* at 20, 21.

76. These fees currently range from about .7% to 2.2% per annum, depending upon the term of credit and country of import.

77. For a description of Eximbank's direct loan program, *see* pp. 832-37 *supra*. If no Eximbank direct loan is involved, the financial guarantee may cover up to 85% of the transaction. Set forth below is a chart showing direct credit (loan) and financial guarantee statistics for Eximbank's 1976 fiscal year.

IV. Foreign Credit Insurance Association Programs

A. Background

Eximbank cooperates with the Foreign Credit Insurance Association (FCIA)[78] to insure qualified United States export-

Direct Credits and Financial Guarantees

($ Millions)

Program	Number of Authorizations	Amount Authorized	Exposure as of 6/30/76
Direct Credits	150	$2,141	$15,299
Financial Guarantees*	62	1,036	4,815
Total	212	$3,177	$20,114
Preliminary Commitments:			
For Direct Credits		$2,740	$ 1,451
For Financial Guarantees*		1,174	653
Total	226	$3,914	$ 2,104

*Excluding guarantees related to the Cooperative Financial Facility discussed in Part 5 A hereof.

Source: 1976 EXIMBANK REPORT 19.

78. The Foreign Credit Insurance Association ("FCIA") was established in 1961 to provide export credit insurance to U. S. exporters. The table below shows FCIA insurance authorizations and Eximbank exposure as of June 30, 1976.

FCIA Insurance

($ Millions)

Program	Number of Authorizations	Amount Authorized	Exposure as of 6/30/76
Short-term	1,046	$2,186	$ 2,138
Medium-term	940	483	725
Combined	140	224	275
Master	31	577	888
Total	2,157	3,470	4,026

Source: 1976 EXIMBANK REPORT 15.

ers, commercial banks and other financial institutions against commercial credit and political risks in short-and medium-term transactions. FCIA underwrites the commercial risks while Eximbank insures against political risks and reinsures a portion of the commercial risks.[79] While FCIA programs are designed to fit a number of specific exporter requirements, they are of particular use to the small exporter of manufactured products having a low unit value which are sold on less than 180-day terms.[80] The coverage afforded by the insurance allows United States exporters or their commercial banks to offer foreign buyers more competitive terms of payment, supports the exporter's prudent penetration of higher risk markets, and assists the exporter in achieving greater financial liquidity by permitting him to assign his FCIA policy proceeds as collateral for bank financing. Each foreign buyer must be an acceptable credit risk and a portion of any loss on the export transaction must be assumed by the exporter or his commercial bank.

FCIA offers the exporter extensive export credit protection consisting of insurance coverage for designated commercial credit risks, such as a foreign purchaser's insolvency or protracted payment default (*i.e.*, the buyer's failure to pay the amount owed within six months after the due date for products delivered to and accepted by him), and serves as Eximbank's agent for coverage of political risks, such as the hazards of war, revolution, expropriation, cancellation of export or import permits, or delays by a country's central bank in converting the purchaser's local currency payment into dollars.[81] The issuance of policies and handling of underwriting and other details is done by FCIA for its member companies[82] and for Eximbank.

FCIA insurance benefits the United States exporter who self-finances his foreign receivables or who discounts such receivables with banks and other financial institutions.[83] With

79. FCIA, EXPORT CREDIT INSURANCE FOR U.S. SERVICES INDUSTRIES (1972) [hereinafter cited as FCIA, SERVICES INSURANCE]. Extraordinary insurance programs, such as inflation risk indemnity offered under British and French programs, are not available from FCIA.

80. Eximbank News, April 29, 1976. An estimated 44% of exporters using FCIA programs during the year and a half ended December 31, 1974 were such exporters.

81. I FCIA, EXPORT CREDIT INSURANCE MANUAL § I.A (1972) [hereinafter cited as FCIA MANUAL].

82. Approximately 50 United States marine, property and casualty insurance companies with combined assets of $27 billion are members of FCIA.

83. EXIMBANK—HOW IT WORKS, *supra* note 48, at 14.

the insurance coverage, the exporter can generally obtain financing on more favorable terms than would otherwise be the case. This results in an ability to extend larger amounts of credit on more favorable terms to the exporter's foreign buyers and frees his working capital for internal use.[84] In certain cases, it may be more beneficial for the exporter to have his commercial bank handle the financing with support of the Eximbank exporter guarantee program rather than using FCIA insurance. One bank may want the guarantee because it is more direct, usually provides coverage for higher interest rates than does FCIA and has other advantages, while another bank may require the exporter to assign to the bank the FCIA policy proceeds, to the extent such assignment is permitted.

An exporter's choice of available FCIA policies will depend upon the scope of his foreign business, the terms of payment applicable to his export sales, the type of goods or services being exported and similar considerations. Usually, exporters can obtain a prior commitment of insurance coverage from FCIA before receipt of a confirmed order. Set forth below are descriptions of the types of FCIA policies available and a summary of eligibility requirements and application procedures.

B. *The Master Policy*

The comprehensive master policy provides blanket coverage for one year of political and commercial credit risks for all or a reasonable spread[85] of the insured exporter's eligible short- and medium-term credit sales. The coverage is generally for ninety percent of the gross invoice value of the product less certain deductions,[86] with the exporter retaining the remaining

84. *Id.*

85. FCIA prefers a "whole turnover" of the exporter's foreign transactions for coverage in order to prevent having only the higher risk transactions presented for coverage. Some overseas sales may be excluded from coverage such as those on confirmed letters of credit. Exceptionally, Eximbank may require large exporters shipping primarily to overseas subsidiaries or affiliates to satisfy the "whole turnover" prerequisite with respect to coverage of political risks only. Selected sales offering a reasonable spread of risks are offered for comprehensive political and commercial coverage. III FCIA MANUAL, *supra* note 81, at 2.

86. Deducted from gross invoice value for purposes of determining coverage under the policy, where the product had been delivered and accepted by the buyer are: (a) discounts or other similar allowances; (b) any amount which, prior to the time of payout to the insured under the policy, the insured received toward payment of the purchase price; (c) any amount which the buyer would have been entitled to take into account by way of payment, credit, set-off or counter-claim and any sums or credits

ten percent for his own account. The master policy has a first loss annual deductible provision (applicable only to commercial credit risks and calculated by aggregating the sum of multiple losses up to the amount of the deductible).[87] The deductible is the amount of loss which the insured exporter agrees to assume, for his own account, as his primary loss. If the insured exporter agrees to a deductible substantially greater than his normal loss expectancy, FCIA will charge a lower premium to reflect the reduced risk and grant a presumption in favor of the exporter's judgment in assessing the creditworthiness of foreign buyers for commercial risk coverage with the result that the underwriting process will be expedited.

Another unique feature of the policy is the discretionary credit limit which is the amount up to which the insured exporter may grant credit to an eligible foreign purchaser without specific prior approval from FCIA. A high discretionary limit generally coincides with a high deductible, and a lower premium, under the policy. If an insured wishes to exceed the discretionary credit limit, the transaction must be submitted to FCIA for credit analysis. Approved limits are endorsed under the policy and can be used for repetitive shipments as long as the policy is in force. FCIA policies also have an aggregate limit which represents its maximum liability during a policy year.

FCIA also offers a master policy covering only political risks. It is most often used by exporters shipping to their own overseas subsidiaries. There is no deductible under this policy since no commercial risks are covered. Specifically excluded from political risks coverage are certain losses arising out of exchange fluctuations or devaluation of the currency of the buyer's country. Export transactions between a United States company and its foreign affiliates are generally insurable only under this political-risks policy.

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which the insured is entitled to appropriate toward such payment; (d) any expenses saved by the insured by non-payment of agent's commission or otherwise; and (e) any part of the gross invoice value which represents interest. Similar deductions from gross invoice value pertain to calculation of the insurance coverage where the product was not delivered. III FCIA MANUAL, *supra* note 81, Exhibit A, Short-Term Comprehensive Export Credit Insurance Policy.

87. The amount of the deductible depends on the amount of prior normal credit losses incurred by the exporter during the previous three to five years, the terms of sale, and the discretionary credit limit necessary to cover most of the exporter's foreign buyers. The deductible does not apply to political losses which generally are unforeseeable. III FCIA MANUAL, *supra* note 81, at 1.

In addition to specific exclusions from political risks coverage, FCIA policies generally do not cover:

1. losses due to the fault of the insured or any of its agents;
2. transactions providing for payment in any currency other than United States dollars;
3. any loss with respect to which a dispute exists between the insured and the buyer until such loss is finally determined to be a valid and legally enforceable indebtedness of the buyer or unless the dispute is otherwise settled to the satisfaction of FCIA;
4. any loss arising from the unwillingness of the buyer to accept delivery of the exported goods;[88]
5. any loss subject to the discretionary credit limit authorized in the policy declarations (not applicable to medium-term policies which have no discretionary credit limit);
6. failure to obtain a bank letter of credit in connection with shipments to buyers in countries where such letter of credit is required under the policy (not applicable to medium-term policies);
7. losses insurable under the American Institute of Marine Underwriters' War Risk and Strikes, Riots and Civil Commotion clauses current on the date of shipment; and
8. losses for which written claim is not made in the manner and within the time period prescribed in the policy.[89]

C. *The Short-Term Policy*

This policy covers all or a reasonable spread of the United States exporter's eligible short-term export credit. In certain respects, it is similar to the master policy, including provisions for a discretionary limit, aggregate limit, a special limit, a special buyer credit limit, if desired, and a deductible.[90] The maximum discretionary credit limit depends upon the exporter's

88. A non-acceptance endorsement to the comprehensive short-term and medium-term policies provides coverage when the buyer fails or refuses to accept the products shipped when such failure or refusal is not due to any fault of the insured. Under the short-term policy endorsement, the insured bears the first loss up to 40% of the gross invoice value with FCIA taking 60% of such value or 60% of the authorized buyer credit limit, whichever is less. Under the medium-term policy endorsement, FCIA bears that portion of the insured's loss which exceeds the lesser of (a) a specified percentage (usually 25%) of the financed portion, or (b) the insured percentage of such portion. This endorsement is issued subject to the provision that the loss not be due to any default of the exporter. II FCIA MANUAL, *supra* note 81, at 2, 3.

89. *Id.*

90. III FCIA MANUAL, *supra* note 81, at 2. U.S. agricultural commodities may be covered under the short-term policy on terms up to one year with 98% commercial credit risks and political risks coverage.

need and export sales experience. The policy normally covers up to 90% of commercial credit risks and up to 95% of political risks relating to eligible shipments of products (being at least of 50% United States origin) made during the policy period, from the United States, to buyers in countries listed in a schedule attached to the policy, and sold for United States dollars on terms of payment not in excess of 180 days from the date of arrival at the port of importation.[91] A short-term policy may also be issued to cover only political risks (up to 95%).

D. *The Medium-Term Policy*

This policy covers up to 90% of commercial credit and political risks, and repayment of interest up to a maximum of six percent per annum, on export sales of capital and quasi-capital goods (solely of United States origin) on terms from 181 days to five years.[92] Raw materials, consumables, parts and supplies are not eligible for insurance under this policy. There is no requirement that the exporter insure all export sales to all buyers. Each such policy is issued on a case-by-case basis. The exporter may request coverage for a single sale or, under a medium-term repetitive policy, for repetitive sales to distributors or dealers who may need a line of credit which revolves as installment payments are made.[93]

Unlike the master and short-term policies, the exporter under the medium-term policy has no discretionary authority.[94] If only one transaction is involved, FCIA, upon submission of the requisite application, will issue a commitment binding on FCIA until, and which must be accepted by the applicant before, the expiration date shown thereon. After acceptance, the policy will be issued. If the exporter has a medium-term repetitive policy, he must provide to FCIA on a monthly basis information respecting covered export transactions occurring

91. III FCIA MANUAL, *supra* note 81, Exhibit A, Short-Term Comprehensive Export Credit Insurance Policy.

92. EXIMBANK—HOW IT WORKS, *supra* note 48, at 16. Occasionally, FCIA will cover sales having terms longer than five years. On a case-by-case basis, U.S. agricultural commodities are also insurable under the medium-term policy with coverage of 98% of commercial credit and political risks for up to one year.

93. III FCIA MANUAL, *supra* note 81, at 2. Coverage requirements and limitations for each sale insured under the medium-term policy are set forth in a transaction endorsement attached thereto. The exporter's retention of risk of loss with respect to a particular transaction may be increased in higher risk markets.

94. III FCIA MANUAL, *supra* note 81, at 3.

in the previous month. The foreign purchaser must pay at least fifteen percent of the contract price on or before delivery. The remainder of the contract price (*i.e.*, the financed portion) is usually evidenced by the purchaser's promissory note[95] given to the United States exporter. The FCIA coverage applies only to the insured percentage of the financed portion. As with other FCIA policies, the exporter can have his transactions insured against only political risks under a medium-term policy.

Each insured agrees under the FCIA policy:

1. to declare all shipments covered by the Transaction Endorsement and to pay the required premium on a monthly basis;
2. not to contract with, ship products to, nor permit further transit to a buyer under an insured transaction after knowledge of the buyer's insolvency or financial difficulty;
3. to notify FCIA of the buyer's insolvency, financial difficulty or the occurrence of any event likely to cause a loss under the Policy within ten days of learning thereof;
4. to report to FCIA, within sixty days from the due date set forth in the foreign buyer's notes all amounts due the insured exporter from such buyer under insured transactions which are wholly or partly in default and to make similar reports thereafter on a monthly basis until a claim is filed in connection with such default;
5. to use reasonable measures to prevent or minimize loss under the Policy and to take steps to effect recoveries of amounts due, including, if required by and at the expense of FCIA, enforcement of any security and commencement of legal action against the buyer or any guarantor, or both;
6. upon payment of a claim, to transfer to FCIA, to the extent of said payment, the rights of the insured in any note or other evidence of indebtedness, any security therefore, any contract of sale and any deposit made by the buyer in a bank in his country for the purpose of paying the indebtedness;
7. not to accelerate the note without prior written consent of FCIA; and
8. to retain for his own account and uninsured so much of

95. The purchaser's note must (a) be negotiable, (b) be dated not later than thirty days after the date of the shipment to which it relates, (c) be in the English language, (d) provide for payment in United States dollars at a designated United States bank, and (e) provide for payment of principal in approximately equal installments with interest, if any, payable concurrently with principal installments. III FCIA MANUAL, *supra* note 81, Exhibit C, Medium-Term Comprehensive Export Credit Insurance Policy.

the financed portion of an insured transaction as exceeds the insured percentage.[96]

Similar undertakings by the insured-exporter are found in other FCIA policies as well.[97] In addition, the FCIA policies contain provisions concerning, among other matters, proof and payment of claims for losses covered by the respective policies; the giving of notices of claims and other communications to FCIA as agent of Eximbank, and of the FCIA member companies; restrictions on actions against FCIA until the exporter shall have first complied with all terms of the applicable policy; the sharing between FCIA and the insured of recoveries from any foreign buyer in the proportion in which they shared the original loss under the policy; the right of FCIA to examine or take copies of records of the insured pertaining to insured transactions; the payment of premiums at applicable rates and the conditions upon which such rates may be changed; the existence of other collectible insurance applicable to a loss covered by the FCIA policy thereby making the FCIA coverage excess insurance over the applicable limit of such other insurance; the voiding of the FCIA policy if the insured makes false or fraudulent statements or knowingly conceals any material fact; indemnification of FCIA by the insured for losses resulting from the insured's failure to fulfill its contractual duties to a foreign buyer if such failure relieves the buyer of its duty to pay all or a portion of its note when due; the terms and effect of changes in FCIA member companies and in their proportionate liability for losses under the policy; the assignment of the policy by the insured with the approval of FCIA; and, failure by the insured to comply with the terms and conditions of the policy not being deemed to have been excused or accepted by FCIA unless specifically so excused or accepted by it in writing.[98]

E. Combined Short-Term—Medium-Term Policy

This combination policy serves to protect United States exporters of capital and quasi-capital equipment and related parts and accessories in transactions with their foreign dealers and distributors.[99] Short-term coverage is provided for normal

96. FCIA Medium-Term Comprehensive Export Credit Insurance Policy VI.
97. *See, e.g.,* FCIA Short-Term Comprehensive Export Credit Insurance Policy VI.
98. FCIA Medium-Term Comprehensive Export Credit Insurance Policies VII-XI.
99. FCIA EXPORT CREDIT INSURANCE: THE COMPETITIVE EDGE 10.

shelf items, short-term inventory and unsold equipment under a "floor plan" arrangement. Medium-term insurance is offered in connection with the exporter's medium-term receivables financing arising from specified export transactions. In a typical case, a foreign dealer sells equipment to an end-user on extended credit terms, obtaining from the end-user a specific cash payment and a promissory note for the balance of the purchase price. The dealer may then ask for similar terms from the United States exporter, in which event the exporter requests medium-term FCIA insurance for the transaction. If the dealer makes a cash sale, he will be expected to pay the exporter in full, in which case short-term (up to 180 days) insurance is all that would be required.[100]

Short-term coverage is usually limited to spare parts and accessories related to equipment covered under the medium-term part of the policy.[101] The combination policy can also cover short-term obligations related to sales of vehicles and industrial equipment while in the foreign dealer's inventory during a permitted "floor plan" period of up to 270 days. If the product covered by the short-term portion of the policy is not sold within such time period, the exporter may convert his coverage to medium-term upon discharge by the foreign dealer of his short-term obligation by a cash payment (at least fifteen percent of the contract price) and delivery of his promissory note. Alternatively, the exporter may elect to extend the "floor plan" period for ninety days (up to a maximum of 360 days from date of importation) in which event the dealer's obligation to pay for the product must be discharged in full on or prior to the last day of the extended period.[102]

The medium-term protection available under the combined policy facilitates receivables financing by the United States exporter and allows the dealer to offer local financing to end-

100. III FCIA MANUAL 3.

101. In exceptional cases, FCIA may expand the coverage under the combined short-term—medium-term policy to include other products sold on a short-term basis by the insured exporter to the foreign dealer, provided the exporter already holds a short-term policy covering most of his other short-term sales. III FCIA MANUAL, *supra* note 81, at 3. Coverage of commercial credit risks is equal to 90% of gross invoice value; political risk coverage is for 95% of such value.

102. The exporter's option to convert to medium-term does not extend beyond 270 days and his option to continue on a short-term basis does not extend past 360 days. III FCIA MANUAL, *supra* note 81, at 4. Coverage of "floor plan" transactions is 90% for commercial credit risks and 95% for political risks.

users. Coverage for automobile sales is two years from the date of importation including any "floor plan" period involved in the arrangement. Agricultural, construction and industrial equipment export transactions have three year coverage in addition to not more than 270 days of a "floor plan." Where the equipment has been resold by the dealer prior to shipment or in other cases where a "floor plan" is not required, the transaction is included from the outset under medium-term coverage upon payment of the requisite down-payment and delivery of the prescribed promissory note.[103]

F. Comprehensive Services Policy

The FCIA Services Export Program offers insurance covering commercial credit or political risks, or both, for receivables arising from the export of United States services by such industries as engineering and management consultants, advertising agencies, health services, franchisers, surface cargo carriers, airlines and mineral and energy developers.[104] The services policy allows the United States exporter to offer his services in higher risk overseas markets on terms competitive with foreign companies.[105] A service contract will qualify for insurance if the amount therof is payable in United States dollars, the countries wherein the services are to be performed have been approved by Eximbank and FCIA, and such services are to be performed by United States based personnel or personnel temporarily assigned to the purchaser's country for the purpose of performing such services.[106]

Due to the distinctive nature of the service industry, policies are structured by FCIA to meet the specific terms and conditions of each service contract and to cover peculiar industry needs such as progress billing method of payments, disputes and arbitration, start-up risks and the like.[107] Generally, the exporter is asked to insure all of his export services contracts on a "whole-turnover" arrangement which results in lower premiums and expedited transaction approvals. The comprehensive services policy is issued for a one year period

103. *Id.* Coverage of receivables financing transactions is 90% for commercial credit and political risks.
104. FCIA, SERVICES INSURANCE, *supra* note 79.
105. III FCIA MANUAL, *supra* note 79, at 4.
106. FCIA, SERVICES INSURANCE, *supra* note 81, at 2.
107. III FCIA MANUAL, *supra* note 81, at 5.

with options to renew for additional one year periods for the duration of the services contract. If insurance is dropped after the first year, it cannot be renewed for the same contract at any later date.[108] Premiums for service contract insurance can be adjusted by FCIA at any time upward or downward to reflect a change in the risk classification of a country wherein the services will be performed, whereupon the exporter will have fourteen days to decide whether to continue the insurance in force with respect to contracts being performed in the country involved.

Coverage may be on a short-term (up to 180 days) or medium-term (181 days to five years) basis. Where the transaction calls for progress billings payable on terms not exceeding 180 days, short-term coverage would be applicable with 90% for commercial credit risks and 95% for political risks. In medium-term transactions, the foreign customer must make a cash payment equal to at least 15% of the services contract price and issue a promissory note evidencing the remaining financed portion of such price.[109] Coverage will normally be up to 90% of the financed amount for both commercial credit and political losses. Interest payments up to six percent of the financed portion are also covered. A lower percentage of coverage will be applicable for losses connected with preparatory services which are required in getting ready to perform the service contract and which occur prior to any receivable having been generated under the contract. In no event will FCIA's liability exceed contract amounts already invoiced, reported to FCIA and as to which the premium has been paid irrespective of whether or not the entire contract has already been performed.[110]

G. Commercial Banks As Insureds

A commercial bank or other institution engaged in financing export sales may obtain an FCIA short- or medium-term

108. FCIA, SERVICES INSURANCE, *supra* note 79, at 3.

109. There notes must be made payable in equal semiannual installments commencing not later than six months from the date thereof. The cash payment may be made at the time of signing the services contract or at the time each invoice is submitted for payment.

110. III FCIA MANUAL, *supra* note 81, at 5. Premiums are based on the length of payment terms and the country wherein the services are to be performed. Premiums must be paid in their entirety at the time a foreign buyer's obligation becomes insured under the policy.

policy, or combination thereof, in its own name in order to protect receivables arising from export transactions and purchased by such bank or institution from United States exporters. Each such policy holder agrees to assume the uninsured portion (normally ten percent) of the credit risk.[111] If the bank wants to participate in the risk to a greater extent, the premiums will be appropriately reduced thereby allowing the bank to increase its profit on the transaction or pass the reduction to its exporter-customer by way of reduced financing costs.

In a typical situation, the bank agrees to assume on a nonrecourse basis[112] the obligation of the foreign buyer to pay for goods or services purchased from a United States exporter. In some instances, bank policy holders have attempted to circumvent the nonrecourse feature of the FCIA policy by entering into side agreements with the exporter who would agree to hold the bank harmless from all loss involved in the export factoring or financing transaction. FCIA requires the bank policyholder to retain some risk in order to assure the existence of an insurable interest, to encourage banks to exercise discretion when seeking to include given export transactions under the policy, and to keep the bank involved should difficulties arise under the policy.[113] If a recourse arrangement which violates the contractual conditions of the policy comes to light, Eximbank and FCIA would have no choice but to deny claims otherwise covered by the policy.[114]

All foreign purchasers sought to be included under an FCIA policy held by a bank must be approved in advance by FCIA. Prior to obtaining coverage of an export transaction, the bank represents to FCIA that:

1. the bank has entered into a factoring or similar agreement with the United States exporter;
2. the exporter has agreed to (a) offer for assignment to the

111. XI FCIA MANUAL, *supra* note 81, at 1. Under these policies, the bank is the insured and the exporter of record.

112. Banks may request that a portion of the risk be with recourse to the exporter in order to keep him involved in the event of collection or performance problems. The risk sharing will be reflected in an appropriate policy endorsement.

113. Interview with Carol McEvoy, Assistant Vice-President, FCIA, in New York (October 12, 1976). The insured bank may enter into an agreement with the exporter whereby the insured obligations of the foreign purchaser will be repurchased if there is a loss due to an act or omission of the exporter.

114. Interview with Peter J. Vatter, Deputy Chief, Claims & Collection Division, Eximbank, in Washington, D.C. (October 8, 1976).

> bank all indebtedness arising from eligible shipments except such indebtedness as has been excluded with the approval of FCIA, and (b) place a notice on the original invoice to the foreign buyer to the effect that such indebtedness has been assigned and is either payable to the bank or to the exporter's account at the bank;
> 3. FCIA's insurance as set forth in the policy extends only to that portion of indebtedness as to which the bank policyholder has assumed 100% of the credit and political risks without recourse as to such risks by the bank against the exporter; and
> 4. FCIA's liability under the Policy will be discharged to the extent of any payment made by the foreign buyer to the exporter instead of the bank.[115]

Not all exporters desire financing during the collection period for each draft received from a foreign buyer in an export transaction. This does not conflict with conditions of the FCIA policy provided the risk of payment is assumed by the insured bank with respect to each draft and and the appropriate premium is paid to FCIA. Most factoring agreements between the bank and the exporter provide that, although the bank has the risk of payment, the exporter may receive payment from either the foreign obligor or from FCIA (in payment of claims). An exporter who needs financing during the draft collection period can generally borrow against specific factored collection amounts or against an agreed-upon percentage of all his factored receivables.[116]

If a bank having an FCIA policy wishes to cover a line of credit extended directly to the foreign purchaser (a buyer credit) covering his imports of United States goods, additional information must be submitted to FCIA showing that the transaction is not a disguised supplier credit which permits the exporter to "select against" FCIA thereby increasing FCIA's risks.[117] This coverage is of particular interest to a commercial bank engaged in the financing of export transactions involving overseas distributors where the bank has relationships with the distributors and their United States suppliers.

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115. Short-Term Comprehensive Export Credit Insurance Policy, Amendatory Endorsement.

116. XI FCIA MANUAL, *supra* note 81, at 2.

117. *Id.* The insured bank has the responsibility to make sure that exports related to the buyer credit are insurable and that the obligation created thereunder is valid and legally enforceable.

Medium-term policies are also issuable by FCIA to a bank in its own name. Such policies generally provide up to ninety percent coverage against commercial credit or political risks throughout the payout period up to five years. The bank is required to take the ten percent uninsured risk, although, upon written request, FCIA will permit the bank to pass one-half of the risk back to the exporter, either directly or by financing on a recourse basis. The medium-term policy may also be used in cases where the bank acts entirely in place of the exporter and arranges a loan to an overseas purchaser where a close financing relationship exists. At the time the purchaser concludes a contract with a United States exporter, the bank normally opens a domestic letter of credit in favor of such exporter, with the result that the proceeds of the loan to the foreign purchaser are not transferred out of the United States but are paid to the exporter upon shipment of the goods.[118]

H. Assignments, Premiums, Eligibility, Etc.

Proceeds of most FCIA policies may be assigned to banks or other financial institutions on an overall policy basis, buyer-by-buyer basis or obligation-by-obligation basis if more than one assignee is involved. This assignment may take place at any time during the life of the policy. In some cases, the assignee accepts the assignment subject to all defenses which FCIA would be able to assert against the assignor had the assignment not been made. In other instances, involving medium-term transactions, the assignee-bank doing the financing on a nonrecourse basis to the exporter may recover from FCIA the insured percentage of a loss even though applicable policy exclusions might have operated to bare the exporter from such recovery had the assignment not been made.[119]

Premiums payable by FCIA policyholders depend upon (1) the terms of payment, which consider the length of the credit period and the nature of the payment instrument, and (2) the market group, which relates to eligible countries classified according to risk factor. Payment terms rated in order of prem-

118. *Id.*

119. IV FCIA MANUAL, *supra* note 81, at 1. This special assignment amounts to an unconditional guarantee of payment by FCIA which retains the right to recover from the insured-exporter-assignor any amounts paid to the assignee which would not have been payable to the said exporter.

ium expense, from the lowest to the highest, are: irrevocable letter of credit confirmed by a United States bank (sight or term), irrevocable letter of credit to 90 days, irrevocable letter of credit from 91 to 180 days, cash against documents or sight draft documents against payment, clean sight draft, or open account or term credits of 1 to 90 days, and last, 91 to 180 day payment terms.[120]

Eligible applicants for FCIA insurance include corporations organized and existing under the laws of the United States, or any state or territory thereof, or the District of Columbia; individuals or partnerships resident in the United States; and foreign corporations, partnerships or individuals doing business in the United States. In most cases, the insured is the actual exporter of title. However, the policy can be endorsed to include a United States financial institution (including a bank or commercial factoring or other organization satisfying the eligibility qualifications set forth above) which has financed the exporter and assumed the risk of a foreign buyer's nonpayment for purchase of United States goods or services.[121]

Shipments eligible for FCIA insurance coverage are normally those originating in the United States except, in certain cases, where a sale is made from consigned stock in a foreign country provided title has remained with the United States exporter until the time of such sale. Special provisions respecting eligible shipments are found in each policy and in country limitation schedules attached thereto. If government funds are allocated for payment of the shipment or if any part of the shipment is financed by a government agency, such as Eximbank, the shipment is not eligible for FCIA insurance coverage.[122]

Eligible purchasers of United States goods and services include any individuals, firms, corporations or other entities, private or public, in a country listed as eligible in the Country Limitation Schedule applicable to the FCIA policy. The purchaser must, of course, be creditworthy for the amount and terms involved as shown by credit reports and financial statements to be submitted in connection with the application for

120. VII FCIA MANUAL, *supra* note 81, at 1 and Rate Schedule No. 1. Premiums for short-term cover range from $0.54 to $1.42 per $100; for medium-term cover they range from $1.61 to $4.24 per $100.

121. V FCIA MANUAL, *supra* note 81, at 1.

122. *Id.*

insurance. Special conditions may be applicable to public buyers who are those owned or controlled by government agencies. Generally in sales to a public buyer, it must be shown that the buyer has authority to incur an obligation payable in United States dollars and that requisite approval of the transaction has been granted by exchange control authorities. Normally, transactions involving public buyers require a guarantee by an appropriate ministry or the central bank or other acceptable institution.[123]

In certain cases, exporters may obtain an advance commitment from FCIA to the effect that insurance coverage will be forthcoming at the conclusion of a sale.

V. Other Eximbank Programs

A. *Cooperative Financing Facility (CFF)*

The purpose of the CFF is to assist the small- and medium-sized foreign purchaser of United States products and services with a contract value of $500,000 or less to obtain dollar credits from a cooperative financial institution (CI) in such purchaser's country. Eximbank arranges for an overseas CI, or a United States bank having foreign branches, to make export loans at its own risk to such purchaser. One-half of the export loan amount is lent to the CI by Eximbank at fixed interest rates; the other half comes from the CI's own resources.[124] Exporter participation is not required in the CFF program.

Conditions to be met in connection with approval of a CFF financing include:

1. The foreign purchaser initially provides its CI information concerning (a) the United States supplier and/or exporter; (b) the purchaser's name, address and type of business; (c) the United States products or services to be purchased; (d) the contract price; (e) the cash payment; and (f) proposed repayment terms.[125] This information is used by the

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123. *Id.*

124. Export-Import Bank of the United States, A Businessman's Guide to the Cooperative Financing Facility [hereinafter cited as Eximbank CFF]. The CFF was established in 1971 for the principal purpose of financing transactions involving the export sale of United States goods and services on terms up to 5 years. A large portion of Eximbank's loans under CFF are for less than $150,000, a factor which reflects the CFF support for small- and medium-sized transactions.

125. Terms of repayment are those customary in international trade for the products involved (normally one to five years with successive semiannual installments commencing six months from the date of the obligation). Competition Report, *supra* note 10, at 24.

CI in applying to Eximbank for the CFF financing. Approval must be obtained from Eximbank before the products are shipped from the United States or the services are performed.
2. The foreign purchaser must pay the United States supplier a minimum of fifteen percent of the contract price thereby limiting Eximbank's one-half portion of the export loan to an amount equal to 42.5% of the contract value.
3. Shipments made by sea of products involved in the transaction must be on vessels of United States registry, unless a waiver is obtained from the United States Maritime Administration. United States shipping costs are eligible for CFF financing.

Eximbank charges the CI a commitment fee equal to one-half of one percent per annum on the undisbursed portion of Eximbank's share of the loan to the foreign purchaser. The charge begins sixty days after the final approval date of each such loan. The CI may charge the foreign purchaser-borrower interest at a rate 2.5% above Eximbank's rate to the CI on Eximbank's portion of the loan. There are no restrictions by Eximbank on interest rates charged by a CI on its portion of a loan. If the CI borrows funds from a commercial bank to make its portion of the loan, in appropriate cases Eximbank may issue to the lender a guarantee of repayment by the CI of such funds.[126]

B. *Eximbank Support for the Private Export Funding Corporation*

The Private Export Funding Corporation (PEFCO)[127] was established by private sector financial institutions[128] for the purpose of making United States dollar loans in a minimum amount of $1 million, with Eximbank's prior approval, to for-

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126. EXIMBANK CFF, *supra* note 124. Since its inception, about 3,600 CFF loans have been authorized to CI's in 55 different countries. Export-Import Bank of the United States, Eximbank Record, July 1976. More than 370 CFF lines aggregating $1.4 billion are now available throughout the world. More than $3 billion in export sales could be supported under these lines. COMPETITION REPORT, *supra* note 10, at 24.

127. PEFCO was incorporated in 1970 under Delaware law for the purpose of supplementing financing of export transactions already available through commercial banks and Eximbank. In 1975, thirty-six loans were authorized aggregating $443,600,112. Loan commitments average $13 million per transaction. PRIVATE EXPORT FUNDING CORPORATION, ANNUAL REPORT 2 (1975).

128. PEFCO's shareholders consist of fifty-four commercial banks, seven manufacturing companies and one investment banking firm. PEFCO Prospectus (September 16, 1976).

eign importers to finance purchases of United States-origin goods and services. These loans are used in financing of longer-term exports such as conventional and nuclear power plants, steel mills, irrigation projects, air, rail and sea transportation, communications and other large projects. Typically, PEFCO assumes the middle maturities of such loans with commercial banks assuming the early maturities and Eximbank taking the later ones. The loans are repayable in United States dollars in semiannual, quarterly or monthly installments over various, generally medium-term, periods of time. All loans made by PEFCO are unconditionally guaranteed as to the payment of interest and repayment of principal by Eximbank.[129] In addition, Eximbank has agreed, upon request of PEFCO, to guarantee the timely payment of interest on PEFCO's debt obligations and makes available to PEFCO a $50 million revolving line of credit.

C. *Advisory Services*

In 1975 Eximbank established a Small Business Advisory Service for the purpose of providing to small businesses (having a net worth of less than $1 million) individual counseling and advice on the use of commercial bank financing and Eximbank programs.[130] Eximbank also operates an Export Finance Counseling Service which advises exporters and banks who have experienced difficulty in arranging export financing; an Advisory Service for Large Projects which assists exporters and banks involved in major projects to structure complete financing packages in cooperation with institutional and other investors; and a Credit Information Service which provides current credit data on foreign purchasers without disclosing confidential information.

CONCLUSION

At the time of writing this article, Eximbank's export support programs reflect credit extension and operating policies which emphasize the participation of private sector lenders in financing export transactions. Such programs also show Exim-

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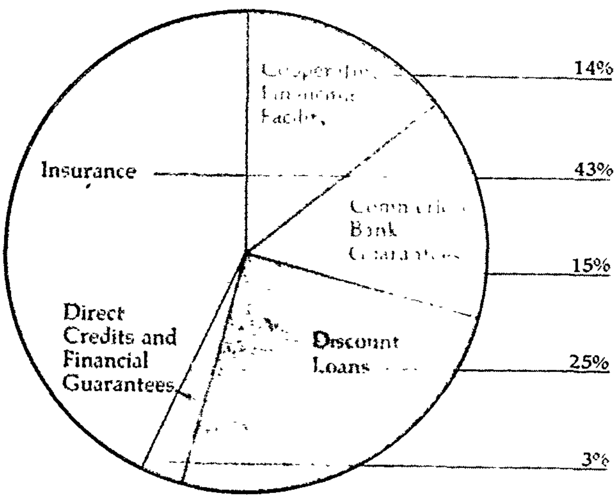
129. PRIVATE EXPORT FUNDING CORPORATION, ANNUAL REPORT 2 (1975).

130. 1976 EXIMBANK REPORT 11. During fiscal year 1976, more than 1,000 small exporters, potential exporters and foreign purchasers of United States goods and services used the Small Business Advisory Service. Some exporters investigating Eximbank programs needed working capital which is not provided by such programs.

bank's concern with conserving its limited resources for allocation to those transactions, or portions thereof, involving conditions or terms which private sources cannot handle or absorb. Nevertheless, qualified U.S. exporters can obtain significant assistance from Eximbank's programs in meeting foreign competition and increasing export sales. Small and medium-sized export activity can especially benefit from the medium-term discount loan, commercial bank exporter guarantee, foreign credit insurance, and CFF programs.[131] Financing of larger export transactions can often be facilitated through the direct loan and financial guarantee programs and by PEFCO.

A knowledge of Eximbank's facilities is important for persons involved in goods and services exporting. The foregoing review will assist such persons and their legal counsel in updating their knowledge of Eximbank policies, programs and procedures thereby permitting them to contribute to a more effective and increased export activity and to capitalize on export opportunities.

131. Of the 4,975 separate transactions authorized by Eximbank during fiscal year 1976, 4,823, or 97 percent, were under the short- and medium-term credit programs. the short- and medium-These transactions accounted for $5.4 billion in authorizations during such year or 63 percent of Eximbank's total authorizations. The graph below shows the share of total Eximbank transactions allocated on a percentage basis to each program.



Source: 1976 EXIMBANK REPORT 11.

Appendix

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