

Effective for all transactions that will be considered by the Bank on or after April 1, 2013.

EXPORT-IMPORT BANK OF THE UNITED STATES ECONOMIC IMPACT PROCEDURES AND METHODOLOGICAL GUIDELINES

April 2013

Purpose

The assignment given to the Bank in its various Economic Impact Charter mandates is to: (a) identify applications requesting Ex-Im Bank support that may be associated with subsequent “second-stage” trade flows that might adversely affect some component of U.S. industry; and (b) develop technical mechanisms and procedures which can provide an empirical framework for making extremely sensitive and highly arguable decisions¹ as to whether the Bank should (i) support the export effort of one sector that may have subsequent “second-stage” adverse impact on another sector or (ii) simply withdraw from the export opportunity.

A key consideration is that almost all the goods and services exports related to medium- and long-term applications for Bank support could be provided by foreign suppliers and supported by their export credit agencies (ECAs) if Ex-Im Bank support were unavailable. Hence, the project would go forward whether Ex-Im Bank finances it or not and any adverse impact would occur whether Ex-Im Bank supports the project or not. Thus, through the Economic Impact mandate, Congress is asking the Bank to develop explicit procedures that help the Bank decide when the second-stage repercussions are so adverse to a segment of U.S. industry (e.g., a company, plant or group of employees), that any degree of government association with new foreign production would likely be perceived as threatening the livelihood of the affected company, plant or group of employees. In such instances, a decision by the Bank to reject participation -- and incur both the loss of an export and the adverse impact from the project’s trade flow -- may be justified.

In that context, the procedures and mechanisms described in the following sections are intended to:

- Look broadly and efficiently for the possibility of a second-stage impact as described above;
- Use straight-forward tools and mechanisms that can efficiently indicate the order of magnitude of benefits and costs; and
- Communicate clearly to the public and Congress on the Bank’s methodology for evaluating the net economic impact of Ex-Im’s transactions.

Introduction

The basis for Ex-Im Bank’s Economic Impact Procedures is found in its Charter.² Congress requires Ex-Im Bank to assess whether the extension of Ex-Im Bank financing support is likely

¹ “The OIG’s reading of Congressional intent... is that Congress intends the Bank’s Board, a politically accountable body appointed by the President and confirmed by the Senate, to make the difficult balancing judgments of when a given export transaction should be approved or declined in circumstances where more than a very small amount of new production of an Exportable Good will result.” Office of Inspector General, Export-Import Bank of the United States, *Evaluation Report Relating to Economic Impact Procedures*, September 17, 2010, pg. G-10

² Sections 2(b)(1)(B) and 2(e) of The Export-Import Bank Act of 1945, as amended. In addition, since 1978, economic impact language has also been included in Ex-Im Bank’s annual appropriations bills (e.g., Fiscal Year 2001 Foreign Operations, Export Financing, and Related Programs Appropriations, Pub. L. No. 106-429, November 1, 2000). The requirement to establish procedures to implement Ex-Im Bank’s economic impact analysis is set forth in 12 U.S. Code Section 635a-2.

to cause substantial injury³ to U.S. industry or would result in the production of substantially the same product that is the subject of specified trade measures.⁴ If Ex-Im Bank determines that a transaction meets the legislatively specified standards, then economic impact can be the basis for denial of Ex-Im Bank support.⁵ The purposes of Ex-Im Bank's Economic Impact Procedures (Section 1 of this document) are: 1) to ensure that all transactions are screened for economic impact implications; 2) to identify those transactions that are subject to applicable trade measures or that pose a significant risk of potentially substantial injury to the U.S. economy; and 3) to put only those cases that meet the standards through a more extensive economic impact analytical process that is fair, consistent, and publicly transparent. The Methodological Guidelines for a Detailed Economic Impact (EI) Analysis are outlined in Section 2 of this document.

Section 1: Economic Impact Applicability

Ex-Im Bank evaluates all transactions it receives for potential adverse economic impact. Transactions are subject to screens designed to: (i) identify those transactions associated with specific legislative prohibitions (e.g., cases in which Countervailing Duties are applicable), and (ii) determine the potential of a transaction to cause substantial injury to the U.S. economy. The economic impact evaluation proceeds in five stages, which are done consecutively.

Stage I: Transactions Resulting in Production of an Exportable Good/Service⁶

The first stage of the economic impact evaluation is to determine if the exports involved in a transaction will result in the production of an exportable good or service.⁷ Therefore, only exports of capital goods and services (e.g., manufacturing equipment, licensing agreements, or engineering contracts) that will result in the foreign production of an exportable good or service are subject to further economic impact analysis in Stage II - V of these procedures. The capital goods and services exports may be associated with new foreign production capacity or existing production capacity (e.g., applicable exports include replacement equipment to an existing

³ Congress defined the threshold for substantial injury in Ex-Im Bank's Charter. This standard/threshold is met if the buyer's new production is equal to or greater than one percent of U.S. production of the same, similar, or competing production.

⁴ Specified trade orders are defined as countervailing or anti-dumping orders under title VII of the Tariff Act of 1930 or determination under title II of the Trade Act of 1974.

⁵ Determinations shall be made by the Board of Directors of the Bank (or pursuant to Individual Delegated Authority, as applicable). When a proposed transaction raises economic impact concerns that are beyond those of a standard analysis, Bank staff consults the Bank's Executive Working Group for guidance. This group reviews the proposed transaction and advises the Bank's President on whether it should be presented for full consideration by the Board. However, the President of the Bank is ultimately responsible for determining which matters appear before the Board.

⁶ Transactions involving U.S. exports that are "**inside the fence**" of a foreign project, but are not directly involved in the foreign production process, are subject to Stage I review to determine if: (1) the project will establish or expand production capacity; (2) the exports are integral to the project; and (3) the exports are dedicated to the project. That is, the end product that the foreign buyer will sell to other parties, regardless of whether the Ex-Im Bank-supported exports directly or indirectly contribute to new production.

⁷ Only those service sectors for which practitioners have identified to the Bank specific cases of potential impact and provided quantified estimates of such potential harm are subject to further review. While economic impact analysis of services would follow the principles embedded in the Bank's Charter, the inherent differences between the dynamics of services trade flow as compared to goods trade flow mean that any detailed analysis of services could not be structured in the same way as the analysis of goods and would have to be sector specific. For example, the review process has different values/characteristics and the criteria for associated impact is higher. As this time, the only transactions creating an exportable service deemed to meet the above criteria is aircraft. The methodology for economic impact review of aircraft is in Attachment A. The guidelines on pages 2 – 12 of this memo regarding oversupply and trade flow pertain only to foreign projects that establish or expand production capacity of goods.

production facility to maintain existing production capacity). Exports that are not capital goods or services are cleared for credit analysis without further analysis of economic impact.

Stage II: Transactions that Result in the Production of a Good Subject to an Applicable Trade Measure

The second stage of the economic impact analysis is to determine if the exports involved in a transaction will enable a foreign buyer to produce an exportable good that is subject to a Specified Trade Order or a Preliminary Trade Action (see Categories B and C under Stage IV below). Only goods are subject to Trade Orders or Actions.

Stage III: Transactions that Establish or Expand Foreign Production Capacity

The third stage of the economic impact evaluation is to determine if the exports involved in a transaction will enable a foreign buyer to establish or expand production capacity of an exportable good (see category A below). Relevant transactions involve capital goods and services exports that are associated with incremental production capacity (e.g., replacement equipment to generate an incremental increase in production capacity is applicable whereas replacement equipment to maintain existing production capacity is not applicable).

Stage IV: Categorization of Transactions

The fourth stage of the economic impact evaluation divides transactions into one of three categories for differentiated evaluation/analysis. Transactions can only be processed in a single category. Staff determines in which category a transaction belongs by examining its characteristics before proceeding to Stage V of the analysis. These three categories are:

- **Category A:** Transactions Not Subject to Specified Trade Orders or Preliminary Trade Actions⁸
- **Category B:** Transactions Subject to Specified Trade Orders⁹
- **Category C:** Transactions Subject to Specified Preliminary Trade Actions¹⁰

Stage V: Evaluation of the Economic Impact of Transactions by Categories

The fifth stage of the economic impact evaluation consists of screens to determine whether a transaction is likely to have a potentially substantial adverse impact so as to justify a prolonged case processing time and work of a Detailed Economic Impact Analysis. This process varies by category.

- **Category A:** Processing Transactions Not Subject to Specified Trade Orders or Preliminary Trade Actions

⁸ Category A: Transactions **Not** Subject to (i) Anti-dumping or Countervailing Duty Orders or Preliminary Antidumping or Countervailing Duty Injury Determinations, (ii) Suspension Agreements Arising From Anti-dumping or Countervailing Duty Investigations, (iii) Section 201 Injury Determinations, or (iv) Section 201 Investigations initiated by the Executive or Legislative Branch.

⁹ Category B: Transactions Subject to (i) Anti-dumping or Countervailing Duty Orders, (ii) Suspension Agreements Arising From Anti-dumping or Countervailing Duty Investigations, or (iii) Section 201 Injury Determinations.

¹⁰ Category C: Transactions Subject to (i) Preliminary Anti-dumping or Countervailing Duty Injury Determinations or (ii) Section 201 Investigations initiated by the Executive or Legislative Branch.

The process for Category A transactions includes screens to determine whether the risk of potentially substantial adverse impact is sufficiently high to warrant a Detailed Economic Impact Analysis.

1. Amount of Ex-Im Bank Financing: Transactions for more than \$10 million¹¹ in Ex-Im Bank financing¹² that are not subject to specified trade orders or preliminary trade actions are evaluated for substantial injury.¹³

a. For purposes of determining whether a proposed transaction exceeds the \$10 million threshold, the Bank will aggregate the dollar amount of the proposed transaction and the dollar amounts of all loans and guarantees approved by the Bank in the preceding 24-month period that involved the same foreign entity and substantially the same product to be produced. If the aggregate financing exceeds \$10 million, the aggregate incremental production is subject to the substantial injury test. However, only the proposed transaction will be affected by the result of the analysis.

Transactions valued at \$10 million or less, that do not appear to raise the prospect of a substantial adverse economic impact are cleared for credit analysis without further analysis of economic impact.

b. For transactions valued \$10 million or less, Ex-Im has developed a variety of procedures that scan and sample transactions for basic characteristics (e.g., capital equipment) that could have a substantial adverse impact despite the small size. This mechanism is called the “watchful eye” approach. Faced with a choice of doing too little and missing cases or doing too much and prolonging processing time, taking a “watchful eye” is a reasonable compromise. When the “watchful eye” detects a transaction that may have a substantial adverse impact on the U.S. market (e.g., majority of foreign project output will be sold into the U.S. market), Ex-Im Bank will review such transactions for noticeable impacts.

Transactions valued at \$10 million or less, that do not appear to raise the prospect of a substantial adverse economic impact are cleared for credit analysis without further analysis of economic impact.

2. Risk of Substantial Injury: Transactions remaining after Screen 1 are then reviewed to ascertain whether they will enable a foreign buyer to establish or expand foreign production by an amount that is equal to or greater than 1% of U.S. production (of the same, similar, or competing output) are subject to Detailed Economic Impact Analysis.¹⁴ If a production facility that would benefit from the provision of Ex-Im Bank financing is reasonably likely to produce a commodity other than, or in addition to, the commodity specified in the application, such commodity will also be subject to a substantial injury determination.

¹¹ Years of observation of economic impact have strongly indicated that transactions that involve the export of capital goods or services, where the financed amount requested is less than or equal to \$10 million, do not have the potential to achieve substantial adverse impact. The \$10 million threshold excludes more than 80% of transactions from further economic impact scrutiny.

¹² All dollar thresholds set forth in these procedures are exclusive of the exposure fee.

¹³ Applicable transactions supported by medium-term Credit Guarantee Facilities (CGF), Medium Term Repetitive (MTR) Sales, revolving Working Capital Guarantees and multi-buyer insurance are excluded from an upfront economic impact analysis because the buyer and/or exports are not known at the time of approval. However, for buyer specific facilities, if the buyer is subject to applicable trade measures, Ex-Im Bank excludes capital goods/services that will result in the production of sanctioned products from the facility.

¹⁴ Note: If the calculation indicates that the new foreign production will be greater than or equal to 1% of U.S. production, the transaction undergoes a Detailed Economic Impact Analysis. See Section 2.

Transactions that do not enable a foreign buyer to establish or expand foreign production by an amount that is equal to or greater than 1% of U.S. production (of the same, similar, or competing output) are cleared for credit analysis without further analysis of economic impact.

3. Detailed Economic Impact Analysis to Determine if the 2(e)(1) Prohibition is

Applicable: Section 2(e)(1) of Ex-Im's Charter prohibits the Bank from supporting transactions that are likely to yield an adverse effect on the U.S. economy. For factors to be evaluated, please see Section 2: Methodological Guidelines for details.

- **Category B: Processing Transactions Subject to Specified Trade Measures**

Ex-Im Bank automatically denies transactions in which trade measures are applicable unless the applicant shows that the exporter and/or the U.S. economy will be extraordinarily harmed by denial of Ex-Im Bank support, in which case the Board may consider such transactions after public notice and comment. The following process is used to evaluate transactions subject to trade measures.

1. Anti-Dumping (AD) or Countervailing Duty (CVD) Orders and Suspension

Agreements arising from AD/CVD investigations: Unless the Board of Directors of Ex-Im Bank applies the Section 2(e)(3) exception contained in Ex-Im Bank's Charter, Ex-Im Bank is prohibited from supporting exports to foreign buyers that are currently subject to an AD or CVD order, or a suspension agreement arising from an AD/CVD investigation, if the transaction would result in the production of substantially the same product that is the subject of such AD/CVD order or suspension agreement.¹⁵ This prohibition is country and good specific (i.e., all firms within a country are subject to the order, unless a specific firm is explicitly excluded).

2. Section 201 Injury Determinations: Unless the Board of Directors of Ex-Im Bank applies the Section 2(e)(3) exception, Ex-Im Bank is prohibited from supporting exports to foreign buyers covered by a Section 201 injury determination by the International Trade Commission (ITC), if the transaction would result in the production of substantially the same product that is the subject of the ITC injury determination. The following additional procedures apply to transactions subject to Section 201 Injury Determinations:

a. Procedure for determining the length of time that a Section 201 injury determination prohibits Ex-Im Bank financing: Once the ITC has issued a Section 201 injury determination, the length of time during which this prohibition will apply to Ex-Im Bank's ability to finance transactions that establish or expand production capacity of a product subject to such Section 201 injury determination will match the relief period implemented by the U.S. President. In the case where the U.S. President does not implement relief for a product, the length of time for Ex-Im Bank's prohibition of support is the lesser of the ITC's recommended relief period or the longest period of relief time implemented by the U.S. President for a similar product(s).

b. Procedure for determining if a tie vote by the ITC on a Section 201 injury determination prohibits Ex-Im Bank financing: In the event that a vote by the ITC on a Section 201 injury determination results in a tie, the U.S. President's determination as

¹⁵ During consideration of an application for financing, when Ex-Im Bank staff determines that the transaction covered by such application involves products subject to the trade measures listed in Section 2(e)(2)(A), staff shall notify all Board members by memorandum that such an application is pending and provide a brief summary and status report.

to whether to consider an equally divided ITC determination to be an affirmative injury determination is controlling for purposes of applying the prohibition on Ex-Im Bank financing.

3. Anti-Circumvention: Ex-Im Bank will not provide financing support if the Bank determines that providing such support will facilitate circumvention of a specified trade measure as described in 1 and 2 above. For example, an integrated manufacturer with a product subject to a specified trade order should not be eligible for Bank financing for the purpose of transforming or further processing the product under order into a related product, which is not subject to an order.

4. Substantially the Same Product: Ex-Im Bank staff will make case-by-case determinations on which items could be reasonably viewed as “substantially the same product” as those covered by an applicable trade measure. Under this approach Ex-Im Bank would start with product descriptions, and then consult with a number of sources, including other USG agency industry experts, trade associations and other relevant experts to see if broader interpretations are appropriate in the case. Procedurally, judgments as to reasonableness shall be inclusive rather than exclusive.¹⁶

5. Section (2)(e)(3) Exception: Section 2(e)(3) of the Charter provides that the economic impact prohibitions shall not apply in any case where the Board of Directors of Ex-Im Bank determines that the transaction is likely to have net economic benefits. However, in transactions in which trade measures are applicable, Ex-Im Bank automatically denies a transaction, unless the applicant shows that the exporter and/or the U.S. economy will be extraordinarily harmed by denial of Ex-Im Bank support. This test is more restrictive than the statutory exception, and extraordinary harm is narrowly construed to require a showing of irreparable harm such as imminent bankruptcy.

6. Public Notice and Comment: Since transactions in which trade measures are applicable are subject to automatic prohibition, Detailed EI Analysis is not performed and a notice and comment period is not provided. In all other circumstances (Categories A and C) in which the exception may be applicable, a Detailed EI Analysis including notice and comment would already have occurred. Although the exception is limited in transactions involving trade measures to circumstances where the applicant demonstrates extraordinary harm to the exporter and/or the U.S. economy, a 14-calendar day notice and comment period is required prior to Board action on transactions subject to the trade measure prohibition to provide an opportunity for interested parties to comment on those issues and on the economic impact of applying the exception.¹⁷ Ex-Im Bank will announce its intention to consider a transaction subject to the trade measure prohibition and the potential applicability of the Section (2)(e)(3) exception on Ex-Im Bank’s website and in the Federal Register. Upon written request, the comment period shall be extended to a period of not more than a total of 30 calendar days.

¹⁶ After Ex-Im Bank staff has made its judgment as to whether goods are “substantially the same product,” staff shall notify all Board members of its decision in writing. In the case of transaction where staff decides that the product is not “substantially the same” and the transactions will be considered through Individual Delegated Authority or by the Board, the appropriate memorandum shall include a brief summary of the staff decision and rationale. In the case of transactions where staff determines that the product is “substantially the same,” staff shall notify all Board members by memorandum as to the decision and the status of the application (e.g., recommendation for denial, withdrawn, pending).

¹⁷ In addition to the standard 14-calendar day notice and comment period described below, Ex-Im Bank will notify and extend an opportunity for a briefing to Ex-Im Bank’s Ex Officio Directors and other relevant agencies.

- **Category C: Processing Transactions Subject to Specified Preliminary Trade Actions**

1. Preliminary AD/CVD Injury Determination: For all transactions over \$5 million that involve an entity subject to a preliminary AD/CVD injury determination, if the transaction would result in the production of substantially the same product that is covered by the preliminary determination, Ex-Im Bank will provide a 14-calendar day notice and comment period. To ensure the efficient processing of small business transactions a \$10 million threshold will apply to the working capital program and short-term insurance transactions. The information obtained from this comment period will be used by Ex-Im Bank to help determine whether a transaction is likely to result in a significant increase in imports of substantially the same product covered by the preliminary determination¹⁸ and to have a significant adverse impact on the domestic industry. In addition, a Detailed Economic Impact Analysis will be conducted if Ex-Im Bank staff determines, based on such comments and other available information, that the transaction poses a risk of substantial injury (1% test).¹⁹

2. Section 201 Investigations: On all transactions involving more than \$10 million that involve products for which a Section 201 investigation has been initiated at the request of the U.S. President, the U.S. Trade Representative, the Senate Committee on Finance, the House Committee on Ways and Means or by the ITC on its own motion, Ex-Im Bank will provide a 14-calendar day notice and comment period. The information obtained from this comment period will be used to help Ex-Im Bank determine whether a product is likely to be in oversupply at the time the resulting production will come on-line. Ex-Im Bank shall consider Section 201 investigations as indicators of oversupply in making economic impact determinations in all transactions involving more than \$10 million. A Detailed Economic Impact Analysis will be conducted if Ex-Im Bank staff determines, based on such comments and other available information, that the transaction poses a risk of substantial injury (1% test).

3. General Procedure for Public Notice and Comment for Preliminary AD/CVD Injury Determinations and Section 201 Investigations: As soon as possible after Ex-Im Bank staff determines that a preliminary AD/CVD determination or a Section 201 investigation applies to a transaction, an announcement of the transaction will be made on Ex-Im Bank's website and in the Federal Register. Ex-Im Bank will follow the notice and comment procedures outlined in Section 2: Methodological Guidelines.

4. Risk of Substantial Injury: If Ex-Im Bank staff determines, based on the comments received during the comment period and other available information, that the transaction would enable a foreign buyer to establish or increase foreign production by an amount that is equal to or greater than 1% of U.S. production (of the same, similar, or competing good), the transaction will be subject to further economic impact analysis. The procedures used for conducting the Detailed Economic Impact Analysis shall be the same as those set forth under Category A. The public notice and comment under this Category C shall be used by Ex-Im Bank to inform its judgment during the Detailed Economic Impact Analysis.

Section 2: Methodological Guidelines

The following description applies to transactions where: (1) the foreign project will produce exportable goods, (2) the Ex-Im financing is more than \$10 million, and (3) the new foreign

¹⁸ Ex-Im Bank will utilize the procedures described under Category B in making determinations with respect to substantially the same product.

¹⁹ To determine whether a proposed transaction exceeds the \$5 million and \$10 million thresholds, the Bank will follow the same aggregation procedures established for Category A transactions.

production poses the risk of substantial injury (i.e., the new, foreign production will be equal to or greater than 1% of U.S. production).

When a transaction requires a Detailed Economic Impact Analysis, Ex-Im evaluates the transaction using technical mechanisms to consider the implications of providing support for the transaction. The focus of the technical analytical methods are outlined in section 2(e)(1)(A) of the Ex-Im Bank Charter. This section directs the Bank to determine: (1) whether the new foreign production²⁰ is likely to be in surplus (hereafter referred to as structural oversupply) on world markets; and (2) the competitive impact of the new foreign production on U.S. producers of the same, similar or competing commodity (or trade flow impact). The oversupply analysis examines whether the global market can absorb increased production, while the trade flow analysis seeks to estimate the direct impact of the transaction on U.S. producers.

If the findings of the trade flow or oversupply analysis are adverse in nature, they may be grounds for Ex-Im denial of the transaction. However, in the event that there are adverse findings, section 2(e)(3)²¹ of the Ex-Im Bank Charter gives the Board authority to nevertheless approve the transaction if the Board determines that the overall benefit exceeds the cost. The netting process provides an empirical basis for the exercise of the Board's authority, but it is not determinative.

The structural oversupply and trade flow analyses require forecasts of projected global supply and demand for the relevant commodity. In order to properly complete a Detailed Economic Impact Analysis, Ex-Im Bank requires applicants on larger transactions to submit independent industry studies, and/or white papers, and applicants on smaller transaction to submit a packet containing the best available market information. The designation of "larger" or "smaller" will depend upon the market sector and the transaction, and Ex-Im Bank will so indicate at the time the application is reviewed for economic impact implications. These studies/white papers will contain most recently available information on the global supply and demand forecasts for the relevant industry/commodity. Relevant information includes but is not limited to: an overview of the new foreign production (e.g., uses of the commodity), current and forecasted global supply and demand for the relevant commodity, historical and forecasted global capacity utilization rates, prices and other relevant indicators of supply and demand balances applicable to the industry (e.g., bankruptcy trends).

The methodological guidelines for processing a case, reviewing structural oversupply, trade flow analysis, and calculating the net trade flow are delineated below:.

Structural Oversupply

The Bank is required to measure "oversupply" in its Detailed EI Analysis. Specifically, the Charter states that the Bank should determine whether the new foreign production that will result from Ex-Im support "is likely to be in surplus on world markets at the time the resulting commodity will first be sold" (see section 2(e)(1)(A)(i) of Ex-Im Bank's Charter). For this purpose, oversupply is defined as "structural oversupply".²² Structural oversupply refers to a

²⁰ Ex-Im Bank analyzes the effect of the commodity that "hits the market" on U.S. producers. "Hitting the market" is defined as the first commercial sale of the commodity that the foreign buyer sells to other parties, regardless of whether the Ex-Im Bank-supported exports directly or indirectly contribute to the new production.

²¹ "... in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment of the same, similar, or competing commodity."

²² Structural oversupply is distinct from "cyclical oversupply". Cyclical oversupply is a regularly and naturally occurring phenomenon driven by business cycles.

long-term chronic excess of supply compared to demand. Such conditions suggest that non-market factors are either directly or indirectly, influencing ongoing production volumes in the industry to levels not warranted by market forces. There are no universally accepted definitions of structural oversupply, so each transaction is analyzed on a case-by-case basis.

Trade Flow

Historically, the Congressional mandate to be competitive with other ECAs has put average Ex-Im Bank terms (i.e., interest rates and/or fees) below market levels. Hence, Ex-Im Bank's economic impact procedures carried a standard assumption that there was always a "window open" (a price advantage to ECA support) through which adverse economic impact considerations could enter the case and bring potential harm to U.S. industry. However, the 2011 OECD premia agreement contains both a general level of risk fees set to proxy long-run market pricing and an optional set of risk fees that would set ECA pricing at time and case-specific market levels.

Accordingly, for any case that qualifies for detailed economic impact analysis (i.e., involves capital goods/services exports, the financed amount requested is more than \$10 million and the new foreign production triggers the 1% threshold), Ex-Im Bank will note in the analysis, for Board reference, whether Ex-Im Bank's pricing for the proposed transaction is using long-run or short-run market pricing. The Bank will also note the existence of competition from other ECAs. The next step is a trade flow analysis.

The purpose of the trade flow analysis is to provide the Bank with a realistic picture of the likely benefits and costs associated with a request for Ex-Im support in the most concise way possible.

Valuation of broad competitive impacts to U.S. industry: The foreign project's potential impact on U.S. industry is analyzed in a cost-benefit framework. The analysis measures to what extent the foreign buyer's increased production could displace U.S. production of the same, similar, or competing good in markets where the foreign buyer directly competes head-to-head with U.S. production. The time horizon for measuring the economic impact is the length of Ex-Im Bank support.

Proportionality and the Trade Flow Analysis: For any transaction where the Ex-Im financing is de minimus, as it represents 10% or less of the total project capital cost²³, the trade flow analysis will employ proportionality, and limit displacement to the proportion of Ex-Im involvement in the project.²⁴ For any transaction where the U.S. exports seeking Ex-Im Bank support comprise more than 10% of the project's capital costs, the trade flow analysis will consider the full production of the project, and will not reflect Ex-Im Bank's proportional involvement in the transaction.

Trade Flow Analysis: For especially robust U.S. industries, Ex-Im Bank will accept a market-based, supplemental cost analysis to be submitted for Board consideration alongside the Bank's trade flow analysis.

²³ Total project capital cost refers to investment costs (e.g., purchase of equipment with a long useful life) that become part of the infrastructure of the project.

²⁴For informational purposes, staff will also show the trade flow impact of the full production of the project.

1. Cost Analysis:

a. Market-Based, Supplemental Analysis²⁵

Qualifications to Submit a Market-Based Supplemental Analysis: For transactions where the affected U.S. industry is especially robust, Ex-Im Bank will provide an outline of issues to be addressed in the market-based supplemental analysis, and the applicant will certify that the proposed consultant conducting the analysis is at an “arm’s length” from interested parties.

Characteristics that are considered, among other things, in evaluating whether the U.S. industry would qualify for a market-based supplemental analysis include:

- i. The U.S. industry is a major player in the global market (e.g., current U.S. share of world exports is substantial, by industry).
- ii. The U.S. domestic industry has global reach and global distribution network/market presence (at least 1% of all major regions).
- iii. The U.S. industry has a globally competitive cost structure.

Market-Based, Supplemental Analysis Parameters:

- i. The potential displacement is based on the U.S. market share in the country or region where the foreign buyer intends to sell its output;
- ii. U.S. production that could potentially be displaced may be sold to other markets;
- iii. The net present value of the potential net displacement is calculated using the most recent, relevant discount rate (CIRR);
- iv. The value of the potential displacement each year is based on the average price of the commodity over the past 3-5 years; and
- v. If the analysis assumes that the potentially displaced U.S. production may be sold elsewhere, then the analysis will show that displacement occurs every year.

b. Ex-Im Bank’s Analysis

Qualifications: Ex-Im Bank will conduct the following cost analysis for all transactions based on readily available data from white papers and other sources.

²⁵ The “Market-Based, Supplemental Analysis” was created in response to a suggestion made by Ex-Im’s Office of the Inspector General (OIG) in its September 2010 report on economic impact. In the report, the OIG recommends that Ex-Im differentiate between Damaged, Concerned, and Successful Industries in its execution of a detailed economic impact analysis (p. 40 of OIG report). The characterization of industries that qualify for a “Market-Based, Supplemental Analysis” mirrors the OIG’s characterization of “successful industries”.

Parameters:

- i.** The potential displacement is based on U.S. market share in the country or region where the foreign buyer intends to sell its output;
 - ii.** The potentially displaced U.S. production cannot be sold anywhere else at any price;
 - iii.** The net present value of the potential displacement is calculated using the most recent, relevant discount rate (CIRR);
 - iv.** The value of the potential displacement each year is based on the average price of the commodity over the past 3-5 years; and
 - v.** Displacement is presumed to occur every other year to mimic the effect of economic cycles.
- 2. Benefit Analysis:** Benefits are quantified as the value of the U.S. exports in addition to any projected follow-on sales of U.S. exports over the life of Ex-Im financing (the net present value for these exports are calculated using the same CIRR as in the cost section).
- 3. Net Trade Flow:** This section of the analysis compares the benefit of the U.S. export (i.e., U.S. export value and related follow on sales) to the estimated cost (i.e., value of displaced U.S. production) to determine the net impact.

Federal Register Notice: Public Notice and Comment

When Ex-Im Bank determines that a transaction poses a risk of substantial injury (i.e., the resulting production is equal to or exceeds 1% of U.S. production), the Bank shall publish in the Federal Register and on its website a notice of intent, and provide a period of not less than 14 calendar days (which, on written request by any affected party, shall be extended to a period of not more than a total of 30 calendar days), for the submission to the Bank of comments on the economic effect of the provision of the loan or guarantee, including comments on whether the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; and the resulting foreign production capacity is expected to compete with United States production of the same, similar, or competing commodity.

Concurrently, Ex-Im Bank will specifically notify relevant U.S. Government agencies and appropriate Congressional Committees of the transaction and weigh carefully the analytical and policy views of such entities. The U.S. Government agencies and Congressional Committees to be notified include: the U.S. Department of Commerce, the U.S. Department of Treasury, the U.S. Department of State, the Office of Management and Budget, the Office of the U.S. Trade Representative, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives. The content of the notice shall include appropriate, non-business proprietary or non-confidential information about: (i) the country to which the goods involved in the transaction will be shipped; (ii) the type of goods being exported; (iii) the amount of the loan or guarantee involved; (iv) the goods that would be produced as a result of the provision of the loan or guarantee; (v) the amount of the increased production that will result from the transaction; (vi) the potential sales market for the resulting goods; and (vii) the value of the transaction. The buyer's and the applicant's names, as well as any business proprietary or confidential information, will not be released. The economic impact analysis will include a summary of the comments received. All of comments received by the Bank will be included in the Board memo.

If a material change is made to an application for Ex-Im Bank financing subsequent to the public notice, the Bank shall publish a revised notice and shall provide for a new comment period. The term material change with respect to an application includes: a change of at least 25 percent in the amount of Ex-Im Bank financing requested in the application; or a change in the principal product to be produced by the foreign buyer.

Interagency Review of Detailed Economic Impact Analyses

After inclusion of public comments in the detailed economic impact analysis, the analysis is circulated to the Departments of Commerce, State and Treasury, U.S. Trade Representative, and Office of Management and Budget for comment with regard to relevant industry information, and the consistency of the economic impact evaluation with broad U.S. Government policies. These agencies have 14 calendar days to complete their review and comment upon the draft Detailed Economic Impact Analysis.

Evaluation of Qualitative Information

After receiving comments from the public and other U.S. Government agencies, the next step in the economic impact process is the weighing of the analytical findings of the preceding steps and the qualitative information received through the notice and comment period (e.g., views from other U.S. Government agencies and affected parties) to establish the impact of Ex-Im Bank financing on the U.S. economy.

Publication of Conclusion

Within 30 calendar days after a written request by a party affected by a final decision of the Ex-Im Bank Board of Directors, Ex-Im Bank will provide to the affected party a non-confidential summary of the facts found and conclusion reached in any Detailed Economic Impact Analysis conducted and submitted to the Ex-Im Bank Board of Directors.

Attachment

Attachment A: Economic Impact for Services, Aircraft

Introduction

This paper outlines a conceptual approach to applying Economic Impact principles to the Bank's most prominent services sector, aircraft. While the economic impact evaluation for services follows the legislative blueprint, the inherent differences in the economic character of goods versus services mean that the application of that blueprint in various service sectors is different in several ways from what is done for goods. For example, services cannot be considered interchangeable commodities and any foreign service as an automatic displacement of U.S. based services. Hence, the tests for competition and impact are more sector-specific and demanding.

Air and Economic Impact

Economic Impact review for aircraft cases is a four-stage process. The particular characteristics of a transaction determine how many stages of analysis the transaction must undergo. However, given the historical distribution and nature of aircraft cases, it is anticipated that only 10% - 15% of cases would go through all four stages.

Stage I: The first stage of an economic analysis consists of an analysis of the long-term supply/demand balance of the global airline industry (likely differentiating between wide-body and narrow-body aircraft). This analysis determines whether a long-run structural **oversupply** exists in the industry, and is conducted on an annual basis (at a cost borne by Ex-Im Bank) by an independent, external source recognized as an expert (and neutral party) in the airline field. In the event that the annual analysis determines that there is a structural oversupply in the industry, all relevant aircraft finance cases would have to undergo a country/airline/case-specific analysis to see if there were exceptional circumstances which could justify Ex-Im Bank support into the teeth of long-run industry oversupply. In the event that the annual analysis found no oversupply problems, the next step would be to determine if the specific case has a possibility of **substantial** injury to the U.S. airline industry.

Stage II: The Charter language makes it quite clear that Ex-Im Bank is supposed to do a Detailed Economic Impact Analysis only when the possible adverse implications could be **substantial**. Congress has provided some guidance as to when to assume substantial injury could exist (when the additional capacity is equal to or greater than 1% of U.S. capacity), and various oversight entities agree that measures such as the \$10 million minimum are appropriate operational interpretations of Congressional intent. Hence, this sector procedure incorporates a series of three tests -- taken in order (with the first "failure to pass" stopping additional review):

First, does the "evaluated transaction" exceed \$200 million?²⁶ If not, the transaction is cleared for credit analysis without further economic impact review.

Second, does the "evaluated transaction" meet the threshold for substantial injury? Staff will calculate substantial injury (the 1% test) using the following metric:

²⁶ The "evaluated transaction" is the total number/value of Ex-Im Bank supported aircraft to be (or has been) delivered in the greater of: (a) the authorization upon which the Detailed Economic Impact Analysis is based, or (b) 12 months of such deliveries after/around/preceding the date of the authorization. The 12-month period was chosen to reflect the business practice that within 12 months the aircraft are actually in production and considered "the airline's" aircraft. It generally requires two aircraft to provide daily, long-range, flights on any specific route. Commercial jet aircraft cost no less than \$35 - \$50 million for a narrow body and \$100 - \$125 million for a wide body. Hence, the \$200 million level of exemption from Detailed Economic Impact Analysis assumes that it would take at least four narrow-body or two wide-body aircraft to create enough alternatives on at least one or two significant routes to have any chance of a noticeable impact on the U.S. airline industry.

(Total seats in: deliveries covered by an Ex-Im authorization OR the next 12 months of deliveries of final orders to be funded by Ex-Im [whichever value is greater]) / (Total seats in U.S. fleet of either wide-body or narrow-body aircraft [if there is a mix of both types of aircraft in the order, the calculation will be performed twice])²⁷

If the outcome is less than 1%, the transaction is cleared for credit analysis without further economic impact review.

Third, do the routes likely to be flown by the “evaluated transaction” include a significant number of flights in **direct** (non-stop or one-stop/same plane) competition with U.S. airlines?²⁸ If not, the transaction is cleared for credit analysis without further economic impact review.

Stage III: “Evaluated transactions” that remain after application of the three tests are subjected to a Detailed EI Analysis.

Unlike goods, which can be, and are, considered “commodities” and therefore totally interchangeable for economic impact trade flow analysis, services (especially airline services) are by their nature highly differentiated. Hence, the mere existence of an alternative is not sufficient to say that Ex-Im Bank is actually helping to put in place competition that could (or should be considered to) displace U.S. services. Rather, Ex-Im Bank will try to look at (in order):

- Step 1: Does export credit agency (ECA) support provide a price advantage (availability is assumed to always exist from another ECA)?²⁹
- Step 2: If so, does that price advantage translate into a calculable direct loss?³⁰

For aircraft, Step 1 consists of a detailed side-by-side analysis of the financing generally available to a U.S. airline in the commercial market versus the financing available to a specific foreign airline in accordance with the terms and conditions of the Aircraft Sector Understanding (ASU). The comparison illustrates the difference in financing terms between what is estimated to be available at the moment of authorization through an Enhanced Equipment Trust Certificate

²⁷ Any aircraft authorized for use by the borrower within 12 months of the final authorization will be considered an addition to the “evaluated transaction” and will cause a revised review of the original economic impact analysis. However, the findings can only apply to the aircraft under the additional financing. Moreover, any authorization beyond 12 months is not additive to the previous 12 months authorization for either the 1% calculation or any detailed analysis. Only Ex-Im Bank supported deliveries are in the numerator to reflect the assumption that each aircraft of an overall order is considered a separate “project” for purposes of Detailed Economic Impact analysis.

²⁸ As the competitive impact analysis is on the effects that specific planes financed by Ex-Im Bank may have on U.S. airlines, the core criterion for potential harm is that the specific Ex-Im Bank financed planes must cause the impact (non-stop or “direct” routes). Moreover, as in goods, only head-to-head competition is assumed to have the potential for substantial injury.

²⁹ In standard economic impact for goods, the driving assumption is that a non-differentiated “commodity” made outside the U.S. is cheaper due to non-financing factors (land, labor, taxes, etc.). Hence, the foreign good supported by Ex-Im Bank is assumed to displace U.S. production 1:1 in any direct competition. However, as foreign services are inherently not “commodities” of any standardization, they are neither necessarily cheaper nor of equal quality. In fact, there are so many points of potential positives and negatives that the financing itself must be assumed to create a price “window” through which some degree of adverse impact could enter into a U.S. vs. foreign services competition.

³⁰ If there is a window created by a price advantage associated with the Ex-Im Bank support, then the price advantage – given the complex interplay of factors influencing a choice of service provider – is assumed to work its impact using classic elasticity analysis.

(EETC) compared to the precise financing terms available for that airline from the ASU. Given the extensive similarity between the financial package in an EETC and the ASU (both require assets as security), it is possible with just a few adjustments to get a very comparable cost of financing. (Note: This highly quantified finding is cross-checked with major financing institutions heavily and regularly engaged in commercial aircraft financing for both the direction of ASU fees and the order of magnitude.) The result of the pricing comparison is included in the detailed analysis.

Step 2 entails:

- An evaluation of the nature and extent of direct competition; and
- A quantification of the likely impact of the price difference on relative market share and total income potentially lost by the U.S. airline.

Stage IV: As part of the quantification exercise (Stage III, Step 2), this figure is compared to the export value of the "evaluated transaction" under review (and any future spares/replacements of the order package) to evaluate whether there was likely to be a net economic benefit to the order package. Also, included in this "netting" stage are the implications of any public comments made on the case.