A Summary of the OECD Guidelines on Official Export Credits

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Throughout most of the 1970s, a combination of events caused the international economic environment to become more conducive to trade-distorting practices. This was seen particularly in the field of official export credits and credit guarantees.

Most significantly, due to the gradual economic slowdown in the industrial world, the governments of the major exporting nations began to increase their official credit support to facilitate increasing exports of capital goods to developing countries. The accompanying drop in industrial-country demand resulted in declining export revenues for developing countries. Further, restrictive monetary policies, pursued by a number of industrial countries to control inflation, caused interest rates to be maintained at high levels, 1 which greatly increased the developing countries' service payments on floating-rate external debt.2 This decline m export receipts, coupled with the increase in interest payments, created serious balance-of-payments problems.

Naturally, foreign buyers and borrowers seek the best financial terms available. It is now acknowledged that there has been an on-going "credit terms race" among exporters and exporting nations in order to secure business. The result has been the de facto inclusion of the "financial package" among the factors typically identified as being the major determinants of export competitiveness. The sourcing decision is no longer solely dependent upon traditional market factors, such as price, quality and service, but also on the financing available.

For these reasons, the financial package offered by governments has become a major instrument in the. export credit competition, often providing the exporter with the "competitive edge" needed to maintain traditional markets and gain access to new ones. However, this "competitive edge" is not attained without cost; it usually takes the form of heavily subsidized export credit interest rates and lengthier credit repayment terms.

In an effort to minimize the destructive effect of export credit competition on international trade, the major exporting nations began negotiations in the early 1960s to bring some degree of discipline and uniformity in the terms and practice of official export credits. In view of the importance of this complex and technical subject to international business and finance, this article presents a concise summary of the historical and current framework of official export credits. The article defines "export credits"; reviews the various agreements that have been'negotiated to lessen export credit competition; examines the main provisions of the OECD (Organization for Economic Cooperation and Development) Guidelines on official export credits, including their substantial revisions in October 1983; and describes the response of the U.S. Export-Import Bank ("Eximbank") to foreign competition.

Export Credits

Broadly defined, an export credit arises " whenever a foreign buyer of exported goods and/or services is allowed to defer payment for a period of time. "3 Such foreign trade credits are usually granted to finance the sale of capital goods (i.e., machinery and equipment) and related services. Generally, they fall into two broad categories: "supplier credits" and "buyer credits":

Supplier credits involve the extension of deferred payment terms by the exporter, which then arranges for its own refinancing with a bank. Such credits primarily are used in short -and medium-term transactions (i.e., repayment terms of up to five years).

Buyer credits involve the lending of the necessary funds by the exporter's bank or other financial institution directly to the foreign buyer (or its bank). Such credits usually are granted for long-term transactions (i.e., repayment terms of five years or more).

International Efforts to Restrain Export Credit Competition

Recent international efforts to restrain subsidized financing as a competitive tool began in the early 1960s in the shipbuilding industry under the aegis of the OECD Working Party

No. 6.[4] About the same time, another OECD export group — the Group on Export Credits and Credit Guarantees (ECG) — was established in 1963 with the objective of bringing discipline and uniformity to the official financing support in the broader export credit field.5

1. The Agreement of 1974

In October 1974, a limited "Agreement" on certain aspects of export credit was reached in Washington by France, Germany, Italy, Japan, the United Kingdom and the United States, with Canada joining in November of that year.6

The Agreement provided that the Participants would not extend official support for:

— export credits of three years or more for ex port transactions among themselves or for the benefit of specified "wealthy" oil producing nations; and

— interest rates lower than 7.5 percent for commercial export credits on terms longer than five years.

However, it was immediately recognized that this Agreement represented only a first step toward the creation of an overall framework regulating officially supported export credits.^

2. The Consensus of 1976

In July 1976, the same seven nations announced in similarly-worded "unilateral declarations" that they would adhere to certain guidelines on export credit terms and conditions (the so-called "Consensus on Converging Export Credit Policies," also known as the "Gentlemen's Agreement").8 These guidelines were to be applied on a trial basis for one year (i.e, through June 30, 1977). By May of 1977, they had been adopted by most OECD countries.'

In a major breakthrough, the Consensus established minimum interest rates, maximum repayment terms, minimum down-payments, maximum local-cost financing allowances and an early warning system in the event of deviation from the rules. The Consensus also established a three-tiered classification of countries: "highly-developed", "intermediate" and "less-developed". In 1978, this classification was renamed: "relatively rich", "intermediate" and "relatively poor" countries.

The permitted interest rates and maturities varied according to the category of the intended recipient: the highest interest rates and shortest maturities applied to buyers whose countries were considered "highly-developed," while gradually more lenient terms were permitted for "intermediate" and "less-developed" countries.

Nevertheless, a major weakness of the Consensus was the fact that the minimum rates of interest were not high enough to reduce to any significant extent the subsidized element in export credits offered by some European countries. As a result, the U.S. Treasury Department and Eximbank viewed the Consensus merely as "a preliminary step paving the way towards a more realistic arrangement which would sharply reduce the subsidy element in export credits."'0 The objective of the subsequent efforts to improve the Consensus was to make governments offer export credits on terms that were no more favorable than those available commercially. In this way, the financing aspect of the sale would be progressively neutralized in international trade; "goods would compete on their own merits."[1]

3. The Arrangement of 1978

In June 1977, the Consensus was extended for a short period to allow time for more discussions. Subsequently, in February 1978 the Consensus guidelines were incorporated into a formal agreement known as the "Arrangement on Guidelines for Officially Supported Export Credits", which came into force on April 1, 1978.[12] By the end of the following month, all 22 members of the OECD Export Credit Group had acceded to the Arrangement.'3

The Guidelines in a Nutshell

The Guidelines' scope of application is limited to "officially supported export credits with a repayment term of two years or more.""*

Since their inception, there have been continuous efforts to improve the Guidelines within the framework of the Annual Reviews, which were taking place usually in the Spring of each year.'5 fhe Guidelines' main provisions — as revised through July 1982 — are as follows:

1. The Interest Rate Matrix

The most important of these Guidelines are those providing for the allowable minimum rates of interest on official export credits, most of which go to countries outside the OECD. The initial minimum interest rates'6 established by the Guidelines are set forth in Table 1.

TAB! El

Classification of Country	Maximum Repayment Terms (in years)		
	2-5	5-8.5	8.5 - 10
I. Relatively Rich	7.75%	8.00%	N/A
II. Intermediate	7.25%	7.75%	N/A
III. Relatively Poor	7.25%	7.50%	7.50%

Source: OECD Doc. TD/Consensus/78.4 (1st Revision) (Feb.- 22, 1978)

On July 1, 1980, the minimum interest rates were increased between 0.25 and 0.75 percentage points,^ and effective November 16, 1981 the allowable minimum interest rates on export credits were substantially increased to between 2.25 and 2.50 percentage points for all currencies — except the Japanese yen'8 for a six-month period.'"

On July 6, 1982, the Guidelines were revised again in several important respects. Through a combination of borrowing country reclassification and interest rate increases, the allowable minimum rates of interest were brought closer to prevailing financial market rates at the time.20 In particular:

a. Borrowing countries were reclassif led according to objective criteria (see EXHIBIT I): Category I: "relatively rich," i.e., GNP per capita of $4,000 or more (per 1979 World Bank figures); Category II: "intermediate", i.e., GNP per capita of less than $4,000 but not eligible for International Development Association (IDA) or mixture of IDAAVorld Bank financing; and Category III: "relatively poor," i.e., GNP per capita below $680 or eligible for IDA or World Bank and IDA financing.

b. Newly-graduated developing countries from Category III to II (mainly "newly in dustrialized" countries) were phased into the higher rates in two stages (with their max imum repayment term remaining at 10 years):

(i) Effective July 6, 1982, the minimum interest rates were increased to 10.75 percent for long-term credits; and

(ii) On January 1, 1983, an 11.35 percent interest rate was applied to these countries.

c. The minimum interest rate for Japanese yen export credits was set at 0.3 percent over the long-term prime rate on a combined basis. Moreover, Japan agreed to open its capital markets to allow foreign export credit agen cies to offer yen financing.

d. The matrix of minimum rates of interest, as it existed from July 6, 1982 to May 1, 198321 is shown in Table 2.

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Classification of Country	Maximum Repayment Terms (in years)		
	2-5	5-8.5	8.5 - 10
I. Relatively Rich	12.15%	12.40%	N/A
II. Intermediate	10.85%	11.35%	N/A
HA. "Newly Graduated":			
(i) effective 7/6/82	10.50%	10.75%	10.75%
(ii) effective 1/1/83	10.85%	11.35%	11.35%
III. Relatively Poor	10.00%	10.00%	10.00%

Source: U.S. Treasury News (July 1, 1982)

2. Maximum Repayment Terms

Except for the special sectors (described below), the maximum repayment term is 8.5 years for "relatively rich" and "intermediate" countries, and 10 years for "relatively poor" countries. In case a Participant intends to support a repayment term longer than 5 years for a "relatively rich" country, it must give prior notice to the other Participants. As to the special sectors, the following maximum repayment terms are applicable: (a) up to 12 years for Conventional Power Plants, (b) up to 8 years for Ground Satellite Communications Stations, and (c) Participants are to apply the terms of the Arrangement to Ships not covered by the OECD "Understanding on Export Credits for Ships" (see more below).22

3. Cash Payments

The Guidelines call for a minimum cash payment of 15 percent of the export contract value to be paid at or before the "starting point". 23

4. Local Costs

Local costs are defined as "the expenditure for the supply from the buyer's country of goods and services necessary either for executing the exporter's contract or for completing the project of which the exporter's contract forms part. "24

For credits to "intermediate" or "relatively poor" countries, the amount of local costs supported on credit terms is not to exceed the cash payment. In case of credits to "relatively rich" countries, the same rules apply except that any such support is confined to insurance or guarantees.25

5. Notification Procedures

The objective of notification procedures is two-fold: to improve the flow of information and to enable, in some instances, Participants to match nonconforming offers.

The Guidelines require that notice be given to the other Participants in the event of an intended "derogation" from the rules. They contain procedures governing^'

a. Prior Notification and Discussion

Any Participant intending to support terms not in conformity with the Guidelines, or to support a "tied aid credit" having a grant element of less than 15 percent, shall notify all other Participants of the terms it intends to support at least 10 calendar days before issuing any commitment. If any other Participant requests a discussion during this period, the initiating Participant will delay an additional 10 calendar days before issuing .a commitment. The "discussion" normally is to be by telex, but in "extreme cases" face-to-face discussions may be requested and arranged. If the initiating Participant moderates or withdraws the nonconforming terms, all other Participants are to be notified immediately.

Unless the matching Participant has received notice from the initiating Participant that the latter has withdrawn its intention to support nonconforming terms, any Participant has the right to offer "matching terms or any other nonconforming support" upon the expiration of the respective 10-day periods described above. As soon as a Participant commits itself to support such terms, it must immediately inform all other Participants.

b. Prior Notification Without Discussion

A Participant shall notify all other Participants of the terms it intends to support at least 10 calendar days before issuing any commitment, if it intends to support:

— a credit with a repayment term of over 5 to 8.5 years to a "relatively rich" country; or

— a credit which does not follow normal pay ment practices with respect to principal or in terest as set forth in the Guidelines; or

— a credit for a Conventional Power Plant with a repayment term longer than the nor mal term, i.e., up to 8.5 or 10 years (see Max imum Repayment Terms, above); or

— a "tied aid credit" having a grant element of 15 percent or more but less than 25 percent.

With respect to matching and information on commitment, the same rules apply as explained under Prior Notification and Discussion, above.

c. Prompt Notification

As soon as a Participant commits itself to support a "tied aid credit" having a grant element of 25 percent or more, it must notify all other Participants. However, prior notification need not be given if a Participant offers terms to match such a credit.

6. Mixed Credits ("Credits Mixtes")

Mixed credits, also known as "tied aid credits," are a combination of official export credits and foreign aid that yields an overall financial package with concessional rates and terms 28

In an attempt to discourage the use of mixed credit subsidies for commercial advantage, the Participants agreed, effective November 16, 1981, to substantially improved notification procedures. In particular:

— official credits with a "grant element" be tween 0 and 25 percent are to be subject to a prior notification period (to other Participants) of at least 10 days to allow other countries to match the offer (previously, this requirement had applied only to offers with a grant element of less than 15 percent); and

— official credits with a grant element over 25 percent are to be subject to prompt notifica tion (previously, there had been no such re quirement for these credits).29

These terms were modified in the July 1982 revision of the Guidelines, where the Participants pledged not to offer mixed credits having a grant element of less than 20 percent.30

7. Special Excluded Sectors

The Guidelines do not apply to several important sectors: 31

a. Aircraft

Effective August 1, 1981, an understanding was reached between the United States and the principal nations involved in the Airbus Consortium (France, Germany and the United Kingdom) setting forth guidelines for official financing of commercial jet aircraft exports — the so-called "Common-Line on Aircraft Export Credit Financing." These guidelines are subject to renewal every six months.32

The main features of the Common-Line

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— a minimum interest rate of 12 percent;
— a maximum repayment period of 10 years (12 years for leases); and
— a 42.5 percent maximum government share in the financing when repaid from the later installments, and 62.5 percent when the official credit and the private loan are repaid par! passu over the entire repayment period.33

b. Ships covered by the OECD "Understanding on Export Credits for Ships"

The Understanding was adopted by the OECD Working Party No. 6 for the shipbuilding industry to avoid excessive competition among the ship-exporting nations over the terms of official ship export credits.3[4] It has been in effect since 1969, with several revisions having been made in subsequent years.

Effective December 1, 1979, the Understanding applies to "any new sea-going ship or conversion of a ship" 35 and it establishes:
— a requirement of a minimum cash payment of 20 percent of the contract price to be paid by delivery;
— a maximum repayment term of 8.5 years from delivery with equal installments at regular intervals of normally six (and a max imum of twelve) months;
— a minimum interest rate of 8 percent (net of all charges); 36 and
— the requirement that notice be given whenever certain practices or acts of the Par ticipants would be in "deroration" of the terms of the Understanding.^^

The "New" OECD Guidelines

Following the July 1982 revision of the Guidelines, the United States launched new efforts toward the adoption by the OECD of a "system for the automatic adjustment of export credit interest rates, with changes in private market rates, to avoid both the artificial incentive of export credit subsidies when commercial rates rise and the disincentive of export credit rates that remain too high when market rates fall. "38

At a meeting held in Paris in June 1983, two basic proposals were presented. While the U.S. stated its preference for the "differentiated rate system" (DRS), in which a different minimum interest rate based on market rates would be established for each currency, to be the most appropriate measure for the long-term, it suggested adopting the "uniform-but-moving matrix" (UMM) as a temporary measure under which minimum interest rates would move automatically according to changes in market rates on an SDR (Special Drawing Rights)-weighted average basis.39 The EEC, on the other hand, insisted on the reduction of minimum interest rates, while the U.S. maintained its position calling for the reduction of government subsidies for officially supported export credits.^

The Paris meeting did not produce a new agreement, with the result that the existing Guidelines were extended to the end of October 1983.[4]' After compromises in the interim, a balanced set of new provisions was negotiated under the auspices of the OECD.42

The new Guidelines, which took effect October 15, 1983, "virtually eliminate direct interest rate subsidies in official credits to the industrialized countries and significantly reduce the subsidy to the developing countries, by linking these rates to market interest rate movements, a long-sought goal of the United States."[4]3 The U.S. Treasury welcomed the new Guidelines as "reasonable and balanced" and viewed them as a "positive step in the international trade area that goes a long way toward reducing wasteful and trade-distorting subsidies.*[44]

Highlights of the New Guidelines

The main features of the new provisions are the following:

a. An "automatic adjustment mechanism" setting the minimum rates of interest for _gqyernment-supported export credits.

The automatic formula would eliminate the painstaking negotiations to set the minimum rates, and was endorsed by the EEC Commission as removing the "agonizing discussions and the uncertainties which have surrounded the annual review of minimum rates up to now. "[4]5

These minimum rates of interest woulri henceforth be adjusted automatically eve six months (on January 15 and July 15) m ry cordance with movements in the international weighted average of interest rates on 10-yea government bond issues in SDR currencies — U.S. dollar, British pound, German mark French franc and Japanese yen — provided that such movements are at least equal to 50 basis points since the preceding change

The first adjustment, scheduled for January 1984, did not occur because the SDR weighted average of government borrowing costs during the month of December was 10 5 percent — 0.4 percent above the May 1983 benchmark rate of 10.1 percent that was used to set the minimum export credit rates in Oc tober (the "Base Rate") 46 If tne increase Jn bond rates had been 0.5 percent or more an automatic adjustment in export credit rates would have been triggered.

b. The minimum rates for industrialized countries (Category I) remain the same while the rates for the advanced'developing'countries (Category II) and poorer developing countries (Category III) have been temporarily decreased.

The revised matrix of minimum rates of interest, remaining unchanged through the January 1984 adjustment, is shown in Table

countries up to approximately government

TABLE 3

Classification of Country	Maximum Repayment Terms (in years)		
	2 - 5	5 - 8.5	8.5 - 10
I. Relatively Rich	12.15*	12.40%	N/A
II. Intermediate III.	10.35%	10.70%	N/A*
Relatively Poor	9.50%	9.50%	9.50%

* For countries reclassified in July 1982 from Category III to II, the maximum repayment term remains at 10 years (with minimum interest rates the same as for credits in the 5 to 8.5 year range).

Source: OECD Announcement (Oct. 14, 1983)

c. To recoup the initial decrease in the interest rate matrix, a complementary upward adjustment will be phased in no later than July 15, 1986 under a stated formula in order to bring minimum interest rates for advanced developing countries up to approximately commercial levels and for poorer developing borrowing costs. In the event of downward adjustments to the general level of minimum interest rates, the phase- in schedule will be accelerated.[4]^

Table 4 gives the phase-in schedule for credits with maturities longer than 5 years.

TABLE 4

	Category II	Category III
July 15, 1985	+ 30 basis points +	-+. 25 basis points
Jan. 15, 1986	25 basis points +	.+- 25 basis points
July 15, 1986	10 basis points	

Source: U.S. Treasury News (Oct. 17, 1983)

d. Generally applicable rules are specified to govern official lending in "low interest rate" currencies, i.e. currencies with domestic commercial rates lower than the relevant minimum matrix interest rates. 48

.According to the new Guidelines, commercial interest reference rates (CIRRSi have been established for "low rate" currencies, which are set at commercial levels and are adjusted automatically to reflect market interest rate movements.49 These currencies include the Japanese yen, the German mark, the Swiss franc and the Dutch guilder. Competitors from other countries can also use these currencies at market rates in order to ensure equal competition among the Consensus Participants. Export credits in such currencies can be extended with official financing support, provided that a margin of 0.2 percent per annum is added to the relevant market interest rate.^O

U.S. Eximbank's Response to Foreign Competition

The Eximbank is an independent agency of the Federal government, founded by Executive Order No. 6581 on February 2, 1934 and currently operating under authority of the Export-Import Bank Act of 1945, as x amended.51 Its charter authority currently extends through September 30, 1986.[52]

The purpose of Eximbank is to aid in financing and to facilitate exports through a wide variety of loan, guarantee and insurance programs.53 Eximbank receives no appropriations from the U.S. Congress. Since inception, it has supported more than SI60 billion in U.S. export sales, and has paid more than SI billion in dividends to the U.S. Treasury.54

1. Charter Mandates

Eximbank is directed by statute to:

— expand U.S. exports, as its primary man date, through "fully competitive financing" though its rates, terms and conditions need not be equivalent to those offered by foreign countries so long as the effect is to neutralize financing offered by Eximbank's counter parts^ (see EXHIBIT II);

— take into consideration its "average cost of money" in determining its interest rates, when "such consideration does not impair the Bank's primary function of expanding U.S. exports through fully competitive financing;" 56

— determine that the transaction offers a "reasonable assurance of repayment;"^

— supplement and encourage, but not com pete, with private sources of export financing^S and

. — take into account the effect of its activities on small business, the domestic economy, and U.S. employment.59

2. Matching Foreign Financing in the U.S.

In principle, Eximbank has followed the Guidelines "rarely derogating except to match terms offered by another export credit agency." Effective November 10, 1978 Eximbank's charter was amended by Section 1912 of the Export-Import Bank Act Amendments of 1978, to authorize Eximbank for the first time to match foreign financing for U.S. domestic sales.60

Under Section 1912, the Secretary of the Treasury is required to conduct an inquiry within 60 days^' upon receipt of information that foreign sales are being offered in the U.S. with the support of foreign official "noncompetitive" financing. 62

Before Eximbank is authorized to match such financing, the Secretary must make the following determinations of fact:

— that the foreign financing offered is "noncompetitive" which means, in effect, finan cing that exceeds the limits allowable under the OECD Guidelines on Official Export Credits;

— that the foreign authorities have been ask ed to withdraw such "noncompetitive" finan cing and have refused to do so; and

— that the availability of such "noncompetitive" financing is likely to be a "significant factor" in the sale. (The 1983 Act relaxed the requirement that the financing had to be the "determining factor" in the sale; the determination now has to be made that the availability of such financing is a "signifi cant factor" in the sale — a far less restrictive requirement).63

The operation of the above requirements can be seen in the following Case Study, which was determined prior to the 1983 Amendments:

MTA Subway Car Purchase Case

"In late 1981, New York's Metropolitan Transportation Authority (MTA) awarded to Kawasaki Heavy Industries, a Japanese company, a contract for the construction and delivery of 325 stainless steel self-propelled subway cars. Shortly thereafter, MTA requested proposals from interested manufacturers for an additional 825 identical cars. Kawasaki did not have the production capacity to fill this additional order, and three companies offered proposals: The Budd Company of Troy, Michigan; Francorail, a consortium of French companies; and Bombardier, a Canadian Company and a licensee of Kawasaki. As permitted under New York State law, MTA negotiated with each of the three companies in an effort to obtain the best possible terms.

"On May 18, 1982, the MTA announced that it would place the order for the 825 subway cars with Bombardier. MTA and Bombardier signed a contract for the subway cars on June 10, 1982, contingent upon the availability of financing from the Economic Development Corporation of Canada (EDC) which would provide an interest rate of 9.7 percent, cover 85 percent of the total contract price, and require repayment over a 10 year period beginning six months after delivery of the last car in 1987.

"Shortly after the signing of the contract, Budd brought suit in the U.S. District Court for the Southern District of New York to enjoin approval of the contract until it was clear whether matching financing would be provided under the Export-Import Bank Act Amendments of 1978/64

In this case, the Secretary refused to authorize Eximbank to consider matching the subsidized Canadian financing for the purchase of the subway cars. Although it was determined that the EDC financing was in violation of the Guidelines on official export credits, and that EDC had refused to withdraw its "noncompetitive" financing despite repeated requests by officials of the Treasury, the evidence showed that, in making its purchase decision, MTA considered Bombardier to be the superior bidder on all relevant factors. These factors were: the availability and cost of financing, price, the amount of work done in New York State ("local content"), reliability of delivery, as well as quality of design, engineering and performance, including compatability with Japanese-built cars already on order by the MTA.65

As a result, it was determined that "Bombardier would have been awarded the contract even if Budd were able to offer matching financing"66 and, therefore, the Secretary concluded that the noncompetitive financing offered by EDC "was not likely to be a determining factor in the MTA's decision."67

3. Tied Aid Credit Export Subsidies

In order to "neutralize the predatory financing engaged in by many nations whose exports compete with U.S. exports, and thereby restore export competition to a market basis," the President is directed, by Section 643 of the Export-Import Bank Act Amendments of 1983, to "pursue vigorously negotiations to limit and set rules for the use of tied aid for exports. "68

Moreover, the Chairman of Eximbank is required to establish a "program of tied aid credits" for U.S. exports to neutralize the noncompetitive financing practices of foreign countries.69 This program is to be carried out in cooperation with the Agency for International Development (AID) and private financial institutions or entities. The Chairman is also authorized to establish a "fund" for carrying out this programJO The National Advisory Council on International Monetary and Financial Policies (NAC) will coordinate the implementation of the Eximbank's and AID'S tied aid credit programs.?' No tied aid may be approved without the "unanimous consent" of the members of the NAC."^2

Conclusion

In retrospect, the evolution of the efforts to restrain export credit competition indicates that considerable progress has been made since the beginning of the negotiations. Particularly, the substantial revisions of the Guidelines in October 1983 constitute an important step toward the objective of eliminating subsidies in official export credits. Still, the ultimate goal that lies ahead should be to totally neutralize the trade-distorting effect of export credit subsidies so that goods can compete on their own merits, unaffected by the ability of governments to offer their exporters subsidized financing.

FOOTNOTES

1. Interest rates have declined since mid-1982, although they remain unusually high, by historical standards, in relation to inflation. The International Monetary Fund Annual Report 1983 (Chapter I: "Developments in the World Economy"), at 1-43 (Washington, D.C.).

2. It is estimated that developing countries' medium-and long-term debt stands at $530 billion (J350 billion from private sourcesl; combined with the short-term debt. the total is probably some $700 billion. Also, the ratio of debt service to export receipts (including services) for all developing countries increased from 13.6 percent in 1980 to 20.7 percent in 1982. The World Bank Annual Report 1983 (Chapter 2: "The Economic Scene: A Global Perspective"!, at 23-37 (Washington, D.C.).

3. The Export Credit Financing Systems in OECD Mem.ber Countries (OECD. Paris 1982), at 7.

4. The earliest effort to regulate the subsidizing of official trade financing was commenced by the International Union of Credit and Investment Insurers. More commonly known as the " Berne Union," this association of private and government export credit and investment insurers was founded in 1934 as a clearing-house for the exchange of information on specific transactions with repayment terms of five years or less. Its primary purpose is to work for "the international acceptance of sound principles of export credit insurance and the establishment and maintenance of discipline in terms of credit for international trade." As of December 1982, its membership consisted of 34 entities from 26 countries. U.S. Eximbank Competition Report (Sept. 1983), at 30-31 (hereinafter cited as "Report").

5. Traditionally there have been three forms of "official support" for export credit: insurance covering the various risks involved in financing export trade, interest-rate subsidies and aid grants tied to national exports ("tied aid credits"). Dizard, J., "Export Credits: Is War Inevitable?", Institutional Investor (April 19811. at 39.

6. Machinery & Allied Products Institute (MAPI) Memorandum FT-56 (Nov. 8. 1974) and Bulletin No. 5295 (June 3, 1975).

7. Duff, J.M., Jr., "The Outlook for Official Export Credits." 13 Law & Pol'y Int'l Bus. 891 (1981), at 901 (hereinafter cited as "Duff").

8. MAPI Bulletin No. 5450 (June 14, 1976).

9. Originally, the European Economic Community (EEC) Commission did not recognize the Consensus on the grounds that the Commission alone had the authori ty to negotiate commercial policy, including export credit insurance policy, for all EEC members. It also obtained a judment from the European Court of Justice con firming its sole authority to negotiate on this subject. To circumvent this obstacle, it was agreed that each country would declare "unilaterally" its intention to apply the guidelines. Finally, the internal EEC dispute was settled in March 1977 when EEC members recognized the Commission as their "sole spokesman" and the Commis sion endorsed the Consensus. Export Finance Service, Quarterly Report (June-Sept. 1976, Sept. 1977) (The Banker Research Unit, London).

10. Rendell, R.S. (Ed.), International Financial Law: Lending, Capital Transfers and Institutions (Chapter 6: "Export-Import Bank of the United States." by Click, W.W. and Duff, J.M., Jr.), (Euromoney Publication, London 1980), at 292 (hereinafter cited as "Rendell").

11. Id. at 292.

12. OECD Press Release (May 31, 1978). OECD Doc. TD/Consensus/ 78.4 (1st Revision) (Feb. 22, 1978), as amended in OECD Doc. TD/Consensus/81.38 (Nov. 6, 1981) (hereinafter cited as the "Arrangement"). Participation in the Arrangement is open to any OECD member country, and to any other country "upon the prior in vitation of the then existing Participants" (para. 12). Further, any Participant may withdraw from the Arrangement" upon not less than 60 calendar days prior written notice to the other Participants" (para. 15).

13. Australia, Austria, Canada, EEC, Finland, Japan. New Zealand, Norway. Portugal. Spain. Sweden, Switzerland and the United States. (EEC members • Belgium. Denmark, Germany. Greece, France. Ireland. Italy. Luxembourg, the Netherlands and the United Kingdom — participate in the Arrangement as a "single entity".)

14. Arrangement, supra note 12, Preamble.

15. "... The aim would be notably to bring the matrix interest rates closer to market rates...". Id. at para. 13.

16. The Arrangement specifically recognizes that these rates are intended as guidelines for the "most generous credit terms' extended by a Participant and the articulation of rates, therefore, should not be interpreted as establishing a norm of permissible rates to be used in alt transactions Id. at para. 8. Further. " interest" ex eludes: (a) any payment by wa\ of premium or other charge for insuring or guaranteeing export credits, (b) any other payment by way of banking fees or commissions associated with the export credit (other than annual or semi-annual charges payable throughout the repayment term), and lei withholding taxes imposed by the importing country. Id. at para. I I (a)(6).

17. MAPI Bulletin No. 6038 (June 20. 1980).

18. A separate provision was made for Japan in view of its traditionally low in terest rates. A minimum rate of 9.25 percent was to be charged by its Exoort-lmport Bank or other export credit agencies, regardless of the income level of the recipient country and the repayment term. Export-Import Bank of Japan Annual Report 1982, at 7. See also Arrangement, supra note 12, para. 3lb).

19. OECD Press Release (May 5. 1982).

20. It is estimated that with the adoption of a minimum interest rate scale ranging from 10 to 12.4 percent, depending on the classification of the purchaser's country and the term of the credit, subsidies were reduced by more than 50 percent by the Summer of 1982. Export-Import Bank of the United States Annual Report 1982, at 3 (hereinafter cited as "Eximbank Report").

21. Effective October 15, 1982 Participants pledged not to derogate from these minimum interest rates and maximum repayment terms. U.S. Treasury News (July 1, 1982).

22. Arrangement, supra note 12, para. 2(a) and 4.

23. Id. at para. 1. The definition of the "starting point" depends on the nature of the contract involved and is as follows:
(a) " In the case of a contract for the sale of capital goods consisting of individual items usable in themselves (e.g. locomotives), the starting point is the mean date or actual date when the buyer takes physical possession of the goods in his own coun try.
(b) " In the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the starting point is the date when the buyer is to take physical possession of the entire equip ment (excluding spare parts) supplied under the contract.
(c) " In the case of construction contracts where the contractor has no responsibility for commissioning, the starting point is the date when construction has been com pleted.
(d) "In the case of any contract where the supplier or contractor has a contractual responsibility for commissioning, the starling point is when he has completed in stallation or construction and preliminary tests to ensure that it is ready for opera tion. This applies whether or not it is handed over to the buyer at that time in accor dance with the terms of the contract and irrespective of any continuing commit ment which the supplier or contractor may have, e.g. for guaranteeing its effective functioning or for training local personnel.
(e) " In the case of paragraphs (b), (c) and (dl above, where the contract involves the separate execution of individual parts of a project, the date of the starting point is the date of the starting point for each separate part, or the mean date of those start ing points or, where the supplier has a contract, not for the whole project but for an essential part of it, the starting point may be that appropriate to the project as a whole."
These rules, developed by the Berne Union, have become international standards in the export credit system and are incorporated in the Arrangement. Id. at para. 11 (a) (5). See also Duff, supra note 7, at 898.

24. Id. at para. 5(b), and the OECD "Declaration on Local Costs," adopted May 15, 1975. OECD Doc. TC/ECG/M/75.1, item 5, Annex II.

25. Id. at para 5(a).
26. Id. at para. 6.
27. Id. at para. 9.

28. Id. at para. 7 and l1(a)(3). Also, U.S. Eximbank Competition Report (Oct. 1981). at 42-43. The OECD Development Assistance Committee (DAC) has developed a formula for measuring the "grant element" based on several factors, in-eluding interest rate, maturity, grace period and number of payments per year. See MAPI Bulletin No. 6265 (May 27. 1982).
29. MAPI Bulletin No. 6207 (Oct. 30. 198H.

30. U.S. Treasury News ijuly 1. 1982).

31. Other excluded Sectors are: 'Nuclear Power Plants" so which the terms of she 1973 OECD "Standstill \greement" are .ippiicable 'OECD Doc. TO'ECG/M/75.1. item 6. Annex 1IIBI. "Agricultural Commodities" and "Military Equipment". See Arrangement, supra note 12, para. 10.

U.S. Exim News (Aup 19811.

33. Repon. supra not? 4. at 30. Also. Foreign Assistance and Related Programs Appropriation? ftr i Q H " - Hearings Before the Subcomm. of the House Comrp or Appropriations. 97th Cong.. 2<_! Sess.. pi. 2 (March 4. I982i. ai 216 (Statement of William H. Draper III. President and Chairman of the U.S. Export-impori Bank!

34. Panicipants were Australia. Canada. EEC. Finland. Japan. Norway and Sweden. The U.S. did not take part in the discussions within Working Party No. 6 and has not become a member of (he Understanding. See OECD Press Release (Feb. 1. 19801. Also, Duff, supra note 7, at 926.

35. Ship conversion means "the conversion of sea-going vessels on condition that conversion operations entail radical alterations to the cargo plan, the hull or propul sion system." See text of the Understanding attached to OECD Press Release (Feb. 1, 1980).

36. Interest rate, net of all charges, means "that part of the credit costs (excluding any credit insurance premia and/or banking charges) which is paid at regular inter vals throughout the credit period and which is directly related to the amount of credit." Id.

37. When the Arrangement was established in 1978, it was necessary to draw a line between the export of ships and the export of goods in general. Therefore, it was stipulated in the Arrangement that its terms should not apply to ships covered by the Understanding (Para. ll(d)). Concurrently, the Arrangement stated that Par ticipants should apply its terms to ships not covered by the terms of the Understand ing (Para. 4(cl). Additionally, the Arrangement required notification to all other Par ticipants when a Participant intended to support credits for "any type of ships," to which the Understanding applied, "on terms more favorable than those permitted by the Arrangement" (Para.l l(d)). See also Duff, supra note 7, at 926.

3.8. Eximbank Report, supra note 20, at 3.

39. Duff, supra note 7, at 909.

40. "Export Credits: The Consensus Agrees to Differ," The Economist (April 23, 1983), at 94;" Export Credit: Can the Consensus Hold?", The Banker (June 1983), at 7; and The Wall Street Journal, June 30, 1983, at 32.

41. "Export Credit: Frustrating Talks," The Banker (August 1983), at 7.

42. OECD Announcement (Oct. 14, 1983) (Washington, D.C.); U.S. Exim News (Oct. 14,1983); and "Drastic Changes in Export Credits," Expres, Nov. 30, 1983, at 7 (Athens).

43. U.S. Treasury News (Oct. 17, 1983).
44. Id.
45. EEC News, No. 15/1983 (Oct. 19, 1983) (Washington, D.C.).
46. U.S. Exim News (Jan. 9, 1984).
47. U.S. Treasury News (supra note 43).
48. OECD Announcement (supra note 42).
49. U.S. Treasury News (supra note 43).

50. EEC News (supra note 45).
51. Enacted as Public Law 173, 79th Cong., 59 Stat. 526 (July 31, 1945), 12 USC 635. Eximbank's regulations are contained in 12 CFR, parts 400-409. Originally called the Export-Import Bank of Washington, its name was changed on March i 3, 1968 by Public Law 90-267. 90th Cong., 82 Stat. 47.

52. Section 611 of the Export-Import Bank Act Amendments of 1983 (Title VI, Supplemental Appropriations Act, 1984), Public Law 98-181, 98th Cong., Title VI, 97 Stat. 1254 (Nov. 30, 1983) (hereinafter cited as the "1983 Act").

53. 12 USC 635(a|(l).

54. "Eximbank Program Summary," published by the Office of Public Affairs of Eximbank (October 1983).

55. The 1983 Act. supra note 52, Sec. 612.

56. Id.
57. 12 USC 635(b)(l)(B).
58. Id.
59. Id.

60. Public Law 95-630. Title XIX, Sec. 1912, 92 Stat. 3726. For its legislative history and purpose, see 1978 U.S. Code Cong, and Adm. News. p. 9273. See also Rendell. supra note 10, at 293.

61. Added by Sec. 631 of the'1983 Act (supra note 52).
62. 12USC635a-3.
63. Amended by Sec. 631 of the 1983 Act (supra note 52).
64. U.S. Treasurv News (Juiv ! 3. 1982[1]. Also "A Subway Collision Over Expon. Credits." Business Week (June 14. 1982). at 30

65. Decision of the Secretary of the Treasury. Donald T. Regan, on the Financing of Subway Cars for the Metropolitan Transportation Authority of New York (The Department of the Treasury. July 13. 19S2).
66. Id. at 1-10.
67. Id. at 9.
68. Sec. 641 et seq. of the 1983 Act (supra note 52). For present purposes, the term "tied aid credit" means credit which:
(a) is provided for development aid purposes:
(b) is tied to the purchase of exports from the country granting the credit;
(c) is financed either exclusively from public funds or, as a "mixed credit," partly from public and partly from private funds; and
(d) has a "grant element" greater than zero percent (as defined by DAC of the OECD). Id. Sec. 647. See also note 28 supra.

69. Id. Sec. 644.
70. Id.
71. Id. Sec. 646.
72. Id.

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EXHIBIT I

Country Categories for OECD "ARRANGEMENT" on Officially Supported Export Credits**

Category 1 Relatively Rich	Category 2 Intermediate	Category 3 Relatively Poor
Andorra	Albania	Angola
Australia	'Algeria	Bangladesh
Austria	Antigua	Benin
•Bahrain	Argentina	Bolivia
Belgium	Bahamas	Burma
Bermuda	Barbados	Burundi
•Brunei	•Belize	Cameroon
Canada	•Botswana	Central African Republic
•Czechoslovakia	•Brazil	Chad
Denmark	Bulgaria	China
Finland	•Colombia	Congo, People's Republic
France	•Chile	Egypt
•Germany. Democratic Republic	•Costa Rica	El Salvador
Germany, Federal Republic	•Cuba	Ethiopia
Greece	Cyprus	Gambia
Iceland	•Dominican Republic	Ghana
•Ireland	•Ecuador	Guinea
•Israel	•Fiji	Guinea-Bissau
Italy	Gabon	Haiti
Japan	Gibraltar	Honduras
Kuwait	•Guatemala	India
Liechtenstein	Hong Kong	Indonesia
Luxembourg	Hungary	Kenya
Libya	Iran	Lesotho
Monaco	Iraq	Liberia
Netherlands	•Ivory Coast	Madagascar
New Zealand	•Jamaica	Malawi
Norway	•Jordan	Mali
Qatar	•Kiribati	Mauritania
San Marino	•Korea, N.	Mozambique
Saudi Arabia	•Korea, S.	Nepal
•Spain	•Lebanon	Nicaragua
Sweden	•Macao	Niger
Switzerland	•Malaysia	Pakistan
United Arab Emirates	Malta	Philippines
United Kingdom	•Mauritius	Rwanda
United States	•Mexico	Senegal
•U.S.S.R.	•Montserrat	Sierra Leone
Vatican City	•Morocco	Somalia
	•Namibia	Sri Lanka
	Nauru	Sudan
	Netherlands Antilles	Tanzania
	•Nigeria	Thailand
	Oman	Togo
	Panama	Uganda
	•Papua New Guinea	Upper Volta
	•Paraguay	Yemen Arab Republic
	•Peru	Yemen, P.D.R.
	Poland	Zaire
	Portugal	Zambia
	Romania	Zimbabwe
	•St. Kitts-Nevis	
	•St. Lucia	
	•Seychelles	
	Singapore	
	South Africa	
	•Suriname	
	•Syria	
	•Taiwan	
	Trinidad & Tobago	
	"Tunisia	
	'Turkey	
	"Uruguay	
	Venezuela	
	Yugoslavia	

* New classification for this country (July 1982-Revised) **
Source: U.S. Exim News, Jan. 9, 1984.

EXHIBIT I!

Export Credit Insurance and Finance Agencies/Institutions in 'ARRANGEMENT" Participating Countries*

Country	Agency	Acronym
Australia	Export Finance and Insurance Corporation	(EFIC)
Austria	Oesterreichische Kontrollbank, A.G.	(OKB)
Belgium	-Office National du Ducroire	(OND)
	- Creditexport	
Canada	Export Development Corporation	(EDO
Denmark	-Eksportkreditradet (Export Credit Council)	(EKR)
	-Dansk Eksportfinansieringsfond	(DEFC)
	(Danish Export Finance Corporation)	
	-Danmarks Skibskreditfond (Ship Credit Fund of Denmark)	(SCFD) (VTL)
Finland	-Vientitakuulaitos (Export Guarantee Board)	(FEC)
	-Finnish Export Credit, Ltd.	(COFACE)
France	•Compagnie Francaise d'Assurance	
	pour le Commerce Exterieur	(BFCE)
	-Banque Francaise du Commerce Ext6rieur	(HERMES)
Germany**	-Hermes Kreditversicherungs, A.G.	(AKA)
	-Ausfuhrkredit GmbH	(KfW)
	-Kreditanstalt fiir Wiederaufbau	(ECIF)
Greece	-Export Credit Insurance Fund	
	-Greek Exports, S.A.	(ICI) (SACE)
Ireland	Insurance Corporation of Ireland, Ltd.	
Italy	-Special Section for Export Credit Insurance	
	-Mediocredito Centrale	(EID/MITI)
Japan	-Export Insurance Division, Ministry of International	(EXIM)
	Trade & Industry	(CID)
	-Export-Import Bank of Japan	(SNCI)
Luxembourg	-Office du Ducroire (Credit Insurance Department)	
	-Societe Nationale de Credit et d'Investissement	(NCM)
	(National Credit and Investment Company)	(EFM)
Netherlands	-Nederlandsche Credietverzekering Maatschappij N.V.	(EXGO)
	-N.V. Export-Financiering-Maatschappij	(GIEK)
New Zealand	Export Guarantee Office	
Norway	-Guarantee Institute for Export Credits	(COSEC)
	-A/S Eksportfinans	
Portugal	-Companhia de Seguro de Creditos	(CCGQ
	(Credit Insurance Company)	
	-Comissao de Creditos e Garantias de Credito	(CESCE)
	(Commission for Credits and Credit Guarantees)	
Spain	-Compania Espanola de Seguros de Credito a la Exportation	(BEE)
	(Spanish Export Creditjnsurance Company)	(EKN)
	-Banco Exterior de Espana (External Bank of Spain)	(SEK)
Sweden	-EKN-Exportkreditnamnden (Export Credit Guarantee Board)	(GERG)
	-AB Svensk Exportkredit (Swedish Export Credit Corporation)	(ECGD)
Switzerland	Geschaftsstelle fiir die Exportrisikogarantie	(EXIMBANK)
United Kingdom	Export Credits Guarantee Department	(FCIA)
United States**	-Export-Import Bank of the United States	(PEFCO)
	-Foreign Credit Insurance Association	
	•Private Export Funding Corporation	

* Source: "The Export Credit Financing Systems in OECD Member Countries" (OECD, Paris 1982)

** Most countries provide investment insurance, export finance and risk coverage through the same agency. Two notable exceptions are Germany and the United States in which investment insurance is provided by Treuarbeit, A.G. and the Overseas Private Investment Corporation (OPIC), respectively.