

**Friends of the Earth * World Wildlife Fund
Pacific Environment**

May 25, 2004

Mr. John A. McAdams
Senior Vice President
Credit and Risk Management
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, DC 20571

RE: Comments on Revised Ex-Im Environmental Policies: "DRAFT May 2004"

Dear Mr. McAdams:

Friends of the Earth-US, Pacific Environment and World Wildlife Fund submit the following comments with respect to the DRAFT-May 2004 Environmental Policies of the Export-Import Bank of the United States (Ex-Im). Many of our local partners and groups in our networks face projects supported by Ex-Im and our comments draw from their experiences and our own. We also appreciate the public commitment of both yourself and General Counsel Saba that these guidelines will in no way be weaker than previous policy while also consistent with the OECD Common Approaches. Thank you for this opportunity.

Policy-making for a branch of the U.S. Government

As a branch of the U.S. Government supported by U.S. taxpayers, the process for developing guidelines and policies should be public, transparent and the rules should be binding. While we appreciate the opportunity to comment on these policies, Ex-Im should embark on a more credible process for developing rules that cannot be waived at the discretion of the agency for any reason whatsoever. We encourage Ex-Im to display leadership in this respect by putting these proposed policies through Public Notice & Comment rulemaking pursuant to notice in the Federal Register. This process will develop clear, binding rules and clear expectations for all Ex-Im Bank stakeholders.

Section I: Overview of Ex-Im Bank's Environmental Procedures

- Ex-Im Bank should make a clear policy statement that it will not support Category A transactions where construction of the project has already begun prior to Ex-Im's completion of due diligence and/or approval by its Board of Directors. Experience demonstrates that Ex-Im can only credibly apply its environmental

guidelines and contribute to sustainable development meeting the spirit of the Common Approaches with such a policy in place.

- **Point 2.** Here Ex-Im states it will formally screen all applications greater than \$10 million. Depending on the type of transaction, applications that are less than \$10 million can have adverse environmental impact thereby making the threshold arbitrary. Ex-Im should screen all transactions for potential significant environmental impact.
- **Point 7** states that Ex-Im “will seek” to make environmental impact information publicly available and will “generally” adhere to such public transparency requirements. While FoE appreciates the leadership of Ex-Im in terms of transparency of Environmental Impact Assessments, the draft language purposely allows wiggle room that could allow Ex-Im Bank to waive such requirements for environmentally and socially sensitive projects. Ex-Im should delete “will seek” and replace with “will require” and delete “generally” to avoid arbitrary allowances for loopholes in this area of the policies. **As currently drafted, this could result in a weakening from current Ex-Im policy and practice.**

Moreover, to achieve the “objective of fostering transparency, predictability, responsibility....” Ex-Im’s commitment should apply to the entire EIA *process*, and not just the EIA *document*. Much of Ex-Im’s ability to meet its environmental objectives and obligations is a function of what occurs after project approval during implementation. Ex-Im Bank should publicly disclose environmental impact information for monitoring and compliance-related documents.

- **Point 8** states a commitment to the use of World Bank pollution guidelines and safeguard policies. Coupled with a commitment to the application of all applicable U.S. environmental laws, we agree with this policy in principle.
- **Point 10** references using the guidelines of other banks including the Inter-American Development Bank and the African Development Bank “in whole or part.” The guidelines of these two institutions are weak, non-policies from the perspective of our organizations and not a credible source for Ex-Im, representing a major step backwards in Ex-Im’s environmental policies. This section should be deleted from the finalized policy or there should be a clear statement that where World Bank standards and safeguards are higher, they will apply. **Without such changes Ex-Im policy will in fact be weaker than previous policy.**
- **Point 13** states that if a project does not meet, *inter alia*, the relevant host country guidelines, its Board of Directors will take into account the environmental impact and other factors in determining whether to provide financial support. This suggests that Ex-Im Bank is willing to consider financing a project even if it knows that the project violates host country laws. **If our interpretation is**

correct, the rule of law is disregarded in some Ex-Im transactions and could also be a violation of the OECD Common Approaches.¹

Section II: Application Screening & Categorization, And Environmental Information Requirements

The new screening categories provide consistency and clarity to the previously confusing process. However, Ex-Im should develop a Category E, projects that are “Categorically Prohibited” because of their inherent environmental and social damage. This prohibition list concept is consistent with the practice of both the U.S. Overseas Private Investment Corporation and Coface of France. Coface specifically seeks to avoid support of projects in Ramsar Convention areas, IUCN Protected Areas, UNESCO World Heritage Sites, IUCN Red List Habitat Species Areas and other critical natural habitats. OPIC policies are similar and more resolute (Appendix of OPIC Prohibitions attached). It is also consistent with Ex-Im’s exclusion list for support of certain chemicals. The Camisea project in Peru demonstrates why such policies are needed from an environmental and social perspective, but also how such policies can provide clarity, saving time and money for exporters up front with a clear bright line test.

Section III: Project Monitoring

We support Ex-Im Bank’s inclusion of a Project Monitoring section into the draft policy yet some enhancements are needed. The policy states that Ex-Im “may” monitor the environmental performance of projects. Ex-Im should develop a much more robust monitoring program and one that is mandatory for every Category A project. As an example, OPIC requires annual environmental monitoring reports and at least one independent environmental audit. Ex-Im Bank’s project monitoring system should avail itself of input from NGOs and project-affected communities and it should embrace the same principle of transparency that it does at the stage of EIA disclosure. In so doing, Ex-Im Bank should establish in this policy its right to make public relevant monitoring reports.

Section IV: Annex A, International Environmental Guidelines

In Point 5 (Ecology), Ex-Im’s revised policy has deleted a previously stated goal of the institution: “Promotion of practices that result in the reduction of greenhouse gases.”

¹ “12.2 Projects should, in all cases, comply with the standards of the host country and when the relevant international standards against which the project has been benchmarked are more stringent these standards would be applied.” <http://www.oecd.org/dataoecd/26/33/21684464.pdf>

Greenhouse gas emissions and resulting climate change are the most environmentally serious problem that our planet faces today.

As President George W. Bush has stated:

“Climate change, with its potential to impact every corner of the world, is an issue that must be addressed by the world....Our country, the United States is the world's largest emitter of manmade greenhouse gases. We account for almost 20 percent of the world's man-made greenhouse emissions....(India) and other developing countries that are experiencing rapid growth face challenges in reducing their emissions without harming their economies. We want to work cooperatively with these countries in their efforts to reduce greenhouse emissions and maintain economic growth.”²

In the context of President Bush’s statement, it makes little sense that Ex-Im Bank would remove provisions that set a reduction of greenhouse gas emissions as an overarching goal of its environmental policy and it is a weakening from previous policy. Ex-Im Bank should A) re-insert such references and goals and B) follow-up with a clear set of policies and deliverables that result in meaningful reductions of greenhouse gas emissions in its overall portfolio across all sectors.

Section 5: International Guidelines- Sector Tables

- General Comment: Ex-Im Sectoral Guidelines consistently refer to the 1998 World Bank Group Pollution Prevention & Abatement Handbook (PPA H) and the December 18, 2003 Operational Policies. Both the PPAH and Safeguard Policies are currently under revision in processes being led by the Bank’s International Finance Corporation. Ex-Im should specifically state that when the revisions for these two processes are complete, the new policies shall apply so as to remain consistent with state-of-the-art World Bank Group assessment.
- Table 2, Pulp and Paper Mills
In addition to the requirement that EIAs assess the direct and indirect impacts for projects located in “sensitive locations,” EIAs for pulp and paper mills must assess their direct and indirect negative impacts on all forests regardless of where the mill is located. In the case of many countries, even pulp and paper mills situated outside sensitive locations can have adverse environmental impacts on forests, whether they are sensitive or not. For example, in Indonesia, the collective capacity of pulp and paper mills greatly exceeds the legally available supply of lumber, virtually guaranteeing that these mills will source fiber from

² White House, Office of the Press Secretary, June 11, 2001. [President Bush Discusses Global Climate Change.](#)

sensitive locations, exhaust otherwise renewable forests in non-sensitive areas, and otherwise encourage the growth of illegal logging.

- Table 4, Mining & Milling

Tailings Disposal. Insert the following as the first paragraph in this section:

“Ex-Im support for mines transporting and using toxic materials such as cyanide and mercury should be minimized and, where possible, safer substitutes should be used. Ex-Im will make active efforts to stimulate the development of safer substitutes in projects it supports. Support of any substance used should depend on the country’s and the company’s capacity to handle the dangers associated with it. Ex-Im will require that when toxic materials are transported there will be a transportation safety plan and an emergency response plan that is made available to, and that involves the participation of potentially affected communities. Where cyanide is used, applicants are required to routinely monitor for other breakdown products associated with it. All of this recommended monitoring should be done within and around the mine site as well as on any nearby waters that serve as potential sources of drinking water and aquatic life habitats.”

- Table 5, Oil & Gas Development

The opening paragraph of this section reads more as a promotion of the oil and gas industry as opposed to an independent evaluation of projects as is the role of Ex-Im Bank when conducting an environmental assessment. For instance, whether the oil and gas industry leads to “economic growth” as a matter of fact is a highly debated conclusion amongst economic scholars following the industry sector. Some impacts to biodiversity and local communities simply cannot be managed and mitigated adequately, and Ex-Im should acknowledge this by adding that some environmental risks must be “avoided” in the opening paragraph. Hence, our recommendation above in these comments for a clearly enunciated set of categorical prohibitions per the route taken by Coface and the Overseas Private Investment Corporation.

- Table 7, Forestry Operations, Logging.

Two policy requirements were deleted that demonstrate a weakening from previous policy:

- 1) **The previous prohibition on support for logging projects in primary tropical forests or expanded to include all forests of high conservation value. This prohibition should be re-inserted.**
- 2) New plantations on heavily degraded forest land, non-forested areas, or on good quality secondary forests will be supported if it can be demonstrated that the area cannot be reasonably expected to recover to a healthy climate forest due to either ecological conditions or extraneous human encroachment.

- Table 10 Hydropower and Water Resources Management

We are encouraged by the updating of this section by the Ex-Im Bank, including the reference to the World Commission on Dams (WCD). Rather than adopting elements of the WCD (as OPIC has done), Ex-Im

project participants are only “encouraged to address, to the greatest extent practical, relevant principles.” Ex-Im should require WCD compliance as a condition of support to its applicants.

Thank you for your time and consideration. Please feel free to call any of us for further clarifications or discussion.

Sincerely,

Jon Sohn
Campaign Director
Friends of the Earth-US

Francis Grant-Suttie
Director, Private Sector Initiatives
World Wildlife Fund

Doug Norlen
Policy Director
Pacific Environment

Cc:
Export-Import Board of Directors