The Export-Import Bank: It's History, Function, and the Reauthorization Act's Impact on the United States and Latin America

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I. INTRODUCTION

THE Export-Import Bank (Ex-Im Bank) of the United States is a banking corporation sponsored by the federal government. It was created almost eighty years ago during the Reconstruction Era in an effort to assist in rebuilding Europe and Asia following World War II. Since its inception, the focus of the bank has broadened in scope, but the Ex-Im Bank’s purposes remain relatively the same. First, the Ex-Im Bank seeks “to expand employment and economic growth in the United States by expanding U.S. exports to markets of the developing world” rather than solely to countries with traditionally stable economies.1 Second, the Ex-Im Bank operates to stimulate and assist “the economic development of countries in the developing world by improving their access to credit” in order to import products and services from the United States for developmental purposes.2 Third, this subchapter serves “to neutralize predatory financing [market windows and export credit agencies that are not in compliance with the Export Credit Arrangement of the Organization for Economic Cooperation and Development, OECD] engaged in by many countries whose exports compete with United States exports, and thereby restore export competition to a market basis [rather than the current conditions where foreign governments subsidize exports and undermine the OECD agreement].”3 Finally, the Ex-Im Bank encourages “foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit the use of the prevailing export credit subsidies.”4

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II. HISTORY

Franklin D. Roosevelt created the Ex-Im Bank by executive order in 1934 as a banking corporation of the District of Columbia in an effort to stimulate the economy in a time of economic depression, when exports were viewed as a stimulus to economic activity and employment. Originally, the primary aim of the Ex-Im Bank was to encourage trade between the United States and the Soviet Union in an effort to reconstruct Europe and Asia, with the help of U.S. companies, following World War II. The Export-Import Bank Act of 1945 (the Act) reincorporated the Ex-Im Bank as a U.S. government corporation, and the purposes and objectives of the Bank remain relatively unchanged today. Primarily, the Ex-Im Bank looks to aid in financing and facilitating U.S. exports.

The Act established the present law governing the Bank and acts as the basic legal authority for the Ex-Im Bank’s operations. Congress has amended the Act over the years in order to facilitate growth in the changing market economy. The most recent amendment to the Act “was reported out of the Committee on Banking, Housing, and Urban Affairs by a 21-0 vote” and was passed by the U.S. House of Representatives on June 5, 2002, by the U.S. Senate on June 6, 2002, and became effective June 14, 2002, when President George W. Bush signed into law § 1372, the Ex-Im Bank Reauthorization Act of 2002. This amendment reauthorizes the Ex-Im Bank through September 30, 2006.

In 1953, U.S. President Harry S. Truman liquidated the Ex-Im Bank in an effort to reduce government spending and to curtail opposition by the World Bank. However, Congress intervened to keep the Ex-Im Bank operational in order to fill gaps created when the private sector hesitated to engage in export financing because of the associated high risks. With the globalization of business and the internationalization of the U.S. economy, the Ex-Im Bank is necessary to provide financing to companies that would otherwise be too risky for the private sector to finance. World trading and financial systems are much more interdependent than, at the inception of the Ex-Im Bank in the 1930’s, and international competition is incomparably more intense. The current focus of the Ex-Im Bank is to promote U.S. exports in a time of market globalization in an effort to

7. Id.
8. 148 CONG. REC. S1954-02 (2002) (statement by Senator Sarbanes, appearing before the President on § 1372, the Export-Import Bank Reauthorization Act) [hereinafter Sarbanes].
10. EX-IM BANK HISTORY, supra note 6.
curtail the trade deficit, which is seemingly different than its original goal of stimulating economic activity and employment almost seventy years ago. Although the focus has changed, it serves the same purpose of exporting U.S. products and creating jobs. "In 66 years, it has supported nearly $400 billion in U.S. exports."11

The Ex-Im Bank is a government-held corporation, not an aid or development agency, and is managed by a Board of Directors, consisting of a chairman, vice chairman, and three additional board members.12 The President of the United States chooses the board members who serve for staggered terms at the President’s discretion.

III. REAUTHORIZATION ACT OF 2002

Given the nature of the Ex-Im Bank and its renewable charter, Congress has the luxury of reviewing and modifying the Act at the expiration of each charter. The most recent reauthorization was 1997 and it expired on September 30, 2001.13 At that time, the Ex-Im Bank was the subject of intense debate, and a “series of bills that served temporarily to extend the Ex-Im Bank’s operation” until both branches of Congress could reach a consensus.14 Both the House of Representatives and the Senate held extensive hearings, and, despite significant support for approval of the Reauthorization Act, a dispute with the U.S. Treasury Department (concerning ultimate authority over the use of the “war chest”15) and dissention between the parties caused Congress to postpone the renewal’s implementation. The Reauthorization Act eventually passed through both branches of Congress and the President signed it nearly one year after its introduction on June 14, 2002,16 extending the Ex-Im Bank’s existence to September 30, 2006.17

Those in support of the Ex-Im Bank strongly opposed Congress’ proposal to cut funding to the Bank. Rather than reducing funding to the Ex-Im Bank, the director of the Institute for International Economics believed the Bank’s authorization should instead be increased by 50 percent, given the “importance of exports to the American economy during this period of slower growth and rising unemployment” in order to reduce the “current account deficit of about $500 billion.”18 Following

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12. EX-IM BANK HISTORY, supra note 6.
18. Hearing on Reauthorization of the U.S. Export-Import Bank Before the Sub on International Trade and Finance of the Senate Committee on Banking, Housing,
much deliberation, the Reauthorization Act heralded support to increase
the limitation on outstanding loans, guarantees, and insurance in the ag-
ggregate amount from seventy-five billion dollars annually to eighty billion
in fiscal year 2002.19

Not later than March 31 of each fiscal year, the President of the
United States shall determine whether the authority available to the
Bank for such fiscal year will be sufficient to meet the Bank’s needs,
particularly those needs arising from—
(A) increases in the level of exports unforeseen at the time of the
original budget request for such fiscal year;
(B) any increased foreign export credit subsidies; or
(C) the lack of progress in negotiations to reduce or eliminate ex-
port credit subsidies.20

The Reauthorization Act also focuses on the increased support of small
business transactions. The Ex-Im Bank “shall make available, from the
aggregate loan, guarantee, and insurance authority available to it, an
amount,” not less than 20 percent, to finance exports by small business.21
Prior to the Reauthorization Act, the Ex-Im Bank’s requirement to small
business was limited to 10 percent.22

IV. FUNCTIONS

A. PRODUCTS OFFERED

In order to serve the purposes of 12 U.S.C. 635, which governs its powers and functions, the Ex-Im Bank offers four principal products. First, the Ex-Im Bank makes direct loans to foreign buyers to enable them to purchase goods from U.S. exporters.23 Second, the Ex-Im Bank “extends loans to intermediary institutions [private lenders], who in turn lend to foreign buyers,” thus achieving the same affect as the direct loan.24 Third, the Ex-Im Bank “guarantees loans extended by commercial lenders against commercial, political, and currency risks,” and it also offers

19. 12 U.S.C. § 635e(a). That number will increase by $5 billion annually to $100 billion dollars until the Reauthorization Act of 2002 expires in 2006. Id.
20. Id.
22. Id.
insurance to private lenders against "commercial and political risks." The fourth and final product offered by the Ex-Im Bank is the working capital guaranty, available to private lenders who provide funds to potential U.S. exporters.

1. Direct Loan Program

The purpose of the direct loan program offered by the Ex-Im Bank is to present fixed-rate loans directly to foreign buyers of U.S. goods and services. This helps U.S. exporters compete against foreign suppliers offering officially supported export credits and fills the gaps created when private institutions are unwilling to provide financing to foreign buyers because of risk of default. In 2002, the Ex-Im Bank’s Direct Loan Program extended over ten billion dollars to U.S. exporters. Ex-Im Bank direct loans generally involve loan amounts over ten million dollars or a repayment term of longer than seven years. A private domestic financing institution ordinarily finances transactions involving loan amounts of ten million dollars or less, and the Ex-Im Bank supports the transaction in the form of a guarantee.

To apply for a direct loan, either the prospective U.S. exporter or the foreign party soliciting the loan for the goods must “demonstrate the existence of official government export credit financing” offered to a foreign competitor. Once the applicant for the direct loan is approved, the foreign borrower must pay 15 percent of the export value (borrowed from private lenders at market terms) because the Ex-Im Bank will only cover up to 85 percent of the value. The Ex-Im Bank charges a fixed rate for the life of the loan, determined by the minimum OECD rate applicable to the importing country and the repayment period.

2. Loan Guarantee Program

The purpose of the Ex-Im Bank’s export loan guarantee program is to “provide repayment protection for private sector loans to creditworthy buyers of U.S. exports.” The guarantee program protects private lenders, “covering up to 100% of the commercial and political risk” on export

27. Ex-Im Bank Direct Loan Program, supra note 23.
28. Id.
30. Mullin, supra note 23.
31. Ex-Im Bank Direct Loan Program, supra note 23.
32. Mullin, supra note 23.
33. Id. See also Ex-Im Bank Direct Loan Program, supra note 23.
34. Id.
35. Ex-Im Bank Guarantee Program, supra note 24.
If the foreign borrower defaults on the loan, the Ex-Im Bank is obligated to pay the lender the unpaid debt and interest as a result of the default.\textsuperscript{37}

3. \textit{Export Credit Insurance}

The Export Credit Insurance program enables U.S. exporters to develop and expand their overseas sales. The insurance program protects the exporters against loss should a foreign buyer or other foreign debtor default for political or commercial reasons. In 2002, the Ex-Im Bank extended almost four billion dollars in export credit insurance.\textsuperscript{38} “With an Ex-Im Bank policy, exporters can also obtain export financing more easily because, with prior approval” of the Ex-Im Bank, financial institutions can assign the proceeds of the policy as collateral for export loans.\textsuperscript{39} The policy covers up to 100 percent of political risks (for example, war, expropriation, insurrection, or non-convertibility of local currency) and up to 90 percent coverage of commercial risks (for example, currency devaluation, economic volatility as a result of economic recessions, unanticipated competition, or deterioration of the market).\textsuperscript{40}

Private lenders interested in purchasing the insurance feature from the Ex-Im Bank have the choice of a political-only protection plan or a comprehensive plan that includes commercial default. The Ex-Im Bank forewarns prospective purchasers that the political-only option does not protect against devaluation of a foreign currency as a risk of default, which is rather common.\textsuperscript{41} Although there are multiple policies to choose from, each providing a different type of coverage, some countries are restricted from using the insurance feature because of the current economic and political situations in the particular country at the time of application.\textsuperscript{42} Lenders interested in Ex-Im Bank insurance coverage may use the country limitation schedule provided by the Ex-Im Bank to determine whether a product is available (the schedule is updated any time country risk perceptions change).\textsuperscript{43}

4. \textit{Working Capital Guarantee Program}

The final product that the Ex-Im Bank offers is a Working Capital Guarantee Program that encourages commercial lenders to make loans to U.S. businesses for various export-related activities. Of the four products offered, in 2002 the Ex-Im Bank allotted almost forty billion dollars of the statutory eighty billion dollar limit to loan guarantees—far exceeding

\begin{itemize}
\item \textsuperscript{36} Mullin, \textit{supra} note 23.
\item \textsuperscript{37} \textit{Ex-Im Bank Guarantee Program, supra} note 24.
\item \textsuperscript{38} \textit{Annual Report FY 2002, supra} note 29, at 62.
\item \textsuperscript{39} \textit{Ex-Im Bank Insurance, supra} note 25.
\item \textsuperscript{40} Sheppard, \textit{supra} note 14, at 92. \textit{See also} Mullin, \textit{supra} note 23.
\item \textsuperscript{41} \textit{Ex-Im Bank Insurance, supra} note 25.
\item \textsuperscript{42} \textit{Id}.
\end{itemize}
any other product.\textsuperscript{44} The purpose of the program is to facilitate the expansion of U.S. exports by helping small and medium-sized businesses obtain funds that allow them to buy or produce goods and to ultimately join the exportation market.\textsuperscript{45}

The Ex-Im Bank must determine that the applying exporter is creditworthy and that the loan would not have been made without the Ex-Im Bank's guarantee.\textsuperscript{46} Prospective exporters must show a reasonable assurance of repayment, a threshold much lower than a commercial bank's determination of creditworthiness, in order to qualify for the guarantee program.\textsuperscript{47} The exporter may use the working capital guarantee to purchase finished products for export, pay for raw materials and labor to produce goods for export, cover standby letter of credit, cover retainages and warranties, or to finance foreign receivables.\textsuperscript{48} The Ex-Im Bank's working capital guarantee covers 90 percent of the loan's principal interest and must be fully collateralized.\textsuperscript{49}

\section*{B. Leveling the Playing Field}

\subsection*{1. A Brief History of the OECD Export Credit Arrangement and the Problem of Tied Aid}

Another function of the Ex-Im Bank, utilizing the four products mentioned above, is to curtail the effect of government subsidized foreign competition. In 1978, many countries, including: Australia, Canada, the Czech Republic, the European Union countries, Japan, New Zealand, Norway, Switzerland, Korea, and the United States, negotiated to form the Export Credit Arrangement under the sponsorship of the OECD.\textsuperscript{50} The purpose of the Export Credit Arrangement is to encourage competition among the member “countries based on the quality and prices of the goods” rather than which goods are officially or government supported.\textsuperscript{51} The Export Credit Arrangement places limits on the amount of the cash down payment, repayment terms, and interest rates.\textsuperscript{52} Another limitation created by the Export Credit Arrangement is on the extension of “tied aid” from one country to another.\textsuperscript{53} “Tied Aid” refers to economic assistance by the government of a donor country to a donee country in return

\textsuperscript{44} \textit{ANNUAL REPORT FY 2002, supra} note 29, at 62.
\textsuperscript{46} \textit{Id.}
\textsuperscript{48} \textit{Ex-IM BANK WORKING CAPITAL, supra} note 45.
\textsuperscript{49} \textit{Id.}
\textsuperscript{50} Organization for Economic Cooperation and Development, \textit{The Arrangement on Guidelines for Officially Supported Export Credits} 8-9 (1998), \textit{available at} \url{http://www.oecd.org/pdf/M00035000/M00035551.pdf} [hereinafter \textit{OECD Arrangement}].
\textsuperscript{51} \textit{Id.} at 7.
\textsuperscript{52} \textit{Id.} at 24.
\textsuperscript{53} \textit{Id.} at 27-30.
for a promise by the donee country to use funds to purchase goods from the donor country when it is economically feasible. If the proposed project from the prospective donee country is capable of generating sufficient cash flow on its own using prevailing market rates, in other words, if it is commercially viable, the donee is restricted from soliciting or receiving tied aid from export credits of foreign governments.  

Unfortunately, there are multiple loopholes in the Export Credit Agreement and its language is overly broad, and countries continue to violate the agreement. For example, several countries offer “untied aid” to circumvent the restriction on tied aid set forth by the OECD as well as market windows. “Untied aid” is bilateral aid provided by the donor country to a developing country with no explicit requirement that the donee country use the aid in the future to purchase goods and services from the donor country. The donor countries argue they are not violating the OECD’s restriction on tied aid because the donee country can use the funds to buy goods and services from the cheapest source worldwide, but the donee country is fully aware that it is responsible to repay the donor for the aid funds in the future. It is estimated that the annual volume of untied aid is about eleven billion dollars.

In order to curtail some of the inefficiencies in the agreement, President Reagan introduced the “war chest” comprised of three-hundred million dollars within the Ex-Im Bank in order to give the United States leverage in future OECD negotiations and to allow the United States to have cash on hand to match any financing offered by other countries in violation of the Export Credit Arrangement.

2. The Problem of Export Credit Agencies and Market Windows

The second, and probably the most prevalent, issue that must be addressed by the Ex-Im Bank is the activity by export credit agencies (ECAs) in other countries. Primarily, Canada, Germany, and Japan devise programs called “market windows” to promote their exports outside agreed international guidelines. Market windows are governmentsponsored enterprises that provide export financing at below market rates. The OECD Arrangement is an international agreement that regulates the use of ECAs and sets market disciplines that govern financing terms of ECAs in order to curtail any one country from having a competitive advantage in the exporting industry. Both Germany and Canada operate very active market windows, the Kreditanstalt fur Wiederaufbau

54. Id. at 27.
55. Hearings, supra note 18 (testimony by C. Fred Bergsten).
56. Id.
57. Id.
58. Id.
60. Hearings, supra note 18 (testimony by C. Fred Bergsten).
61. Sarbanes, supra note 8.
62. Id.
The Export-Import Bank (KfW) and the Export Development Corporation (EDC), respectively. The goal of market windows is to allow Canada and Germany to provide subsidized export financing outside the OECD Arrangement, and therefore, their financing terms are more attractive than U.S. private institutions. This gives their exporters a competitive advantage over U.S. exporters. Canadian officials argue that they are not subject to the rules of the Export Credit Arrangement because their financing terms are similar to those in the private sector and are not officially supported by their governments. The advantages of market windows are that start-up capital for these entities are derived from the government and that these entities can offer lower-cost financing because they have the full faith and credit guarantees of their respective governments, do not have to pay taxes on their profits, and do not have to pay dividends from shareholders.

The Reauthorization Act has two provisions that address the problem of market windows. First, the legislation directs the executives to seek increased transparency over the activities of market windows in the OECD Export Credit Arrangement to ensure that the Bank financing remains fully competitive. The term transparency refers to the availability of the terms and conditions of the proposed financing arrangement by the country supporting the market window. "If such transparency indicates that market windows" put U.S. exporters at a disadvantage, "the United States should seek negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement." The second provision authorizes the Ex-Im Bank to "provide financing on terms and conditions that are inconsistent with those permitted under the OECD Export Credit Arrangement." In order to match financing terms and conditions offered by market windows, matching such terms advances "negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement," or if "transparency verifies that the market window financing is being offered on terms that are more favorable than the terms and conditions that are available from private financial markets." Under the second provision, the Ex-Im Bank may also match inconsistent terms "when the foreign government-supported institution refuses to provide sufficient transparency" into the op-

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63. Id.
64. Id.
66. Id. at 174.
68. OECD Arrangement, supra note 50, at 45-47.
70. Id. at § 635i-9(b).
71. Id. at § 635i-9(b)(1)(A)-(B).
eration and terms of the market window.\textsuperscript{72}

3. \textit{Opposition}

Opponents of the Ex-Im Bank argue it does not level the playing field with Western European countries that subsidize exports because much of the Ex-Im Bank’s credit goes to U.S. firms that do not face competition subsidized by foreign governments. In 1999, only 18 percent of medium and long-term loan and guarantee transactions by the Ex-Im Bank went to counter government-backed export credit competition.\textsuperscript{73} Prior to the Reauthorization Act of 2002, President Bush proposed to cut the Ex-Im Bank’s funding by 25 percent, given that only one third of the Ex-Im Bank’s financing requests even allege that they are in response to official foreign competition.\textsuperscript{74} Therefore, the Ex-Im Bank could significantly reduce its lending without undermining its mission to level the playing field. Some critics question whether the playing field is unlevelled in the first place. The United States exports roughly one trillion dollars worth of goods and services each year, leading the industrialized world in both exports and export growth.\textsuperscript{75} “In 2001, the Ex-Im Bank backed only about $12.5 billion of that amount . . . only some of which faced government-subsidized competition.”\textsuperscript{76}

The Ex-Im Bank Act currently authorizes the Ex-Im Bank to “provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters.”\textsuperscript{77} The Ex-Im Bank views this statute as an authorization to provide financing that matches market window financing of other countries in order for U.S. exporters to compete, but not to create its own market windows institutions.

C. \textbf{Small Business Development}

One of the primary goals of the Ex-Im Bank is to provide financing to small business in an effort to give them the opportunity to pursue a participation in the exportation market when private institutions are unwilling to extend that possibility. “[M]edium- and small-sized companies

\textsuperscript{72} Id. at § 635i-9(b)(2).

\textsuperscript{73} Export-Import Bank of the United States, 2000 Annual Performance Report 2-3 (Washington: Export-Import Bank, 2000), available at http://www.exim.gov/annperf00.html. With only $6.3 billion of the Ex-Im’s loan and guarantee transactions going to offset subsidized transaction, only 15 percent of the Bank’s total dollar amount of medium-term insurance, or $89 million, went to counter officially supported foreign competition. \textit{Id.}


\textsuperscript{75} \textit{Id.}

\textsuperscript{76} \textit{Id.}

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represented ninety-seven 97% of U.S. exporters” in 2002.78 Private lenders often arrange financing for major buyers, but are unwilling to extend trade credit in smaller amounts, because they only generate small banking fees.79 In fiscal year 2000, small business comprised 86 percent of all transactions supported by the Ex-Im Bank and 18 percent of the total value of all financing authorizations.80 One of the arguments against the Ex-Im Bank is that it does not further its goal of promoting the exportation of products by small businesses, but instead benefits large companies. In response, Congress determined that the minimum total value of financing extended to small business must meet the threshold of 20 percent.81 This 10 percent increase from previous years was made effective by the Reauthorization Act of 2002.82 The 10 percent increase in total value that must be contributed to small business will have the affect of actually raising the total amount by two percentage points over years past.83

Although many critics are not persuaded by the threshold increase, a number of small businesses also benefit through financing arrangements between the Ex-Im Bank and larger corporations as subcontractors and suppliers to the corporations. Congress has the authority to increase the percentage allotted to small business exporters, but it fears tying up available resources in the event that, because of a lack of qualifying applicants, the Ex-Im Bank could not achieve the higher level of small business financing in a given year.84

In response to the controversy concerning the lack of focus on small business, the Reauthorization Act includes several new provisions that focus on benefiting small business in addition to the 10 percent increase in total value financing. First of all, in an effort to facilitate access to the Ex-Im Bank and to cut out much of the tiresome paperwork, the Reauthorization Act requires technological improvements and development by implementing a system capable of tracking pending transactions.85 More importantly, it allows small businesses to conveniently apply for financing on the Internet.86 Second, the Ex-Im Bank must designate at least 8 percent of its total financing used for small businesses to

80. Sarbanes, supra note 8.
82. Id. See also Reauthorization Act of 2002, supra note 16.
83. Sarbanes, supra note 8 (small business made up 18 percent of the total value of all Ex-Im Bank financing authorizations in 2000, 16 percent in 1999, and 21 percent in 1998).
84. Id.
86. Id.
businesses with one hundred employees or less. Whether this provision will create added financing to small businesses, or if the new requirement will simply take away from the businesses just above the one hundred employee threshold is uncertain. The answer is only speculative until Congress is able to analyze statistics in future years. One final step taken by the Reauthorization Act will require the Ex-Im Bank to solicit business and increase loans to small businesses owned by disadvantaged individuals or women. This provision takes financing away from other small businesses and does not create additional financing. Despite Congress' efforts to increase the support to small businesses, the bulk of financing by the Ex-Im Bank will continue to go towards larger corporations. Companies such as IBM, General Electric, and AT&T will continue to attract the attention of the Ex-Im Bank, and the new provisions in the Reauthorization Act of 2002 will probably have little or no effect.

Another program available exclusively to small businesses is the small business insurance program. It allows small business exporters to extend short financing to foreign buyers. The program protects exporters by paying 95 percent of the credit if the buyer defaults for commercial reasons, such as bankruptcy, and the Ex-Im will cover 100 percent of the credit for political based defaults. Currently, over 1,100 U.S. small businesses utilize the program, but they must have annual export credit sales of less than three million dollars. Despite the efforts by proponents of the Ex-Im Bank to increase lending to small businesses, many critics continue to criticize the Reauthorization Act's effectiveness. Rather than celebrating the small percentage increase to small business, opponents view the Ex-Im Bank as a corporate welfare system for Fortune 500 companies, such as "Enron, Boeing, Halliburton, Mobil Oil, IBM, General Electric, AT&T, Motorola, Lucent Technologies, FedEx, General Motors," amongst others. These large entities could easily obtain financing from private lenders, but the Ex-Im Bank offers more favorable terms. This, in effect, displaces private sector sources of financing with governmental backed financing that is more attractive to Fortune 500 companies. Although the Reauthorization Act increases the percentage of loans that must go to small businesses, the overall dollar amount of loans that go towards large companies far outweighs the amount attributed to the small businesses.

89. Spivey, supra note 11, at 35.
90. Id.
92. Id.
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D. Job Creation

In a statement by the President, he expressed that he signed the Ex-Im Bank Reauthorization Act of 2002 with the purpose of "creating jobs here at home." The Ex-Im Bank allows small businesses, as well as others, which are unable to obtain financing from private lenders to compete in the export market, thus creating jobs and opportunities for American workers. In fiscal year 2001, it is estimated that the Ex-Im Bank helped sustain 62,700 U.S. jobs. "[M]edium- and small-sized companies represented 97% of U.S. exporters" and provide an important source of U.S. employment. These jobs pay, on average, "13 to 18 percent higher than the national average of non-export jobs," according to the Department of Commerce U.S. trade facts. Many critics are skeptical of the Ex-Im Bank's ability to fulfill this job creation purpose. Rather than job creation, the companies receiving "welfare" ultimately shut down plants in the United States and move them to China, Mexico, and elsewhere, in order to utilize cheap labor. Jack Welch, longtime CEO of GE, advocates the shift from American plants to those in Third World countries, stating "[i]deally, you'd have every plant you own on a barge." Overall, the top five recipients of the subsidized loans, receiving more than 60 percent of all Ex-Im Bank subsidies, have reduced their workforce by 38 percent over the past decade.

Less pessimistic opponents also agree that the Ex-Im Bank's increase in domestic jobs is a myth. The affect of the Ex-Im Bank's financing is to shift job opportunities among sectors within the economy, but the overall employment rates in the United States remain the same. Most economists doubt government subsidized exports will benefit overall welfare in the long run. In many instances sellers choose the Ex-Im Bank for financing, rather than willing private lenders, because of the more favorable financing terms. Therefore, not all Ex-Im Bank-backed sales increase total exports or job creation, given private lenders are available and willing to finance.

The Congressional Research Service believes economic policies within a country are the prime factors that determine interest and exchange
rates, which, in turn, largely determine the overall level of a nation's exports. Therefore, subsidized export financing merely shifts production among sectors rather than increasing overall economic activity. Rather than creating jobs, the Ex-Im Bank seemingly shifts the workforce from sector to sector rather than increasing overall employment rate.

E. Trade Balance

Supporters of the Ex-Im Bank vigorously argue that it helps improve the U.S. balance of trade with countries around the world. Last year, the U.S. Chamber of Commerce announced the U.S. trade deficit was a record $369.7 billion in 2001, highlighting the need for full funding for the U.S. Ex-Im Bank in order to advance American products overseas and to correct the growing imbalance between U.S. exports and imports. In 1997, the Economic Strategy Institute reported that the net impact of eliminating the Ex-Im Bank is estimated at a minus forty billion dollars over a ten-year period.

Realistically, government-subsidized export credit agencies such as the Ex-Im Bank do not noticeably affect the overall level of trade with the adjustment of the net balance of imports and exports. The General Accounting Office notes that the Ex-Im Bank’s programs cannot produce a substantial change in the U.S. trade balance. By providing credit at rates lower than private lending with less than the full risk-adjusted premium, foreign demand increases, and in turn, the value of the U.S dollar in exchange markets increases as well. The net affect is a simple economics problem: to encourage imports, because of the increased value of the dollar and its purchasing power against other foreign currencies, and to also raise the price of U.S. exports by making it more costly for foreign countries to obtain U.S dollars in an effort to buy U.S. products. Therefore, the exchange rate offsets any price advantage created by the Ex-Im Bank loans, and, just as in job creation, the real impact of the Ex-Im Bank’s financing is to shift exports from less favored to more favored sectors.

Even if the Ex-Im Bank could alter the trade balance, its budget is far too small to adequately impact the “problem.” The Ex-Im Bank only


103. Id.


105. Lukas, supra note 74, at 4.

106. Id.

107. Id. at 5.

108. Id.

109. Id.
financed about 1 percent of all U.S. goods and services exports in 2001, and the value of exports supported by the Bank has been shrinking in recent years, given that private credit has become more readily available at attractive terms. Influencing the U.S. trade balance is a task for which the Ex-Im Bank is seemingly unfit, a hypothesis corroborated by an official Ex-Im Bank report who recently admitted the "Ex-Im Bank does not see itself as a tool of macroeconomic policy addressing the national level of exports or jobs."  

V. LATIN AMERICA

The Ex-Im Bank's focus is the development of jobs within the United States and increased exportation by U.S. companies, but the financing of U.S. firms has a direct affect on the countries benefiting from the transactions. Latin America and the rest of the Western Hemisphere are at the forefront of President Bush's foreign policy initiatives. He realizes the importance of developing close ties with our geographical neighbors, especially given the instability and uncertainty in the Middle East. In an effort to promote an open trading system to improve economic opportunities for the hemisphere, the United States and its neighbors would like to implement the Free Trade Area of the Americas (FTAA) by 2005. The FTAA will link 800 million people and twelve trillion dollars of goods and services produced in the Western Hemisphere, but, before its implementation, the Bush administration would like to see the political unrest and economic problems in Latin America subside. The effect of the FTAA would be to lower the cost of goods and services, to increase exports, and to create jobs. The Ex-Im Bank could play an important role in the eventual enactment of the FTAA by providing financing to Latin American countries; in particular, those countries whose private lenders shy away from because of the credit risks. In turn, the Ex-Im Bank will help provide economic stability, which is required before the FTAA comes into effect.

A. THE UNITED STATES CURRENT RELATIONSHIP WITH THE WESTERN HEMISPHERE

"The United States relies on Brazil and Latin America for nearly twenty percent of its total exports," and in the past five years, exports

110. Id.
111. Id.
113. Id.
to Latin America grew twice as fast as U.S. exports worldwide.\footnote{115} The Ex-Im Bank plays a large part in financing the abundance of exports to Latin America; its loan commitments in fiscal year 2002 totaled twelve billion dollars, 27 percent of all financing by the bank.\footnote{116} Currently, "Mexico, Venezuela and Brazil currently comprise the three largest markets for Ex-Im Bank supported exports."\footnote{117}

The Ex-Im Bank may need to increase its concentration of financing to the Western Hemisphere in coming years in order for the FTAA to become a reality in 2005 given the worsening conditions of Argentina, Venezuela and many other South American countries. In 2001, Fleet Boston Financial Corporation, the United States' seventh largest bank, reported a 76 percent loss in earnings and announced that it was going to exit riskier lines of work, such as Latin American lending.\footnote{118} Fleet's loan portfolio currently includes four billion dollars to Argentina and nine billion dollars in Brazil.\footnote{119} Several other financial institutions, including Morgan Stanley Dean Whitter, Goldman Sachs, and Lehman Brothers, announced strategic shifts that meant a reduction of research in the area in the near future due to the financial situation of Latin American countries.\footnote{120} Many countries and businesses will look to the Ex-Im Bank to pick up a sizeable portion of the slack created by the reluctance of private institutions to issue loans during economic and political instability. While proponents of the bank believe the Ex-Im Bank's assistance is necessary, critics believe countries such as Brazil and Mexico have little difficulty attracting private investments on their own, and the Ex-Im Bank "merely displaces private investment by funding ventures that would otherwise have taken place" without the its assistance.\footnote{121}

Regardless of one's stance on the Ex-Im Bank, its importance to Latin America's economy in a time of hemispheric integration is pivotal. Argentina, once considered South America's most prosperous country, is now reeling following the currency devaluation.\footnote{122} Not only did the

\begin{footnotes}
\footnote{115}{\textit{Policies for Latin America}, \textit{supra} note 112.}
\footnote{116}{\textit{Annual Report FY 2002}, \textit{supra} note 29, at 58.}
\footnote{117}{Sheppard, \textit{supra} note 14, at 112.}
\footnote{119}{\textit{Id.}}
\footnote{120}{Anthony DePalma, \textit{Wall Street's Latin Spotlight Dims}, \textit{N.Y. Times}, Mar. 31, 2002, at S3.}
\footnote{121}{Lukas, \textit{supra} note 74, at 5.}
\footnote{122}{Anthony Faiola, \textit{Despair in Once-Proud Argentina: After Economic Collapse, Deep Poverty Makes Dignity a Casualty}, \textit{Wash. Post}, Aug. 6, 2002, at A01. As a result of the currency devaluation and unstable economic situation, Argentina has experienced a telecommunications failure, which is considered as one of the most important factors in the development of any country. Michelle Wallin, \textit{Argentina's Telecom Business Succumbs to Economic Crisis—Long an Oasis of Growth, The Sector Is Hit by a Fall In Fixed-Line Subscriptions}, \textit{Wall St. J}, July 23, 2002, at A10. This failure forced the smaller providers, many of them United States-owned companies, to abandon the market, which resulted in a rapid decrease in the lines of service available. \textit{Id.}}}
country default on its outstanding debts, but its gross domestic product, as well as the production of overall goods and services in the country, has fallen by 20 percent since 1998.\textsuperscript{123} Many Argentines kept their savings in dollar denominated bank accounts, but the Argentine government gave local banks the permission to convert the U.S. dollar accounts to pesos during the devaluation, decreasing the value of the bank accounts by 75 percent.\textsuperscript{124} As a result, over 50 percent of Argentine citizens currently live below the poverty line.\textsuperscript{125} Given Argentina’s economic situation, many U.S. investment companies announced their decision to pull out strategists and researchers from the area.\textsuperscript{126} In addition to economic uncertainty, there is political unrest, evidenced by the election of five successive presidents in a two-week time span.\textsuperscript{127} One of Chile’s economic advisors recently stated, “Today we see a country like Argentina being allowed to sink, with a callously indifferent attitude from Washington.”\textsuperscript{128} Critics find the United States’ recent concerns with terrorism and the situation in the Middle East means Latin America is being ignored.\textsuperscript{129} Although Argentina is currently on the Ex-Im Bank’s country limitation schedule, and none of its services are available to the country at this time, the International Monetary Fund’s (IMF) recent intervention may make exports to the area more attractive to the Ex-Im Bank. The IMF pledged to provide additional aid to Argentina and to defer the due date of nearly seven billion dollars owed to it through August.\textsuperscript{130} An important factor in deferring the repayment of the loan is Washington’s lenders’ limited faith in current President Eduardo Duhalde, whom they fear will ignore making payments to the IMF.\textsuperscript{131} Deferring repayment allows Argentina enough time to hold presidential elections in April and gives a new government time to begin their administration without being behind on payments.\textsuperscript{132} The IMF’s managing director, Horst Koehler, states “[t]he transitional program is focused on maintaining monetary and fiscal discipline, avoiding policy reversals, and rebuilding legal certainty.”\textsuperscript{133} If the program is effective, the Ex-Im Bank may be willing to take Argentina off the country limitation schedule and to once again extend its services in an effort to rebuild the once stable economy.

\textsuperscript{124} See e.g. Faiola, \textit{supra} note 122, at A01. 
\textsuperscript{125} Mark Drajem & Helen Murphy, \textit{Argentina Gets IMF Approval to Defer $6.8 Billion Due}, \textit{BLOOMBERG: LATIN AMERICA}, Jan. 24, 2003.
\textsuperscript{126} See DePalma, \textit{supra} note 120, at S3. (reporting Morgan Stanley Dean Whitter, Goldman Sachs, and Lehman Brothers announced strategic shifts).
\textsuperscript{127} Sheppard, \textit{supra} note 14, at 114.
\textsuperscript{129} Id.
\textsuperscript{130} Drajem, \textit{supra} note 125.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
Brazil is another South American country on the verge of economic failure. Despite Brazil’s $245 billion public debt134 and the devaluation of the real, which lost 40 percent as of October 5, 2002,135 the Ex-Im Bank continues to finance a large portion of exports to the area (with overall transactions totaling 7 percent of the Ex-Im Bank’s resources).136 President Bush met with Brazil’s leftist President Luiz Inacio Lula da Silva late last year in an effort to further his inaugural day promise that strengthening ties with Latin America is “among his highest foreign policy priorities.”137 Both leaders were optimistic about the trade opportunities between the countries.138 The IMF recently granted a thirty billion dollar loan to Brazil for development purposes, and with the Ex-Im Bank’s aggressive lending to the region, the FTAA gets one step closer to implementation.139 In 2002, U.S exports to Brazil increased to fifteen billion dollars,140 making it the twelfth largest U.S. exporting market in the world.141 While more than fifty million Brazilians live below the poverty line,142 critics believe the Ex-Im Bank is wasting its resources and curtailing its purpose by lending to Brazil because they are capable of attracting private investment on their own.143 Regardless of the arguments against the Ex-Im Bank, it is very active in the Brazilian market, providing small businesses with the opportunity to export and also acting as an aid to Brazil as it continues to develop.

A. UNITED STATES-MEXICO RELATIONSHIP

President Bush has time and again emphasized the importance of U.S.-Mexico relations since taking office in 2000. President Vicente Fox of Mexico echoes Bush’s ambition to resolve migration disputes and to ad-

136. Lukas, supra note 74, at 6. According to the Ex-Im Bank’s financial statements for the fiscal year 2002, the concentration of risk for the Ex-Im Bank in Brazil is at a lofty 17.2 percent. ANNUAL REPORT FY 2002, supra note 29, at 59.
138. Id.
139. Brazil’s Economic Woes, supra note 135.
141. CS Expert Details 16 Services to Promote U.S. Exports to Brazil, MANAGING EXPORTS, Mar. 1, 2003.
142. Brazil’s Economic Woes, supra note 135.
143. Lukas, supra note 74, at 5. Critics believe the Ex-Im Bank “merely displaces private investment by funding ventures that would otherwise have taken place” without intervention by the bank. Id. They claim that Ex-Im Bank financing stepping in to take the place of private lenders who refuse to do so because of high risk is not what actually happens, and, as a result, the Ex-Im Bank’s default rate is only 1.4 percent, a rate better than many commercial institutions. Id.
dress the concerns of “drugs, crime, corruption, and education.” When they first met in February of 2001, Presidents Bush and Fox explained that “unfettering the economic potential of every citizen, so each may contribute fully to narrowing the economic gaps between and within our societies,” is among their highest priorities. Another step in affirming the interaction between the United States and Mexico involves the continued trade between the neighboring countries. In 2002, the United States exported nearly $135 billion of goods and services to Mexico and imported close to $100 billion of the same. The Ex-Im Bank is an increasingly important player in the financing and trade between the two countries. In 2002, Mexico was the largest recipient of export assistance through guarantees, insurance, and undisbursed loan commitments.

In 2002, Presidents Bush and Vicente Fox announced the U.S.-Mexico Partnership for Prosperity, focusing on the promotion of economic development in the parts of Mexico where growth has lagged and forced its citizens to migrate northward. The action plan of the partnership contemplates projects that “facilitate investment in small business, housing, agriculture, roads, ports, airports, and information technology.”

Both Presidents believe the plan will help “harness the power of the private sector,” which in turn will foster an environment that will compel Mexican citizens to stay in Mexico because of the increase in job opportunities. An important factor in the realization of increased employment is the continued growth of small- and medium-sized businesses. In Mexico, small- and medium-sized businesses account for 70 percent of all jobs in the country. In an effort to promote growth, the Ex-Im Bank identifies long-term investment opportunities for small- and medium-sized Mexican businesses and has agreed to share up to 50 percent of the credit risks for enterprises importing capital goods from the United States. In an era of war and turmoil, the United States and Mexico continuing to build and formalize a long-lasting relationship is essential, and the Ex-Im Bank plays a fundamental role in the building process.

147. ANNUAL REPORT FY 2002, supra note 29, at 60. On “September 30, 2002, the Ex-Im Bank’s largest concentration of guarantees, insurance and undisbursed loan commitments at risk” went to Mexico, totaling nearly five billion dollars and 11.1 percent of all guarantees made by the Ex-Im Bank. Id.
149. Id.
150. Id.
152. Id.
B. Environmental Concerns

The primary industries that the Ex-Im Bank and most other government-supported ECAs participate in are air transportation, oil and gas (exploration and refining), power projects, gas pipeline development, chemical plants, and manufacturing. According to environmental organizations, extending ECA credit to developing countries is harming the environment because they have no environmental guidelines, and when a country’s ECA considers lending it does not consider the environmental impact of the proposed project. In response to the environmental concerns, Congress revised the Ex-Im Bank’s charter in October 1992 requiring the establishment of environmental review procedures. The revised “charter also authorizes the Board of Directors to grant or withhold financing support after taking into account the beneficial and adverse environmental effects” of the U.S. goods and services for which financial support is requested. Following the Congressional mandate, the Ex-Im Bank founded an environmental policy in 1994 (the Environmental Exports Program) “to support U.S. exports that are environmentally beneficial such as wastewater treatment plants and renewable energy plants.” The Environment Exports Program also sets out the Environmental Procedures and Guidelines to make certain that foreign projects are implemented in a way that is environmentally responsible. Therefore, the Ex-Im Bank, unlike other ECAs, will decline to finance an export transaction if the Board of Directors determines that the risk of adverse environmental effects is too high.

The Ex-Im Bank evaluates proposed projects with seven guidelines derived from its environmental objectives. First, it considers the “protection of air quality, to a degree that safeguards both human health and the environment.” Second, the Ex-Im Bank considers the “protection of surface and groundwater resources from over demand and project related contamination.” Third, the project must manage, recycle, and dispose of “solid, hazardous, and toxic materials and wastes in a way that safe-

153. ANNUAL REPORT FY 2002, supra note 29, at 60 (explaining that air transportation, oil and gas, power projects, and manufacturing make up 75 percent of the Ex-Im Bank’s loans).
155. Id.
157. Id.
158. Id.
159. Id.
161. Id.
guards human health and the environment."\textsuperscript{162} Fourth, the location and design of the project must meet acceptable "levels of natural, ecological, and economic risk."\textsuperscript{163} Fifth, the Ex-Im Bank is concerned with the "[p]rotection of ecological resources, encouragement of conservation, and promotion of practices that will result in the reduction of greenhouse gasses."\textsuperscript{164} Sixth, the plan will consider the development of the project and whether it avoids or mitigates significant adverse impacts the socio-economic and socio-cultural framework of the region.\textsuperscript{165} Finally, the board considers the unhealthy project related noise.\textsuperscript{166} The Ex-Im Bank uses either quantitative or qualitative guidelines to determine whether this objective is met.\textsuperscript{167}

Despite Congress' mandate to require an environmental safety element in Ex-Im Bank transactions, environmental organizations still express concern about supported power projects. The organizations and other policy groups believe the Ex-Im Bank's standards are too lenient and should be required to adhere to the U.S. National Environmental Policy Act (NEPA), which is much stricter.\textsuperscript{168} Specifically, critics believe the Ex-Im Bank finds that their projects do not have a significant impact on the environment and, therefore, do not have to adhere to NEPA.\textsuperscript{169} On December 17, the city of Oakland, California "announced it had approved a motion to join a lawsuit brought by Friends of the Earth, Greenpeace and the city of Boulder," Colorado against the Ex-Im Bank.\textsuperscript{170} The organizations charge the Ex-Im Bank with illegally funding fossil fuel projects overseas that commercial banks deem too risky.\textsuperscript{171} The Ex-Im Bank is accused of providing over thirty-two billion dollars in financing and insurance for oil fields, pipelines, and coal-fired plants over the past ten years without assessing the affect on global warming or the U.S. environment as required under NEPA.\textsuperscript{172} In response, the Reauthorization

\begin{itemize}
\item \textsuperscript{162} Id.
\item \textsuperscript{163} Id.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} Id.
\item \textsuperscript{167} Id.
\item The "\textit{Quantitative or Numerical Guidelines}\ will be used to assess the air emissions, water quality, and noise impacts," and they will "identify acceptable concentrations of pollutants in the air, water and soil media, and define noise levels." Id. The "\textit{Qualitative Guidelines}\ will be used to assess . . . the management of solid, hazardous and toxic materials and wastes." Id. These guidelines assess the potential impacts "on the project's ecological context, socioeconomic, and socio-cultural environment based on informed analysis of the results of social, economic, and scientific surveys, investigations, and projections." Id.
\item \textsuperscript{169} Id. at 25-28.
\item \textsuperscript{171} Id.
\item \textsuperscript{172} Id.
\end{itemize}
Act requires the Ex-Im Bank to promote the export of goods related to renewable energy sources and make annual progress reports to Congress.¹⁷³ Although there will remain critics, the Ex-Im Bank, through the Congressional mandate and the Reauthorization Act, has taken steps in the right direction to safeguard the environment. The environmental guidelines will immediately impact how the Ex-Im Bank deals with Latin American projects given the ongoing construction and operation of infrastructure projects.

C. HUMAN RIGHTS

Human rights are a central concern of the Ex-Im Bank due to the relatively frequent occurrence of violations in Central and South America. The Reauthorization Act includes language designed to protect human rights in Latin America and other developing areas of the world. The Ex-Im Bank now provides that financing may be approved only if doing so would "clearly and importantly advance United States policy in such areas as... human rights" (such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948).¹⁷⁴ The U.S. Department of State's definition for human rights includes respect for the integrity of the person, respect for civil liberties, respect for political rights, prohibition of discrimination based on protected classes and worker's' rights.¹⁷⁵ Activists and organizations that closely monitor violations report the innumerable numerous abuses by Latin American countries as well as others around the world. Organizations such as Amnesty International and Human Rights Watch report the violations each of which is taken into consideration by the Ex-Im Bank in determining whether or not it will extend financial products to the region.

South and Central American countries present heightened human rights concerns because of their economic and political instability. According to Amnesty International, "Mexico's human rights situation could turn into a crisis... if the government does not take concrete steps

¹⁷³ Sheppard, supra note 14, 118.
¹⁷⁵ United States Embassy Stockholm, Country Reports on Human Rights Practices for 2001, United States Embassy Stockholm, Mar. 2002 (released by the Bureau of Democracy, Human Rights, and Labor U.S. Department of State), at http://www.usis.usemb.se/human/2001/introduction.html. This study provides the definition for human rights as (1) respect for the integrity of the person, including freedom from arbitrary or unlawful deprivation of life, disappearance, torture and other cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or exile, denial of a fair and public trial, arbitrary influence with privacy, family, home and correspondence, and use of excessive force; (2) respect for civil liberties, including freedom of speech and press, freedom of peaceful assembly and association, freedom of religion, and freedom of movement within the country; (3) political rights, including open and transparent elections and the peaceful transfer of power; (4) workers' rights, including the right of association, right to organize and bargain collectively, prohibition of forced labor or child labor and acceptable work conditions; and (5) prohibition of discrimination based on race, gender, religion, disability, language or social status. Id. See also Sheppard, supra note 14.
to ensure the protection of human rights at all levels of society.”176 In Mexico, ordinary citizens, public figures, and human rights activists must deal with death threats, arbitrary imprisonment, torture, and some are even murdered.177 Federal and state law enforcement officials are continually accused of committing political and extra-judicial killings against the Mexican people.178 The Director of Amnesty International’s Legal and International Organizations Program stressed, “a crucial step towards reducing tensions and bringing human rights abuses to an end is for the Mexican Government to ensure that those responsible for human rights violations, no matter their position or status within society, are brought to justice.”179

In Brazil, police stations, prisons and juvenile detention centers systematically torture occupants.180 Sao Paulo’s juvenile detention centers (FEBEM) are at the center of accusations of human rights violations. Human rights groups estimate that FEBEM employees have tortured or beaten at least 700 inmates.181 In Colombia, the human rights crisis continues to escalate. The warring factions in Colombia campaign against human rights and international humanitarian law by kidnapping, torturing (often involving mutilation), and murdering activists.182 “More than

177. Id.
181. U.S. DEPARTMENT OF STATE, BRAZIL-COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2000 (Feb. 23, 2001), available at www.state.gov/g/drl/rls/hrrpt/2000/wha/724pf.htm. “The two most common forms of torture are “repique” and “recepcao.” Id. (italics added). Employees use repique after attempted escapes or rebellions by gathering the inmates and beating them with iron bars and sticks. Id. Recepcao occurs when adolescents are transferred to different facilities and are beaten by FEBEM guards who kick, torture, and scream at the prisoners as they pass between them to teach the rules of discipline. Id.
4,000 people were victims of political killings, over 300 ‘disappeared,’ and an estimated 300,000 people were internally displaced” in Colombia.183

Despite the ongoing concerns with human rights in South and Central America, there is reason to believe reform is on the horizon. For example, Mexico took several steps in 2002 toward reform by ending seven decades of one-party rule, according to Human Rights Watch.184 Other parts of Latin America experienced positive change as well. In Brazil, the Brazilian Congress approved a new civil code recognizing men and women’s equality before the law, giving women equal authority with men in family affairs, thus replacing the previous view of paternal power.185 In Peru, the government finally closed the door on the non-democratic administration of former President Alberto Fujimori with presidential balloting for the first time in many years.186 According to Human Rights Watch’s World Report in 2002, “a number of different countries made meaningful progress in the area of truth, justice, and accountability.”187

The Ex-Im Bank will continue to be criticized as long as it continues to finance projects to countries that routinely violate human rights, but the added provision of the Reauthorization Act will serve to lessen that criticism and hopefully lessen the occurrence of human rights violations in the region.

D. Development Beginning with Enhancement of Infrastructure

In order to encourage the continuation of development in Latin America and the enactment of the FTAA by the proposed date of 2005, many Latin American countries must begin from the ground up. Easily accessible roads, airports, ports, wastewater treatment plants that improve the overall quality of life and reduce health risks, and other infrastructure projects are luxuries many U.S. citizens take for granted. Luxuries not shared by the United States’ neighbors in Central and South
America. Many private financial institutions are unwilling to extend their services to the region because of the potential credit risk, and private lenders are unable to obtain sufficient information to determine if such infrastructure projects are feasible. The Ex-Im Bank is less likely to have the insufficient information problem given its interaction with other government entities.

Underdeveloped legal systems, a lack of general infrastructure, political unrest, economic instability, and the recent terrorism-related government regulation on global business are all factors that discourage private lending to Latin America. This creates a greater reliance on government subsidized financing for international transactions. In order for Latin America to develop to a point that its exports of goods and services are competitive enough to benefit the United States, lending institutions must first provide assistance by funding basic infrastructure needs. Roads, airports, wastewater treatment plants, sewage facilities, power plants and other infrastructure projects are essential to the development of Latin America. The deficiency of private lending of U.S. exports to Latin America prolongs the development of the Western Hemisphere and the implementation of the FTAA. Currently, the Ex-Im Bank is more willing to finance such projects, given their close working relationship with the emerging-market governments.

As soon as infrastructure projects are in place, developing Latin American countries can focus on technological advances, such as universal Internet access. These advances will provide a much needed resource for education and blossoming economic growth. Clear socio-economic consequences result from lacking sophisticated information technology, but, in order to improve information technologies, developing countries must first have an adequate infrastructure in place.

VI. CONCLUSION

Although the purpose of the Ex-Im Bank has shifted over the years, it continues to serve its primary purposes of stimulating exportation of American goods, strengthening small U.S. businesses, and creating jobs. In recent years, it has helped prevent the illegal use of government subsidized lending by countries such as Japan, Canada, and Germany. As the world’s economy continues to globalize, the Ex-Im Bank will play an intricate part in promoting U.S. goods and services, enabling U.S. exporters


189. Id.

190. Sheppard, supra note 14, at 126.

to obtain financing at a competitive level. Given the bank’s reauthorization, it will continue to support U.S. businesses in years to come.

Not only does the Ex-Im Bank benefit the U.S. economy by way of exports, it also benefits foreign participants including Latin America. In 2001, the President Bush announced an initiative to build the United States' relationships with its Western Hemisphere neighbors and to ultimately integrate by way of the FTAA. In coming years, the Ex-Im Bank's ability to lend to riskier borrowers will be crucial for the implementation of the FTAA by 2005. As Latin American businesses benefit from the Ex-Im Bank, it will also help promote human rights and environmental protection, and it will help fortify the United States relationship with Mexico. In a perfect market, supply and demand control and government subsidized financing is unnecessary. However, given the circumstances of the world in which we live, subsidization is necessary, and the Ex-Im Bank will continue to benefit the United States as well as Latin America pursuant to the Reauthorization Act.