Chapter 8:

Private Finance

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One of the most significant outcomes of the 1992 Earth Summit in Rio de Janeiro was the sobering estimate of the financing needed by developing countries to promote sustainable development and the demand that northern countries dramatically increase concessional financial flows to the South. Agenda 21, the comprehensive plan of action produced by the Earth Summit, estimated that the annual cost of implementation in developing countries would be on the order of $600 billion and called for a major increase in official development assistance (ODA), stating that "for developing countries . . . ODA is a main source of external funding."[1] However, participants in the United Nations (U.N.) Conference on Environment and Development failed to anticipate the dramatic shift in the landscape of development finance that actually occurred in the 1990s. Instead of significant increases in ODA, it has been private financial flows to developing countries that have boomed in the last decade.

The question to be answered in this Chapter is: what actions has the U.S. government taken to ensure that these North-South financial flows—particularly those originating in the United States—promote rather than undermine sustainable development? Agenda 21 fails to provide much explicit guidance regarding the goals or policies that developed country governments should undertake to ensure that private North-South financial flows promote sustainable development. Chapter 33 of the Agenda on "Financial Resources and Mechanisms" calls for funding to be provided "in a way that maximizes the availability of new and additional resources and uses all available sources and mechanisms."[2] Those specifically mentioned include, among others, multilateral development banks and higher levels of foreign direct investment.[3]

Nevertheless, application of several principles from the Rio Declaration on Environment and Development[4] in the context of the private finance of development is relatively straightforward. This Chapter will focus on the integration of sustainability into mainstream economic decisionmaking and public participation. To what extent has U.S. government policy on private development finance integrated environmental considerations into decisionmaking, both procedurally and substantively? To what extent has the U.S. government promoted public participation in the development of policies related to private development finance? And to what extent has the U.S. government encouraged leadership on this issue by industrialized countries?

The number of federal agencies with some mandate or activity related to private investment in developing and transition countries is large. The U.S. Departments of Commerce (Commerce Department), State (State Department), and Treasury (Treasury Department), as well as the Export-Import Bank (Ex-Im Bank), the Overseas Private Investment Corporation (OPIC), the U.S. Trade and Development Agency (USTDA), the U.S. Agency for International Development (USAID), the U.S. Trade Representative (USTR), and the U.S. Environmental Protection Agency (EPA) all have important roles to play in influencing the intersection of U.S. international trade, investment, environment, and development policies.

This Chapter focuses on an assessment of U.S. performance in the two policy arenas that we believe to be the most significant for influencing the environmental character of private financial flows to developing countries: bilateral export and investment promotion agencies and multilateral financial institutions. These public institutions provide powerful levers for directing private finance flows toward sustainable development. However, they are not being fully deployed toward that objective and indeed often contribute to specific investments and general development paths that result in the degradation of social and ecological systems.[5]

The United States has demonstrated fairly strong leadership in these arenas, in relative terms, compared to other industrialized countries. For example, the United States has imposed rigorous information disclosure and environmental assessment standards on OPIC and the Ex-Im Bank, and has been an advocate for reform of the multilateral development banks. However, the United States could use its position more vigorously to overcome the political, institutional, and technical obstacles that have prevented a more fundamental redirection of these public funds toward support for sustainable private ventures.

The Chapter also identifies other opportunities for the U.S. government to leverage private development finance toward sustainability. Bilateral development assistance policy, bilateral cooperation agreements, international investment policy, climate protection policy, and regulation of capital markets all have the potential to influence private financial flows to developing and transition economies in a more sustainable direction.

The Chapter concludes with specific recommendations for improving U.S. performance in implementing its Rio commitments in the realm of ensuring that North-South private financial flows support, rather than undermine, sustainable development. With respect to bilateral export and investment promotion agencies, we suggest that the United States maintain strong information disclosure and environmental standards for U.S. agencies, and continue working toward upward harmonization of such procedures across all similar agencies in industrialized countries. In particular, the financing activities of bilateral agencies should be aligned with the climate protection commitments of both developed and developing countries. In addition, we suggest that the sustainable development performance of such agencies be reviewed, and that the possibility of revising their mandates to enable them to promote sustainable development more effectively be considered. With respect to multilateral development banks, the United States should push harder for integration of sustainability objectives into the private sector-oriented activities of these institutions. The Treasury Department should monitor implementation and ensure adequate staffing for this role.

With respect to the roles of other federal agencies, we suggest that USAID continue its support for independent civil society organizations in developing and transition countries and that such support be insulated from more narrow U.S. commercial interests. In addition, USAID should provide intellectual and financial leadership on the complementary public financing necessary—for example, for the development of independent regulatory agencies—to ensure that private financial flows are directed toward sustainable development. We recommend that the USTR integrate sustainable development concerns into the negotiations of multilateral investment agreements. In particular, the USTR should initiate reform of the most damaging aspects of investment provisions under the North American Free Trade Agreement (NAFTA) and ensure that international investment rules are compatible with international environmental treaties.

The United States should re-engage in international climate protection negotiations and continue to promote financing mechanisms such as the Clean Development Mechanism (under the Kyoto Protocol of the U.N. Framework Convention on Climate Change (FCCC))[6] that can leverage private finance toward climate protection goals. We further recommend that the United States take steps to "green" private capital markets by strengthening and enforcing regulations related to corporate disclosure of environmental performance and prospects. Finally, we urge the U.S. government overall to increase interagency cooperation to develop and promote a coherent strategy to direct private financial flows toward sustainable development.

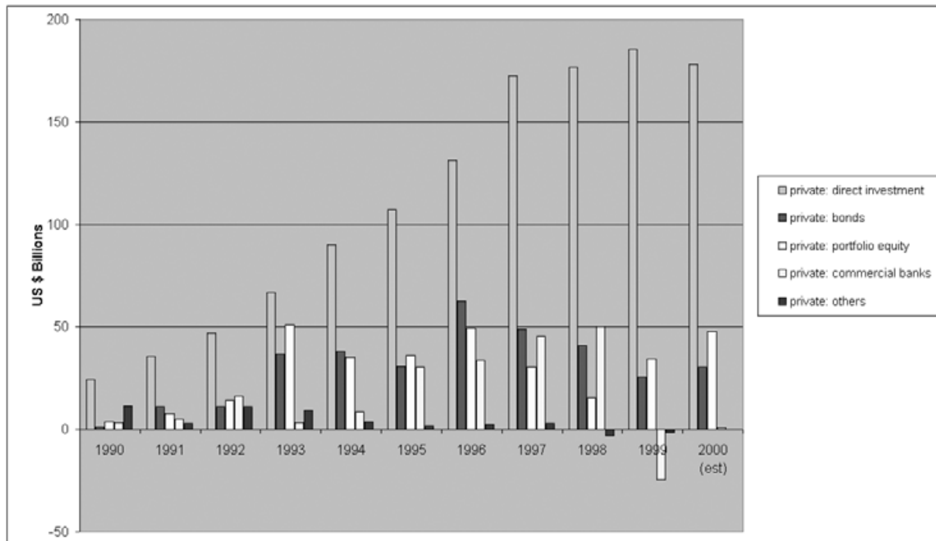
Private Development Finance, the United States, and Sustainability

In 1991, the net flow of capital from North to South totaled approximately $123 billion, with approximately one-half consisting of ODA and the other one-half consisting of private flows.[7] In the early 1990s, however, private financial flows to developing countries exploded as investors sought higher returns in "emerging markets." Over the same period, official flows declined by more than one-third. By 2000, despite fluctuations induced by the series of financial crises in the late 1990s, private finance outstripped

stagnated public flows by a factor of almost seven to one.[8] The preponderance of these flows went to middle-income countries, with almost three-quarters of the total concentrated in 10 developing countries in 2000.[9] While the World Bank predicts that the global economic downturn will lead to a sharp decline in private capital flows to developing countries in 2001,[10] it is likely that the private finance of development will continue to be significant for the foreseeable future.

The surge in private development finance in the 1990s has taken several forms.[11] Foreign direct investment—including investment in new ventures, mergers with and acquisitions of existing private firms, and investment in previously state-owned enterprises through the privatization process—constitutes the largest portion of North-South finance. Securitized investment–stocks and bonds that flow through international capital markets—was negligible at the start of the decade but grew to rival foreign direct investment in the mid-1990s before falling off in the wake of the Asian financial crisis. Commercial bank loans, an important source of development finance in previous decades, composed a smaller share of the total and indeed experienced negative net flows in 1999 as the level of repayments exceeded new borrowing. Figure 1 illustrates the trends in these flows during the 1990s.

Figure 1
Net Long-Term Resource Flows Composition by Vehicle[12]



On the ground, these figures translate into economic activity on a scale with significant implications for environmental sustainability, both in terms of the initial ecological footprint of specific investments, as well as the development trajectory they reinforce. For example, construction of new coal-fired power plants adds to local air pollution while locking in a fossil fuel-based electricity system for a generation. Similarly, investment in pulp and paper factories adds to local water pollution while establishing a long-term demand for forest products that natural forests may not be able to meet. Development of agribusiness often requires converting natural forests to plantations, leading to the significant loss of biological diversity over time.

Some impacts of private development finance on sustainability could be positive. Privatization of formerly state-owned utilities such as municipal water systems and electric utilities, for example, could harness market incentives to increase efficiency of resource use. Acquisition of existing enterprises ranging from mining companies to manufacturing facilities to financial institutions could accelerate the transfer of environmental technologies and management practices that improve environmental performance. However, such benefits depend strongly on the institutional and regulatory environment within which private

firms operate. In addition, privatization can lead to adverse social impacts, as market-based pricing of services raises their cost beyond the reach of the poor.

The degree to which these private investments reflect sustainable development objectives should ideally be governed by national-level development priorities and regulatory frameworks in the recipient countries. However, national-level capacity to promote sustainable development objectives has lagged behind the rapid pace of economic globalization. In addition, many of these investments affect transboundary or global ecosystems for which governance infrastructure is not yet in place. As a result, policy levers in multilateral financial institutions and in countries from which the financial flows originate assume an important role in ensuring environmental sustainability.

The role of the United States is particularly important in this regard for several reasons. First, the United States is responsible for the largest single portion of North-South private finance: the Organization for Economic Cooperation and Development (OECD) estimates that private flows from the United States constituted 38% of total private flows to developing and transition economies in 2000.[13] (Total outbound private investment flows from the United States were estimated to be more than $579 billion in 2000, most of which was destined for other industrialized countries.)[14] Thus, increasing the sustainable development character of U.S.-outbound financial flows to developing countries alone would have a significant impact.

Second, the United States has traditionally played a leadership role in relevant international fora including groupings of developed countries, such as the OECD and the Group of Eight (G-8), and in the governance of multilateral financial institutions such as the World Bank and the International Monetary Fund (IMF). For example, the United States took the lead in addressing corruption in international financial transactions through the Foreign Corrupt Practices Act of 1977. Twenty years later, countries of the OECD followed suit by concluding agreement on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.[15] Third, private sector-led development has been a key theme of U.S. foreign policy over the last 10 years, and the United States has been an outspoken proponent of the private finance of development as an alternative to increased ODA flows.

Finally, the U.S. government has itself articulated the imperative of integrating sustainability considerations into the private finance of development. In 1997, at a moment of reflection on progress toward sustainable development five years after Rio, the U.S. government explicitly recognized the increasing importance of private North-South financial flows in pursuing that goal. The revised charter of the President's Council on Sustainable Development—the U.S. national council on sustainable development—stated that:

> [G]iven the increasing flow of financial capital from developed to developing countries, the Council shall recommend policies that encourage foreign investment by the U.S. Government, businesses, investors, and, as appropriate, multi-lateral institutions that are consistent with the principles of sustainable development.[16]

In summary, private development finance has significant implications for sustainability, and the United States has a particular responsibility for addressing those implications.

Bilateral Export and Investment Promotion Agencies

The Character and Significance of Bilateral Agencies

Bilateral export and investment promotion agencies have assumed an increasingly important role in development finance over the past decade, but their contribution to sustainable development is contested. Such publicly funded agencies provide a variety of financial services to the private sector—including export finance, political risk insurance, loans, guarantees, and private equity funds—in order to promote national commercial and foreign policy interests. Most OECD governments and an increasing number of developing country governments support one or more such bilateral agencies. While some critics question whether such agencies should even exist,[17] they continue to receive official support in order to finance risks that cannot be covered by commercial sources of financing and to counter similar finance provided by other governments.[18] As dis-

cussed below, these agencies often finance activities that run directly counter to the sustainable development goals supported by other agencies of the same governments. The result, at best, is fiscally imprudent, and at worst is an exercise in policy incoherence that comes at great expense to the environment.

Most bilateral export and investment promotion agencies belong to the Berne Union, an organization dedicated to promoting exchange of information and development of sound principles related to export credit insurance and foreign investment insurance.[19] While there are some areas of overlap, Berne Union members are divided into two general categories: export credit and guarantee agencies (ECAs), which provide export credits and export insurance, and investment promotion agencies, which provide project finance in the form of long-term debt and/or equity.[20] The distinction is important, as the OECD distinguishes "export credits" from "investment credits," and the latter are not subject to the OECD Arrangement on Guidelines for Officially Supported Export Credits.[21] In some countries, both functions are combined into one agency; when they are separate, political risk insurance may be provided by the ECA or the investment promotion agency.[22]

The United States supports an investment promotion agency, OPIC, and an ECA, the Ex-Im Bank. According to a former Chairman of the Ex-Im Bank, the distinction between the two agencies can be characterized as follows: OPIC is an instrument of U.S. foreign policy with a development mandate that promotes U.S. ownership overseas, while the Ex-Im Bank is an instrument of U.S. commercial policy without a development mandate that promotes U.S. exports.[23] The U.S. agencies rank high among comparable organizations in various measures of the global significance of their finance. For example, OPIC and the Ex-Im Bank ranked third and fourth, respectively, in terms of their total direct financing for energy-intensive projects and exports to developing countries in the second half of the 1990s.[24]

At the time of the Earth Summit, most ECA activity focused on providing short-term trade finance to support the export of host country products abroad. Over the intervening decade, however, both the size and the composition of this finance have changed along with the broader patterns of development finance. An increasing proportion of overall ECA finance has shifted from short-term export credits to longer term project finance, "mainly for large infrastructure projects in power generation, telecommunications, and transport."[25] Annual new commitments of officially supported export credits, excluding short-term trade finance, increased from about $83 billion per year in the late 1980s to an average of $110 billion a year in the early 1990s.[26] Total export credit and investment insurance provided by the members of the Berne Union reached an average of $390 billion per year from 1993-1999.[27] While the preponderance of this total is for short-term trade finance, the World Bank nevertheless suggests that "it seems probable that the great majority of large loan syndications [for infrastructure projects] have been covered by export credit agency guarantees."[28]

The change in bilateral agency portfolios was due in part to changes in the larger landscapes of development policy and finance. During the past decade, public criticism and changing priorities drove the World Bank and other multilateral development banks (MDBs) to reduce their support for large infrastructure projects with major associated environmental impacts. At the same time, economic liberalization in developing countries generated a massive surge in foreign direct investment, increasing the demand for bilateral agency services. Privatization invited the private sector to build and to manage formerly public projects (such as roads, dams, and power plants) and services (such as water systems). The net result of these shifts was that the private sector, supported by public bilateral and multilateral institutions, became the primary builder and operator of the most environmentally destructive projects.

These infrastructure investments, as well as publicly supported private investment in such resource-extractive sectors as mining, manufacturing, pulp and paper, agribusiness, and oil and gas development, leave significant environmental footprints and will shape sectoral development trajectories for decades to come. For example, bilateral agency financing, guarantees, and insurance accounted for roughly $44 billion—20% of all international finance for energy-intensive investment and exports to developing countries—from 1994 through the first quarter of 1999.[29] If the leveraging effect of such finance is taken

into account, the proportion of such investment influenced by bilateral export and investment promotion agencies rises to almost one-half.[30]

Bilateral agencies also affect the prospects for sustainable development through their impacts on debt and corruption. The IMF estimated that in 1996, ECAs accounted for 24% of the total indebtedness of all developing countries, and for 56% of their official debt.[31] Bilateral export and insurance promotion agencies have been associated with large-scale corruption on the part of developing country governments. In Indonesia, for example, a "staggering" level of corruption was discovered in a coal-fired power plant project supported by several bilateral agencies in the mid-1990s, including OPIC and the Ex-Im Bank.[32]

Because ECAs were created to promote the business interests of the source country, most do not have a sustainable development mandate. While investment promotion agencies are somewhat more oriented to development, their mandates also fall short of sustainable development. Among OECD countries, only the United Kingdom has articulated sustainable development as an explicit objective for its ECA.[33] Indeed, much of the economic activity financed by ECAs and investment promotion agencies is inconsistent with long-term environmental sustainability. For example, the World Resources Institute researchers Crescencia Maurer and Ruchi Bhandari estimated that in the late 1990s, some three-fifths of bilateral agency projects and trade finance going to developing countries supported energy-intensive exports or investments.[34] Bilateral agencies are financing exports and projects that deepen developing countries' dependence on fossil fuels and lock in high greenhouse gas emissions trajectories while doing little to finance renewable energy or energy-efficient technologies.[35] As a result, current public financing contradicts the commitments of industrialized countries to facilitate the transfer of environmental technologies to developing countries under the FCCC.[36] Bilateral export and investment promotion agencies thus represent a policy arena ripe for application of the integration principle.

With respect to transparency and public participation, bilateral agencies are also laggards. As a group, Berne Union members have very limited environmental procedures and information disclosure standards compared to most bilateral and multilateral development aid agencies. Among agencies from OECD countries, only OPIC and the Ex-Im Bank have such policies that are comparable in content and procedure to the World Bank Group.[37] According to one observer: "ECAs are rogue agencies that make the World Bank, the [IMF], and even the World Trade Organization seem like models of benevolence and accountability."[38]

The following section will assess U.S. progress in implementing the integration and participation principles at OPIC and the Ex-Im Bank, and the role of the United States in promoting higher standards among industrialized countries in international fora.

OPIC

OPIC began operations in 1971, having been established as an independent agency by an amendment to the Foreign Assistance Act in 1969[39] to perform functions to promote private investment previously administered by USAID.[40] Thus, OPIC's origins were linked to development objectives. Although OPIC's annual reports stress the agency's contribution to creating jobs in the United States and generating U.S. exports, the agency has increasingly referred to itself in language characteristic of a bilateral development agency.[41] OPIC's leadership in promoting economic development in developing countries was the first of four priorities stressed by Chief Executive Officer George Munoz in the *2000 Annual Report*.[42] OPIC's Mission Statement describes the agency's role as being "to mobilize and facilitate the participation of [U.S.] private capital and skills in the economic and social development of less developed countries and areas, and countries in transition . . . ."[43]

In fiscal year (FY) 2000, OPIC insured and financed $2 billion worth of projects in 25 countries.[44] Figures 2 and 3 illustrate the geographic and sectoral composition of OPIC's overall portfolio. Significant in-

volvement in the power sector and in the manufacturing, oil and gas, and mining industries indicate the ecological implications of activities financed by OPIC.

Figure 2
Geographic Breakdown of Overall OPIC Portfolio in FY 2000[45]

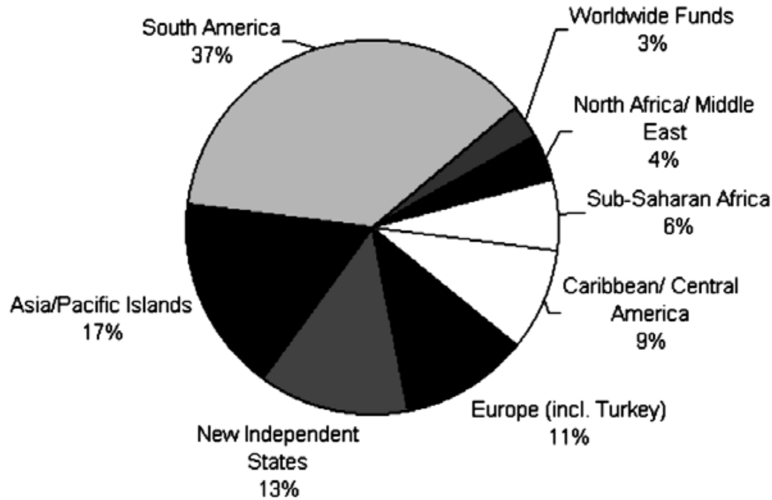
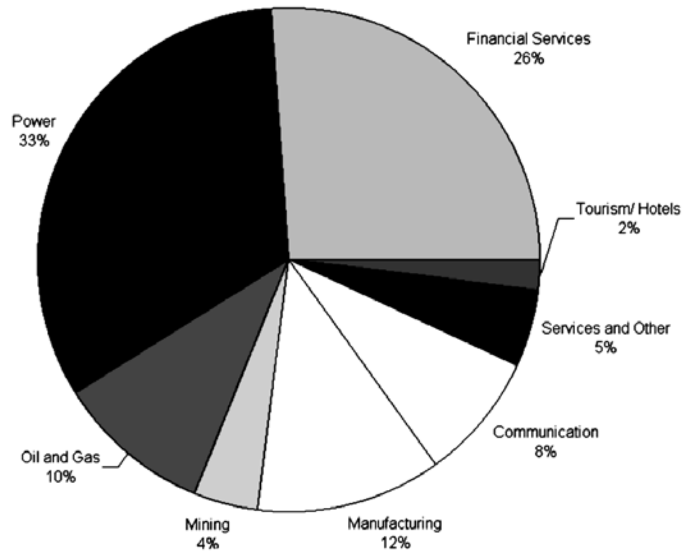


Figure 3
Sectoral Breakdown of Overall OPIC Portfolio in FY 2000[46]



Since 1979, OPIC has been subject to Executive Order No. 12114, Environmental Effects Abroad of Major Federal Actions,[47] which requires that an environmental impact statement be prepared for "major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation"[48] and that an environmental review or study be conducted for actions "significantly affecting any nation not involved in the action" and for actions that lead to the production of effluents or emissions that are prohibited or strictly regulated by federal environmental law.[49]

Congress first incorporated an environmental mandate into OPIC's authorizing statute in 1985.[50] The new mandate required OPIC "to assess the environmental impacts of projects under consideration for political risk insurance and financing . . . and to decline assistance to projects posing a major or unreasonable hazard to the environment, health or safety or resulting in the significant degradation of a national park or similar protected area."[51] OPIC was further directed to ensure that its insurance and financing activities were consistent with provisions of the Foreign Assistance Act related to environmental impact assessment, tropical forests, biological diversity, and endangered species.[52]

In 1995, the consistency of OPIC's insurance of a mining investment in Indonesia with the provisions of the Foreign Assistance Act was challenged. Indonesian and international activists had long charged that the Grasberg mine, operated by Freeport-McMoran Copper & Gold, Inc., in the province of Irian Jaya, was associated with severe environmental and human rights abuses, including the dumping of toxic tailings into rivers and the destruction of tropical rainforests. In August 1995, a report by the Roman Catholic church detailing torture and executions committed by military forces providing security to the mine intensified international scrutiny of the operation, which was then covered by $100 million in OPIC insurance.[53] In what was characterized as "an unprecedented action against environmental abuse by an American company overseas," the Clinton Administration cancelled the insurance on environmental grounds.[54]

President William J. Clinton's speech to the Special Session to the U.N. General Assembly in June 1997 (described below) precipitated another round of substantive and procedural environmental reforms at OPIC. OPIC agreed to produce an annual environmental report in order to inform the U.S. Congress and the public "regarding its implementation of and compliance with internal, national and international environmental policies, laws, treaties, and agreements to which its programs are subject."[55] The 1999 annual environmental report provides a general summary of the agency's environmental policies and procedures and how they were applied during the previous year. It includes summary information on how environmental screening criteria were applied and information about tracking and reporting the aggregate greenhouse gas emissions resulting from OPIC-supported power sector projects. The annual environmental report also highlights OPIC support for environmentally beneficial projects.[56]

Following a public comment period and pilot implementation of a draft, in April 1999, OPIC finalized an *Environmental Handbook*.[57] The *Environmental Handbook* provides detailed guidelines on the agency's environmental screening, assessment and monitoring procedures, and standards with which OPIC-supported projects must comply, as well as commitments for public consultation and disclosure.

OPIC's strengthened environmental policies and procedures were tested in 1999 by the Cuiaba Pipeline Project in Bolivia. The project was controversial, as the proposed pipeline would pass through ecologically valuable and vulnerable forest ecosystems. The project was opposed by a coalition of U.S. and international nongovernmental organizations (NGOs), who argued that the application of relevant OPIC guidelines would preclude financing for the project. Nevertheless, OPIC's Board of Directors approved the project in June 1999, albeit with "an unprecedented set of environmental and social conditions."[58]

Over the last decade, Congress passed four laws that directly addressed OPIC's role in promoting sustainable development in ways other than through environmental protection. In the Jobs Through Exports Act of 1992, Congress mandated that OPIC require its investors to observe specific labor laws and to avoid using forced labor.[59] The remaining three laws mandated increased OPIC activity in subSaharan Africa. The 1993 South African Democratic Transition Support Act directed the president to establish OPIC activities in South Africa and encourage other donors to support the post-apartheid democracy.[60] The 1998 Africa: Seeds of Hope Act directed OPIC to support private agricultural and rural development in subSaharan Africa, particularly those serving the needs of small-scale farmers, rural entrepreneurs, and cooperatives.[61] The 2000 African Growth and Opportunity Act specified that OPIC should increase assistance to Africa "particularly [for] projects that expand opportunities for women entrepreneurs and employment for the poor."[62] Consistent with these congressional mandates, OPIC's management is refocusing the agency's efforts on realization of its de-

velopment mandate, according to agency officials.[63] This includes increased outreach to small business, underserved countries and sectors, and a more selective approach to proposed investments.

It is difficult to provide an assessment of the impact of OPIC reforms in practice, as no independent review has been conducted. Nevertheless, a few summary observations can be made. First, the substantive and procedural reforms have clearly provided public interest advocates with a basis on which to challenge the consistency of OPIC financing with sustainable development objectives. However, the Cuiaba Pipeline Project experience may indicate that the substantive impact on the agency's portfolio is more incremental than fundamental. Second, some of OPIC's procedural reforms should be recognized as approaching best practice. For example, in October 2000, OPIC published *Climate Change: Assessing Our Actions*. The report provides an independently reviewed estimate of the cumulative annual greenhouse gas emissions of all OPIC-financed and insured projects over the previous decade.[64] This far exceeds the disclosure practices of ECAs from other countries.

Third, and perhaps most importantly, OPIC reforms continue to fall short of an explicit mandate to promote sustainable development, as distinct from procedures designed to identify and mitigate potential environmental harm on a project-by-project basis.

The Ex-Im Bank

The Ex-Im Bank was created in 1934 and established under current law in 1945 as the official export credit agency of the United States.[65] The Ex-Im Bank's mission is "to match officially supported competition and fill financing gaps in order to maximize support for U.S. exports and contribute to the promotion and maintenance of U.S. jobs."[66] The Ex-Im Bank offers working capital guarantees and export credit insurance to U.S. exporters and offers direct loans and guarantees of commercial loans to foreign buyers of U.S. goods and services.[67]

In FY 2000, the Ex-Im Bank authorized $12.6 billion in loans, guarantees, and export credit insurance, which was leveraged by a congressionally appropriated subsidy of $865 million.[68] Although the Ex-Im Bank's annual financing commitments are several times greater than those of OPIC, the total numbers are not strictly comparable: a portion of the Ex-Im Bank's financing is for short-term trade finance rather than long-term project finance, while the latter constitutes the bulk of OPIC's portfolio. Figures 4 and 5 estimate the geographic and sectoral composition of the Ex-Im Bank's finance. While export finance of aircraft constitutes the single largest portion of the Ex-Im Bank's portfolio, oil and gas, manufacturing, and power projects together constitute more than one-third.

Figure 4
Estimated Geographic Breakdown of the Ex-Im Bank's Authorizations Made in FY 2000[69]

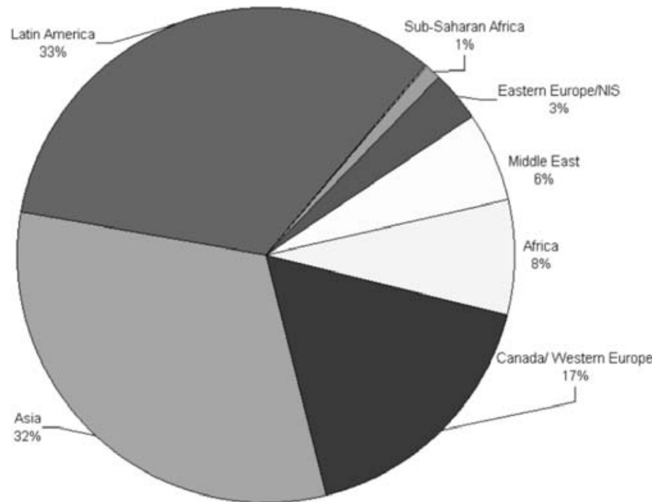
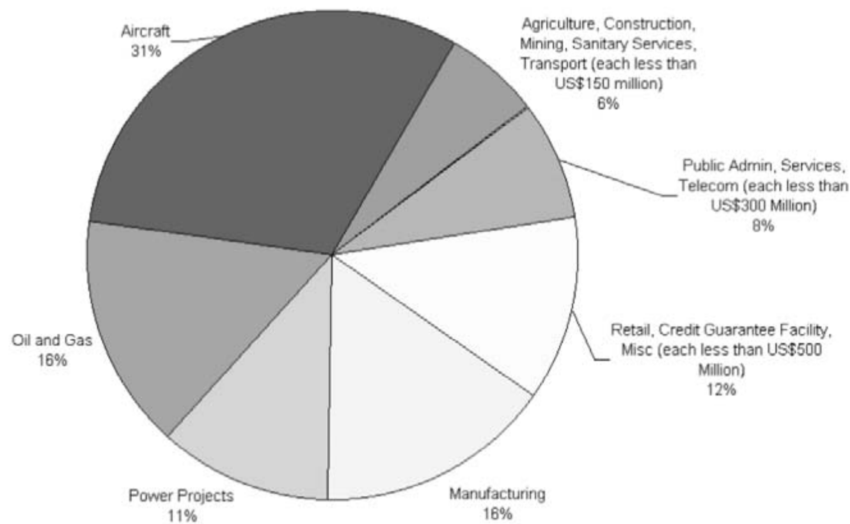


Figure 5
Estimated Sectoral Breakdown of the Ex-Im Bank's Authorizations Made in FY 2000[70]



Unlike OPIC, the Ex-Im Bank has maintained the promotion of U.S. commercial interests as its central purpose and has not styled itself as a development-oriented organization. According to its website, "Ex-Im Bank is not an aid or development agency."[71] However, in October 1992, Congress gave a mandate to the Ex-Im Bank to increase support for exports of environmentally beneficial U.S. goods and services and revised the Ex-Im Bank's Charter to require the agency to establish environmental review procedures.[72] The revised charter further authorized the Ex-Im Bank's Board of Directors to withhold financing from a project for environmental reasons.[73] However, consideration of environmental impact must be "consistent with" the agency's primary mission of supporting goods and services from the United States.[74] The Ex-Im Bank is also subject to Executive Order No. 12114, described above.

In 1993, the Ex-Im Bank adopted interim environmental procedures that were officially adopted in 1995 and amended in 1998.[75] The Ex-Im Bank's *Environmental Guidelines* provide for the evaluation of projects on the basis of seven objectives: air quality, water use and quality, waste management, natural hazards, ecology, socioeconomic and sociocultural framework, and noise.[76] Quantitative and qualitative guidelines related to these objectives are provided for general industrial projects and eight specific sectors ranging from logging to steel mills.[77] However, even if a project fails to meet the guidelines, the board of directors has the discretion to evaluate projects "on a case-by-case basis, taking account of significant mitigating effects and circumstances."[78]

The Ex-Im Bank's environmental policies and procedures were given an early test by the Three Gorges Dam project in China. The project, one of history's most ambitious engineering undertakings, will be the first of several major dams on the Yangtze River for flood control and hydroelectric power generation.[79] As the world's largest hydroelectric dam, Three Gorges will displace nearly 1.9 million people and create a 350-mile reservoir at a cost of $24 billion.[80] Several U.S. companies were eager to supply equipment to the project and applied to the Ex-Im Bank for financial support. However, critics inside and outside China had raised concerns about the project's "significant far-reaching, irreversible impacts on the resettled populations, cultural heritage of the people in the region, and the ecosystem balance of the Yangtze [R]iver basin."[81] The Ex-Im Bank sought the views of the National Security Council, which coordinated an interagency review of the project.[82] Ultimately, in May 1996 the Ex-Im Bank's Board of Directors voted unanimously to withhold support for the project, citing concerns about the project's social and environmental impacts.[83]

More recently, the consistency of the Ex-Im Bank's finance with sustainable development objectives was challenged in the context of the Chad-Cameroon Oil and Pipeline Project. The project, which will develop oil fields in southern Chad and build a pipeline to the coast of Cameroon, was delayed by three years as project sponsors (including ExxonMobil) and financiers (including the World Bank) attempted to respond to international concerns about environmental, human rights, and corruption issues.[84] According to opponents, the project threatens to disturb tropical rainforests and indigenous populations and risks oil spills that would pollute groundwater, surface water, and marine environments.[85] Even those who believed the environmental impacts to be manageable were concerned about whether the governments could manage revenues from the project without significant corruption.[86] Nevertheless, in August 2001, the Ex-Im Bank decided to guarantee $200 million worth of loans for the project.[87]

External attention to the Ex-Im Bank's environmental record has prompted efforts to develop a portfolio of environmentally friendly activities, which amounted to $877 million or just under 6% of total financing in FY 2000.[88] For example, the Ex-Im Bank has cooperated with the U.S. Department of Energy (the DOE) to carry out a clean energy program in China. The program is designed to encourage private industry to identify, assess, and implement projects based on clean energy technologies.89 During its 2001 congressional reauthorization process, the Ex-Im Bank signaled its willingness to be more proactive in identifying alternatives to fossil fuel-oriented investments more generally by proposing to set up an advisory group on renewable energy.[90]

As is the case with OPIC, it is difficult to provide an assessment of the impact of the Ex-Im Bank's reforms in practice, as no independent review has been conducted. As with OPIC, substantive and procedural reforms have clearly provided public interest advocates with a basis on which to challenge the consistency of the Ex-Im Bank's financing with sustainable development objectives, as evidenced in the Three Gorges Dam and Chad-Cameroon Pipeline cases. And its efforts to develop a portfolio of environmentally friendly projects is laudable. But these reforms continue to fall short of an explicit mandate to promote sustainable development as distinct from procedures designed to identify and mitigate potential environmental harm on a project-by-project basis.

U.S. Leadership in International Fora

In his speech to the Special Session to the U.N. General Assembly to review and appraise implementation of Agenda 21 in June 1997, President Clinton singled out strengthened environmental guidelines for OPIC and the Ex-Im Bank as part of the U.S. commitment to "encourage private investment that meets environmental standards."[91] He went on to endorse "common guidelines for responsible investment" as a way to promote "sustainable growth in developing countries."[92] U.S. interest in promoting common ECA standards is driven by the disadvantage faced by U.S. exporters when their European and Japanese competitors are not bound by similar environmental policies and procedures.[93]

Since then, the U.S. government has been at the forefront of efforts to promote the upward harmonization of environmental and public participation procedures at export credit and guarantee agencies through G-8 and OECD forums.[94] Thanks to U.S. leadership in G-8 summits in 1998 and 1999, governments agreed to negotiate common environmental guidelines under the auspices of the OECD by 2001. However, in advance of the Genoa G-8 summit in July 2001, the Bush Administration declined to reverse four years of effort by the Clinton Administration, and rejected the draft guidelines as being too weak, thereby blocking the proposed agreement.[95] U.S. insistence on compliance with common environmental impact assessment standards and on public disclosure of the results of such assessments were resisted by European governments.[96] The Administration's actions were hailed by environmentalists in the United States and abroad as a welcome departure from the Bush Administration's otherwise disappointing record of environmental diplomacy.[97] Overall, U.S. efforts in G-8 and OECD represent an attempt to promote developed country leadership in the domain of aligning private finance with sustainable development.

MDBs

MDBs and Private Development Finance

MDBs are a significant driver of North-South financial flows, both directly and indirectly.[98] Over the last decade, MDBs have provided almost one-third of total ODA, or about $16 billion per year in loans and concessional assistance.[99] Until recently, the environmental and social impacts of MDBs' direct lending activities had captured most of the attention of the public interest community focused on MDB reform.[100]

However, MDBs also play a significant role in affecting the degree to which private financial flows to developing and transition economies are consistent with sustainable development objectives. Several MDBs leverage private development finance through direct engagement with private corporations in addition to their provision of loans to client governments. Separate MDB financing windows provide equity investments and political risk insurance to corporations—roles that are functionally similar to those of the export credit and guarantee agencies described above.

The World Bank Group illustrates the multiple channels that MDBs use to influence private finance. The International Bank for Reconstruction and Development (IBRD) makes loans at close to market rates and provides advice to credit-worthy borrower governments. The International Development Association (IDA) makes highly concessional loans and provides advice to governments of countries that fall below a specific per capita income threshold. Through investment loans tied to specific projects and adjustment loans tied to policy reforms, the IBRD and the IDA assist governments both to finance specific projects and to develop the national-level policy and institutional frameworks that condition international private investment flows. In the mid-1990s, the IBRD also initiated the use of partial risk and partial credit guarantee instruments to leverage private finance directly, particularly for large, long-term infrastructure projects. These guarantees enjoy counter-guarantees from host governments.

The World Bank Group's International Financial Corporation (IFC), by contrast, targets its financing and advice directly to private investors, and because it does not enjoy counter-guarantees, puts its own cap-

ital at risk. The IFC invests its capital in shares of private companies, financial intermediaries, and portfolio funds, and makes loans to corporations and to specific projects. The IFC also provides a variety of additional financial services to its clients, including underwriting, guarantees of loans and bond issues, advice, and technical assistance. The mandate of the Multilateral Investment Guarantee Agency (MIGA) is limited to the provision of political risk insurance to foreign investors and technical assistance to developing countries in how to attract foreign investment.

These private sector arms of the MDBs have grown rapidly in the 1990s. In the World Bank Group, the committed portfolio of the IFC grew from $1.5 to $3.5 billion between 1990 and 2000, while the guarantees issued by MIGA grew from $132 million to $1.6 billion over the same period.[101] In 1994-1995, the IBRD was at or near financial closure for guarantees associated with projects worth almost $10 billion.[102]

As was the case with bilateral export and investment promotion agencies, MDB finance of the private sector is weighted toward support for sectors with significant social and environmental implications. For example, initial IBRD guarantees were used for an oil-fired steam plant in Pakistan, two coal-fired power plants in China, and a diesel power plant in Jamaica.[103] In 2000, support for infrastructure and oil, mining, and gas constituted 29% and 43% of IFC and MIGA commitments, respectively. Figures 6 and 7 provide sectoral breakdowns of the overall portfolios for the IFC and MIGA.

Figure 6
Sectoral Breakdown of the IFC's Committed Portfolio in FY 2000[104]

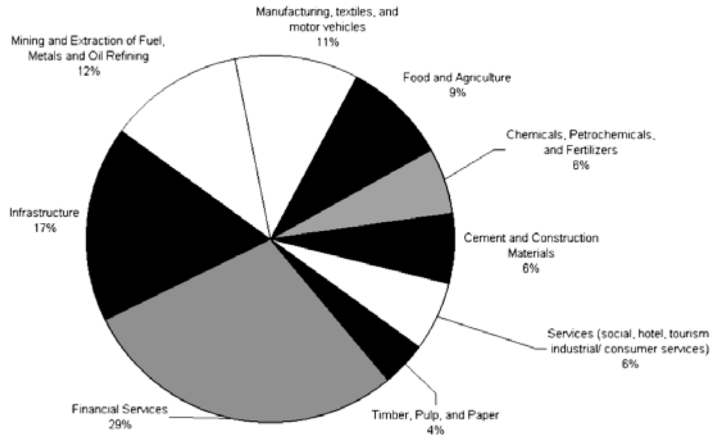
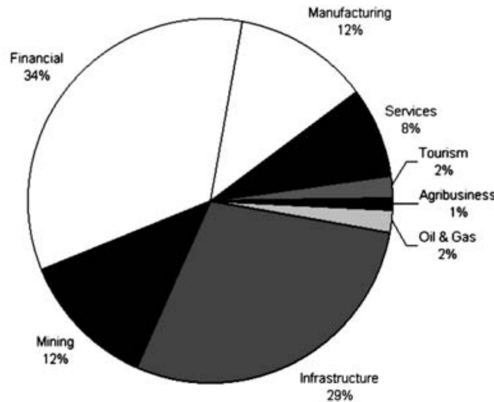


Figure 7
Sectoral Breakdown of Overall MIGA Portfolio in FY 2000[105] **(% of total gross exposure)**



Public interest advocates have alleged that the activities of the IFC and MIGA have undermined, rather than supported, environmentally and socially sustainable development. For example, early critics charged that the support of these institutions for privatizations of state enterprises could have unintended negative outcomes such as externalizing environmental costs and exacerbating income inequality.[106] More recent critiques have targeted the IFC and MIGA's investments in extractive sectors such as oil, mining, and gas, and have suggested that proposed investments be screened for their positive development impact.[107] In the case of MIGA, some advocates have suggested that the agency be "shut down."[108]

However, the indirect role of MDBs in influencing North-South financial flows through policy leverage has arguably been more significant than their direct participation in private sector transactions. Throughout the 1980s and 1990s, the MDBs promoted application of the so-called Washington Consensus by borrower governments.[109] The Washington Consensus emphasized the role of capital market and trade liberalization, privatization, and removal of other constraints on integration into the international economy, as such integration was seen as a precondition for growth. The resulting removal of capital controls and privatization of state-owned enterprises helped to spur the dramatic growth in private financial flows to emerging market economies in the mid-1990s.

Policy reforms associated with the Washington Consensus were imposed through conditionality in the context of stabilization and structural adjustment lending offered by the IMF and the World Bank. The IMF provides loans to countries experiencing balance-of-payments problems in order to enable them to build up their reserves, stabilize their currencies, and finance imports.[110] These loans are provided based on "letters of intent" in which the borrowing government agrees to conditions that have been negotiated with the IMF.[111] World Bank structural adjustment loans, which are coordinated with the IMF, provide financing that is not tied to specific projects but rather to specific macroeconomic and structural reforms.[112]

Even before the Asian financial crisis of 1997-1998 called this development model into question, public interest advocates had challenged the degree to which stabilization and structural adjustment prescriptions promoted sustainability.[113] In particular, critics pointed out that policies designed to attract foreign investment for export-led growth provided incentives for the rapid degradation of natural resources.[114] For example, the IMF bail-out package for Indonesia in early 1998 called for lifting restrictions on foreign investment in the oil palm sector even though landclearing for tree crops was already a major cause of forest fires and deforestation.[115] Subsequently, Indonesia's highly indebted pulp and paper industries—which had borrowed heavily in international capital markets prior to the financial crisis—continued to take a significant toll on Indonesia's forests, as the mills were kept running to stave off bankruptcy.[116]

Clearly, implementation of the Washington Consensus did not automatically support sustainable development. Indeed, over the course of the 1990s considerable evidence accumulated demonstrating that prescriptions for liberalization and privatization could actively undermine sustainability if not accompanied by strong independent regulatory capacity and other improvements in governance.

The United States has explicitly supported the private sector-led growth model in its policy influence over MDBs, which is exercised through congressional authorizations and appropriations and through staffing and oversight of U.S. executive directors provided by the Treasury Department. The United States is particularly influential in the World Bank Group, where it contributes the largest single share of capital subscription and controls the largest number for votes on the Group's boards.[117] Language entered into the Foreign Assistance Act prior to 1992 defines development of the private sector in borrower countries as a "principal focus of U.S. Government policy," and instructs U.S. executive directors to "vigorously encourage" promotion of policies to privatize state-owned enterprises in the developing world by the World Bank Group.[118] The Treasury Department has been an outspoken proponent of the Washington Consensus and has used U.S. representation on the executive boards of the MDBs to promote related policies.[119] It is thus appropriate to review the degree to which the U.S. government has integrated principles of integration and

public participation into policy advocacy for private sector-led growth in its participation in the governance of MDBs.

MDB Reforms and Private Development Finance

An international campaign focused on the negative environmental and social impacts of MDB lending began in the early 1980s, spurred by a series of particularly destructive projects in Brazil and Indonesia.[120] Following hearings in 1983 and 1984, Congress passed the first piece of what was to be a series of legislative acts designed to force MDBs to pay more attention to the environment and to participatory process in development.[121] Congressional leverage over MDBs included policy guidance and voting restrictions to steer the "voice and vote" of U.S. executive directors sitting on the boards of MDBs and conditions imposed on congressionally appropriated funds.[122] Congressional influence was extended not only through the Treasury Department's leadership in MDB governance but also through the State Department and USAID, which were directed to participate in an "early warning system" to assess potential adverse impacts of MDB-financed projects.[123] According to a former U.S. executive director at the World Bank, the interagency consultation process, backed up by a congressional mandate on environmental procedures, were important drivers of U.S. effectiveness in pursuing the environmental reform agenda.[124] Thus, even prior to the Rio Summit in 1992, the United States had demonstrated significant leadership in MDB reform, addressing both integration and public participation.

One of the most significant congressional actions was the Pelosi Amendment to the International Development and Finance Act of 1989.[125] The Pelosi Amendment precludes U.S. executive directors from supporting any MDB project unless an environmental impact assessment has been made available to affected groups at least 120 days before the board vote.[126] In 1992, the United States opposed 40 World Bank projects on Pelosi Amendment grounds, a figure that dropped to zero by 1996.[127]

The congressionally driven MDB reform agenda also included attention to principles of integration, public participation, and developed country leadership. As an example of attention to the need for integration, in 1990 the U.S. House of Representatives focused on integrating environmental concerns into forestry and energy lending.[128] Public participation was promoted through improved information disclosure and the institution of accountability mechanisms. Congressional attention also leveraged the creation of a Public Information Center and an Independent Inspection Panel in the early 1990s.[129] Finally, Congress specifically directed the Secretaries of Treasury and State to seek the cooperation of other OECD governments in the MDB reform agenda.[130]

Unfortunately, U.S. leadership in the MDB reform agenda has been only partially effective and has as yet failed to address adequately the role of MDBs in leveraging private development finance. Some of the earlier reforms did apply to the private sector-oriented activities of the MDBs, and some subsequent reforms have specifically targeted those activities. For example, in the FY 1995 Appropriations bill, Congress threatened to partially withhold funding if the IFC did not reform its policies on the environment, information disclosure, and resettlement.[131] In the FY 1998 Appropriations bill, Congress required that the IFC comply with environmental standards applied to other MDBs,[132] and in 1998, the IFC adopted modified forms of the World Bank's social and environmental policies.[133] However, many of the reforms of the late 1980s and early 1990s focused on MDB project loans to governments, and thus did not apply to the activities of MDB private sector windows. For example, in 1995 the World Bank's Independent Inspection Panel was construed as not applicable to the activities of the IFC or MIGA.[134]

Much less progress has been made in redirecting MDB influence through policy lending toward sustainable development. As of early 2002, environmental impact assessments are still not required for structural adjustment loans from any of the MDBs, even though such loans are arguably the most potent vehicle for leveraging the policy environment in which private investment takes place.[135] And even though as early as

1989 Congress had encouraged the assessment of environmental impacts of IMF loan agreements,[136] in 2001 only one-and-one-half IMF staff positions were allocated to this function.

It is difficult to assess the degree to which this lack of progress is the result of intransigence on the part of MDB management, resistance from other countries represented on the governing bodies of the MDBs and the IMF, or the lack of focused effort by the U.S. government to pursue the reform agenda laid out more than a decade ago. An internal evaluation of the World Bank's environmental performance released in 2001 rated the World Bank as only "partially successful" in mainstreaming environmental concerns into its lending and prescribed a set of actions to be undertaken by the World Bank's senior leadership, suggesting that management failures are at least part of the problem.[137] However, elements of the World Bank's board have also been resistant to change.

The U.S. executive directors on MDB boards are generally considered to be among the most progressive on sustainability issues, but because board deliberations and votes are confidential, there is no way to confirm this impression directly. Clearly, U.S. leadership was effective in establishing the first generation of procedural reforms related to environmental assessment and information disclosure in the late 1980s and early 1990s. However, attention to extending this agenda to direct and indirect levers over private development finance may have fallen victim to other priorities in the mid- to late 1990s. Although the United States did, for example, press for extension of the World Bank Inspection Panel to cover the IFC, the challenges of providing assistance to the countries of the former Soviet Union and responding to the East Asian financial crisis pushed the environmental agenda to the back burner.[138] Anecdotal evidence does point to U.S. attention to social and environmental considerations in the context of private sector-led growth. For example, a U.S. executive director's statement on a structural adjustment credit for Pakistan in mid-2001 specifically raised concerns about environmental impacts and regulatory capacity with respect to rapid development of the oil and gas sector.[139]

However, there is evidence that in at least some instances, U.S. policy has held the sustainability agenda hostage to promotion of the Washington Consensus liberalization agenda rather than the reverse. For example, two laws in the 1990s linked the receipt of environment and development assistance to economic reforms that would make countries more hospitable to foreign investors. The Enterprise for the Americas Initiative was established in 1992 to promote market-oriented reforms and investment reforms in Latin America and the Caribbean, along with environmental protection and child development. Conditions for receiving support through this fund included acceptance of structural adjustment policies or loans from the IMF or the World Bank.[140] Similarly, the Tropical Forest Conservation Act of 1998 restricted its benefits to countries that qualified for the Enterprise for the Americas Initiative support and had "put in place major investment reforms," either through a bilateral treaty with the United States or through an MDB investment sector loan.[141]

Other U.S. Levers on Private Development Finance

In addition to U.S. influence over bilateral export and insurance promotion agencies and MDBs, there are many other U.S. institutions and policy arenas that are being or could be used to influence the degree to which private North-South financial flows promote sustainable development. This section provides a brief summary and examples of the potential of some of those levers, without attempting an assessment of past performance.

Bilateral Development Assistance Policy

USAID is an independent federal government agency that operates under the Foreign Assistance Act of 1961 and receives overall foreign policy guidance from the Secretary of State.[142] In pursuing its mandate to provide foreign economic assistance, USAID has been active in promoting the sustainable development principles of integrating environmental protection and public participation into development decisionmaking. USAID was an early leader among bilateral development assistance agencies in promot-

ing the integration of environmental concerns into development policy and practice, and by law must undertake environmental impact assessments of proposed programs.[143] In 1993, the USAID Administrator articulated a "Statement of Principles on Participatory Development," identifying democratization of the development process as the "cornerstone" of the agency's approach.[144]

At the same time, USAID has also been a proponent of the Washington Consensus to remove barriers to private sector-led growth. "Broad-based economic growth" is the largest category of USAID assistance—significantly dwarfing aid for both environment and democratization combined—and includes support for private sector development, trade development, privatization, and fiscal and financial sector reform.[145]

While there are examples from the USAID's portfolio of its multiple objectives being pursued in an integrated manner, there are also examples in which they have come into conflict. An example of an integrated approach is the United States-Asia Environmental Partnership (USAEP), a USAID-led program in cooperation with the Commerce Department and EPA. Founded in 1992, USAEP is designed to promote sustainable development in Asia through facilitating public-private partnerships for improved industrial environmental performance.[146] An example of conflict occurred in 1995, when Freeport-McMoran, a U.S.-based corporation, urged USAID to cut off funding for an Indonesian environmental group that was protesting against the environmental and social impacts of its mining activities in Irian Jaya.[147] The company felt that it was inappropriate for U.S. government funds to support civil society groups that in turn challenged U.S. foreign direct investment, and suggested that members of Congress would share that sentiment.[148] To its credit, USAID declined to cut off support to the environmental organization.

Bilateral Cooperation Agreements

In several instances, the United States has sought to promote environmentally friendly private finance for development in the context of bilateral agreements with specific countries. For example, under the auspices of the Gore-Chernomyrdin Commission, in 1993 the DOE concluded a memorandum with the Russian Federation Ministry of Fuel and Energy to promote cooperation in energy efficiency and renewable energy through, among others, joint ventures.[149] Indeed, the goals of the Energy Policy Committee of the Commission included both "Encourage Environmentally-Safe and Efficient Production and Use of Energy" and "Establish an Environment to Encourage Economic Reform and Western Investment."[150] Similar bilateral "common agendas" were pursued by the State Department under a more general environmental diplomacy initiative in the early 1990s. Other bilateral and transition countries targeted for this approach in addition to Russia were Brazil, China, Egypt, India, Mexico, South Africa, and Ukraine.[151]

International Investment Policy

An increasingly important area of policymaking relevant to the private finance of environmentally sustainable development is the establishment of rules governing international investment. Many public interest advocates fear that bilateral or multilateral investment agreements may undermine the ability of host countries to pursue environmental and social objectives through domestic regulation.[152] This concern motivated much of the opposition to the proposed Multilateral Agreement on Investment (MAI) that was negotiated under OECD auspices from 1995 to 1998. The MAI was designed to provide a standard framework for the treatment and protection of foreign investment. For example, its draft provisions included limitations on how governments could constrain investor behavior through such mechanisms as performance requirements, limitations on foreign ownership of certain types of assets, and capital controls. The proposed agreement drew strong criticism from environmentalists and others who feared that it granted investors extraordinary rights at the expense of the public interest.[153]

The MAI negotiations also raised questions about the degree to which the process itself was consistent with integration and public participation principles. For example, within the U.S. government, the USTR took the lead on the negotiations and failed to share information or even consult with other federal agencies

such as USAID and EPA with relevant mandates and expertise until very late in the process. The International Task Force of the President's Council on Sustainable Development convened a forum on the MAI in February 1998, and concluded that "all sides were negligent in not opening a dialogue at an earlier stage."[154]

During the same time period, the investment rules contained in Chapter 11 of NAFTA became a cause for serious concern.[155] The NAFTA investment rules had attracted little attention from public interest groups during the negotiations over the treaty; instead, the focus was on securing environmental and labor side agreements.[156] However, when private investors started using Chapter 11 to overturn environmental regulations and collect financial compensation for lost profits, both government and NGOs were alarmed.[157] NAFTA's Chapter 11 contains many of the provisions that were controversial in the failed MAI. It granted private investors extraordinarily broad rights, barring discrimination, expropriation of assets, and the imposition of "performance requirements" by host country governments in the broadest of terms.[158] It established a private dispute resolution process outside of established judicial systems and away from the public eye where legal decisions with broad implications for public policy and finance were decided in private.[159]

A majority of cases brought under Chapter 11 have challenged environmental policies; of those that are now resolved, the majority have been decided in favor of the investor.[160] Some observers fear that governments in the NAFTA countries, facing uncharted legal territory and the possibility of major compensatory claims, will avoid passing any new laws that might trigger Chapter 11 lawsuits. The resulting "chill effect"—combined with the overturning of laws by Chapter 11 lawsuits—could have serious implications for environmental policy in all three countries.[161] Efforts to revise Chapter 11 have stalled due in part to lack of U.S. enthusiasm. Instead, many of Chapter 11's provisions are being incorporated into the draft Free Trade Area of the Americas where they may do even broader damage.[162]

In addition to its impacts on environmental regulation, negotiation of investment rules in the absence of coordination with international environmental treaties risks undermining prospective environmental finance mechanisms. For example, an analysis by researchers Kevin A. Baumert, Navroz K. Dubash, and Jacob Werksman suggests that investment rules similar to those proposed under the MAI would prohibit the conditioning of investment envisioned under the Clean Development Mechanism of the Kyoto Protocol of the FCCC.[163]

Climate Protection Policy

Climate protection is another policy arena relevant to private development finance. Specifically, the Clean Development Mechanism (CDM) could potentially prove a significant lever on North-South financial flows toward investments that promote progress toward more sustainable development paths. The CDM is designed to simultaneously lower the cost of reducing greenhouse gas emissions and promote sustainable development in developing countries. The CDM would allow industrialized countries to receive credit for financing greenhouse gas reduction opportunities in developing countries. In 1999, the World Resources Institute estimated that the value of these credits to industrialized countries could be between $25 billion and $85 billion and concluded that potential CDM projects could offer "a wide range of sustainable development benefits."[164]

During the Clinton Administration, the U.S. government was a consistent proponent of the CDM as an instrument to attract investment to clean energy and carbon sequestration projects. The United States also promoted principles of good governance in CDM implementation.[165] The International Task Force of the President's Council on Sustainable Development convened a forum on the CDM in July 1998, at which a representative of the White House Council on Environmental Quality spoke of the potential of CDM to promote both sustainable development and U.S. business opportunities abroad.[166] With the March 2001, announcement of its withdrawal from Kyoto Protocol negotiations, however, the Bush Administration surrendered the U.S. seat at the table in designing the CDM.

Regulation of Capital Markets

EPA has focused attention on the connection between finance and the environment in the context of U.S. capital markets, through which a significant portion of global capital flows. In the late 1990s, EPA established an ad hoc Environmental Capital Markets Committee under the National Advisory Council for Environmental Policy and Technology. In 2000, the committee published a report summarizing research on the relationship between a firm's environmental and financial performance.[167] The report outlined barriers to integrating environmental factors into mainstream financial analysis and proposed 11 recommendations to overcome those barriers.[168]

One of the committee's recommendations related to EPA collaboration with the Securities and Exchange Commission (SEC) to improve corporate disclosure of information pertaining to environmental performance.[169] In early 2001, EPA enlisted its enforcement personnel to notify corporations registered with the SEC to disclose information regarding environmental legal proceedings that are pending or known to be contemplated by government authorities.[170] Such disclosure has long been required under SEC regulations,[171] although enforcement has been minimal.[172] While this regulation could plausibly apply to environmental legal proceedings pending against the international operations of a U.S. or non-U.S. firm registered with the SEC, the SEC apparently has seldom if ever initiated action against a company to enforce such an interpretation.[173]

More broadly, current capital market regulation related to environmental disclosure fails to capture the prospective risks that companies may face in the future as a result of changes in regulations, taxes, or subsidies. For example, multinational corporations could face quite different financial risks stemming from prospective climate policies under the Kyoto Protocol, but they are not currently required to disclose them.[174] And without such disclosure, individual and institutional shareholders are not in a position to selectively reward more forward-looking companies with their investment dollars.

Recommendations

The following section suggests actions that the United States could take in order to leverage private international financial flows toward sustainable development.

Bilateral Export and Investment Promotion Agencies

First, the United States should continue to lead by example by maintaining high environmental and disclosure standards for OPIC and the Ex-Im Bank. Despite the slow progress of reform at non-U.S. agencies, OPIC and the Ex-Im Bank should maintain their current substantive and procedural reforms and work to further improve environmental assessment and information disclosure practices. While the U.S. corporate community and its champions in Congress will likely continue to chafe at being held to a higher standard than their European and Japanese competitors, maintaining U.S. standards is essential to the prospects of upward harmonization of standards internationally.

Second, the United States should maintain its leadership in the G-8 and the OECD policy arenas to promote upward harmonization of sustainable development policies and procedures for ECAs. The primary obstacle at present is the reluctance of several European governments to agree to binding common standards.

Third, OPIC and the Ex-Im Bank should go beyond mere compliance with environmental safeguards and disclosure requirements and shift their portfolios toward investments in sustainability. This will require the agencies themselves to be more assertive in shaping their portfolios and may also require innovating financing mechanisms more appropriate to smaller projects with longer term payback periods such as

those typical of renewable energy.[175] Implementing such changes may depend on a revision in the mandates of these agencies, which would require congressional action.

Finally, Congress should request independent assessments of the environmental performance of OPIC and the Ex-Im Bank. Such assessments could have two purposes. First, there is a need to assess the degree to which OPIC and the Ex-Im Bank are in compliance with announced policies. In addition, there is a need to analyze the degree to which the current practices of the two agencies are consistent with sustainable development and to identify what changes in their mandates might be necessary to close the gap between the two.

Maurer and Bhandari proposed a set of reform recommendations targeted specifically to aligning bilateral agency finance with the climate commitments of both developed and developing countries under the FCCC, including technology transfer.[176] In addition to some of the recommendations already mentioned above, they also suggest that ECAs be required to estimate and report on the annual and cumulative greenhouse gas emissions associated with projects and exports that receive ECA finance; that ECA environmental assessment procedures evaluate potential climate impacts; and that ECAs engage in dialogue with developing country governments to ensure that ECA finance supports sustainable development objectives.[177]

MDBs

First, United States needs to push harder for integration of sustainability objectives into the private sector development activities of MDBs. Specifically, the Treasury Department and U.S. executive directors (through voice and vote) should ensure that MDB policy and strategy documents related to the environment explicitly address private sector-oriented activities. At the same time, policies and strategies related to private sector development should explicitly address environmental sustainability.

Second, the Treasury Department and U.S. executive directors should proactively monitor the performance of MDBs in complying with agreed policies and strategies. However, this compliance monitoring should focus more on the "mainstreaming" agenda rather than the "do no harm" agenda, and should move "upstream" from the project level to focus on sectoral and countrywide policy instruments.[178] In particular, such mainstream policy vehicles as Country Assistance Strategies, Poverty Reduction Strategy Papers, and structural adjustment loans should be scrutinized to ensure that environmental sustainability concerns have been adequately addressed. Monitoring implementation of the World Bank's recently approved environment strategy would be a good place to start. Such monitoring will require sufficient allocation of resources to adequately staff this function. According to a former U.S. executive director at the World Bank, adequate staffing is an important determinant of the effectiveness of U.S. advocacy of sustainability.[179]

Third, the Treasury Department and U.S. executive directors should promote upward harmonization of the safeguard and disclosure policies that apply to the private sector arms of the MDBs. Further, as with ECAs, those private sector arms should go beyond mere compliance with environmental safeguards and disclosure requirements to shift their portfolios toward investments in sustainability. An important opportunity in this regard is the IFC's "Sustainability Initiative," launched in 2001. Through the Sustainability Initiative, the IFC has committed to moving beyond compliance with regulatory safeguards toward helping corporate clients create financial value through improved environmental or social performance or improvements in corporate governance.[180]

Friends of the Earth provided specific recommendations to improve the IFC's development impact.[181] Among others, these recommendations suggested that the IFC adopt a positive development "screen" to identify investment opportunities with clear development benefits, expand its exclusionary lending list to screen out projects with significant adverse environmental and social impacts, and adopt a corporate screen to exclude companies with poor performance records. The report also suggested that the IFC systematically assess the "development risk"—such as risks of human rights violations and corruption—as well as the financial risks being considered for financing.[182]

Bilateral Development Assistance Policy

USAID must maintain its positive record of providing support to civil society organizations in developing and transition countries. These organizations provide an important mechanism by which to hold governments and private actors accountable for their performance on sustainable development objectives. Indeed, USAID's independence in providing such support should be strengthened and the agency must be insulated from having to respond to the narrow commercial interests of U.S. corporations. Furthermore, USAID should more proactively cultivate linkages among programs focused on private sector development, environmental protection, and good governance. USAID has an important role to play in advocating as well as financing the governance infrastructure that is necessary to ensure that private finance is directed toward sustainability. For example, support for the development of independent regulators, as well as mechanisms for the public to hold them accountable, is an important priority for development assistance.

International Investment Policy

Overall, the United States should elevate sustainable development concerns in the negotiations process over multilateral investment agreements. In the short term, the United States should demonstrate leadership in initiating reform of the most damaging aspects of NAFTA's Chapter 11. These include clarifying Chapter 11's provision regarding expropriation of assets, so that it can no longer be interpreted to apply to the future profits of a firm, and adding transparency provisions and an appeals process to the dispute resolution procedures. In addition, the United States should apply its experience with NAFTA's Chapter 11 to negotiations for a Free Trade Agreement of the Americas, thereby ensuring that similarly damaging provisions are not included in that agreement.

In addition, the United States should ensure that international investment rules are compatible with international environmental agreements. For example, Werksman, Baumert, and Dubash provide suggestions for aligning investment rules with climate protection agreements.[183] They include the following recommendations regarding international investment agreements: eliminating investor-to-state dispute resolution provisions; prohibiting indirect expropriation claims that are directed against broadly applicable laws and regulations; and exempting CDM-related investment activities from such agreements when they are determined to be vital to achieving the goals of the mechanism.

Finally, the United States should ensure that both the negotiation of international investment agreements themselves and any new institutions created by those agreements are subject to a transparent and participatory decisionmaking process.

Climate Protection Policy

The United States should re-engage in international climate protection negotiations and should continue to promote financing mechanisms such as the CDM to harness private development finance toward climate protection goals. Werksman, Baumert, and Dubash make several recommendations for the design of CDM rules to reduce the possibility of the mechanism being undermined by investment rules. These include the standardization of CDM rules and procedures, the establishment of the Kyoto Protocol as the applicable law for conflict resolution, and the creation of provisions for legal assistance in the structuring of project agreements.[184]

World Resources Institute researchers Baumert and Elena Petkova provide specific recommendations regarding how public participation mechanisms should be build into the CDM.[185] These include ensuring that CDM policy development is shaped by public participation, creating a review panel for public appeal and redress, and crafting new institutions that reflect state-of-the-art thinking about transparency and public engagement.

Capital Markets Regulation

The United States must exercise leadership in leveraging private capital markets toward sustainable development. Researchers Robert Repetto and Duncan Austin provide specific recommendations on environmental aspects of capital markets regulation and corporate disclosure in the United States.[186] They recommend that the SEC reinforce and clarify existing rules regarding disclosure of environmental information, allocate more resources to enforcement, and alert companies that these rules will be enforced. In addition, they suggest that the SEC cooperate more closely with EPA to share information regarding pending changes in law, regulation, and policy. Finally, they recommend that publicly registered companies should voluntarily disclose their environmental risks more fully.

In order to influence the sustainable development character of international financial flows, current capital market regulation should be strengthened and should be applied not only to the domestic operations of U.S. firms, but also to their international operations as well as to the operations of foreign corporations publicly listed in the United States. Disclosure of environmental risks and liabilities worldwide would empower shareholder activists to promote corporate responsibility of individual companies in the short run and would harness market mechanisms to reward companies that minimized environmental risks in the long run.

In addition to creating incentives for operating companies to promote sustainable development, there are also opportunities to align the incentives of the private financial industry in that direction as well. A report by researcher John Ganzi provides an inventory of opportunities for the public interest community to influence the private financial services industry toward sustainable development.[187] For example, the United States ought to follow the lead of the Netherlands in providing tax incentives for green investment. In 1995, the Dutch Ministry of Finance declared interest and dividends from certain green investment funds to be tax free.[188]

Interagency Cooperation

A cross-cutting theme that emerges in this Chapter is the importance of interagency cooperation within the U.S. government as a critical element of any strategy to align private international financial flows with sustainable development objectives. Interagency collaboration has proven effective in instances ranging from consideration of the Ex-Im Bank finance for the Three Gorges Dam project to monitoring the performance of MDBs. Inadequate interagency collaboration has led to omissions such as the lack of sustainable development advocates in the formulation of the U.S. position on the MAI, conflicts such as the pressure put on USAID to condition support to civil society on commercial interests, and lost opportunities such as the weak enforcement of capital markets regulation related to environmental disclosure. Clearly, an overarching recommendation is the need for increased interagency cooperation to develop and execute a coherent strategy to direct private financial flows toward sustainable development.

Conclusion

The performance of the United States in pursuing the integration and public participation principles in the context of private North-South financial flows has been mixed. In the realm of ECAs, public interest advocates, Congress, and the White House have leveraged significant commitments to substantive and procedural reforms at OPIC and the Ex-Im Bank. However, the practical impact of those reforms on both individual projects and the portfolios of these institutions has been marginal rather than transformative and has thus far been unsatisfactory to significant elements of the public interest community. At the same time, the standards of U.S. bilateral agencies related to environmental assessment and information disclosure far outstrip those of similar agencies in other countries. And significantly, the United States has been willing to stand alone among OECD governments in insisting on the upward harmonization of these standards.

In the realm of MDBs, the United States can justly claim credit for leading the first generation of substantive and procedural reforms in the late 1980s and early 1990s. However, the reform agenda has not yet been pursued with sufficient vigor to ensure that the private sector-oriented activities of the MDBs are aligned with sustainable development objectives. A significant task remains ahead to ensure that the activities of the private sector arms of the MDBs, as well as the indirect influence of MDB policy advice and lending, promote sustainable development.

There are many other prospective avenues for the United States to leverage private financial flows toward sustainable development. Some, such as USAID's support for public participation in developing countries, are already making a significant contribution in the right direction. Others, such as the integration of sustainability and public participation into international investment rules negotiations and capital markets regulation, remain opportunities yet to be fully developed. The agenda of aligning private international flows with sustainable development objectives remains unfinished.

Chapter 8 Endnotes

1. United Nations Conference on Environment and Development, Agenda 21, ¶ 33.13, U.N. Doc A/CONF.151.26 (1992).
2. *Id*. ¶ 33.14.
3. *Id.*
4. The Rio Declaration (and principles contained therein) can be read at the website of the United Nations at http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.
5. While sustainable development includes economic, social, and environmental dimensions, this Chapter will focus primarily on attempts to improve the environmental sustainability of private financial flows.
6. Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/7/Add.2, *reprinted in* 37 I.L.M. 22 (1998).
7. *See* World Bank, Global Development Finance: Building Coalitions for Effective Development Finance 36-39 (2001).
8. *Id.*
9. *Id.*
10. *Poverty to Rise in Wake of Terrorist Attacks in U.S.*, Dev. News, Oct. 1, 2001.
11. This Chapter does not treat two forms of private financial flows that are also significant for sustainable development, but are less amenable to policy levers: charitable giving and remittances. According to the Foundation Center, between 1994 and 1998 international grants from U.S. foundations increased from roughly $966 million to $1.6 billion per year, representing only 8% of total U.S. grantmaking. Of the grant funds going overseas, 17.5% were directed to "international development," and another 8.4% to "environment." Loren Renz & Josefina Samson-Atienza, International Grantmaking II: An Update on U.S. Foundation Trends (2000). Remittances from individuals working in the United States are quite significant in some countries, particularly in Latin America, where they are estimated to rival revenues from key exports. Stephen Fidler, *New Migrants Spur Growth in Remittances*, Fin. Times, May 16 2001, at 17. Because only a portion flow through official channels and many are transferred in kind, their true value of workers' remittances is not fully captured by official statistics. Shivani Puri & Tineke Ritzema, Social Finance Unit, International Labour Organization, *Migrant Worker Remittances, Micro-Finance, and the Informal Economy: Prospect and Issues*, at 1-2 (Working Paper No. 21, 1999). Nonetheless, in 1999, the International Monetary Fund (IMF) estimates that approximately $17 billion was sent out of the United States by workers sending wages home to their families. Balance of Payments Statistics Yearbook: 1999 (IMF 2000).
12. World Bank, Global Development Finance: 2001 (2001).
13. Estimated from OECD, *The International Development Statistics Online Database: Development Assistance Committee Online* (2001), *at* http://www.oecd.org/htm/M00005000/M00005347.htm.
14. U.S. Department of Commerce, *Survey of Current Business*, at D-58, tbl. G-1 (Sept. 2001). Outbound financial flows are not disaggregated by country of destination.
15. OECD, *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Apr. 1998), *at* http://www.oecd.org/pdf/M00007000/M00007323.pdf.
16. President's Council on Sustainable Development: Revised Charter v (1997).
17. *See* Bruce Rich, *Exporting Destruction*, Envtl. F., Sept./Oct. 2000, at 32-40, and James K. Jackson, *Export-Import Bank: Background and Legislative Issues*, Cong. Res. Service Report for Congress (2001).
18. Raymond J. Albright, Ex-Im Bank and OPIC: Trade Promoters or Welfare Pariahs? (unpublished manuscript, 1998, at 5) (paper prepared by the Study Group on American Commercial Diplomacy in Asia convened by the Council on Foreign Relations). Paper is available on the Internet at http://www.cfr.org/public/pubs/opic.html#members.
19. *See* Berne Union, *Homepage*, *at* http://www.berneunion.org.uk (last visited Jan. 24, 2002).
20. Personal Communication with Harvey Himberg, Deputy Vice President/Director Environmental Affairs, Office of Investment Policy, OPIC (Dec. 14, 2001). Mr. Himberg suggests the term "Bilateral Development Institutions" to refer to what the authors term "investment promotion agencies," but the authors wish to avoid confusion with bilateral development aid agencies.
21. *Id*. The Arrangement on Guidelines for Officially Supported Export Credits are available on the Internet at http://www1.oecd.org/ech/pub/arrangement-98-en.pdf.
22. Personal Communication with Harvey Himberg, *supra* note 20.
23. Personal Communication with James Harmon, Former Chairman of the Ex-Im Bank (Dec. 15, 2001).
24. Crescencia Maurer & Ruchi Bhandari, The Climate of Export Credit Agencies (2000).
25. *Id.*
26. World Bank, Global Development Finance 58 (1998). Bruce Rich prefers to use lower IMF estimates ($26 billion in 1988) for the earlier period. *See* Rich, *supra* note 17.
27. *See* The Berne Union 2001: International Union of Credit and Investment Insurers Yearbook 224, tbl. 1 (Jon Marks ed., 2001).
28. World Bank, Global Development Finance 24 (1997).
29. Maurer & Bhandari, *supra* note 24.
30. *Id.*

31. Official Financing for Developing Countries 12-14 (A.R. Boote & D.C. Ross eds., 1998).
32. Stephanie Fried & Titi Soentoro, Export Credit Agency Finance in Indonesia 14 (2000).
33. The United Kingdom's Business Principles, articulated in December 2000, include the following statement: "We will promote a responsible approach to business and will ensure our activities take into account the Government's international policies including those on sustainable development, environment, human rights, good governance and trade." United Kingdom Export Credits Guarantee Department, *Statement of ECGD's Business Principles* (Dec. 2000), *at* http://www.ecgd.gov.uk.
34. Maurer & Bhandari, *supra* note 24.
35. *Id.*
36. *Id*.
37. *Id.*
38. Rich, *supra* note 17, at 32.
39. 22 U.S.C. §2191 et seq., Pub. L. No. 91-175, §234(b), (c).
40. Albright, *supra* note 18, at 7.
41. *See* OPIC, 2000 Annual Report: Building Bridges to Emerging Markets (2001); OPIC, 1999 Annual Report (2000); OPIC, 1998 Annual Report (1999); OPIC, 1997 Annual Report (1998); OPIC, 1996 Annual Report (1997).
42. The OPIC *2000 Annual Report* features the following quote from Sen. Jesse Helms (R-N.C.): "Private investment supported by OPIC does far more to promote growth and to ensure economic and political stability in developing countries than does any amount of wasteful foreign aid." OPIC, 2000 Annual Report, *supra* note 41, at 4.
43. OPIC, Environmental Handbook (1999), *available at* http://www.opic.gov/publications/envbook.htm [hereinafter OPIC, Environmental Handbook].
44. OPIC, 2000 Annual Report, *supra* note 41, at 16-19.
45. *Id*.
46. *Id*.
47. Exec. Order No. 12114, 3 C.F.R. 356 (1998), Admin. Mat. 45023; OPIC, Environmental Handbook, *supra* note 43, app. A.
48. Exec. Order No. 12114, Admin. Mat. at 45023, *supra* note 47.
49. *Id.*
50. OPIC, Environmental Handbook, *supra* note 43.
51. *Id*.
52. *Id*.
53. Catholic Church of Jayapura, Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia (1995).
54. Jim Mann, *Citing Pollution Overseas, U.S. Cuts Firm's Insurance*, L.A. Times, Nov. 11, 1995, at A1. The insurance was later reinstated through the end of 1996 following a vigorous public relations campaign mounted by Freeport McMoran and nontransparent negotiations with U.S. government officials. Freeport subsequently did not renew its OPIC coverage.
55. OPIC, 1999 Annual Report, *supra* note 41, at 11-12.
56. *Id.*
57. OPIC, Environmental Handbook, *supra* note 43.
58. OPIC, 1999 Annual Report, *supra* note 41.
59. Jobs Through Exports Act of 1992, Pub. L. No. 102-549, 106 Stat. 3651.
60. South African Transition Support Act of 1993, Pub. L. No. 103-149, 107 Stat. 1503.
61. Africa: Seeds of Hope Act of 1998, Pub. L. No. 105-385, §104, 112 Stat. 3460, 3464.
62. African Growth and Opportunity Act of 2000, Pub. L. No. 106-200, 114 Stat. 251.
63. Personal Communication with Harvey Himberg, Deputy Vice President/Director Environmental Affairs, Office of Investment Policy, OPIC (Dec. 7, 2001).
64. OPIC, Climate Change: Assessing Our Actions (2000).
65. Ex-Im Bank, *History of Ex-Im Bank*, *at* http://www.exim.gov/history.html (Nov. 7, 2001).
66. Ex-Im Bank, 1999 Annual Performance Report (2000).
67. *Id.*
68. Jackson, *supra* note 17.
69. Ex-Im Bank, 2000 Annual Report (2001).
70. *Id*.
71. *History of Ex-Im Bank*, *supra* note 65.
72. 12 U.S.C. §635i-5 reads: "[T]he Bank shall establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee program."
73. *Id*.
74. Memorandum from Susan Houser, Congressional Analyst, Congressional and External Affairs, Ex-Im Bank, to Lisa Dreier on Ex-Im Bank's Environmental Mandate (June 14, 2001).
75. *Id.*

76. Ex-Im Bank, Environmental Guidelines, at 1, Annex A (2001).
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78. *Id*. at 1.
79. Richard Fuggle & W.T. Smith, Large Dams in Water and Energy Resource Development in the People's Republic of China 5 (2000).
80. International Rivers Network, *Yangtze Currents* (Oct. 2001). For more information, see http://www.irn.org/programs/threeg (last visited Mar. 7, 2002).
81. Fuggle & Smith, *supra* note 79, at 9.
82. Personal Communication with David Sandalow, Executive Vice President, World Wildlife Fund (Nov. 21, 2001). However, such coordination was apparently more the exception than the rule. Former Ex-Im Chairman Harmon recalls his "shocking realization" of how little interagency coordination there was, even between the Ex-Im and OPIC. *See supra* note 23.
83. Fuggle & Smith, *supra* note 79, at 13.
84. Bruce Rich et al., *Export Credit Agencies in SubSaharan Africa: Indebtedness for Extractive Industries, Corruption, and Conflict*, at 14, *available at* http://www.environmentaldefense.org/documents/638_ACF666.pdf (last visited Mar. 7, 2002).
85. *Id*.
86. *See supra* note 23.
87. Ex-Im Bank, Summary of Minutes of Meeting of Board of Directors August 1, 2000, at ii (2000).
88. Ex-Im Bank, 2000 Annual Report, *supra* note 69.
89. Maurer & Bhandari, *supra* note 24, at 13.
90. *Environmentalists Seek Greater Oversight of Export-Import Bank Investments*, Inside EPA, Aug. 29, 2001, *available at* http://www.insideepa.com.
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92. *Id*.
93. Harry Dunphy, *Official: Leaders Will Not Meet Environmental Objectives*, Associated Press, July 16, 2001.
94. *See* Jackson, *supra* note 17.
95. Emily Schwarts, *U.S. Rejects Proposed Global Environmental Accord, Deems It Weak*, Bloomberg News, July 10, 2001.
96. *U.S. Faces Uphill Battle on Tough OECD Rules on Export Credit Loans*, Inside U.S. Trade, July 27, 2001, *available at* http://www.insidetrade.com.
97. *See* David B. Sandalow, *Export Credits and the Environment*, Fin. Times, July 19, 2001, at 17, and Nancy Dunne, *Export Credit Agencies Hunt for Common Ground*, Fin. Times, July 11, 2001, at 11.
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100. *See, e.g.*, Peter Bosshard et al., Lending Credibility: New Mandates and Partnerships for the World Bank (1996).
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102. *See* World Bank Group, The World Bank Guarantee: Catalyst for Private Capital Flows (1995).
103. Project Finance and Guarantees (World Bank Group June 1995); Project Finance and Guarantees (World Bank Group Apr. 1995); and Project Finance and Guarantees (World Bank Group Jan. 1995).
104. International Finance Corporation, 2000 Annual Report, *supra* note 101.
105. Multilateral Investment Guarantee Agency, 2000 Annual Report, *supra* note 101.
106. Bosshard et al., *supra* note 100, at 90-91.
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108. Friends of the Earth, Risky Business: How the World Bank's Insurance Arm Fails the Poor and Harms the Environment 20 (2001).
109. The Washington Consensus was first described in John Williamson, Latin American Adjustment: How Much Has Happened? ch. 2 (Washington Inst. for Int'l Econ. 1990), and later updated in John Williamson, The Political Economy of Policy Reform ch. 2 (Washington Inst. for Int'l Econ. 1994).
110. *See* IMF, *How Does the IMF Lend?* (Sept. 2000), *at* http://www.imf.org/external/np/exr/facts/howlend.htm.
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112. *See* the World Bank Group's website at http://www.worldbank.org (last visited Jan. 28, 2002).
113. *See* Frances J. Seymour & Navroz K. Dubash, The Right Conditions: The World Bank, Structural Adjustment, and Forest Policy Reform 17-19 (2000).
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115. *See* Seymour & Dubash, *supra* note 113, at 83-112.

116. *See* Christopher Barr, Banking on Sustainability: Structural Adjustment and Forestry Reform in Post-Suharto Indonesia (2001).
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118. 22 U.S.C. §262p-4b.
119. *See*, *e.g.*, Lawrence Summers, U.S. Treasury Secretary, Address to the Council on Foreign Relations, New York, New York, A New Framework for Multilateral Development Policy (Mar. 21, 1999) (transcript on file with author).
120. Bosshard et al., *supra* note 100, at 43.
121. Ian A. Bowles & Cyril F. Kormos, *Environmental Reform at the World Bank: The Role of the U.S. Congress*, 35 Va. J. Int'l L. 777-839 (1995). *See id*. for a detailed summary of congressional action from 1985 through 1994.
122. *Id*. at 781-82. These include appropriations to the banks' concessional windows, such as the International Development Association and the Global Environment Facility, as well as for general capital increases to the banks themselves.
123. *Id*. at 790.
124. Personal Communication with Jan Piercy, Former Executive Director at the World Bank (July 31, 2001).
125. The Pelosi Amendment can be found at 22 U.S.C. §262m.
126. Bowles & Kormos, *supra* note 121, at 795.
127. U.S. Department of the Treasury, 1993 Annual Report to Congress: Environment and the Multilateral Development Banks 33 (1993); U.S. Department of the Treasury, 1997 Annual Report to Congress: Environment and the Multilateral Development Banks 13 (1997).
128. Bowles & Kormos, *supra* note 121, at 796.
129. *Id*. at 806.
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146. USAEP homepage, *at* http://www.usaep.org/about.htm (last visited Jan. 28, 2002).
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160. INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT & WORLD WILDLIFE FUND, PRIVATE RIGHTS, PUBLIC PROBLEMS: A GUIDE TO NAFTA'S CONTROVERSIAL CHAPTER ON INVESTOR RIGHTS 70 (2001); PUBLIC CITIZEN & FRIENDS OF THE EARTH, *supra* note 152.
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172. ROBERT REPETTO & DUNCAN AUSTIN, COMING CLEAN x (2000).
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175. A more radical proposal has been advanced by former Ex-Im Chairman Harmon, who proposes that ECAs be used to administer a new Marshall Plan for the developing world, which would require relaxing the "firewall" between trade finance and foreign aid and increasing the use of "tied aid." *See* James A. Harmon, Remarks to the Corporate Council on Africa 2001 Business Summit (Nov. 1, 2001). While such a proposal is controversial on several levels, it should be among the options considered in a review of how ECA activities can be aligned with sustainable development objectives.
176. MAURER & BHANDARI, *supra* note 24, at 10-13.
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178. Frances Seymour & Navroz K. Dubash, *World Bank's Environmental Reform Agenda*, 4 FOREIGN POL'Y IN FOCUS 3 (Interhemispheric Resource Center & Institute for Policy Studies 1999).
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183. Werksman et al., *supra* note 163, at 14-15.
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