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AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

AMENDMENT NO. 4
TO THE
PROJECT MEMORANDUM

NEW INDEPENDENT STATES:
Economic Restructuring and Financial Sector
Reform Project (110-0009)

APPROVED: April 11, 1995

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U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Waiver No. 95-0009-02

APR 11 1995

**ACTION MEMORANDUM FOR THE DEPUTY ASSISTANT
ADMINISTRATOR FOR PROGRAM OPERATIONS, ENI**

FROM: 
Richard A. Johnson, ENI/ED
Laurie Mailloux, ENI/PER

SUBJECT: Economic Restructuring and Financial Sector Reform Project (110-0009):
Amendment No. 4 - USAID Ukraine Export Credit Insurance Program

ISSUE: We require your approval on the following actions:

1) to authorize an amendment to project 110-0009 to finance a program of short-term export credit insurance for agricultural-related inputs to Ukraine. The new life of project (LOP) total will be increased by \$30 million, with the new LOP funding totalling \$160 million. All other budget items covered under Amendment No. 3, totalling \$130 million, remain the same. The Project Assistance Completion Date (PACD) will be extended through September 30, 1998 to allow for the completion of project activities under the Ukraine Export Credit Insurance Program.

2) to invoke the authority of Section 498B (j) of the Foreign Assistance Act of 1961, as amended, (the FAA) to enable the Export-Import Bank of the United States (EXIM) to apply its own statutes, regulations, policies, and procedures in carrying out this program on behalf of USAID notwithstanding any statutes and regulations applicable to USAID which are inconsistent with or contrary to EXIM statutes, regulations, policies, and procedures.

BACKGROUND and DISCUSSION: The purpose of the Economic Restructuring and Financial Sector Reform Project 110-0009, under which the Ukraine Export Credit Insurance Program will be funded, is to support the transformation of New Independent States' command economies into market-based economies. The purpose of the \$30 million dollar Export Credit Insurance Program is to leverage over \$130 million in export financing to guarantee exports of US agricultural inputs (seeds, fertilizer, herbicides, pesticides, and agricultural equipment) to Ukraine. The US Government and US agribusiness suppliers will develop a public-private partnership to foster economic growth both in the US and Ukraine.

This increase in LOP funding does not change the project focus of the project's major components: fiscal sector, financial sector, and market environment. It simply includes anticipated project costs for the Ukraine Export Credit Insurance Program.

The Economic Restructuring and Financial Sector Reform Project 110-0009, under which the Ukraine Export Credit Insurance Program will operate, was authorized on June 1, 1992 at \$18 million. It was amended on March 19, 1993, raising the LOP funding to \$77 million and to expand activities in fiscal reform, adding a new component in the market environment. It was amended again on June 2, 1993 and LOP funding was increased to \$130 million. On January 6, 1994, the project authorization was amended for a third time. This amendment extended the PACD from June 1, 1996 to June 1, 1997 and added a new component for investment and trade.

It is proposed that the Ukraine Export Credit Insurance Program in the Ukraine, as described in the attached Program Description, be authorized under the Economic Restructuring and Financial Sector Reform Project, and that the Economic Restructuring and Financial Sector Reform Project Authorization be amended to reflect increased LOP funding and extension of the PACD from June 1, 1997 until September 30, 1998 which will allow for the completion of this Ukraine Export Credit Insurance Program activity.

Ukraine has an immediate need for agricultural inputs to ensure that this year's harvests will be bountiful. President Kuchma has stressed that increased productivity in this year's harvest is urgently important for the country's entire economy. US agricultural firms have a large number of potential clients in Ukraine, but cannot provide the needed products because EXIM cannot provide its programs to a country with Ukraine's current credit rating. A formal review has begun to upgrade Ukraine's credit rating, but will not be finished soon enough to affect this year's crops. Ukraine also requires substantial balance of payments support which only US leadership can ensure.

Because of the urgent nature of Ukraine's agricultural needs and the lack of regular EXIM programs, this interim facility provides the best opportunity to get needed agricultural inputs to Ukraine in time to make an impact on this year's harvest.

NOTWITHSTANDING: Because of the urgent and immediate need to establish the Ukraine Export Credit Insurance Program, as well as the program's essentially commercial nature, we are requesting that you invoke "notwithstanding" authority under Section 498B (j) of the Foreign Assistance Act of 1961, as amended, to waive and suspend all statutes and applicable regulations, under USAID programs, including USAID's Environmental Procedures (22 CFR 216). Instead, the EXIM will execute and enforce its own environmental regulations to implement the Ukraine Export Credit Insurance Program.

ENVIRONMENTAL CONSIDERATIONS: However, in recognition of the environmental significance of some of the likely export commodities, such as fertilizers and pesticides, USAID will undertake a series of parallel efforts to assist private agribusinesses and government agencies in the Ukraine to properly manage and control the transport, storage, and use of agricultural chemicals. These efforts will include: (1) collection of product and

related information from exporters (by use of an environmental questionnaire to be included in EXIM's application package); (2) the immediate commissioning of an environmental review of pesticide use and regulation issues in the Ukraine; and (3) development of both short-term and long-term program activities, to be carried out by USAID based on the findings of that review. These future program activities will be designed to foster sustainable agricultural chemical use practices which achieve improved agricultural performance consistent with human health and environmental quality improvement objectives.

IMPLEMENTATION ARRANGEMENTS: Using authorities within the fiscal year 1995 Appropriations Act, the FREEDOM Support Act, and the FAA, USAID will fund export credit insurance to support US agricultural exports to Ukraine. USAID will work with EXIM to issue the insurance and require the Government of Ukraine to provide a sovereign guarantee on all transactions for which it will provide insurance. To cover the US risk, USAID will pay into the Treasury Department's federal financing account an appropriate subsidy, up to a total of \$30 million in USAID funds. In case of default, the federal financing account will pay claims by US exporters.

To manage the financial transactions operating under this program, the Office of Management and Budget will establish program and financing accounts with Treasury. ENI will then request a reappropriation from the existing NIS account to the new Treasury program account. ENI/PCS/B will forward, through Management Bureau's Budget Office to OMB, the request for reappropriation from the NIS account to the program account. This involves requesting a decrease in the NIS account and an increase in the Treasury program account. The two requests will be prepared simultaneously. Once funds are reappropriated, the program account must be tracked by two different categories: (1) subsidies and (2) administrative costs for the program. The financing account will be established simultaneously with the program account. The purpose of the financing account is to pay claims arising from defaults.

As guarantee commitments for specific export transactions are cleared and signed in USAID's Financial Management Office/Loan Management Division (FM/LMD), a simultaneous reservation and obligation is recognized. A liability is assumed at that point and funds are obligated in the program account. Perfection of the contract is assumed by receipt of the insurance premium from the exporter. This triggers the outlay of the subsidy obligation from the program to the financing account. Also deposited into the financing account are premiums paid by exporters. Reservations and obligations for the administrative costs will be recorded in the program account including program oversight, contracts for audits, and other miscellaneous documents such as travel authorizations, as necessary. Payments for these expenses are made directly from the program account.

Payments will be triggered through EXIM provisions of notification to USAID/FM/LMD of a default by the importer. FM/LMD will arrange for payment through Financial Management/Cash Management and Payments Office (FM/CMP). Simultaneously, notification of the payment for default will be made by EXIM to the Government of Ukraine at the time the claim is forwarded to USAID by EXIM. Follow-up to ensure reimbursement by the Government of Ukraine will be the responsibility of FM/LMD.

Several concerns were raised and addressed on this program. First, it was claimed that the IMF does not count short-term export financing balance of payments support. This claim is wrong and we have confirmed our contribution with the IMF. Second, concerns were raised over Ukraine's repayment ability within the original 360 day repayment terms and the ability to affect this year's planting season. This has been met by extending the repayment period to 540 days, which also allows for sales of agricultural inputs for next year's planting season. Third, because of extraordinary requirements of time, the program's importance and uniqueness, the desire to make the program mirror normal EXIM insurance programs as closely as possible, and after consultations with the Management Bureau, it was recommended to invoke "notwithstanding" authority and specify that USAID would substitute EXIM's regulations in favor of USAID's. EXIM's regulations are considered more appropriate for the commercial nature of this program.

It is anticipated that USAID/Kiev will rely on support from the Office of the General Counsel and ENI/ED concerning the review and approval of conditions, covenants, and other project implementation matters which may require legal or technical reviews not otherwise available to the USAID Mission.

CONGRESSIONAL NOTIFICATION: The Congressional Notification (CN) was sent to Congress on March 17, 1995. This program has been thoroughly vetted with Congress. Two Congressional holds placed by the Senate and House Appropriations Committees have been lifted. Particular Congressional concern stemmed from repeated calls by the Government of Ukraine and the Ukrainian-American community for the immediate opening of the EXIM in Ukraine for medium and long-term credits. The US Government explained that this is not possible under current law and credit risk review, but the proposed program will help build the positive credit history Ukraine needs for its credit rating to improve enough so that EXIM can re-open short-term financing. With good repayment, the terms could ultimately open to medium and long-term. The extension of this program from 360 to 540 days also addresses this concern.

AVAILABILITY OF FUNDS: A total of \$30 million is to be made available for this Ukraine Trade Credit Insurance Program and will be obligated within the newly authorized PACD of September 30, 1998.

RECOMMENDATION: Based on the foregoing, we recommend that by signing below, you:

- 1) approve the short-term single-buyer trade credit insurance program proposed for the Ukraine with an estimated LOP Funding of \$30 million to establish the Trade Credit Insurance Program as described in the Program Description;
- 2) amend the Economic Restructuring and Financial Sector Reform Project (110-0009) by increasing LOP Funding by \$30 million and extending the PACD from June 1, 1997 until September 30, 1998 which will allow for the completion of this project activity;

3) invoke the authority of Section 498B (j) of the FAA, to enable EXIM to apply its own statutes, regulations, policies, and procedures in carrying out this program on behalf of USAID notwithstanding any statutes and regulations applicable to USAID which are inconsistent with or contrary to EXIM statutes, regulations, policies, and procedures.

Approved: Carlos Pascual

Disapproved: _____

Date: April 12, 1995

ATTACHMENTS:

- | | |
|---------------|--|
| Attachment A: | Program Description |
| Attachment B: | Project Authorization Amendment No. 4 |
| Attachment C: | Guarantee Providing a Government of Ukraine Sovereign
Guarantee |
| Attachment D: | Action Memorandum for Administrator Atwood |

Clearance Sheet for:

Economic Restructuring and Financial Sector Reform Project (110-0009)

**Action Memo and Authorization Amendment No. 4
for Ukraine Export Credit Insurance Program**

Clearances:

ENI/PER, LMailloux	<u>RM</u>	Date	<u>4/5/95</u>
ENI/ED, RJohnson	<u>Raf</u>	Date	<u>4/5/95</u>
ENI/EEUD, NTumavick	<u>[Signature]</u>	Date	<u>4/11/95</u>
ENI/PD, PThorn	<u>[Signature]</u>	Date	<u>4/8/95</u>
ENI/PCS, PMatheson	<u>[Signature]</u>	Date	<u>4/11/95</u>
ENI/NCA, BKline	<u>[Signature]</u>	Date	<u>4/8/95</u>
ENI/FA, PCallen	<u>P Callen</u>	Date	<u>4/7/95</u>
ENI/PCS/B, SHudec	<u>[Signature]</u>	Date	<u>4-11-95</u>
GC/ENI, TGeiger	<u>[Signature]</u>	Date	<u>4/11/95</u>

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U.S. AGENCY FOR
INTERNATIONAL
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UKRAINE EXPORT CREDIT INSURANCE PROGRAM

PROGRAM DESCRIPTION

12 APRIL 1995

PROGRAM:

USAID, in a unique cooperation with the U.S. Eximbank (Eximbank), will establish a program for Ukraine to provide U.S. exporters with trade credit insurance of up to \$130 million to finance exports of U.S. agricultural supplies and inputs.

BACKGROUND:

Spring has arrived early in Ukraine, and Ukrainian farmers have a critical and urgent need for agricultural inputs for the 1995 planting and growing season -- fertilizers, pesticides, herbicides, seeds, and equipment. In recent years production has fallen sharply due in part to shortages of these products. These agricultural inputs will increase productivity and yields which will in turn increase agricultural exports, such as sunflower seed and oil, and thus generate additional foreign exchange earnings during the coming year. Ukraine has a credit rating on the USG ICRAS rating system which does not permit Eximbank to provide financing on transactions. U.S. suppliers, which are very interested in the Ukrainian market and have been recently involved in that market, cannot supply any of the inputs because of the lack of credit.

Ukraine, which was slow to adopt macro-economic reforms, has recently reached agreement with the IMF on a stand-by arrangement. A consultative group meeting with major donor countries was held on 21 March 1995 to close Ukraine's balance of payments gap. Increasing foreign exchange earnings and thus helping reduce Ukraine's balance of payments deficit will be critical to success of the reform program. Exports of Ukrainian agricultural commodities have significant potential for earning foreign exchange.

Last year the Government of Ukraine (GOU) asked for USG assistance in importing essential inputs for increasing agricultural production, but the USG was not able to respond, and Ukrainian agricultural production fell again for the third consecutive season. Again this year the GOU is requesting USG assistance for these critical imports. Given current budget constraints the USG does not have sufficient assistance funding to provide a commodity

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import program in the range of \$100 to \$132 million for the necessary agricultural inputs without gutting ongoing essential technical assistance programs in privatization, economic structural reform, the West NIS Enterprise Fund, social safety net, and democracy. The GOU has expressly requested that the USG provide some form of trade credit assistance to permit the immediate import into Ukraine of U.S. agricultural inputs. The export of U.S. agricultural inputs to Ukraine directly enhances U.S. economic interests by creating U.S. jobs and expanding international trade contacts in the NIS.

In response to Ukraine's need for short-term credit, State formed a working group with representatives from Treasury, OMB, Eximbank, and USAID to consider options. The most promising initial proposal was to transfer NIS funds to Eximbank for a collateral fund which would reduce the risk of insuring credits to Ukraine. However, given Eximbank's statutory requirement for "reasonable assurance of repayment," the collateral fund would have had to equal the amount of trade credit extended. In addition, OMB advised that such a collateral fund would not reduce the amount of the "subsidy cost" (slightly more than 22% for sovereign guaranty credits to Ukraine) necessary under federal credit reform legislation. In sum, this option would have required deposit of NIS funds equal to each credit extended plus payment of the 22% subsidy cost and was thus too costly. For these reasons this option was not feasible and rejected in favor of the present option in which USAID directly insures U.S. exports with leveraged funds while contracting Eximbank to administer the insurance policy.

DISCUSSION:

Proposed Exports: As noted above, the proposed Ukraine Export Credit Insurance Program will provide coverage of up to \$130 million for U.S. exporters of agricultural inputs to Ukraine. The GOU has provided an illustrative list of inputs needed for the 1995 crop year. The list totalling approximately \$40 million contains seeds as well as herbicides and pesticides, such as Titus, Grandstar, Harmony, Stomp, Dursban 4, Nurelle D, Rubigan 12EC, Treflan 2EC, Zelleck Super Starane, Lontrel 300, and DMA6 (and possibly Harness), which have been effectively used before in Ukraine. In addition, the GOU proposes approximately \$35 million in phosphoric acid to manufacture in Ukraine liquid fertilizer which has been used for many years, and around \$25 million for ingredients to manufacture herbicides. A state-owned enterprise will produce and distribute the liquid fertilizer using the phosphoric acid made available under this program. The GOU has not requested other specific items.

U.S. exporters have expressed a willingness to provide additional "uncovered" credit at their own risk if USAID undertakes this program. If this occurred, it would increase the amount of agricultural inputs made available under this program. A list of some U.S. firms which have expressed interest and potential products is attached.

Company	Total Export Value (Estimated Figures)	Ukrainian Partners (Private/State)	Commodities
American Cyanamid Princeton, NJ		Public/Private	Stomp--Crop Protection
Cargill -- Minneapolis, MN		Public/Private	Sunflower seed, Corn seed, Planters, Sprayers
DeKalb -- DeKalb, IL		Public/Private	Corn seed
DowElanco--Indianapolis, IN		Public/Private	2,4-D formulated/acid, Zelle Super, Nurelle D, Lontrel, Rubigan, Treflan, Starane, Dursban
DuPont -- Wilmington, DE		8 Private distributor	Grandstar, Titus, Harmony, Benlate
Elanco Animal Health Indianapolis, IN		Public/Private	Medicated feed additives
FMC -- Philadelphia, PA		Public	Arrivo crop protection, Food machinery
Kiev-Atlantic Minneapolis, MN		Private	Fuel, Fuel product, Combines, Planters, Sprayers, York Grain Bins, Grain Handling Equipment, Crop Protection Chemicals

Monsanto -- St Louis, MO		Public/Private	Kinze Planters, Great Plains Seed Drill, Brandt Sprayers, Cargill Sunflower, Dialen, Roundup
Pig Improvement Corporation			Breeding Pigs
Pioneer -- Des Moines, IA		Private	Corn Seed
TOTAL			

15 April 1995 Contract Completion (Estimated)

Time is of the essence. The early arrival of moderate temperatures has accelerated spring planting which is now occurring. To maximize the beneficial impact of the inputs to be imported, Ukrainians need to receive them as soon as possible. Every day lost will diminish the potential benefits of the program.

In discussions with Ukrainian officials and policy makers, U.S. representatives have emphasized the importance of permitting and encouraging private Ukrainian importers and distributors to participate fully in the program. Though there are only a few such firms today, this participation will strengthen ties between U.S. suppliers and local private entrepreneurs thereby building a base for future business. GOU representatives agree in principle on permitting private firms to participate but want to meet the needs of state importers as well.

The proposed program will be a first in Ukraine in that the GOU has not previously provided a sovereign guaranty for private importers of agricultural inputs. Thus, it will set a precedent for Eximbank programs which will begin once Ukraine's credit rating improves. Ukraine is now breaking up and privatizing the state distribution system for agricultural inputs. For example, the GOU is dividing UKRAGROCHEM, the state distributor of agricultural chemicals, into twenty five separate firms. Some of them will be clients of U.S. exporters under this program. Many have already begun acting independently. This program will enhance their capability to do so through commercial ties with U.S. suppliers.

At present, the GOU owns most farms which will receive and use the inputs financed under the proposed program. To increase agricultural production in Ukraine during the upcoming season, there is no alternative to working with state-owned farms.

Proposed Agreement: A written guaranty has been proposed which eliminates the necessity for negotiating a full Framework Agreement (customarily used by Eximbank where it opens for long-term business) with the Ukrainians. The proposed guaranty follows Eximbank's interim sovereign guaranty format and requires only the signature of the guaranteeing government to enter into force. This written guarantee states that the signing government will provide a sovereign guaranty and be directly responsible for reimbursing the USG in case of a default. It is expected that this guaranty, because of its simplicity, will be acceptable to the GOU.

Before this simpler guaranty was proposed, USAID attempted to reach agreement with the GOU on a more comprehensive agreement. That framework agreement would have been essentially the same as the expired Framework Agreement between Eximbank and the GOU dated May 4, 1992 (Eximbank Framework Agreement), except that USAID, not Eximbank, would issue trade credit insurance policies for approved transactions and the agreement would allow for risk-sharing splits between USAID and U.S. exporters. In 1992, Ukrainian officials negotiated and accepted the terms and conditions of the Eximbank Framework Agreement and carried out transactions pursuant to it and thus were familiar with its obligations. It seemed like the appropriate vehicle for the USAID program. However,

several issues arose which made it extremely difficult to negotiate a final agreement in a timely manner and has brought USAID to the present interim agreement.

First, there was no agreement on the Ukrainian side as to which GOU entity -- the Ukraine Eximbank, the Hard Currency Council, the Ministry of Finance, or some combination -- would sign the agreement, implement the program, and issue sovereign guarantees. Second, the GOU needed further clarification of the meaning of the sentence whereby the GOU waives its right to "diligence, presentment, demand, protest or notice of any kind." Clarification was provided but the Ukrainians refused to accept this crucial element which refers to normal commercial law practices. Third, the GOU initially suggested making both versions equally valid in Ukrainian and English. This approach would have greatly delayed signing because of translation and certification requirements. The Eximbank Framework Agreement was prepared and signed only in English. However, the GOU recently agreed to accept the English version as the control for the agreement. Given these issues, USAID opted to offer the GOU the simpler guaranty format.

Under the present proposal, the GOU will provide a sovereign guaranty for each Ukrainian importer participating in the program. Both the GOU and USAID must approve each transaction, and either party may veto or disapprove a proposed transaction. The sovereign guaranty means that if and when a Ukrainian importer defaults on a covered credit and USAID (through the U.S. Treasury Department's federal financing account) pays the U.S. supplier or its bank, then USAID on behalf of the USG will have a claim under the sovereign guaranty against the GOU to recover the payments made. There were no defaults under earlier Eximbank programs.

At the time USAID issues each trade credit insurance policy, it will make the corresponding payment for the "subsidy cost" to the federal financing account as required under federal credit reform legislation. Under Ukraine's current credit rating and with a GOU sovereign guaranty, the subsidy cost will be around 22% of the amount guaranteed. The obligation of NIS funds under this program occurs at the time of each subsidy cost payment, not at the time of signing the proposed USAID agreement. Once USAID pays funds into the financing account, they cannot be returned to USAID regardless of whether the credit is repaid by the Ukrainian importer. At the end of the program, any NIS funding not paid into the financing account remains available for obligation and reprogramming.

The proposed GOU guaranty does not state the total value of insured credits or commit the USG to insuring a specific amount of trade credits. The guaranty thus offers USG policymakers a flexible tool which is adaptable to circumstances.

Subsidy and Inter-agency Finance Mechanism: Prior to the request for reapportionment from the NIS account to the Treasury program account, OMB will establish the program and financing accounts with Treasury.

ENI/PCS/B will forward through M/B to OMB the request for reapportionment from the NIS account to the program account. This involves requesting a decrease in the NIS account and an increase in the Treasury program account. The two requests will be prepared simultaneously.

Once reapportioned, the program account must be tracked by two different categories: (1) subsidies and (2) administrative costs for the program. (2) Includes not only EXIMBANK reimbursements, but any incremental AID costs, such as funds required for audit and incremental AID program funded staff time arising as a result of the program. Payments for administrative costs are paid directly out of the program account.

The financing account will be established simultaneously with the program account. The purpose of this account is to pay claims arising from defaults.

Funds Reservation and Obligation: As letters of commitment for specific export transactions are cleared and signed in FM/LMD, a simultaneous reservation and obligation is recognized. A liability is assumed at that point and funds are obligated in program account. Perfection of the contract is assumed by receipt of the insurance premium from the exporter. This triggers outlay of the subsidy obligation from the program to the financing account. Also deposited into the financing account are premiums paid by exporters. Premium payments will be sent to the AID cashier along with a copy of the billing so that the funds can be credited to the financing account.

Reservations and obligations for the administrative costs will be recorded in the program account based upon the IAA, as well as contracts for audits and other miscellaneous documents such as travel authorizations, as necessary. Payments for these expenses are made directly from the program account.

Payments for Defaults and Recoveries: Payments will be triggered through the notification of a default by the importer. FM/LMD will arrange for payment through FM/CMP. Simultaneously, notification of the payment for default will be sent by FM/LMD to USAID/Ukraine. Recovery of the amount paid will then be pursued by USAID/Ukraine based on the LMD notification. Amounts recovered will be deposited by USAID/Ukraine to the financing account. A notification of the deposit will be forwarded to FM/LMD by the USAID/Ukraine Controller.

Proposed Application Mechanism: Companies wishing to apply for USAID's Ukraine Export Credit Insurance Program must meet the following initial eligibility criteria:

- Products must be agricultural-related goods and services, including but not limited to such items as, seeds, fertilizers and inputs for fertilizers, herbicides and pesticides and related inputs, equipment and spare parts, and other processing or distribution-related equipment and goods.

- The insured portions of the transactions must involve the sale of 100% U.S. goods and services.
- This program stipulates that there be risk sharing on the exporter's part equal to at least 50% of the total contract value. USAID insurance will cover the other 50%. The exporter is free to make any arrangements with the Ukrainian importer for payment of the uninsured amount, including advance payments, separate security, shorter payment terms, etc.
- All products must be arrive on Ukrainian soil by 15 December 1995.
- Single or multiple shipments must be made under a sales contract calling for payment terms of not greater than 540 days.
- The following products are ineligible for USAID Insurance: Products which are less than 50% U.S. content, any products used to conduct or service abortions, defense products, and products which do not meet U.S. Ex-Im Bank environmental regulations or other regulations or policies, except as otherwise agreed between USAID and U.S. Eximbank. (Annex A of the USAID application lists specific commodities not eligible for the insurance).
- USAID and the Government of Ukraine are negotiating a written guaranty under which the Government of Ukraine will provide its sovereign guaranty for this program.

Description of the Application Process: Eligible U.S. exporters should file applications for USAID's Ukraine Export Credit Insurance Program with the U.S. Eximbank. The application materials will include the following:

- USAID's Ukraine Export Credit Insurance Program Application Form. This application will contain supporting information, including credit reports and current financial statements on the exporter as well as disclosure certificates and Anti-Lobbying and Munitions Control forms and an environmental questionnaire. (Two Copies, in English)
- Note: Ukraine Ex-Im Bank Insurance Application materials will need to be completed by the Ukrainian buyer to meet Ukrainian requirements. U.S. suppliers should advise Ukrainian importers of this requirement and seek to accelerate this process. (Two Copies; one English, one Ukrainian).

The review process for an application will be as follows:

- USAID and U.S. Eximbank will make an initial determination of whether the application meets the above eligibility criteria.
- If it meets the criteria, pertinent details of the proposed transaction will be forwarded to the Ukraine Eximbank and Ukraine Ministry of Economy for approval by the Government of Ukraine.
- Upon approval by the Government of Ukraine, U.S. Eximbank, upon specific concurrence from USAID and as USAID's agent, will issue a binding commitment on the transaction valid for up to 90 days.
- Upon payment of a non-refundable premium by the exporter to USAID, U.S. Eximbank, as agent for USAID, will issue an insurance policy on the transaction. Premium payment must be made prior to the expiry date of the commitment. Once issued, the policy is non-cancellable by USAID.
- Reports of overdues, if any, on insured obligations must be submitted to U.S. Eximbank which will notify USAID.
- Formal notification of a claim must be submitted to U.S. Eximbank. U.S. Eximbank will process the claim and determine if the insured complied with the terms and conditions of the policy. After it completes the review, U.S. Eximbank will make a recommendation to USAID as to whether the insured complied with the terms and conditions of the policy. If USAID approves the claim, the claim will be paid out of the Treasury Department's federal financing account.
- The Government of Ukraine, as ultimate guarantor under the written guaranty, will reimburse the U.S. Government the amount issued in payment on a claim.

Financing and Insurance Coverage: Under USAID's Ukraine Export Credit Insurance Program, the insurance coverage would be substantially similar to that offered under U.S. Eximbank's Short-Term Single-Buyer Export Credit Insurance Policy, save for the following:

Required Payment Structure for USAID Insured Transactions--

An irrevocable letter of credit opened by the Ukraine Export-Import Bank which provides for payment against 50% of invoice amount(s) on terms up to 540 days. Multiple shipments, if needed, are permissible if stipulated as acceptable in the letter of credit.

Additional Parameters--

- Shipment Volume Limit equal to value of total contract.
- Claim Payment Limit set at an amount equal to 50% of Shipment Volume Limit (contract price).
- USAID insurance premium is set at \$5.70 per \$100 of Claim Payment Limit.
- Stipulation that irrevocable letter of credit pay 50% of value of invoice(s) provided. All other normal requisite documents evidencing shipment such as bills of lading, etc. would also be required to effect payment under the letter of credit.
- Percentage of cover set equal to 100% of the 50% (Claim Payment Limit).
- No provision for sharing of recoveries after payment of claim. Each party, USAID and the insured exporter, pursues recoveries independently.

Since the Ukraine Ex-Im Bank will examine the relevant required documents under the letter of credit related to the insured transaction, it will have documentary evidence as to the products being supported and the amounts involved. The full faith and credit of the Government of Ukraine will be conveyed to USAID pursuant to a separate underlying bilateral agreement.

Indicators: Indicators for USAID's Ukraine Export Credit Insurance Program should demonstrate the following impact on Ukraine's agricultural sector and U.S. agricultural exports.

- The agricultural value-added which this program generates in Ukraine is equal to at least twice the value of the agricultural commodity inputs insured and imported into Ukraine. For example, with \$130 million in agricultural inputs, the value-added should be at least \$260 million.
- The value of agricultural production in Ukraine increases by 3% (based on Ukraine National Account Statistics) during the 1995 harvest.
- The volume and total dollar value of Ukrainian agricultural exports are shown to increase from 1994 base year figures by at least 1% in calendar years 1995 and 1996.

- The program generates at least \$130 million in exports, directly insured by USAID, of U.S. agricultural-related inputs to Ukraine during 1995 that otherwise would not have been transacted.

Environmental Impact Requirement: Normally, USAID would require an initial environmental evaluation to ensure that exported products, such as above mentioned pesticides and herbicides, will have no adverse environmental impact. Because of extraordinary requirements of time, the program's importance and uniqueness, and the desire to make the program mirror normal Eximbank insurance programs as closely as possible, USAID has chosen to waive any laws and regulations applicable to USAID which are inconsistent with or contrary to Eximbank's statutes, regulations, policies, and procedures, by invoking "notwithstanding authority." U.S. Eximbank's regulations were considered more appropriate for the commercial nature of this program. This decision has been taken by the ENI Bureau, with concurrence by the Management Bureau and the Administrator of USAID. In addition, USAID would set up a parallel program to identify potential problems concerning the use of imported pesticides, assist Ukraine develop its agricultural environmental control standards, and ensure that products will be handled properly.

The GOU has stated and is prepared to present upon request of the USG its registration of the proposed pesticides and herbicides that might be financed under this program. All the above listed pesticides and herbicides are registered for use in Ukraine and have been extensively used there before (with the exception of Harness which is in the process of being registered). To approve registration of pesticides and herbicides, Ukrainian government officials must study potential adverse impact on the environment. The GOU is willing to make available to USAID environmental experts the registration and supporting studies for each product. USAID environmental experts will be sent to Ukraine to begin an initial evaluation of the country's needs.

Statutory Authority and Delegation of Authority: Under Section 560(a) (3) of the Foreign Operations, Export Financing, and related Programs Appropriations Act FY 1994 (Public Law 103-87), funds for the NIS may be ("should") be allocated for the purpose of enhancing trade and investment with the NIS, including "costs of loans and loan guarantees." Thus FY 1994 NIS funds are available to pay the subsidy costs of guarantees for trade credits for the NIS. In addition, the legislative history of the Foreign Operations, Export Financing, and Related Programs Appropriations Act for FY 1995 supports the conclusion that Congress intended to make available FY 1995 NIS Funds for paying subsidy costs of guarantees. Both FY 1995 and FY 1994 NIS funds are "no year" funds and thus remain available in future fiscal years for this purpose.

Section 635(a) of the Foreign Assistance Act of 1961, as amended (FAA), grants authority to furnish assistance "on such terms, including cash, credit, or other terms of repayment (including repayment in foreign currencies or by transfer to the USG or commodities) as may be determined to be best suited to the achievement of the purposes of the" FAA. Section 498(4) of the FAA authorizes the President to provide assistance to the

NIS for "creating conditions that promote trade and investment." Under these provisions, the Executive Branch may determine that USAID guarantees of trade credits are the "terms" for furnishing assistance "best suited" to create "conditions that promote trade" with the NIS.

The Legal Advisor's Office at State has also reviewed whether there is statutory authority for the proposed program and concurs that both FY 1994 and FY 1995 NIS funds may be used for this purpose. OMB has approved going ahead with this program.

Primary responsibility for managing this program would, however, remain, with the ENI Bureau in Washington. An interagency agreement will be signed between USAID and Eximbank detailing Eximbank's contract duties in administering the insurance policies and providing for payment of Eximbank employees working on this program. The USAID Mission in Kiev would likely also require either a personal services contractor or U.S. direct hire officer for four to six weeks to assist the Mission and the GOU in implementing the program with all possible speed.



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

PROJECT AUTHORIZATION AMENDMENT NO. 4

Name of Country: New Independent States of the Former Soviet Union
Name of Project: Economic Restructuring and Financial Sector Reform
Number of Project: 110-0009

The authorization for Economic Restructuring and Financial Sector Reform Project dated January 6, 1994 is changed to:

(a) increase the LOP funding of the Project by \$30 million, increasing the authorized level under this Project to a total of \$160 million.

(b) amend the last sentence of paragraph 1 to read as follows: "The planned life of project is six years and three months from the date of the original authorization."

With the exception of changes (a) and (b) provided above, the Project Authorization dated January 11, 1994, continues to remain in full force and effect.

Carlos Pascual
Carlos Pascual
Deputy Assistant Administrator
Bureau for Europe and the
New Independent States

April 12, 1995
Date

GUARANTEE

In consideration of the United States of America, acting by and through the Agency for International Development ("USAID"), issuing trade credit insurance, the Government of Ukraine ("GOU") unconditionally and irrevocably guarantees to USAID the full and punctual payment in U.S. dollars of any amount due and payable under any letter of credit or bank guarantee ("Guaranteed Obligation") designated by the GOU Hard Currency Council by written notice to USAID in the form of Appendix A hereto. Should the obligor identified therein (the "Obligor") fail to fulfill any obligation incurred in connection with the Guaranteed Obligation, the GOU upon receipt of a written cable or telex notice from USAID will pay immediately to USAID and any entity insured or guaranteed by USAID any sums due and payable with respect thereto. The _____ of the GOU shall act as agent for the GOU under this Guarantee for purposes of receiving said notice from USAID and making payment to USAID.

This Guarantee shall be a direct, general and unconditional obligation of the GOU, shall be legal, valid, binding and enforceable in accordance with its terms, and no other external debt of Ukraine shall enjoy and priority over such obligation. The GOU waives diligence, presentment, demand, protest and any requirement that USAID or the insured entity exhaust any rights or take any action against the Obligor and hereby consents to any extension of time of payment, renewal or rescheduling of the Guaranteed Obligation. This Guarantee is a continuing guarantee, which shall apply to all Guaranteed Obligations, is irrevocable and is a guarantee of payment and not of collection, it being the intention of the GOU that its liability under this Guarantee shall not be discharged until the payment in full of the Guaranteed Obligations. The GOU agrees that USAID is not required to provide it with notice of any kind, including, without limitation, notice of defaults by the Obligor, extension of time or the incurring of additional or increased Guaranteed Obligations. Prior to first issuance by USAID of credit insurance, the GOU will furnish to USAID, in form and substance satisfactory to USAID, a legal opinion that this Guarantee has been duly authorized and executed on behalf of the GOU and constitutes a valid and legally binding obligation of the GOU.

This Guarantee is prepared in both English and Ukrainian. In the event of ambiguity or conflict between the two versions, the English language version will control.

Executed as of this ____ day of _____, 1995.

THE GOVERNMENT OF UKRAINE
acting by and through the Hard Currency Council of the Cabinet of
Ministers

By _____
Name: Mitiukoff
Title: Chairman, Hard Currency Council

**APPENDIX A
DESIGNATION OF GUARANTEED OBLIGATIONS**

[Letterhead of the Hard Currency Council of the Cabinet of Ministers of the Government of Ukraine]

[Date]

Agency for International Development
ENI Bureau, Room 6724, NS
320 21st Street, NW
Washington, DC 20523-009

We hereby designate the following [letter of credit/bank guarantee/draft] pursuant to the Guarantee signed as of _____, 1995 by the Government of Ukraine, acting by and through the Hard Currency Council of the Cabinet of Ministers. The obligations of the Obligor identified below arising as the result of or in connection with such [letter of credit/bank of the guarantee/draft] are guaranteed by the Government of Ukraine, pursuant and subject to the terms and conditions set forth in the Guarantee. [Please provide the following information for each letter of credit, bank guarantee or draft being guaranteed.]

Type of Guaranteed Obligation: [letter of credit/bank guarantee/draft]

Name of Obligor: [Issuing bank/guaranteeing bank/drawee]

Beneficiary/guarantee party/drawer:

Amount:

Terms:

[Name of: confirming bank
 negotiating bank
 paying bank
 accepting bank]*

Sincerely,

The Government of Ukraine, acting by and through the Hard Currency Council of the Cabinet of Ministers

By _____
Name Mitiukoff
Title Chairman, Hard Currency Council

*Fill out for letters of credit only.



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Assistant Administrator
Bureau for Europe and the
New Independent States

APR - 7 1995

ACTION MEMORANDUM FOR THE ADMINISTRATOR

FROM: AA/ENI, Thomas A. Dine *[Signature]*
RE: Ukraine Export Credit Insurance Program

ISSUE: I request that you approve a program of short term credit insurance on agricultural-related inputs to Ukraine. The direct cost of the program is \$30 million. This will leverage between \$160-190 million in financing for U.S. exports to Ukraine. With your approval, we will finalize and authorize this program (see attached) and initiate implementation.

BACKGROUND and DISCUSSION: Ukraine has an immediate need for agricultural inputs to ensure successful harvests. U.S. agricultural firms have a large number of potential Ukrainian clients but require financing to enter the market. Ukraine's present credit rating precludes U.S. Eximbank from financing these transactions. Ukraine is nearing passage of a budget that will permit the IMF to approve a stand-by agreement to support economic reform. Also contingent upon this agreement is donor support for assisting Ukraine ^{close} its balance of payments gap. To enable Ukraine to proceed with its policy reform agenda and meet its agricultural needs while supporting U.S. exports and expanding commercial ties to the region, USAID has developed a special Ukraine Export Credit Insurance Program.

USAID is authorized to provide economic assistance related to "loans and loan guarantees" and create "conditions that promote trade" with the NIS. Under this program, USAID will fund short term trade credit insurance to support U.S. agricultural exports to Ukraine. USAID will contract with U.S. Eximbank to issue the insurance and require the Government of Ukraine to provide a sovereign guarantee on all transactions for which it will provide insurance. To cover the U.S. risk, USAID will pay into the Treasury Department's federal financing account an appropriate subsidy, up to a total of \$30 million in USAID funds. This amount will cover the cost of approximately \$130 million in trade credit insurance. Moreover, we will also seek matching private sector funding from suppliers who participate in this program. Currently such financing is estimated at \$30-60 million.

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23

The Ukraine Export Credit Insurance Program is the primary component in the recent U.S. pledge of \$250 million at the Ukraine Consultative Group meeting in Paris. Depending on the actual levels of U.S. private sector financing under the program, the total value of leveraged exports (all countable as towards that pledge) could be between \$160-190 million. The program will support agricultural inputs for this and next season and provides an interim financing measure for U.S. exports despite Ukraine's credit rating. Along with a stand-by agreement, the program could provide a positive credit history that could be used as part of an Interagency Country Risk Assessment System (ICRAS) review to upgrade Ukraine's credit rating and re-establish normal U.S. Eximbank short term export credit programs.

This program also leverages far more than the financing provided for agricultural inputs. By allowing the U.S. to pledge \$250 million at the Ukraine CG, the program effectively leveraged pledges of \$300 million from the EU and \$200 million from Japan, in effect doubling previously planned EU and Japanese pledges. Although the EU pledge is conditional on progress toward closure of Chernobyl, the IMF has counted the EU pledge against Ukraine's balance of payments gap. With Ukraine's passage of an austerity budget and the assurance of bilateral funding for Ukraine, the IMF is expected to approve Ukraine's first Stand-By Agreement for comprehensive economic reform in early April.

Several concerns were raised and addressed on this program. First, it was claimed that the IMF does not count short term export financing as balance of payments support. This claim is wrong and we have confirmed our contribution with the IMF. Second, concerns were raised over Ukraine's repayment ability within 360 days and the ability to affect this year's planting season. This has been met by extending the repayment period to 540 days, which also allows sales of agricultural inputs for next year's planting season. Third, because of extraordinary requirements of time, the program's importance and uniqueness, the desire to make the program mirror normal Eximbank insurance programs as closely as possible, and after consultations with the Management Bureau, it was recommended to invoke "notwithstanding authority" and specify that USAID would substitute U.S. Eximbank's regulations in favor of USAID's. U.S. Eximbank's regulations were considered more appropriate for the commercial nature of this program. In addition, USAID would set up a parallel program to identify potential problems concerning the use of imported pesticides, assist Ukraine develop its agricultural environmental control standards, and ensure that products will be handled properly.

This program has been thoroughly vetted with the Congress. Two Congressional holds placed by the Senate and House Appropriations Committees have been lifted. Particular Congressional concern stemmed from repeated calls by the GOU and Ukrainian-American community for the immediate opening of U.S. Eximbank in Ukraine for medium and long-term credits. The USG has explained that this is not possible under current law and credit risk review and that the proposed program will help build the positive credit history Ukraine needs for its credit rating to improve enough that U.S. Eximbank can re-open short term financing. With good repayment, the terms could ultimately open to medium and long term. The extension of this program from 360 to 540 days also addressed this concern.

CONCLUSION: Because of the importance of agriculture to Ukraine's economy and the urgent nature of Ukraine's agricultural needs, the role of this program in supporting Ukraine's IMF agreement, and the lack of regular U.S. Eximbank programs, this interim facility provides the best opportunity for the U.S. to support Ukraine's economic transformation.

RECOMMENDATION: That by signing below, you approve the Ukraine Export Credit Insurance Program with an estimated Life of Project Funding of \$30 million. With your approval, the ENI Bureau will proceed to finalize the project documentation needed to implement this activity.

*Tom
Highly creative
program. Congratulate
Carlo and all
who worked on
it. 13*

Approved: _____



Disapproved: _____

Date: _____

4-6-95

25

Clearances:

AA/M: LByrne	<u>LB</u>	date	_____
PPC/PAR: BScheurch	<u>BS</u>	date	4/1/95
LPA: TVellenga	<u>TV</u>	date	4/7/95
ES: AWilliams	<u>AW</u>	date	4/10/95
AA/ENI: CPascual	<u>CP</u>	date	4/2/95
ENI/NCA: BKline	<u>BK</u>	date	4/11/95
ENI/NCA: SGrossman	<u>SG</u>	date	4/4/95
ENI/GC: TGeiger	<u>TG</u>	date	4/7/95
ENI/PD: PThorn	<u>PT</u>	date	4/4/95
DAAID: CLancaster		date	_____

ENI/NCA/WNIS:EKiefel:04/03/95:6-7057:actnaa.mmo



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Waiver No. 95-0009-02

JUN 15 1995

**ACTION MEMORANDUM FOR THE DEPUTY ASSISTANT
ADMINISTRATOR FOR PROGRAM OPERATIONS, ENI**

FROM:

R.A. Johnson
Richard A. Johnson, ENI/ED

Laurier Mailloux, ENI/PER *LM for*

SUBJECT:

**USAID Ukraine Export Credit Insurance Program
Economic Restructuring and Financial Sector Reform Project (110-0009)**

ISSUE:

We require your approval on the following actions:

- 1) to approve the revised Program Description of the Ukraine Export Credit Insurance Program;
- 2) to approve the attached 632(b) Inter-Agency Agreement that will fund the administrative costs associated with reviewing and processing the export applications filed with the Export-Import Bank of the United States (Eximbank);
- 3) to Delegate Authority to the Office Director, ENI/ED, to sign letters of commitment approving specific export transactions; and
- 4) consistent with the intent of the Action Memorandum dated April 11, 1995, to conform the language notwithstanding to section F.1 of the Schedule to the proposed USAID/Eximbank Inter-Agency Agreement.

BACKGROUND and DISCUSSION: USAID, in a unique cooperation with Eximbank, will establish a program for Ukraine to provide U.S. exporters with trade credit insurance of up to \$175 million to finance exports of U.S. agricultural supplies and inputs.

USAID will provide political and commercial risk insurance on 100% of the claim payment limit value of a transaction which is supported by a sovereign guarantee of the Government of Ukraine. The claim payment limit is the amount of the transaction's contract price (shipment volume limit) which an exporter can claim against the USAID insurance policy in the case of a default. The insurance will be provided only on U.S. goods and services as determined by Eximbank's U.S. content rules. This program will provide insurance only on agricultural/food systems products sold on a short-term, 540 days or less, payment basis. It will complement Eximbank's short-term and medium-term coverage for all other products.

Once the USAID program ends, Eximbank will provide short-term coverage for exports of agricultural/food systems products to Ukraine.

To provide this insurance, USAID and Eximbank will review applications for environmental and developmental impact and to ascertain whether any proposed exports are on the Environmental Protection Agency's listings of banned or restricted products. The Government of Ukraine will also review the application and provide a sovereign guarantee. Once approved and guaranteed, Eximbank, as USAID's agent, will provide a commitment of insurance to the exporter who may decide to purchase the insurance policy by paying a non-refundable premium to USAID. The premium is set on a sliding scale per \$100 of claim payment limit and based on the repayment terms:

180 days	2.14%
360 days	3.80%
540 days	4.28%

Once the premium has been paid, USAID outlays the subsidy into a financing account which together with the premium, will cover the cost of possible defaults. The subsidy cost is determined by the credit rating of the country for which the insurance is issued. With Ukraine's present credit rating, USAID will pay 8.92% on the claim payment limit of each transaction and the insurance premium into a federal financing account established for this program. In the case of a default, funds will be used to repay the U.S. exporter the full claim payment value of his insured transaction. The Government of Ukraine is then obligated by the terms of its sovereign guarantee to reimburse USAID for that same amount.

This program was initially proposed as a public-private partnership in which USAID and U.S. exporters would each share fifty percent of the risk on a transaction, requiring insurance on only fifty percent of the transaction's contract price. However, the inability to quickly come to an agreement on the sovereign guarantee, the eventual upward revision of Ukraine's credit rating and restoration of Eximbank short and medium-term coverage, and the lack of private sector participation as the planting season came to a close, required a revision in the program's coverage terms if it was to continue at all. It was decided to continue the program because it had been the basis of the U.S. pledge in support of Ukraine at the April Consultative Group meeting. To remain complementary to Eximbank programs, the insurance coverage was raised to 100% and the program was designed to follow normal Eximbank rules and regulations for short-term insurance. (Attachment A)

IMPLEMENTATION ARRANGEMENTS: Using authorities within the fiscal year 1995 Appropriations Act, the FREEDOM Support Act, and the Foreign Assistance Act (FAA) of 1961, as amended, USAID will fund export credit insurance to support US agricultural exports to Ukraine. USAID will work with Eximbank to issue the insurance and has obtained a Government of Ukraine sovereign guarantee on all transactions for which it will provide insurance. To cover the US risk, USAID will obligate an appropriate subsidy into a program account established for this program. Funds for the subsidy or individual

transactions will be transferred to USAID's financing account. In case of default, USAID's account will pay claims by US exporters.

In a cable sent to USAID/Kiev on May 8, 1995, you approved the Delegation of Authority for the Mission Director, USAID/Kiev, or the US Ambassador to Ukraine, or both the authority to negotiate and execute the Framework Agreement with the Government of Ukraine, providing a sovereign guarantee for the insured transaction. The Framework Agreement was signed on May 10, 1995 formalizing the Ukrainian sovereign guarantee. (Attachment B)

It is necessary that a Delegation of Authority also be approved for the ENI/ED Office Director to sign letters of commitment on behalf of USAID approving specific export transactions. (Attachment C)

A written guarantee was originally proposed which would have eliminated the necessity for negotiating a full Framework Agreement (customarily used by Eximbank where it opens for long-term business) with the Ukrainians. However, the Government of Ukraine's refusal to accept this agreement and the eventual upward revision of the Ukraine's credit rating to a level where normal Eximbank programs opened on May 14, 1995, required that a full Framework Agreement should be negotiated. (Attachment D) The shorter written guarantee would have followed Eximbank's interim sovereign guarantee format and required only the signature of the guaranteeing government to enter into force. This written guarantee would have stated that the signing government would provide a sovereign guarantee and be directly responsible for reimbursing the USG in case of a default. The Framework Agreement allows for the opening of normal short and medium-term Eximbank programs in Ukraine, except for short-term exports of agricultural inputs which the USAID-Government of Ukraine program will finance. Once the USAID program funds are fully obligated, Eximbank will begin offering short-term insurance on agricultural inputs.

It is anticipated that USAID/Kiev will rely on support from the Office of the General Counsel, ENI and the ENI Enterprise Development Office concerning the review and approval of conditions, covenants, and other project implementation matters which may require legal or technical reviews not otherwise available to the USAID Mission.

The proposed Inter-Agency Agreement (IAA) with the Eximbank will operate for about 3 years. (Attachment E) USAID is being asked to cover the administrative costs associated with the processing of export applications and claims for the Trade Credit Insurance Program. Because of the 540 day repayment terms associated with export credit insurance, it is necessary that the IAA operate at least 540 days from the date of the last export shipment. Annexes A and B of this IAA contain the Program Description and Projected Budget, respectively. This IAA also includes USAID's standard terms and conditions in the Schedule Section as well as USAID's Standard Provisions in Annex C. Eximbank is in the process of reviewing the final draft for concurrence with the language included in both the Schedule and the Standard Provisions of the IAA. This will facilitate Eximbank's approval of these final documents.

NOTWITHSTANDING: The intent of invoking notwithstanding in Section 498B (j) of the Foreign Assistance Act of 1961, as amended, in the Action Memorandum dated April 11, 1995 (Attachment F) was to permit Eximbank to operate under its own statutes and regulations. Consistent with that intent, you are requested to invoke notwithstanding in accord with the language requested by Eximbank in Section F.1 of the Schedule to the Inter-Agency Agreement (Attachment E). The effect of invoking notwithstanding as requested by Eximbank is to waive all statutes and regulations which apply to USAID except the following provisions which cannot be waived under the express terms of Section 498B (j): chapter 11 of part I of the FAA, Section 634A of the FAA, Sections 669 and 670 of the FAA; Sections 306 and 307 of the Chemical and Biological Weapons Control and Warfare Elements Act of 1961; the Anti-Deficiency Act; the Congressional Budget and Impoundment Control Act of 1974; the Balanced Budget and Emergency Deficit Control Act of 1985; and the Budget Enforcement Act of 1990. Under this action, Eximbank would not be subject to any statutes or regulations applicable to USAID and would thus administer funds under the IAA in accord with those regulations and statutes applicable to it.

AVAILABILITY OF FUNDS: OMB has established the Ukraine Export Credit Insurance Program account to facilitate the special accounting and analysis requirements associated with credit programs by Credit Reform.

RECOMMENDATION: Based on the foregoing, we recommend that by signing below, you:

- 1) approve the revised Program Description to allow Eximbank's normal short and medium-term insurance; once the USAID program funds are fully obligated, Eximbank will begin offering short-term insurance on agricultural inputs as described in the attached Program Description;
- 2) approve the attached 632(b) Inter-Agency Agreement with Eximbank for funding totalling \$231,810 to cover the administrative costs of processing the export applications and claims;
- 3) approve the Delegation of Authority to the Office Director ENI/ED to sign letters of commitment approving specific export transactions; and
- 4) invoke notwithstanding of Section 498B (j) of the FAA as provided in section F.1 of the Schedule of the USAID/Eximbank IAA.

Approved: Carlos Pascual

Disapproved: _____

Date: June 15, 1995

ATTACHMENTS:

- Attachment A:** Revised Program Description
Attachment B: Delegation of Authority to the US Ambassador and/or
USAID/Kiev Mission Director
Attachment C: Delegation of Authority to ENI/ED Office Director
Attachment D: Framework Agreement
Attachment E: Inter-Agency Agreement 632(b) with Export-Import
Bank of the United States
Attachment F: Action Memorandum Dated April 11, 1995
Attachment G: Memorandum on Technical and Financial Procedures

Clearance Sheet for:

Action Memo for Ukraine Export Credit Insurance Program

Economic Restructuring and Financial Sector Reform Project (110-0009)

Clearances:

ENI/ED, RJohnson	<u>RAJ</u>	Date	<u>6/15/95</u>
ENI/PER, LMailloux	<u>NB</u>	Date	<u>5/15/95</u>
ENI/EEUD, NTumavick	<u>NT</u>	Date	<u>6.15.95</u>
ENI/PD, PThorn	<u>PT</u>	Date	<u>5/19/95</u>
ENI/PCS, PMatheson	<u>PM</u>	Date	<u>6/15/95</u>
ENI/NCA, BKline	<u>BK</u>	Date	<u>5/17/95</u>
ENI/NCA, SGrossman	<u>SG</u>	Date	<u>5/19/95</u>
ENI/FA, PCallen	<u>PC</u>	Date	<u>5/17/95</u>
GC/ENI, TGeiger	<u>TG w/ change</u>	Date	<u>6/15/95</u>

Drafter: MWalker: U:\actmem1.ukr Drafted: 5/10/95, final revisions: 6/15/95



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

UKRAINE EXPORT CREDIT INSURANCE PROGRAM

PROGRAM DESCRIPTION

15 June 1995

PROGRAM:

USAID, in a unique cooperation with the U.S. Export-Import Bank (Eximbank), has established a program for Ukraine to provide U.S. exporters with trade credit insurance of up to \$175 million to finance exports of U.S. agricultural supplies and inputs.

BACKGROUND:

Leading Factors: Ukraine, though slow to adopt macro-economic reforms, has taken dramatic steps to secure a more stable macro environment and begin the structural reforms necessary to revitalize its economy. This program was initially proposed in January 1995 to address the following situation:

- During his state visit to the U.S., Ukrainian President Kuchma requested assistance from the USG in obtaining agricultural and food systems inputs to develop his country's most important commercial sector. The Government of Ukraine (GOU) asked for the same assistance last year, but the USG could not respond.
- Ukraine's credit rating precluded all Eximbank programs for financing U.S. exports. Without financing, U.S. agribusiness suppliers were unable to sell their products in Ukraine.
- The agricultural sector is Ukraine's primary engine for future economic growth. Privatization of land, farms, agribusinesses, and the distribution and processing systems is necessary to throttle up this engine. USAID is integrally involved in developing that sector and providing support for newly privatized distributors of agricultural and food systems products and services.
- Last year food production in Ukraine fell for the third consecutive year to its lowest level since independence. Support for farming and processing inputs to

reduce waste, increase production, and rebuild the deteriorating infrastructure has become increasingly important. There is an urgent need in Ukraine for inputs such as fertilizers, pesticides, herbicides, seeds, and equipment.

- Ukraine has been running large balance of payments deficits, in part because the former "breadbasket of the Soviet Union" must purchase food for its citizens. These deficits have greatly reduced Ukraine's foreign exchange reserves. Improving the productivity of Ukrainian agriculture would help eliminate these deficits by decreasing the need to import foodstuffs and increasing agricultural exports of such commodities as sunflower seed and oil that generate foreign exchange earnings.

USG Response: To truly affect Ukraine's agricultural sector it was determined that at least \$100 million in commodities would need to be supplied. Given current budget constraints the USG did and still does not have sufficient assistance funding to create a commodity import program for that level of U.S. agricultural and food systems products to Ukraine without gutting all the other ongoing technical assistance programs in privatization, economic structural reform, the West NIS Enterprise Fund, social safety net, and democracy. With Ukraine's credit rating at that time, the needed commodities also could not be financed through existing Eximbank credit programs. Something imaginative had to be created to fill in the gap between Ukraine's needs, the credit roadblock, and the tight funding levels.

In response, State formed a working group with representatives from Treasury, OMB, Eximbank, and USAID to consider options. The most promising initial proposal was to transfer NIS funds to Eximbank for a collateral fund which would reduce the risk of insuring credits to Ukraine. However, given Eximbank's statutory requirement for "reasonable assurance of repayment," the collateral fund would have had to equal the amount of trade credit extended. To provide \$100 million in insurance would have required USAID to transfer \$100 million to Eximbank which it just did not have available.

A further wrinkle was added when OMB advised that such a collateral fund would not reduce the amount of the "subsidy cost" (slightly more than 22% for sovereign guarantee credits to Ukraine) necessary under federal credit reform legislation that would have to be paid on each insured transaction. This option required depositing NIS funds equal to each credit extended plus a non-recoverable subsidy equal to 22% of the transaction's value into the Treasury. This was just too costly for USAID to pursue as it would require \$130 million to provide \$100 million of insurance. At this point the entire program was about to be reconsidered and possibly rejected when a new proposal was broached in which USAID would directly insure U.S. exports with leveraged funds while coordinating with Eximbank to administer the insurance policy. This option would alleviate the need for the 100% funding of Eximbank and require USAID only to provide subsidy costs for each transaction and administrative costs for Eximbank. This would allow USAID to use a limited amount of funds which could be leveraged up to five times the amount paid in subsidy cost. State determined that the maximum amount available for this program was \$30 million. With that

level of funding, USAID could provide approximately \$175 million in insurance plus the administrative costs for Eximbank and USAID.

Another aspect of this program was the proposal from the U.S. suppliers of agricultural and food processing systems products to create a public-private partnership in which they would share fifty percent of the risk on a transaction. USAID would insure only fifty percent of the transaction's contract price and pay a subsidy based only on that amount and not the transaction's full contract price. Depending on the actual private sector participation, the total value of products imported into Ukraine could have reached \$260 million based upon a platform of \$130 million in insurance. Also at issue was the extent to which USAID would have to follow its own environmental regulations and procedures for this program as many of the products proposed by the companies were fertilizers, herbicides, and pesticides. This was ultimately resolved in favor of following Eximbank regulations rather than USAID's while establishing a parallel environmental project to assist Ukraine develop better systems for using and storing chemical products. (A detailed discussion of this issue follows in the Discussion section). At this point the program also gained importance as the major tool available for a U.S. pledge at the upcoming Ukraine Consultative Group meeting.

The Consultative Group Pledge: The international community has also done much to assist Ukraine meet its economic stabilization and balance of payments difficulties. Leveraging this international support, especially the provision of a stand-by arrangement from the IMF, has required substantial initiative and ingenuity by the USG. The USG has been forced to demonstrate its commitment to Ukraine with strong levels of bilateral assistance before other donors would follow.

This was the situation before the USG as the Ukraine Consultative Group meeting in late March grew nearer. The USG needed to develop a pledge of non-grant balance of payments support in the neighborhood of \$250 million in order to leverage the remaining \$600-650 million in pledges from other donors such as the Japanese, European Union, and the international financial institutions to meet the nearly \$900 million balance of payments gap Ukraine had incurred. By gaining this support, the USG would also be paving the way for a \$1.5 billion stand-by arrangement between the IMF and Ukraine. Following the successful pledging session and a long fight in the Ukrainian Rada, President Kuchma's austerity budget was passed and the IMF stand-by arrangement was extended to Ukraine.

The trade credit program constituted the bulk of the \$250 million U.S. pledge and leveraged even greater levels of assistance from the other donors. Because the level of actual risk sharing that the private sector would ultimately agree to was uncertain, the interagency group decided it was best to lower expectations and pledged \$175 million for the trade credit program (\$60 million in humanitarian assistance and \$15 million in technical assistance constituted the remainder of the pledge). Based on the information which the companies had offered, there was high confidence in the ability to involve at least \$45 million in private

sector risk-sharing if the program started immediately. Without this program, the pledging session would have failed and the stand-by arrangement might not have been reached.

Summary: Negotiations were then rejoined with the Ukrainians to establish a guarantee framework for the USAID insurance. After further protracted discussions (see p. 8), an agreement was reached. By that time, however, an interagency review had re-assessed Ukraine's country risk and raised its credit rating. This has allowed Eximbank to re-open export financing programs for the short and medium term in Ukraine.

Though the spring planting season had progressed substantially, this program will positively affect the late planting this year and the spring planting next year. The dramatically altered circumstances have also required USAID to revise the program's coverage terms. To remain consistent with Eximbank programs, the insurance coverage was raised to 100% and follows all applicable Eximbank rules and regulations for short-term insurance. To ensure its use, this program will be the only source of short-term insurance for agricultural and food systems exports to Ukraine until all \$175 million is committed. Eximbank will then open for short-term insurance on these same products.

Despite the changes, it was decided to continue developing this program for a number of reasons. Among them was its role as part of the USG pledge for Ukraine at the Consultative Group meeting. Backing away from the program after touting it as the primary element of that pledge would have been disastrous. Both the Europeans and Japanese had conditioned their pledges on the amount and quality of the U.S. pledge. A retreat at this point might have caused the Europeans and Japanese to withdraw much of their pledges. In this case, the consequences of not completing the program outweighed the difficulty of revising and continuing it.

DISCUSSION:

Proposed Exports: As noted above, the proposed Ukraine Export Credit Insurance Program will provide coverage of up to \$175 million for U.S. exporters of agricultural inputs to Ukraine. The GOU has provided an illustrative list of inputs needed for the 1995 and 1996 crop years. The list totalling approximately \$40 million contains seeds as well as herbicides and pesticides, such as Titus, Grandstar, Harmony, Stomp, Dursban 4, Nurelle D, Rubigan 12EC, Treflan 2EC, Zelleck Super Starane, Lontrel 300, and DMA6 (and possibly Harness), which have been effectively used before in Ukraine. In addition, the GOU proposes to import approximately \$35 million in phosphoric acid which will be used to manufacture liquid fertilizer and around \$25 million for ingredients to manufacture herbicides. A state-owned enterprise will produce and distribute the phosphoric acid-based fertilizer. The GOU has not requested other specific items. A list of some U.S. firms which have expressed interest in the program and potential products follows.

Company	Total Export Value (Estimated Figures)	Ukrainian Partners (Private/State)	Commodities
American Cyanamid Princeton, NJ		Public/Private	Stomp--Crop Protection
Cargill -- Minneapolis, MN		Public/Private	Sunflower seed, Corn seed, Planters, Sprayers
DeKalb -- DeKalb, IL		Public/Private	Corn seed
DowElanco--Indianapolis, IN		Public/Private	2,4-D formulated/acid, Zellel Super, Nurelle D, Lontrel, Rubigan, Treflan, Starane, Dursban
DuPont -- Wilmington, DE		8 Private distributor	Grandstar, Titus, Harmony, Benlate
Elanco Animal Health Indianapolis, IN		Public/Private	Medicated feed additives
FMC -- Philadelphia, PA		Public	Arrivo crop protection, Food machinery
Kiev-Atlantic Minneapolis, MN		Private	Fuel, Fuel product, Combines, Planters, Sprayers, York Grain Bins, Grain Handling Equipment, Crop Protection Chemicals

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Monsanto -- St Louis, MO		Public/Private	Kinze Planters, Great Plains Seed Drill, Brandt Sprayers, Cargill Sunflower, Dialen, Roundup
Pig Improvement Corporation			Breeding Pigs
Pioneer -- Des Moines, IA		Private	Corn Seed
TOTAL			

15 April 1995 Contract Completion (Estimated)

28

In discussions with Ukrainian officials and policy makers, U.S. representatives have emphasized the importance of permitting and encouraging private Ukrainian importers and distributors to participate fully in the program. Though there are only a few such firms today, this participation will strengthen ties between U.S. suppliers and local private entrepreneurs and build a base for future business. GOU representatives agree in principle to private firm participation but also want to meet the needs of state importers.

This will be a first in Ukraine as the GOU has never before provided a sovereign guarantee for private importers of agricultural inputs. It sets a precedent for the re-opened Eximbank programs. Ukraine is also privatizing the state distribution system for agricultural inputs. The GOU is dividing UKRAGROCHEM, the state distributor of agricultural chemicals, into twenty five separate firms. Some of them will be clients of U.S. exporters under this program. Many have already begun acting independently. This program will enhance their capability to do so through commercial ties with U.S. suppliers.

At present, the GOU owns most of the farms which will receive and use the inputs financed under the proposed program. To increase agricultural production in Ukraine during the upcoming seasons, there is no viable alternative to working with state-owned farms.

Framework Agreement: USAID and the GOU signed a Framework Agreement for this program as of 10 May 1995. Effective the same date, Eximbank and the GOU also signed a Framework Agreement opening normal short and medium term Eximbank programs in Ukraine on 14 May 1995.

Before this Framework Agreement was accepted by the GOU, USAID attempted to negotiate a one page interim guarantee in place of the full Framework Agreement which Eximbank customarily uses when opening for long-term business. The GOU continually sought to revise the interim agreement. The USG could not accept the proposed revisions and the negotiations continued without resolution. Finally, the improvement of Ukraine's credit rating required that USAID and Eximbank each negotiate separate Framework Agreements. A negotiating team consisting of a lawyer from USAID and Eximbank were dispatched to Kiev to finalize both agreements.

The final Framework Agreement for the USAID program ended up being the same as the one which a previous State/USAID/Eximbank delegation proposed to the GOU in March which in turn was almost exactly the same as the (at that time) expired agreement between Eximbank and the GOU from 4 May 1992, except that USAID and not Eximbank was issuing the insurance policies. As Ukrainian officials had previously accepted the 1992 agreement's terms and conditions, had carried out transactions pursuant to it, and were familiar with its obligations, it was thought to be the most appropriate vehicle for this program and that the GOU would quickly agree to its terms. Instead, the GOU refused to accept the agreement without substantial revisions. The lengthy and fruitless negotiations which followed eventually led USAID to propose the simpler interim guarantee in the hopes that would break the impasse.

Some of the difficulties in negotiating the agreement with the GOU included:

- No initial GOU agreement on who -- the Ukraine Eximbank, the Hard Currency Council, the Ministry of Finance, or some combination -- would sign the agreement, implement the program, and issue sovereign guarantees.
- A dispute over the need for the GOU to follow normal commercial law and "waive its right to diligence, presentment, demand, protest or notice of any kind." Clarification was provided, not initially understood, and finally accepted.
- A GOU demand that the English and Ukrainian versions of the agreement be equally valid. This would have delayed the signing even longer because both versions would have to be translated and certified as authentic by State's translations services. Further, the Eximbank Framework Agreement of 1992 was prepared and signed only in English. In the end, the GOU accepted the English version.

Under the final Framework Agreement, the GOU provides a sovereign guarantee on approved transactions. Both the GOU and USAID must accept each transaction, and either party may veto or disapprove a proposal. The sovereign guarantee requires that if and when a Ukrainian importer defaults on a covered credit the GOU reimburses USAID who then pays (out of the financing account for this program) the U.S. supplier or its bank and, on behalf of the USG, will have a claim against the GOU for the total amount of the funds due to the U.S. exporter.

At the time USAID issues each trade credit insurance policy, it will make the corresponding payment for the "subsidy cost" to the financing account as required under federal credit reform legislation. Under Ukraine's present credit rating and with a GOU sovereign guarantee, the subsidy cost will be around 8.92% of the amount guaranteed. Once USAID pays funds into its financing account, they cannot be returned to USAID regardless of whether the credit is repaid by the Ukrainian importer. At the end of the program, any NIS funding not paid into the financing account remains available for obligation and reprogramming.

The proposed GOU guarantee does not state the total value of insured credits or commit the USG to insuring a specific amount of trade credits. The guarantee thus offers USG policymakers a flexible tool which is adaptable to circumstances.

Process Issues--Subsidy and Inter-Agency Finance Mechanism: Prior to the request for reapportionment from the NIS account to the program account, OMB will establish the program and financing accounts with Treasury.

ENI/PCS/B will forward through M/B to OMB the request for reapportionment from the NIS account to the program account. This involves requesting a decrease in the original NIS account and an increase in the new NIS Ukraine Export Credit Insurance Program account. The two requests will be prepared simultaneously.

Once reapportioned, the program account must be tracked by two different categories: (1) subsidies and (2) administrative costs for the program. Administrative costs include not only Eximbank reimbursements, but any incremental USAID costs, such as funds required for audit and incremental USAID program funded staff time arising as a result of the program. Payments for administrative costs are paid directly out of the program account.

The financing account will be established simultaneously with the program account. The purpose of this account is to pay claims arising from defaults.

Funds Reservation and Obligation: Based upon the recommendation of the ENI Bureau Review Committee, the ENI/ED Office Director will affirm that the Application submitted to Eximbank by the exporter meets the basic requirements for further processing by the Eximbank and the GOU. At this time, ENI/PCS will reserve funds for this transaction. An Action Memorandum is then sent to the USAID Chief Financial Officer (CFO) requesting approval of the subsidy. Once approved, the letter of commitment for the specific export transactions is cleared and then signed by the ENI/ED Office Director and subsequently forwarded to M/FM/LMD. A liability is assumed at that point and funds are obligated in program account by M/FM/LMD. Outlay of the subsidy obligation from the program to the financing account takes place on the effective date of the insurance policy. Also deposited into the financing account are premiums paid by exporters. Premium payments will be sent to USAID electronically in accordance with Treasury guidelines.

Reservations and obligations for the administrative costs will be recorded in the program account based upon the Inter-Agency Agreement between USAID and Eximbank, as well as contracts for audits and other miscellaneous documents such as travel authorizations, as necessary. Reservation of funds will be made as documents are cleared through ENI/FS and obligation will be recorded by M/FM/LMD when obligations are executed. Payments for these expenses are made directly from the program account.

Payments for Defaults and Recoveries: Payments will be triggered through the notification of a default by the Eximbank. Eximbank will provide FM/LMD with all relevant claims documentation, including but not limited to the following: 1) Exporter's request for claim payment and proof of loss, 2) proof of compliance with Insurance Policy and attached endorsements, 3) Eximbank's documented review/analysis procedures of the claim, 4) Eximbank's recommendation to encompass the amount to be paid and the deadline for issuing payment and 5) and all relevant information necessary for the Exporter to receive from USAID electronic payment on the claim. All claims are paid electronically through FM/CMP. FM/LMD will subsequently generate a Claims invoice to be issued to the GOU. The invoice is sent to the USAID/Kiev Mission for forwarding to the appropriate GOU

office. Recovery of the amount paid, as part of the program activity, will be pursued cooperatively by the Program Office and the Mission based on the LMD payment status notification. Amounts recovered will be electronically paid into USAID's financing account with the Treasury.

Proposed Application Mechanism: Companies wishing to apply for USAID's Ukraine Export Credit Insurance Program must meet the following initial eligibility criteria:

- Products must be inputs into the Ukrainian agricultural or related processing and distribution systems. There are no other initial limitations on eligible products. Transactions which create sustainable productivity gains and are used in an environmentally sound manner are more likely to receive insurance under this program than those which do not.
- The transactions must involve the sale of U.S. goods and services and will be insured in accordance with U.S. Eximbank's eligible content rules.
- All products must arrive on Ukrainian soil by 15 December 1995.
- Single or multiple shipments must be made under a sales contract calling for payment terms of not greater than 540 days.
- The following products are ineligible for USAID Insurance: Products which are less than 51% U.S. content, any products used to conduct or service abortions, defense products, and products which do not meet U.S. Eximbank environmental regulations or other regulations or policies, except as otherwise agreed between USAID and U.S. Eximbank. (Annex A of the USAID application lists specific commodities not eligible for the insurance).
- The GOU will provide its sovereign guarantee for this program.

Description of the Application Process: Eligible U.S. exporters should file applications for USAID's Ukraine Export Credit Insurance Program with the U.S. Eximbank. The application materials will include the following:

- USAID's Ukraine Export Credit Insurance Program Application Form. This application will contain supporting information, including credit reports and current financial statements on the exporter as well as disclosure certificates and Anti-Lobbying and Munitions Control forms and an environmental questionnaire.
- Note: Ukraine Export Import Bank Insurance Application materials will need to be completed by the Ukrainian buyer to meet Ukrainian requirements. U.S.

suppliers should advise Ukrainian importers of this requirement and seek to accelerate this process.

The review process for an application will be as follows:

- USAID and U.S. Eximbank will make an initial determination of whether the application meets the above eligibility criteria.
- If it meets the criteria, pertinent details of the proposed transaction will be forwarded to the Ukraine Eximbank and Ukraine Ministry of Economy for approval by the GOU.
- With approval by the GOU, Eximbank, upon specific concurrence from USAID and as USAID's agent, will issue a binding commitment on the transaction valid for up to 90 days.
- Upon payment of a non-refundable premium by the exporter to USAID, U.S. Eximbank, as agent for USAID, will issue an insurance policy on the transaction. Premium payment must be made prior to the expiry date of the commitment. Once issued, the policy is non-cancelable by USAID.
- Reports of overdue, if any, on insured obligations must be submitted to U.S. Eximbank which will notify USAID.
- Formal notification of a claim must be submitted to U.S. Eximbank. U.S. Eximbank will process the claim and determine if the insured complied with the terms and conditions of the policy. After it completes the review, U.S. Eximbank will make a recommendation to USAID as to whether the insured complied with the terms and conditions of the policy. If USAID approves the claim, the claim will be paid out of the financing account.
- The GOU, as ultimate guarantor under the written guarantee, will reimburse the U.S. Government the amount issued in payment on a claim.

Internal USAID Application Review: USAID has final approval of each application. Eximbank will forward copies of the application to USAID when they receive them. Once Eximbank decides on an application, Eximbank will forward an endorsing cover letter which will include a brief discussion of the factors behind its decision for USAID's records.

USAID's review of an application will focus entirely on the applications' appropriateness and acceptability from the agricultural input and environmental perspectives. As quick turnaround on decisions is essential, every effort will be made to effect USAID

review and final determination within 24 hours, unless circumstances warrant additional review time.

The proposed procedures for internal USAID review are as follows:

- The USAID approving office will be ENI/ED. Each approved application must bear the signature of the Director or Deputy.
- The review committee will consist of representatives of ENI/ED/AG (Steve Sposato or Charles Uphaus), ENI/EEUD/ENR (David Smith or Marshall Fischer) and ENI/NCA (Jan Mozee or Sherry Grossman) or their designees.
- ENI/ED will receive the applications and endorsing cover letter from Eximbank and monitor their review.
- The review committee will submit a cover memo to the Director, ENI/ED recommending approval or disapproval of each application. A copy of the approved cover memo will then be transmitted (faxed) back to Eximbank and to USAID/Kiev.
- USAID/Kiev will be kept apprised of the substance and disposition of each application, but will only be consulted in the event of serious questions or issues.

Financing and Insurance Coverage: Under USAID's Ukraine Export Credit Insurance Program, the insurance coverage would be substantially similar to that offered under U.S. Eximbank's Short-Term Single-Buyer Export Credit Insurance Policy, save for the following:

Required Payment Structure for USAID Insured Transactions--

An irrevocable letter of credit opened by the Ukraine Export-Import Bank which provides for payment against 100% of invoice amount(s) on terms up to 540 days. Multiple shipments, if needed, are permissible if stipulated as acceptable in the letter of credit.

Additional Parameters--

- Shipment Volume Limit equal to value of total contract.
- Claim Payment Limit set at an amount equal to 100% of Shipment Volume Limit (contract price) as it meets U.S. Eximbank U.S. content requirements.

- USAID insurance premium is set at the following sliding scale levels per \$100 of Claim Payment Limit:

180 days	2.14%
360 days	3.80%
540 days	4.28%
- Stipulation that irrevocable letter of credit pay 100% of value of invoice(s) provided. All other normal requisite documents evidencing shipment such as bills of lading, etc. would also be required to effect payment under the letter of credit.
- Percentage of cover set equal to 100% of Claim Payment Limit.
- USAID is sole recipient of all recoveries on claims.

Since the Ukraine Export Import Bank will examine the relevant required documents under the letter of credit related to the insured transaction, it will have documentary evidence as to the products being supported and the amounts involved. The full faith and credit of the GOU will be conveyed to USAID pursuant to the framework guarantee agreement.

Indicators: Indicators for USAID's Ukraine Export Credit Insurance Program should demonstrate the following impact on Ukraine's agricultural sector and U.S. agricultural exports.

- The gross value of agricultural production in Ukraine increases by 1% (based on Ukraine National Account Statistics) during the 1995 harvest, and by 3% during the 1996 harvest. (Performance will be judged from increases over 1994 baseline figures).

Originally we planned to track just the 1995 increase in agricultural production. However, the GOU's delays in finalizing our framework agreement will delay the arrival of many commodities and put off their impact until 1996.

- The agricultural value-added which this program generates in Ukraine is equal to at least twice the value of the agricultural commodity inputs insured and imported into Ukraine. For example, with \$175 million in agricultural inputs, the value-added should be at least \$350 million.

We proposed the above indicator in order to track the value-added which this program creates. This has proven more difficult than initially thought. Calculating value-added requires knowledge of numerous variables and related data. We are examining how to refine this indicator and will be working with companies to determine how to calculate the value which their products add. USAID, with assistance from Citizen's Network for Foreign

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Affairs (CNFA), will ask businesses to provide this information through surveys and personal interviews or calls following the 1995 and 1996 seasons.

- The volume and total dollar value of Ukrainian agricultural exports are shown to increase from 1994 base year figures by at least 0.5% in calendar year 1995 and 1% in 1996. (Performance will be judged from increases over 1994 baseline figures, both trade volume and dollar value).
- The program generates at least \$175 million in exports, directly insured by USAID, of U.S. agricultural-related inputs to Ukraine during calendar year 1995 that otherwise would not have been transacted.

The baseline figures will be taken from official Ukrainian National Account Statistics for 1994 which USDA and our Agribusiness office is supplying. The value of Ukrainian agricultural exports will be based on market prices for the commodities and will be supplied by USDA and our Agribusiness office.

Monitoring Issues:

- The application review process ensures that USAID can promote the participation of private Ukrainian importers and distributors in this program. USAID has discussed this issue thoroughly with the GOU and received agreement in principle on providing its sovereign guarantees to transactions involving private firms.
- To ensure repayment of any default claims by the GOU, a sovereign guarantee framework agreement was negotiated which legally binds the GOU to repayment on all claims. The guarantee agreement also establishes a framework for repayment.
- The State Department and USAID will follow-up on Ukraine's IMF stand-by arrangement to ensure Ukraine's implementation of its macroeconomic stabilization commitments and the continued privatization of its agricultural and state distribution systems.

Taken together, these measures will provide a foundation for monitoring the success of this export insurance program and its impact on the development of a privately-owned and operated agribusiness system in Ukraine.

Environmental Impact Requirement: Normally, USAID would require an initial environmental evaluation to ensure that exported products, such as above mentioned pesticides and herbicides, will have no adverse environmental impact. Because of extraordinary requirements of time, the program's importance and uniqueness, and the desire to make the program mirror normal Eximbank insurance programs as closely as possible,

USAID has chosen to waive any laws and regulations applicable to USAID which are inconsistent with or contrary to Eximbank's statutes, regulations, policies, and procedures, by invoking "notwithstanding authority." U.S. Eximbank's regulations were considered more appropriate for the commercial nature of this program. This decision has been taken by the ENI Bureau, with concurrence by the Management Bureau and the Administrator of USAID. In addition, USAID would set up a parallel program to identify potential problems concerning the use of imported pesticides, assist Ukraine develop its agricultural environmental control standards, and ensure that products will be handled properly.

The GOU has stated and is prepared to present upon request of the USG its registration of the proposed pesticides and herbicides that might be financed under this program. All the pesticides and herbicides requested are registered for use in Ukraine and have been extensively used there before (with the exception of Harness which is in the process of being registered). To approve registration of pesticides and herbicides, Ukrainian government officials must study potential adverse impact on the environment. The GOU is willing to make available to USAID environmental experts the registration and supporting studies for each product. USAID environmental experts were sent to Ukraine to provide an initial evaluation of the country's needs. The team found that much needed to be done in the way of storage, handling, and safety and provided specific recommendations for a parallel environmental program to address those problems.

Statutory Authority and Delegation of Authority: Under Section 560(a) (3) of the Foreign Operations, Export Financing, and related Programs Appropriations Act FY 1994 (Public Law 103-87), funds for the NIS may be ("should") be allocated for the purpose of enhancing trade and investment with the NIS, including "costs of loans and loan guarantees." Thus FY 1994 NIS funds are available to pay the subsidy costs of guarantees for trade credits for the NIS. In addition, the legislative history of the Foreign Operations, Export Financing, and Related Programs Appropriations Act for FY 1995 supports the conclusion that Congress intended to make available FY 1995 NIS Funds for paying subsidy costs of guarantees. Both FY 1995 and FY 1994 NIS funds are "no year" funds and thus remain available in future fiscal years for this purpose.

Section 635(a) of the Foreign Assistance Act of 1961, as amended (FAA), grants authority to furnish assistance "on such terms, including cash, credit, or other terms of repayment (including repayment in foreign currencies or by transfer to the USG or commodities) as may be determined to be best suited to the achievement of the purposes of the" FAA. Section 498(4) of the FAA authorizes the President to provide assistance to the NIS for "creating conditions that promote trade and investment." Under these provisions, the Executive Branch may determine that USAID guarantees of trade credits are the "terms" for furnishing assistance "best suited" to create "conditions that promote trade" with the NIS.

The Legal Advisor's Office at State has also reviewed whether there is statutory authority for the proposed program and concurs that both FY 1994 and FY 1995 NIS funds may be used for this purpose. OMB has approved going ahead with this program.

Primary responsibility for managing this program would, however, remain, with the ENI Bureau in Washington, specifically ENI/ED and ENI/ED/AG. An interagency agreement will be signed between USAID and Eximbank detailing Eximbank's contract duties in administering the insurance policies and providing for payment of Eximbank employees working on this program. The USAID Mission in Kiev would likely also require either a personal services contractor or U.S. direct hire officer for four to six weeks to assist the Mission implement the program.

CONCLUSION:

The major revisions in the program have made a significant difference. USAID, as the only source of insurance on short-term agricultural and food systems products should be able to fully utilize its leveraged funds as intended and provide \$175 million in insurance on U.S. exports. Changing its coverage and premium terms to those which Eximbank offers make the program complementary to Eximbank medium-term coverage of similar products and mirror those for short-term coverage of other products. Following Eximbank procedures and regulations on content and environmental issues increases the timeliness and reduces the cost of approving each transaction. This final version of the program greatly improves the pledge's quality in the eyes of the Europeans and Japanese. It also meets USAID's goal to develop the Ukrainian agricultural private sector and improve Ukraine's macroeconomic performance without adversely affecting the rest of the assistance program. For these reasons it was decided to continue the program despite all the changes to the fundamental factors which initially gave it birth.



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AID/ENI/PD:MWALKER:JAT
05/08/95 647-8674
AID/DAA/ENI:CPASCUAL

AID/GC:BBRYANT
AID/ENI/ED:RJOHNSON
AID/ENI/PCS:PMATHESON
AID/ENI/FS:PCALLEN (INFO)

STATE/NIS:MCOLEMAN
AID/ENI/PD:PTHORN
AID/ENI/PER:LMAILLOUX (INFO)
AID/ENI/NCA:SGROSSMAN (INFO)

APPR: CP *(initials)*
DRAFT: MW *(initials)*
CLEAR: BB *(initials)*
CLEAR: MC *(initials)*
CLEAR: RJ *(initials)*
CLEAR: PT *(initials)*
CLEAR: PM *(initials)*

IMMEDIATE KIEV

ADM AID FOR MISSION DIRECTOR

E.O. 12356: N/A

TAGS:

SUBJECT: DELEGATION OF AUTHORITY

PURSUANT TO THE AUTHORITIES DELEGATED TO ME AS DEPUTY ASSISTANT ADMINISTRATOR, BUREAU FOR EUROPE AND THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION, I HEREBY DELEGATE TO THE UNITED STATES AMBASSADOR TO UKRAINE OR THE MISSION DIRECTOR FOR THE REGIONAL USAID MISSION FOR UKRAINE, BELARUS, AND MOLDAVA, OR BOTH, AUTHORITY TO SIGN A FRAMEWORK GUARANTEE AGREEMENT FOR A SPECIAL USAID-FUNDED TRADE CREDIT INSURANCE PROGRAM FOR UKRAINE TO SUPPORT THE PURCHASE OF QUALIFIED AGRICULTURAL-RELATED GOODS AND SERVICES OF UNITED STATES MANUFACTURE AND ORIGIN BY BUYERS IN UKRAINE. THIS AUTHORITY MAY NOT BE REDELEGATED, AND THIS DELEGATION IS EFFECTIVE IMMEDIATELY. YY

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U.S. AGENCY FOR
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DELEGATION OF AUTHORITY

Pursuant to the Freedom Support Act and the Foreign Assistance Act of 1961, as amended, and authorities delegated under such Acts, I hereby delegate to the Director of the Office of Enterprise Development of the Bureau for Europe and New Independent States, or the person holding or acting in such capacity, authority to affirm that the Application submitted to the Export-Import Bank of the U.S. (Eximbank) by the exporter meets the basic requirements for further processing by Eximbank and the Government of Ukraine, and sign letters of commitment on behalf of the U.S. Agency for International Development for specific export transactions under the USAID Ukraine Export Credit Insurance Program (the Program), not to exceed a total of \$175 million in credit insurance.

This delegation shall be effective upon signature and shall expire two years from the date of signature or termination of the Program, whichever occurs first.

Carlos Pascual

Carlos Pascual
Deputy Assistant Administrator
Bureau for Europe
and New Independent States

June 15, 1995
Date

FRAMEWORK GUARANTEE AGREEMENT

THIS FRAMEWORK GUARANTEE AGREEMENT (the "Framework Agreement") is entered into as of May 10, 1995 between the Government of Ukraine (the "Guarantor"), acting by and through the Ministry of Finance of Ukraine, and the Government of the United States of America, acting by and through the Agency for International Development ("USAID").

WITNESSETH:

WHEREAS, USAID is willing to support the purchase of qualified agricultural-related goods and services of United States manufacture or origin by buyers in Ukraine under its special insurance program, with repayment terms of 540 days and cover of 100% as provided in such special insurance program;

WHEREAS, the Guarantor and USAID desire to facilitate the implementation of this USAID special insurance program in Ukraine.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the Guarantor and USAID agree as follows:

SECTION 1. DEFINITIONS

As used herein, the following terms shall have the following meanings (all terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Guarantee" shall mean the guarantee issued by the Guarantor of the Obligations.

"Obligations" shall mean the obligations of the Export-Import Bank of Ukraine ("Obligor") incurred at the direction of the Guarantor in individual transactions (i) that are insured by USAID under its special insurance program for agricultural-related products, and (ii) for which the Guarantor has issued a guarantee pursuant to Section 2.02 hereof.

SECTION 2. PROCEDURES

2.01 Procedures. Prior to processing an application for USAID insurance, USAID requires notice that a sovereign guarantee is available for such transaction. For letters of credit or drafts to be insured under USAID's special insurance, the Guarantor should send a notice in the form of Appendix A.

2.02 Issuance of Guarantees. The Guarantor shall issue its Guarantee of Obligations by written notice to USAID in the form of Appendix A hereto.

SECTION 3. TERMS OF THE GUARANTEES

3.01 Unconditional Guarantee. With respect to each Guarantee to be issued, the Guarantor unconditionally and irrevocably guarantees to USAID the full, prompt and complete payment in United States dollars by the Obligor of the Obligations, when and as due. The Guarantor waives acceptance, diligence, presentment, demand, protest or notice of any kind, as well as any requirement that USAID or any other party exhaust any rights or take any action against the Obligor or any other guarantor of the Obligations and hereby consents to any extension of time or renewal or other modification of the Obligations. Such waiver shall not affect the rights of the Ukrainian buyer or any assignee of the Ukrainian buyer, including the Guarantor, and the U.S. supplier under any contract for the purchase of U.S. goods and services under transactions covered by this Framework Agreement. The Guarantees constitute the direct, general and unconditional obligation of the Guarantor, for which the full faith and credit of Ukraine is pledged. The Guarantees are continuing guarantees, which shall apply to all Obligations, are irrevocable and are guarantees of payment and not of collection, and shall remain in full force and effect until all Obligations hereby guaranteed are paid in full.

3.02 Acceleration. The Guarantor shall, at USAID's option upon prior written notice from USAID, immediately become liable for the outstanding balance of any or all Obligations, whether or not then due, in the event of any failure by the Guarantor fully and punctually to pay any amount owing, or to perform any obligation or to discharge satisfactorily any liability of the Guarantor under this Framework Agreement or any Guarantee or under any Framework Agreement ("U.S. Eximbank Framework Agreement") between the Guarantor and the Export-Import Bank of the United States ("U.S. Eximbank") or any Guarantee (as defined in such U.S. Eximbank Framework Agreement) to U.S. Eximbank. Without limiting USAID's rights set forth in this Section 3.02, the Guarantor shall have the right to consult with USAID regarding the exercise by USAID of such rights.

3.03 Unenforceability. In the event that any Obligation is not legal, valid, binding or enforceable in any court of law against such Obligor, or if such Obligation is limited, modified, voided, released or discharged in any proceeding under bankruptcy laws of Ukraine or the like, the Guarantor's liability under the Guarantee relating to such Obligation shall be the same as if such Obligation were legal, valid, binding and enforceable and had not been so limited, modified, voided, released or discharged. If any payment or transfer to USAID (or the party insured by USAID) in respect of the Obligation is voided or rescinded or required to be returned by USAID (or such party), with respect to such Obligation, the Guarantee shall continue in effect or be reinstated as though such payment or transfer had not been made.

SECTION 4. REPRESENTATIONS AND WARRANTIES; COVENANTS

4.01 Representations and Warranties of the Guarantor. The Guarantor represents and

warrants that:

(a) Authority. It has full power, authority and legal right to issue the Guarantees, to execute and deliver this Framework Agreement, and to observe and perform the terms and conditions of this Framework Agreement and the Guarantees.

(b) Direct Obligation. When issued, each Guarantee will constitute the obligation of the Guarantor in accordance with Section 3.01 hereof. Each such Guarantee will be legal, valid, binding and enforceable against the Guarantor in accordance with its terms.

(c) Permits. All legal requirements, registrations or approvals of any governmental agency, department, commission or authority of the Government of Ukraine for (i) the issuance of the Guarantees and the due execution and delivery by the Guarantor of this Framework Agreement and the Guarantees, including without limitation, approvals relating to the availability and transfer of U.S. dollars due under the Guarantees; (ii) the legality, validity or enforceability of this Framework Agreement and the Guarantees; and (iii) ensuring that the Guarantees are in accordance with Section 3.01 hereof, have been obtained and are in full force and effect.

(d) Pari Passu. All indebtedness of the Guarantor under the Guarantees ranks, and will continue to rank, at least pari passu with all other indebtedness of the Guarantor which is payable, or may be required to be paid, to any person or entity outside of Ukraine or in a currency other than the currency of Ukraine, except indebtedness of the Guarantor to international financial institutions.

4.02 General Covenants.

(a) Non-interference. The Guarantor agrees that it will not take any action that would prevent or interfere with (i) the performance by the Obligor of its Obligations or the enforcement of such Obligations or (ii) the performance by the Guarantor of the Guarantees or the enforcement of the Guarantees.

(b) Subrogation. The Guarantor shall not exercise any rights of subrogation which it may acquire due to its payment of Obligations pursuant to a Guarantee unless and until all sums payable under the Obligations have been paid in full.

(c) Modifications. The Guarantor hereby agrees that the obligations of the Guarantor under any Guarantee shall not be affected by any amendment, modification, extension or waiver of any of the Obligations covered by such Guarantee.

SECTION 5. CONDITIONS PRECEDENT

5.01. Conditions Precedent. As conditions precedent to the effectiveness of this Framework Agreement and USAID's acceptance thereof, USAID shall be furnished with the following, in form and substance satisfactory to it:

(a) Legal Opinion. A written opinion of the Ministry of Justice of Ukraine substantially in the form of Appendix B hereto.

(b) Authority of Representatives. Evidence of the authority and a specimen signature of person(s) signing this Framework Agreement and any notices or Guarantees pursuant hereto.

(c) Agent for Service of Process. A letter from the Ministry of Justice of Ukraine designating the person to act as agent for the Guarantor for service of process pursuant to Section 6 hereof and evidence that such person has accepted the appointment of agent for service of process.

5.02 Additional Documents. From time to time hereafter there shall be delivered to USAID such additional opinion(s) of counsel, evidence of authority, authenticated specimen signatures, documents and other information as USAID may reasonably request.

SECTION 6. JURISDICTION

The Guarantor hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Framework Agreement, any Guarantee or the Obligations covered by such Guarantee may be instituted in the United States of America in any Federal or State court sitting in the State of New York or in the District of Columbia, or the court of a third country designated by mutual agreement of the Guarantor and USAID, and the Guarantor irrevocably submits to the jurisdiction of these courts in any such action or proceeding. The Guarantor will designate, appoint and empower a person whose office is presently located in New York, New York, U.S.A., as its agent to receive for and on behalf of itself and its properties and revenues, service of process in any such action or proceeding. The Guarantor also irrevocably consents to such service upon it, by the mailing of copies thereof by U.S. air mail to it at its address set forth on the signature page of this Framework Agreement. The foregoing provisions shall not limit the right of USAID to bring any such action or proceeding or to obtain execution on any judgment rendered in any such action or proceeding in any other appropriate jurisdiction or in any other manner. The Guarantor agrees that judgment against it in any legal action or proceeding arising out of or relating to this Framework Agreement or a Guarantee shall be conclusive and may be enforced in any other jurisdiction within or outside the United States.

SECTION 7. MISCELLANEOUS

7.01 Expenses. The Guarantor hereby agrees to guarantee the payment to USAID, on demand, of (a) any legal fees for any opinions of Ukrainian counsel which may be reasonably requested by USAID and (b) all reasonable costs and expenses, including legal fees, incurred by USAID in connection with any legal action relating to any failure by the Guarantor fully and punctually to pay any amount owing under this Framework Agreement or any Guarantee. All reasonable costs and expenses, including legal fees, in connection with any legal action relating to any other right or claim under this Framework Agreement or any Guarantee shall be paid by the non-prevailing party.

7.02 Charges. If the Government of Ukraine or any department, agency, political subdivision, or taxing authority thereof imposes or levies any taxes, duties, fees, or other charges (collectively, "Charges") on or in connection with the execution, issuance, delivery, registration, or performance of a Guarantee, the Guarantor agrees to pay all such Charges. The Guarantor agrees to make all payments of the Obligations pursuant to the Guarantees free and clear of and without deduction for any Charges on or in connection with the Obligations or any amounts payable under the Obligations. If the Obligor is prevented by operation of law or otherwise from paying any Charges on an Obligation, the Guarantor agrees that the amount payable under such Obligation and the Guarantee may be increased to the extent necessary to yield to USAID the amount of the Obligation covered by the Guarantee due after provision for payment of such Charges.

7.03 Waiver and Amendment. The failure or delay on the part of any party in exercising any power or right under this Framework Agreement or a Guarantee shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other exercise thereof or the exercise of any other legal power or right. No amendment or waiver of any provision of this Framework Agreement or a Guarantee shall be effective unless evidenced in writing signed by the Guarantor and USAID.

7.04 Illegality. If any provision of this Framework Agreement or a Guarantee shall be held by any court having appropriate jurisdiction to be illegal or unenforceable, all other provisions of this Framework Agreement or such Guarantee shall remain in full force and effect and the parties shall enter into negotiations to amend such illegal or unenforceable provision.

7.05 Governing Law. This Framework Agreement and the Guarantees shall be deemed to be commitments made under the laws of the State of New York, United States of America, and for all purposes and in all jurisdictions shall be governed by, construed and enforced according to the laws of the State of New York.

7.06 Payments. All payments to be made by the Guarantor to USAID under a Guarantee shall be made in U.S. dollars in immediately available funds to the Federal Reserve Bank of New York for credit to an account to be designated by USAID.

7.07 Communications. Any Obligation, document, notice or demand to be given to or made under this Framework Agreement or a Guarantee by or on behalf of USAID or the Guarantor shall be in writing made in the English language and shall be deemed to have been duly given when received by hand-delivery, registered airmail (postage prepaid), telex or facsimile, addressed to USAID or the Guarantor at their respective addresses and numbers set forth in the signature page hereto or to such other address or number as one party may designate to the other from time to time by notice hereunder.

7.08 Successors and Assigns. The provisions of this Framework Agreement and each Guarantee are binding upon the Guarantor and shall be binding upon any successors or assigns of the Guarantor and shall inure to the benefit of USAID and its successors and assigns. The

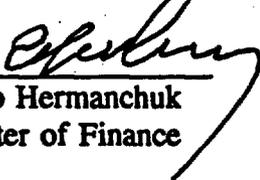
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Guarantor may not assign this Framework Agreement or a Guarantee or its obligations hereunder or thereunder without USAID's prior written consent.

7.09 English and Ukrainian Versions. This Framework Agreement shall be executed in duplicate in both an English version and an Ukrainian version; provided, however, that in the event of any ambiguity or conflict between the English version and the Ukrainian version, the English version shall govern.

IN WITNESS WHEREOF, the Guarantor and USAID have caused this Framework Agreement to be executed as of the date first above written.

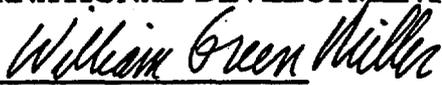
**GOVERNMENT OF UKRAINE,
acting by and through the
Ministry of Finance of Ukraine**

By 
Name: Petro Hermanchuk
Title: Minister of Finance

Address:
Grushevskiy Str. 12/2
Kiev, Ukraine

Telephone: (380 44) 293-5363
Facsimile: (380 44) 226-2517

**GOVERNMENT OF THE UNITED
STATES OF AMERICA, acting by and
through the AGENCY FOR
INTERNATIONAL DEVELOPMENT**

By: 
Name: William Green Miller
Title: United States Ambassador to Ukraine

Address:
320 21st Street, N.W.
Washington, D.C. 20523-009
U.S.A.
Attention: Assistant Administrator for
Europe and the New Independent States

Telephone: (202) 647-9119
Facsimile: (202) 647-9973

**APPENDIX A
GUARANTEE OF LETTER OF CREDIT/DRAFT**

[Date]

Agency for International Development
ENI Bureau Room 6724, NS
320 21st Street, N.W.
Washington, D.C. 20523-009
U.S.A.

As provided herein, we hereby guarantee the following [irrevocable letter(s) of credit/draft(s)] pursuant and subject to the terms of the Framework Guarantee Agreement (the "Framework Agreement") dated as of _____, 1995 between the Government of Ukraine, acting by and through the Ministry of Finance of Ukraine, and the Government of the United States of America, acting by and through the Agency for International Development.

[Letter of Credit/Draft]

(Provide the following information with respect to each letter of credit or draft being guaranteed.)

Obligor (issuing bank/drawee):

Beneficiary/drawer:

Amount:

Terms:

As primary obligor, we hereby unconditionally and irrevocably guarantee the full, prompt and complete payment of amounts due under the [letter of credit/draft] described above when due in accordance with the terms and conditions of the Framework Agreement. This Guarantee constitutes the obligation of the Government of Ukraine in accordance with Section 3.01 of the Framework Agreement.

Government of Ukraine

By _____
Name _____
Title _____

**APPENDIX B
OPINION OF COUNSEL**

[Date]

Agency for International Development
ENI Bureau Room 6724, NS
320 21st Street, N.W.
Washington, D.C. 20523-009
U.S.A.

Gentlemen:

This opinion is furnished to you pursuant to Section 5.01(a) of the Framework Guarantee Agreement (the "Framework Agreement") dated as of _____, 1995 between the Government of Ukraine (the "Guarantor"), acting by and through the Ministry of Finance of Ukraine, and the Government of the United States of America, acting by and through the Agency for International Development ("USAID"). Terms not otherwise defined in this opinion shall have the meanings assigned to them in the Framework Agreement.

As legal counsel, I have reviewed the Framework Agreement. In connection therewith, I have also examined the following documents:

[Listing of relevant governmental approvals, registrations, laws and
decrees, and of such additional documents, as to which counsel may
wish to refer, to be added.]

Based on the foregoing and having regard for legal considerations which I deem relevant, I am of the opinion that:

1. The Guarantor has full power, authority and legal right to issue the Guarantees, execute and deliver the Framework Agreement and observe and perform the terms and conditions of the Framework Agreement and the Guarantees. The Framework Agreement is and the Guarantees will be the legal, valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their terms. The Guarantor has full legal right, power and authority to pledge the full faith and credit of Ukraine under the terms of the Guarantees.

2. All legal requirements, registrations or approvals of any governmental agency, department, commission or authority of the Government of Ukraine for (i) the issuance of the Guarantees and the due execution and delivery by the Guarantor of the Framework Agreement and the Guarantees, including without limitation, approvals relating to the availability and transfer of U.S. dollars due under the Guarantees; (ii) the legality, validity or enforceability of the Framework Agreement and the Guarantees; and (iii) the pledge of the full faith and credit of Ukraine by the Guarantor under the Guarantees, have been obtained and are in full force and effect.

3. The indebtedness of the Guarantor under the Guarantees issued for individual transactions ranks at least pari passu with all other indebtedness of the Guarantor which is payable, or may be required to be paid, to any person or entity outside of Ukraine or in a currency other than the currency of Ukraine, except indebtedness of the Guarantor to international financial institutions.

4. When issued, the Guarantees will constitute the direct, general and unconditional obligation of the Guarantor for which the full faith and credit of Ukraine is pledged.

5. The Guarantor has taken all legal action required under the laws and regulations of the Government of Ukraine to authorize the execution and delivery of the Framework Agreement and the issuance of Guarantees and to observe and perform the terms and conditions thereof. There is no legal or administrative impediment for the Guarantor to make the covenants set forth in Section 6 of the Framework Agreement with respect to the submission to jurisdiction and the other matters contained therein. The Guarantees will be unconditional, absolute and irrevocable, and shall remain in full force and effect until all Obligations guaranteed by the Guarantor are paid in full.

6. USAID will be entitled to rely on a signature of an authorized representative of the Government of Ukraine on an Appendix A notice as conclusive evidence that (i) all legal action has been taken to approve a Guarantee of the Obligations therein specified, (ii) such Guarantee is in full force and effect, and (iii) the opinions set forth herein are true and correct with respect to such Guarantee as if restated as of the date of such Guarantee.

Very truly yours,

[Seal]

Ministry of Justice of Ukraine

By _____

Name:

Title:

ГАРАНТІЙНА СТРУКТУРНА УГОДА

ЦЮ ГАРАНТІЙНУ СТРУКТУРНУ УГОДУ («Структурна угода») здійснено Маг 10 1995 року між Урядом України («Гарант»), який діє через Міністерство фінансів України, та Урядом Сполучених Штатів Америки, який діє через Агентство з міжнародного розвитку («АМР»).

УСВІДОМЛЮЮЧИ, що АМР бажає підтримати придбання якісних сільськогосподарських товарів та послуг, вироблених або що походять із Сполучених Штатів Америки, покупцями з України за особливою програмою страхування з строком повернення 540 днів та 100% покриттям за такою особливою програмою страхування;

УСВІДОМЛЮЮЧИ, що Гарант та АМР бажають сприяти втіленню цієї особливої програми АМР в Україні щодо страхування;

Гарант та АМР погоджуються про наступне:

РОЗДІЛ 1. ВИЗНАЧЕННЯ.

Слідуючі терміни при вживанні надалі матимуть наступне значення (всі терміни визначені в однині, при використанні в множині будуть мати теж саме значення, та навпаки):

«Гарантія» означає гарантію, яку надає Гарант по Зобов'язаннях.

«Зобов'язання» означають зобов'язання Експорт-Імпорт Банка України («Сторона, яка приймає на себе зобов'язання») за дорученням Гаранта щодо окремих операцій (i), які страхуються АМР за особливою програмою страхування для сільськогосподарських товарів, та (ii) для яких Гарант надав гарантію згідно положення Статті 2.02.

РОЗДІЛ 2. ПОРЯДОК

2.01 Порядок. Перш ніж розглядати заяву про страхування АМР, АМР вимагає повідомлення, що суверенна гарантія є дійсною для таких операцій. Для акредитивів або переказних векселів, що будуть страхуватися АМР за особливою програмою страхування, Гарант має направити повідомлення за формою як у Додатку А.

2.02 Надання Гарантій. Гарант надаватиме свою Гарантію по Зобов'язаннях письмовим повідомленням до АМР за формою, як у Додатку А.

РОЗДІЛ 3. УМОВИ ГАРАНТІЇ

3.01 Безумовна Гарантія. По відношенню до кожної Гарантії, що буде надана, Гарант безумовно та безвідзивно гарантує АМР повну сплату в строк і як належить в доларах Сполучених Штатів Америки Стороною, яка прийняла на себе зобов'язання. Гарант відмовляється від акцепту, зусиль, заяв, запитів, протесту або будь-яких повідомлень, а також від будь-яких вимог у випадку пред'явлення АМР або будь-якою іншою стороною, своїх прав і вимог, чи вживання будь-яких заходів проти Сторони, яка приймає зобов'язання, або проти будь-якого іншого гаранта за цими Зобов'язаннями, та наступним погоджується на будь-яке подовження часу, поновлення або інші зміни щодо цих Зобов'язань. Така відмовленість не впливатиме на права українського покупця або будь-якого уповноваженого від українського покупця, включаючи Гаранта, та постачальника із США за будь-яким контрактом на придбання товарів та послуг із США через операції, які підпадають під цю Структурну угоду. Ці Гарантії є прямим, загальним та безумовним зобов'язанням Гаранта, що є запорукою повної довіри та доброї репутації України. Ці Гарантії є гарантіями, які подовжуються та матимуть відношення до всіх Зобов'язань, є безвідзивними, є гарантіями стосовно платежів, а не інкасації, вони будуть мати повну силу та діяти доки всі гарантовані тут Зобов'язання не будуть сплачені.

3.02 Прискорення. Гарант, на визначення АМР та за попереднім письмовим повідомленням від АМР, негайно стає відповідальним за будь-які або всі Зобов'язання, що виконуються або невиконані, у випадку неспроможності Гаранта повністю і в строк сплатити прострочений борг, або виконати будь-які зобов'язання, або вирішити позитивно будь-які питання по зобов'язаннях Гаранта за цією Структурною угодою або будь-якою Гарантією, або будь-якою Структурною угодою («Структурна угода Ексімбанку США») між Гарантом та Експорт-Імпорт Банком Сполучених Штатів Америки («Ексімбанк США») або будь-якою Гарантією (як визначено такою Структурною угодою Ексімбанку США) до Ексімбанку США. Не обмежуючи права АМР, визначені в розділі 3.02, Гарант матиме право на консультації з АМР щодо використання АМР таких прав.

3.03 Примусове виконання. У випадку коли будь-яке зобов'язання не буде юридично дійсним або примусовим до виконання через будь-який суд проти Сторони, яка прийняла на себе зобов'язання, або якщо таке Зобов'язання обмежене, змінене, позбавлене юридичної сили, звільнене через будь-яку справу пов'язану із законами України про банкрутство або подібними, відповідальність Гаранта за цією Гарантією по відношенню до такого Зобов'язання буде такою ж самою, якби таке Зобов'язання було б юридично дійсним, примусовим до виконання, не мало б обмежень, змін, мало б юридичну силу та не було звільнено. Якщо будь-який платіж або переказ до АМР (або сторони застрахованої АМР), що має відношення до Зобов'язання, буде визнано недійсним або анульовано,

або вимагатиметься від АМР (або такої сторони) повернути платіж, ця Гарантія за таким Зобов'язанням буде діяти або відновиться якби такого платежу або переказу не було б зроблено.

РОЗДІЛ 4 ПРЕДСТАВНИЦТВО ТА ГАРАНТІЇ; ОКРЕМІ ПОЛОЖЕННЯ

4.01 Представництво та гарантії від Гаранта. Гарант представляє та гарантує:

(а) Повноваження. Він має повну силу, повноваження та юридичне право щодо надання цих Гарантій, на виконання цієї Структурної угоди, а також нагляду за дотриманням строків та умов цієї Структурної угоди та Гарантій.

(б) Пряме Зобов'язання. Коли надана, кожна Гарантія буде представляти собою зобов'язання Гаранта згідно положення розділу 3.01 вище. Кожна така Гарантія буде юридично дійсною, обов'язковою для виконання Гарантом у відповідності до її строків.

(в) Позволи. Всі правничі вимоги, реєстрації або схвалення будь-якою урядовою установою, відділом, комісією або уповноваженим Урядом України стосовно (і) надання Гарантій та належного виконання Гарантом положень цієї Структурної угоди та Гарантій, що включають без обмежень схвалення щодо наявності та переказу коштів в доларах США за цими Гарантіями, (ii) юридичної дійсності та обов'язкового виконання цієї Структурної угоди та Гарантій, та (iii) підтвердження того, що ці Гарантії відповідають положенням розділу 3.01 вище, отримані та мають повну силу для здійснення.

(г) Рівнозначність. Всі заборгованості Гаранта за цими Гарантіями класифікуються та класифікуватимуться принаймні як рівнозначні по відношенню до всіх інших заборгованостей Гаранта, що підлягають сплаті, або сплата яких може вимагатися, будь-якій фізичній або юридичній особі за межами України, або у валюті іншій ніж валюта України, за винятком заборгованості Гаранта міжнародним фінансовим установам.

4.02 Загальні положення.

(а) Невтручання. Гарант погоджується, що він не здійснюватиме ніяких заходів, які б перешкождали або втручалися у (i) виконання своїх Зобов'язань Стороною, яка прийняла на себе зобов'язання, або примус до виконання таких Зобов'язань, або (ii) виконання Гарантом цих Гарантій або примусу до виконання Гарантій.

(б) Наслідування прав. Гарант не буде вживати будь-яких регресивних прав, що можуть виникнути у зв'язку із сплатою по Зобов'язаннях, пов'язаних з Гарантією, доки та поки всі суми, що підлягають сплаті за цими Зобов'язаннями не будуть повністю

сплачені.

(в) Зміни. Гарант наступним погоджується, що зобов'язання Гаранта за будь-якою Гарантією не будуть здійснені у вигляді будь-якого доповнення, зміни, подовження або відмовленості від будь-яких зобов'язань, що містить така Гарантія.

РОЗДІЛ 5. ПЕРЕДУЮЧІ УМОВИ

5.01 Передуючі умови. В якості умов передуючих ефективному виконанню цієї Структурної угоди та, якщо АМР з цим погоджується, АМР буде представлено наступне, що за формою та змістом задовольнить АМР:

(а) Правниче розуміння. В письмовому вигляді висновки Міністерства юстиції України по суті та за формою Додатку Б.

(б) Повноваження представників. Свідоцтво про повноваження та зразки підпису особи(осіб), які підписують цю Структурну угоду та будь-які повідомлення або Гарантії, пов'язані з цим.

(в) Агент-представник. Лист від Міністерства юстиції України про призначення особи, яка буде діяти як агент Гаранта та свідоцтво про те, що ця особа погоджується бути агентом-представником.

5.02 Додаткові документи. Надалі, час від часу, АМР надаватиметься такий додатковий юридичний висновок(висновки), свідоцтво про повноваження, аутентичні зразки підписів, документи та інша інформація, яку АМР обґрунтовано вимагатиме.

РОЗДІЛ 6. ЮРИСДИКЦІЯ

Гарант безвідзивно погоджується, що будь-яка судова справа або процедура, що виникне внаслідок або у зв'язку із даною Структурною угодою, будь-якою Гарантією або Зобов'язанням згідно до такої Гарантії, може бути порушена у Сполучених Штатах Америки у будь-якому федеральному суді або суді штату, що засідає у Штаті Нью-Йорк або в Окрузі Колумбія, або в суді третьої країни, призначеним за спільною домовленістю між Гарантом та АМР, а Гарант безвідзивно підлягає юрисдикції цих судів у разі порушення будь-якої з таких справ або процедур. Гарант обере, призначить та наділить повноваженнями особу, чий офіс зараз розташований у Нью-Йорку, штат Нью Йорк, США, бути його агентом для отримання для нього або від його імені та від імені його майна та прибутків, процесуальне повідомлення у випадку порушення будь-якої з таких справ або процедур. Гарант також безвідзивно погоджується на отримання такого повідомлення шляхом надсилання копій авіапоштою США на його ім'я та адресу, зазначену на сторінці, де стоять підписи під цією Структурною угодою. Зазначені умови не обмежують права АМР

порушити будь-яку з таких справ чи процедур або отримати виконання будь-якого рішення, винесеного судом у зв'язку з будь-якою з таких судових справ або процедур у будь-якому іншому відповідному порядку юрисдикції чи будь-яким іншим чином. Гарант погоджується, що рішення, винесене проти нього у ході будь-якої судової справи або процедури, що витікає з цієї Структурної угоди або Гарантії, буде вирішальним і може бути приведене у виконання у будь-якій іншій юрисдикції у межах або за межами Сполучених Штатів Америки.

РОЗДІЛ 7. РІЗНЕ

7.01 Витрати. Гарант цим погоджується гарантувати сплату АМР, на вимогу, (а) будь-яких витрат на юридичні послуги за будь-які юридичні висновки від української сторони, які може вимагати АМР в разі необхідності та (б) усіх обгрунтованих витрат та видатків, включаючи вартість юридичних послуг, що виникли у АМР у зв'язку із будь-яким юридичним заходом, що мають відношення до будь-якої неспроможності з боку Гаранта повністю або вчасно сплатити будь-яку прострочену суму за цією Структурною угодою або Гарантією. Всі розумні витрати, включаючи витрати на юридичні послуги у зв'язку з будь-якими юридичними діями, що матимуть відношення до будь-яких інших прав або позовів за цією Структурною угодою або Гарантією, буде сплачувати програвша сторона.

7.02. Збори. Якщо Уряд України або будь-яке відомство, агентство, політичний підрозділ чи податкова інспекція накладатиме чи зтягуватиме будь-які податки, мита, збори або інші нарахування (все разом «Збори») на або у зв'язку з виконанням, видачею, наданням, реєстрацією чи здійсненням Гарантії, Гарант погоджується сплачувати всі такі Збори. Гарант погоджується робити всі платежі за Гарантіями вільними та чистими від будь-яких зборів або у зв'язку із Зобов'язаннями, або по відношенню до будь-яких сум, що підлягають сплаті за цими Зобов'язаннями. Якщо Сторона, яка прийняла на себе зобов'язання, через дію закону чи інакше не може сплатити будь-які Збори за таким Зобов'язанням, Гарант погоджується, що сума, яка підлягає сплаті за таким Зобов'язанням та Гарантією може бути збільшена до розмірів, необхідних, щоб отримати та перерахувати АМР суми Зобов'язань, передбачених цією Гарантією після виплати таких Зборів.

7.03 Відмовленість та додаток. Неспроможність або запізнення з боку будь-якої сторони у використанні будь-яких можливостей або прав за цією Структурною угодою або Гарантією не буде розглядатися як відмова, або будь-яке окреме або часткове використання будь-яких можливостей або прав, не заважатиме будь-якому іншому виконанню або використанню будь-яких інших юридичних можливостей або прав. Жоден з додатків або жодна відмовленість від будь-яких положень цієї Структурної угоди або Гарантії не будуть

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дійсними, доки не будуть підписані Гарантом та АМР.

7.04 Неправомірність. Якщо будь-яке положення цієї Структурної угоди або Гарантії буде визнано будь-яким судом з відповідною юрисдикцією неправомірним або необов'язковим до виконання, всі інші положення цієї Структурної угоди або такої Гарантії залишаються в повній силі та дії, та сторони розпочнуть переговори щодо внесення поправок до неправомірних або необов'язкових до виконання положень.

7.05 Застосування закону. Ця Структурна угода та Гарантії вважатимуться як підлеглі до законів Штату Нью-Йорк, Сполучені Штати Америки, та з усіх причин, у всіх юридичних випадках будуть керуватися, тлумачитися та зобов'язуватимуться до виконання законами Штату Нью-Йорк.

7.06 Платежі. Всі платежі, що мають бути здійснені Гарантом для АМР за цією Гарантією, мають бути здійснені в доларах США, фондами, що можуть бути використані негайно, в Банку Федерального резерву Нью-Йорку для кредитування рахунку призначеного для АМР.

7.07 Зв'язок. Будь-яке Зобов'язання, документ, повідомлення або вимога, що мають бути надані або здійснені за цією Структурною угодою або Гарантією АМР або від імені АМР або Гарантом, мають бути зроблені в письмовій формі англійською мовою, будуть вважатися отриманими, якщо доставлені через посильного, зареєстровану авіапоштою (попередня сплата), телексом або факсом, адресовані АМР або Гаранту на їх відповідні адреси та номери, вказані на сторінці із підписами, або на інші адреси або номери, які кожна сторона може призначати час від часу для отримання зазначених повідомлень.

7.08 Правонаступники та уповноважені. Положення цієї Структурної угоди або кожної Гарантії є зобов'язаннями Гаранта та будуть зобов'язаннями будь-яких правонаступників та уповноважених Гаранта та стануть дійсними на користь АМР та його правонаступників та уповноважених. Гарант не має права на передачу прав за цією Структурною угодою або Гарантією, або зобов'язаннями, визначеними тут, без попередньої письмової згоди АМР.

7.09 Англійський та український варіанти. Ця Структурна угода буде укладена в двох примірниках англійською та українською мовами, проте, у випадку невиразності або конфлікту між англійським та українським варіантами, варіант зроблений англійською мовою буде мати перевагу.

НА ЗАСВІДЧЕННЯ ВИЩЕЗАЗНАЧЕНОГО, Гарант та АМР уклали цю Структурну угоду, що підлягає виконанню з визначеної дати.

УРЯД УКРАЇНИ, який
діє через Міністерство
фінансів України



Ім'я: Петро Германчук
Посада: Міністр фінансів України

Адреса:

вул. Грушевського 12/2
Київ, Україна

Телефон: (380 44) 293-5363
Факс: (380 44) 226-2517

УРЯД СПОЛУЧЕНИХ ШТАТІВ
АМЕРИКИ, який діє через
АГЕНТСТВО З МІЖНАРОДНОГО
РОЗВИТКУ.



Ім'я: Уільям Грін Міллер
Посада: Посол Сполучених
Штатів Америки в Україні

Адреса:

320, вул. 21, Північний Захід
Вашингтон, Округ Колумбія,
Сполучені Штати Америки
До уваги Заступника
Адміністратора
регіонального управління
країн Європи та Нових
Незалежних Держав

Телефон: (202) 647-9119
Факс: (202) 647-9973

ДОДАТОК А
ГАРАНТІЙНІ ЗОБОВ'ЯЗАННЯ ЩОДО АКРЕДИТИВА/ПЕРЕКАЗНОГО ВЕКСЕЛЯ

(Дата)

Агентство з Міжнародного розвитку
 ЕНІ Бюро, к. 6724, НС
 320, вул. 21, Північний Захід,
 Вашингтон, Округ Колумбія 20523-009
 США

Наступним ми гарантуємо, що (безвідзивний/і акредитив/и /переказний/і вексель/і) є предметом строків та умов визначених цією Гарантійною структурною угодою («Структурна угода»), підписаною _____, 1995 року між Урядом України, який діє через Міністерство фінансів України, та Урядом Сполучених Штатів Америки, які діють через Агентство з міжнародного розвитку («АМР»).

[Акредитив/переказний вексель] (Надайте наступну інформацію про кожний акредитив або про гарантований переказний вексель.)

Сторона, що приймає зобов'язання: (Банк, який видає/банк-гарант):

Бенефіціар/Сторона-гарант:

Сума:

Строки:

Як основна Сторона, що приймає зобов'язання, ми наступним безумовно та беззастережливо гарантуємо повну, швидку та завершену сплату призначеної суми згідно [акредитива/переказного векселя], як належить, як це зазначено строком виплати у відповідності до строків та умов цієї Структурної угоди. Ця Гарантія є зобов'язанням Уряду України у відповідності до розділу 3.01 Структурної угоди.

Уряд України

Ким _____
 Ім'я _____
 Посада _____

ДОДАТОК Б
ЮРИДИЧНИЙ ВИСНОВОК

(Дата)

Агентство з міжнародного розвитку
ЕНІ Бюро, к. 6724, НС
320, вул. 21, Північний Захід,
Вашингтон, Округ Колумбія 20523-009
США

Панове:

Цей висновок подається на ваш розгляд згідно Розділу 5.01(a) Гарантійної структурної угоди («Структурна угода») підписаної _____, 1995 року між Урядом України («Гарант»), який діє через Міністерство фінансів України, та Сполученими Штатами Америки, які діють через Агентство з міжнародного розвитку («АМР»). Умови, що інакше не визначені у цьому висновку, надалі матимуть відповідні значення в Структурній угоді.

Як уповноважений адвокат я переглянув Структурну угоду. У зв'язку з цим, я також вивчив наступні документи:

(Перелік відповідних урядових схвалень, реєстрацій, законів та указів, та інших документів, до яких може звернутися адвокат, додається.)

Виходячи з вищезазначеного та посилаючись на юридичні підстави, які я вважаю доречними, я маю на увазі наступне:

1. Гарант має повну силу, повноваження та юридичне право видавати гарантії та виконувати Структурну угоду, а також наглядати за дотриманням строків та умов цієї Структурної угоди та Гарантій. Структурна угода має, а Гарантії матимуть юридичну, дійсну та обов'язкову силу зобов'язань Гаранта, що використовуватимуться проти Гаранта згідно положень про їх використання. Гарант має повне юридичне право, довіреність та повноваження заручитися повною довірою та доброю репутацією України згідно гарантійних умов.

2. Всі юридичні вимоги, реєстрації або ухвалення з боку будь-якої державної установи, відділу, комісії або будь-якої іншої уповноваженої установи від Уряду України щодо (i) надання гарантій та чинного додержування та виконання Гарантом Структурної угоди і гарантій, включаючи без обмежень, ухвалення, згідно гарантій, наявності та переказу доларів США; (ii) законності, юридичної сили або обов'язковості щодо виконання Структурної Угоди та Гарантій; і (iii) заручення повною довірою та доброю репутацією України згідно

гарантійних умов, були отримані та мають повну силу для здійснення.

3. Заборгованість Гаранта згідно Гарантій, що надавалися для індивідуальних справ, принаймні як рівнозначні з усіма іншими заборгованостями Гаранта, що підлягають сплаті, або сплата яких може вимагатися, будь-якій фізичній або юридичній особі за межами України, або у валюті іншій, ніж валюта України, крім заборгованості Гаранта міжнародним фінансовим установам.

4. Після надання Гарантії складатимуть пряме, загальне та безумовне зобов'язання Гаранта, що стане запорукою повною довіри та доброї репутації України.

5. Гарант вживає всіх юридичних заходів, що вимагаються згідно законів і постанов Уряду України з метою започаткувати виконання та впровадження Угоди, а також надання Гарантій та дотримання строків і умов. До Гаранта не вживатиметься ніяких юридичних або адміністративних заходів стосовно визначення зобов'язань згідно розділу 6 даної Структурної угоди з посиланням на підлеглість юрисдикції та в інших можливих випадках. Гарантії будуть безумовними, абсолютними та безвідзивними, матимуть повну силу для здійснення, доки всі гарантовані Зобов'язання, що надаються Гарантом, мають бути повністю сплачені.

6. АМР має право покластися на підпис уповноваженого представника Міністерства фінансів України, як зазначено у повідомленні Додатка А, що є заключним свідоцтвом про (i) всі юридичні заходи, що були вжиті з метою ухвалення Гарантії визначених Зобов'язань, (ii) про те, що Гарантія має повну силу для здійснення, та (iii) про те, що всі зроблені висновки є дійсними та правильними стосовно цієї гарантії, як було встановлено згідно норм на час підписання такої Гарантії.

З повагою,

(Печатка)

Міністерство юстиції України

Ким: _____
 Ім'я:
 Посада:

INTERAGENCY AGREEMENT
BETWEEN THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
AND
THE EXPORT-IMPORT BANK OF THE UNITED STATES

1. Project Title: Economic Restructuring and Financial Sector Reform		2. Project Number 110-0009 Obligation No. 110-0009-G-5100-00	
3. Appropriation Symbol 72X0402		4. Budget Plan Code WNPX-95-16200-V990	
5. Funds Control Number 5621100		6. Fiscal Year FY 1995	
7. Completion Date September 30, 1998		8. Original <input checked="" type="checkbox"/> or Amendment No.	
9A. Prior Funding \$ 0	9B. Funding Obligated this Document \$ 246,082	9C. New Total Funding \$246,082	
10. Authority: Freedom Support Act; Section 632(b) of the Foreign Assistance Act of 1961, as amended.			
11. Brief Program Description: Services provided by the Export-Import Bank of the United States in connection with the USAID Ukraine Export Credit Insurance Facility, as further defined in the attached Annex A Program Description.			
12. Liaison Offices/Additional Representatives			
A. Export-Import Bank of the United States William Redway Kenneth Tinsley Thomas Fitzpatrick Bernard Lubran		B. United States Agency for International Development Richard A. Johnson Charles Uphaus Laurier Mailloux	
13A. Signature by Authorized Representative		13B. Signature by Authorized Representative	
EXPORT-IMPORT BANK of the UNITED STATES		UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT	
BY: <u><i>Raymond Albright</i></u>		BY: <u><i>Carlos Pascual</i></u>	
NAME Raymond Albright		NAME Carlos Pascual	
TITLE Senior Vice President		TITLE Deputy Assistant Administrator Bureau for Europe and New Independent States	
DATE June 15, 1995		DATE June 15, 1995	
14. This Interagency Agreement consists of this face sheet and the following items (if checked):			
<input checked="" type="checkbox"/> Schedule		<input checked="" type="checkbox"/> Annex A - Program Description	
<input checked="" type="checkbox"/> Annex B - Financial Plan and Budget		<input checked="" type="checkbox"/> Annex C - Standard Provisions	

SCHEDULE

A. Purpose of Agreement

This Agreement between the Export-Import Bank of the United States, hereinafter referred to as the "Recipient Agency," and the United States Agency for International Development (USAID) is entered into under the authority of Section 632(b) of the Foreign Assistance Act of 1961, as amended. The Agreement defines the procedures under which USAID will reimburse the Recipient Agency to act as servicing agent for USAID in connection with the USAID Ukraine Export Credit Insurance Facility.

B. Purpose of Program

The Program, further described in Annex A, consists of services to be provided by the Recipient Agency in connection with the USAID Ukraine Export Credit Insurance Facility.

C. Fiscal Terms

1. Execution of this Agreement constitutes an obligation by USAID of the funds specified in Block 9B of the face sheet of this Agreement.

2. USAID funding for the Program is limited to the amount obligated. If the Recipient Agency chooses to continue Program activities after USAID funding has been exhausted, the Recipient Agency agrees to use its own fund for that purpose.

3. The financial plan in Annex B sets forth the budget for implementation of the Program. Within the total budget amount for the Program, the Recipient Agency may adjust individual line items, provided that (1) any adjusted line item does not change by more than 15 per cent of the amount shown for that line item in the financial plan and (2) the Recipient Agency gives USAID written notice of the adjustments. Adjustments to the budget that exceed 15 per cent for any one line item shall require prior written approval of USAID.

D. Billing, Financial and Progress Reports

1. The Recipient Agency will bill USAID through OPAC procedures or by submitting a Standard Form 1081 (SF-1081), addressed to:

United States Agency for International Development
M/FM/CMP/GIB
SA-2, Room 700
Washington, D.C. 20523-0209

2. The original and two copies of each quarterly financial report required under Section B.2 of the Standard Provisions (Annex C) of this Agreement shall be furnished to the above-stated address. In addition, a copy of each financial report shall be submitted to:

United States Agency for International Development
ENI/PD
Room 4725 NS
Washington, D.C. 20523-0086.

E. Program Reporting

1. Reports

a. **Periodic Progress Reports:** The Recipient Agency shall submit to USAID on a quarterly basis a financial report that includes budget information on accrued expenditures, commitments, and disbursements of funds provided under this Agreement.

b. **Final Report:** Not later than 60 days following the completion date of the Program, the Recipient Agency shall prepare and submit to USAID, in form and substance satisfactory to USAID, a final financial report. This final report shall provide a chronological summary of the information required generally for the periodic progress reports for the period from the beginning of the Program to its completion.

2. Consultation

The Recipient Agency and USAID will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Recipient Agency and USAID, at the request of either, will exchange views on the progress of the Program, the performance of obligations under this Agreement, and other matters relating to the Program.

3. Compliance with USAID Policy Guidance

From time to time, USAID may issue policy and operational guidance regarding the implementation of the Program. The Recipient Agency hereby agrees to comply with all such guidance, as USAID may convey to the Recipient Agency in writing.

4. Notification

The Recipient Agency shall notify USAID promptly in writing of any audits of activities financed by this Agreement initiated by or at the request of the Recipient Agency, the Office of Management and Budget or the General Accounting Office.

F. Special Provisions

1. Applicable Regulations

USAID is invoking the authority of Section 498B (j) of the Foreign Assistance Act (FAA) of 1961, as amended to enable the Recipient Agency to apply its own statutes, regulations, policies, and procedures in administering the USAID Ukraine Export Trade Credit Insurance Facility on behalf of USAID notwithstanding any statutes and regulations (including environmental regulations) applicable to USAID, except for (a) chapter 11 of the FAA, (b) section 634A of the FAA and the comparable notification requirements in USAID's annual appropriations acts, (c) sections 669 and 670 of the FAA and sections 306 and 307 of the Chemical and Biological Weapons Control and Elimination Act of 1961, and (d) section 1341 of title 31 of the United States Code ("Anti-Deficiency Act"), the Congressional Budget and Impoundment Control Act of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985, and the Budget Enforcement Act of 1990.

2. Country Eligibility

For purposes of this Agreement, the term "Cooperating Country" shall mean the Ukraine.

3. Agent's Liability

Nothing in this Agreement shall be deemed to create any liability on the part of the Recipient Agency for any action taken or omitted to be taken by it in connection with its administering, as servicing agent for USAID, of the USAID Ukraine Export Credit Insurance Facility.

G. Conflicts

Conflicts between any of the parts of this Agreement shall be resolved by applying the following descending order of precedence:

Face Sheet
Schedule
Annex C, Standard Provisions
Annex B, Financial Plan and Budget
Annex A, Program Description

ANNEX A
PROGRAM DESCRIPTION

INTRODUCTION

USAID has developed a special export credit insurance facility (the "USAID Insurance Facility") to support the sales by eligible U.S. exporters of agricultural-related goods and services to the Ukraine. The obligations insured under the USAID Insurance Facility will be supported by the Government of the Ukraine. The AID Insurance Facility will support U.S. exports and commercial ties to the Ukraine and assist in the development of the Ukrainian agricultural sector. Under the USAID Insurance Facility, USAID will provide insurance to cover exports of approximately \$175 million. USAID will be responsible for the operation of the USAID Insurance Facility and the payment of all claims thereunder.

DESCRIPTION OF EXPORT-IMPORT BANK OF THE U.S. ACTIVITIES

The Export-Import Bank of the United States ("Eximbank") will service the USAID Insurance Facility on behalf of USAID. Eximbank will receive all applications from U.S. exporters (or other USAID-approved applicants) for export credit insurance under the USAID Insurance Facility, will review such applications for completeness. The applications will be reviewed in accordance with USAID established criteria for product eligibility and Eximbank's standard exporter underwriting procedures for short-term single buyer insurance policies. Such exporter underwriting procedures involve evaluation of the applicant's financial strength vis-a-vis the size of the transaction to be insured, as evidenced by the applicant's financial statements and a credit report. Applicant's Disclosure Certificate will also be reviewed. Upon completion of its review, Eximbank will submit its evaluation, together with the application and accompanying documentation, to USAID for final decision. USAID will be responsible for initiating contact with the Government of Ukraine and ensuring that all requisite approvals are obtained. After USAID's approval of the application and upon receipt of direct instructions from USAID, Eximbank, on behalf of USAID, will issue a commitment to the applicant for a period not exceeding 90 days (or, if USAID otherwise approves, for a longer period.) Premiums and any other payments owing by the insured or other parties will be paid directly to USAID. After notification from USAID of receipt of premium from the applicant, Eximbank, on behalf of USAID, will issue to the applicant an insurance policy in substantially the form previously approved by USAID, except for any declarations, endorsements, amendments or other changes deemed necessary or advisable by Eximbank. Except for actions against USAID which will be made directly upon USAID, all overdue reports, requests for assignment of policy proceeds and notifications from the insured under the insurance policy will be submitted to Eximbank, and Eximbank will forward such documents or requests to USAID. Eximbank will receive and process all filings of claims, will review claim documentation to determine if the claim complies with the terms and conditions of the applicable insurance policy, and will submit a recommendation to USAID as to whether the claim should be paid, together with claim documentation. If USAID approves the claim, it will, after receipt of insured's Release and Assignment documentation, pay the insured directly. If USAID denies the claim, it will notify the insured directly. USAID will undertake and be responsible for any collection or recovery efforts or other actions in connection with the insurance policy.

USAID and Eximbank will work closely in the implementation of the USAID Insurance Facility.

In addition to the foregoing, Eximbank will also take any actions it considers necessary or desirable to the performance of its role as servicing agent for USAID in the operation of the USAID Insurance Facility.

STAFFING

To assist Eximbank in fulfilling its role as servicing agent, USAID will fund the salary and benefits of Eximbank's personnel that will be assigned to this Program as well as other administrative costs and expenses. The Program will fund personnel and administrative costs and expenses associated with the review and processing of applications for export credit insurance and claims as further defined below:

Vice President	Responsible for management and day-to-day decisionmaking on Program. Ensures all Eximbank divisions and key personnel involved in Program are kept apprised of operations.
Assistant Vice President	Involved in day-to-day oversight of program to ensure applications and policy documents are processed pursuant to acceptable standards and to ensure Program standards are met. Maintains dialogue with all relevant Insurance Division personnel involved in Program.
Underwriters	Review applications to ensure completeness. Clarify information with exporters and Policy Administration Department. Responsible for policy instructions to Policy Administration Department for creation of insurance policy documents. Notify applicant of USAID decision regarding application and, in general, communicate with applicant on related matters as directed by USAID. Contact Ukrainian authorities as need arises to clarify application issues. Work closely with USAID, in particular, to obtain decisions on applications and other relevant issues.
Policy Administrator	Prepares all policy documentation and review for accuracy. Maintains computer data base related to policy issuance. Responsible for the mailing of USAID policy documents to insured.
Underwriting Assistant	Receives applications and tracks all related documentation. Maintains file system, coordinating information with all involved divisions and departments within Eximbank, especially Policy Administration Department. Performs miscellaneous typing and recordkeeping duties and receives and directs all telephone inquiries.
Claims Officer	Receives all claims and establishes internal system to track claim processing. Reviews claim documentation and identifies coverage or non-coverage issues. Communicates with transaction participants (exporters, assignees, obligors, et al.) as necessary. Prepares recommendation to USAID.
File Maintenance Personnel	Creates and maintains file system. Responsible for overseeing (conversion of) hard copy of application

to microfiche format, tracking data and file retrieval as needed for application processing.

Other Staff

Perform other functions necessary or advisable to fulfilling Eximbank's role as servicing agent.

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ANNEX B
Export-Import Bank of the United States
Budgeted Costs Related to the Servicing Agreement
With AID for their Insurance Program for Ukraine

	FY 1995 Preparation Cost Thru 6/14/95		6/15-9/30/95 FY 1995		FY 1996		FY 1997		FY 1998	
	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Personnel Costs										
Vice President	25	\$1,255	120	\$6,025	40	\$2,069	40	\$2,129	10	\$547
Assistant Vice President	35	1,362	120	4,670	160	6,414	100	4,125	10	424
Senior Underwriter	60	1,985	120	3,970	30	1,022	200	7,014	0	0
Underwriter	35	980	640	17,918	400	9,700	350	10,387	0	0
Underwriter	0	0	240	6,719	100	2,425	130	3,858	0	0
Policy Administrator	25	406	200	3,247	80	1,338	0	0	0	0
Underwriting Assistant	15	220	40	588	30	454	0	0	0	0
Claims Officer	0	0	0	0	0	0	80	2,374	80	2,441
File Maintenance	0	0	80	1,062	40	547	20	281	0	0
Other Staff	120	4,670	200	7,784	100	4,009	100	4,125	0	0
		<u>\$10,879</u>		<u>\$51,983</u>		<u>\$27,977</u>		<u>\$34,294</u>		<u>\$3,413</u>
Other Admin. Costs										
Travel		0		25,000		25,000		25,000		5,000
Overhead (29.2% of Salaries)		3,177		15,179		8,169		10,014		997
Total		<u>\$14,055</u>		<u>\$92,163</u>		<u>\$61,147</u>		<u>\$69,308</u>		<u>\$9,409</u>

4 Year Total

\$246,082

ANNEX C

STANDARD PROVISIONS

A. GENERAL

1. The Recipient Agency shall be accountable for all funds made available to it under this Agreement. Funds not expended by the Recipient Agency by the Completion Date of the Program (as defined below) and funds expended for purposes or activities not authorized by this Agreement shall be promptly refunded to USAID.

2. The Completion Date for the Program shall be the date stated in Block 7 of the face sheet of this Agreement, or such other date as the parties may agree to in writing. "Completion Date" for this purpose means the estimated date by which all USAID-financed services will have been performed and all USAID-financed goods will have been furnished for the Program as contemplated in this Agreement. Except as USAID may otherwise agree in writing, funds transferred under this Agreement may not be used to finance services performed after the Completion Date or goods furnished after the Completion Date.

3. Except as USAID may otherwise agree in writing, the Recipient Agency shall, not later than nine months following the Completion Date, submit to USAID requests for reimbursement or liquidation of outstanding advances under the Program. Funds which have not been disbursed and for which reimbursement requests have not been received by USAID as of nine months following the Completion Date of the Program may be unilaterally deobligated by USAID.

4. In order to be eligible for reimbursement under this Agreement, expenditures must be consistent with all applicable laws and regulations, as set forth in F.1, Applicable Regulations, of the Schedule to this Agreement.

B. BILLING AND FINANCIAL REPORTS

1. The Recipient Agency shall bill USAID as provided in the Schedule. The amount billed will be determined by the Recipient Agency and will be billed for an expenditure transfer into an account administered by the Recipient Agency and for which the Recipient Agency provides fiscal reports to OMB and/or the Department of Treasury. This amount will be treated by USAID as an advance and will be expended based on the quarterly reports, described below, detailing the implementation of the Program.

2. The financial report submitted for liquidation of advances or requests for reimbursement shall, as provided in the Schedule, contain current quarter and cumulative amounts as follows:

<u>Budget Line Item</u>	<u>Budget Amount</u>	<u>Current Quarter Disbursements</u>	<u>Cumulative Disbursements</u>	<u>Remaining Budget Balance</u>
-----------------------------	--------------------------	--	-------------------------------------	-------------------------------------

3. The financial reports will be used to liquidate the advance authorized by this Agreement. The Recipient Agency shall submit its quarterly report within 30 days after the end of the applicable quarter. An original and three copies of the report shall be furnished to USAID at the address(es) specified in the Schedule of this Agreement. The report must be signed in the original by an authorized official of the Recipient Agency billing office.

4. The final report reflecting the fact that there will be no additional expenditures under the agreement will be clearly marked "FINAL," so that USAID may take appropriate fiscal actions to close the accounting records.

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C. PROGRESS REPORTS

The periodic progress reports (as specified in the Schedule to this Agreement) shall include a narrative description of financial commitments, expenditures and disbursements against the approved budget. These periodic progress reports shall be keyed to approved planning documents as may be required in the Schedule to this Agreement.

D. PROCUREMENT

The Recipient Agency agrees to use the funds transferred hereby to cover costs incurred in carrying out the Program in accordance with the terms and conditions of this Agreement and will administer the funds (including procurement and monitoring actions) in accordance with its own procedures and Section 498B (h) of the Foreign Assistance Act of 1961, as amended.

E. REPORTS AND RECORDS

1. The Recipient Agency shall keep full and complete records and accounts with respect to the funds transferred hereby in accordance with generally accepted U.S. Government accounting principles.

2. The Recipient Agency shall not enter into any contracts or grant agreements without first seeking prior approval in writing from USAID. If the Recipient Agency enters into any contracts or grants, the Recipient Agency shall ensure that contracts and grants include a clause providing that all contractors or grantees financed with funds provided hereunder maintain books and records related to the Program in accordance with generally accepted accounting principles as formally prescribed by the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants). Further, the Recipient Agency shall ensure that contracts and grants include a clause providing that all such books and records of all contractors and grantees financed with funds allocated hereby may be audited by the Recipient Agency, USAID, or other authorized U.S. Government official for a period of three (3) years from the expiration of the contract or grant.

F. IMPLEMENTATION AND MONITORING

1. Overall Program supervision shall be the responsibility of the Recipient Agency.

2. For each interval of the fiscal year as specified in the Schedule to this agreement, the Recipient shall submit to the office identified in Block 12B of the face sheet of this Agreement a report on Program implementation. The report shall be submitted within 30 days after the end of the interval covered by the report. The report shall, for the period covered, include financial commitments, expenditures, and disbursements in connection with the Program.

3. In addition, the Recipient Agency shall submit to USAID such other information as USAID may reasonably request regarding the implementation of the Program and the expenditure of funds under this Agreement.

G. AUDIT AND INSPECTION RIGHTS

1. Audit and inspection requirements as set forth in the Inspector General Act of 1978, as amended (the "Act") shall apply with respect to the funds transferred hereby. The Office of the Inspector General for USAID shall ensure full compliance with all applicable provisions of the Act in coordination with the appropriate office of the Recipient Agency, which shall provide all appropriate assistance or other support.

2. The Recipient Agency shall not enter into any contracts or grant agreements without first seeking prior approval in writing from USAID. The following provisions will be enforced should the Recipient Agency enter into any contract or grant agreement that is approved by USAID.

a. The Recipient Agency shall ensure that grants and contracts include a clause providing that audit and inspection requirements as set forth in the Inspector General Act of 1978, as amended, (the "Act") shall apply with respect to the books and records of any contractor or grantee financed with funds transferred hereby.

b. The Recipient Agency shall ensure that grants with non-U.S., nongovernmental organizations include an audit clause which requires that if a grantee receives \$100,000 per year or more under such a grant, the grantee agrees that it shall have an independent financial audit made of the funds provided under such a grant. The financial audit of the funds disbursed to the grantee shall determine whether the receipt and expenditure of the funds provided under the grant are in accordance with generally accepted accounting principles and whether the grantee has complied with the terms of the agreement. An audit shall be conducted for each fiscal year of the grantee. The audits shall usually be performed annually, but not less frequently than every two years. The audits shall be performed in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States.

c. The Recipient Agency shall ensure that contracts with non-U.S. contractors include the appropriate audit and examination of records clauses as specified in the Federal Acquisition Regulations.

d. The Recipient Agency shall ensure, by appropriate written arrangements with aid recipients, that such USAID-financed assistance shall be subject to audit and inspection by authorized U.S. Government officials.

H. AMENDMENTS AND MODIFICATIONS

1. Implementation letters may be used to record mutually agreed upon adjustments to Annex A (Program Description) or to Annex B (Financial Plan and Budget) without formal amendment to this Agreement. In addition, USAID, from time to time may issue implementation letters to furnish additional information about matters addressed in this Agreement. Implementation letters shall not be used, however, to modify the Schedule or Annex C (Standard Provisions) of this Agreement or to increase the amount of funds obligated under this Agreement. Such changes shall only be accomplished through formal amendment of the Agreement.

2. This Agreement may be amended, modified or canceled upon the mutual, written agreement of both parties.

I. AUTHORIZED REPRESENTATIVES.

For all purposes relevant to this Agreement, the Recipient Agency will be represented by the individual identified in Block 13A or the individual holding or acting in the same office, and USAID will be represented by the individual identified in Block 13B or the individual holding or acting in the same office. Each party may, by written notice to the other party, designate additional representatives, who shall serve as representatives for all purposes specified in such notice. The Recipient Agency and USAID hereby designate as additional representatives the persons named in Blocks 12A and 12B, respectively, who may exercise all powers under this Agreement other than amending, modifying or canceling the Agreement. USAID may accept as duly authorized any instrument signed by representatives of the Recipient Agency until receipt of written notice of revocation of their authority.

J. INTERNATIONAL TRAVEL

1. Except as USAID may otherwise agree in writing, all travel financed under this Agreement shall be subject to the Federal Travel Regulations.

2. Except as USAID may otherwise agree in writing, travel financed under this Agreement to all international destinations shall be subject to United States Embassy or USAID Mission clearance in accordance with guidance issued from time to time by USAID. The Recipient Agency is hereby advised that in some instances, several weeks' advance notice may be required in order to obtain the necessary approvals for certain international destinations. Accordingly, the Recipient Agency shall advise USAID in Washington of proposed international travel at least six weeks in advance if possible.

K. INELIGIBLE COUNTRIES.

Except as USAID may otherwise agree in writing, funds provided under this Agreement will only be expended for services to be provided by the Recipient Agency in connection with USAID's Ukraine Export Credit Insurance Facility.

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Clearance Sheet for:

**Inter-Agency Agreement with the Export-Import Bank of the US
Project 110-0009**

Document (Obligation) No.: 110-0009- G-5100-00

Drafter:
ENI/PD MWalker MaryAnn Walker Date 6/15/95

Clearances:

ENI/PER, LMailloux	<u>LM</u>	Date	<u>6/15/95</u>
ENI/ED, RJohnson	<u>RJ</u>	Date	<u>6/15/95</u>
ENI/EEUD, NTumavick	<u>NT</u>	Date	<u>6.15.95</u>
ENI/PD, JDzierwa	<u>JD</u>	Date	<u>6-15-95</u>
ENI/PCS, PMatheson	<u>PM</u>	Date	<u>6/15/95</u>
ENI/NCA, BKline	<u>BK</u>	Date	<u>6/15/95</u>
GC/ENI, TGeiger	<u>TG</u>	Date	<u>6/20/95</u>

Funds for the services requested are available:

ENI/FS, MLew al Date 6/14/95

Fiscal Data:

Project Number: 110-0009
Appropriation Symbol: 72X0402
Budget Plan Code: WNPX-95-16200-V990
Obligation Number: 110-0009-G-5100-00
Fiscal Year: 95
Amount: \$ 246,082.00
Funds Control No. 5621100

ACTION: received
INITIALS: al
DATE: 6/15/95

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U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Waiver No. 95-0009-02

APR 11 1995

**ACTION MEMORANDUM FOR THE DEPUTY ASSISTANT
ADMINISTRATOR FOR PROGRAM OPERATIONS, ENI**

FROM:

Richard A. Johnson
Richard A. Johnson, ENI/ED
Laurie Mailloux
Laurie Mailloux, ENI/PER

**SUBJECT: Economic Restructuring and Financial Sector Reform Project (110-0009):
Amendment No. 4 - USAID Ukraine Export Credit Insurance Program**

ISSUE: We require your approval on the following actions:

- 1) to authorize an amendment to project 110-0009 to finance a program of short-term export credit insurance for agricultural-related inputs to Ukraine. The new life of project (LOP) total will be increased by \$30 million, with the new LOP funding totalling \$160 million. All other budget items covered under Amendment No. 3, totalling \$130 million, remain the same. The Project Assistance Completion Date (PACD) will be extended through September 30, 1998 to allow for the completion of project activities under the Ukraine Export Credit Insurance Program.
- 2) to invoke the authority of Section 498B (j) of the Foreign Assistance Act of 1961, as amended, (the FAA) to enable the Export-Import Bank of the United States (EXIM) to apply its own statutes, regulations, policies, and procedures in carrying out this program on behalf of USAID notwithstanding any statutes and regulations applicable to USAID which are inconsistent with or contrary to EXIM statutes, regulations, policies, and procedures.

BACKGROUND and DISCUSSION: The purpose of the Economic Restructuring and Financial Sector Reform Project 110-0009, under which the Ukraine Export Credit Insurance Program will be funded, is to support the transformation of New Independent States' command economies into market-based economies. The purpose of the \$30 million dollar Export Credit Insurance Program is to leverage over \$130 million in export financing to guarantee exports of US agricultural inputs (seeds, fertilizer, herbicides, pesticides, and agricultural equipment) to Ukraine. The US Government and US agribusiness suppliers will develop a public-private partnership to foster economic growth both in the US and Ukraine.

This increase in LOP funding does not change the project focus of the project's major components: fiscal sector, financial sector, and market environment. It simply includes anticipated project costs for the Ukraine Export Credit Insurance Program.

The Economic Restructuring and Financial Sector Reform Project 110-0009, under which the Ukraine Export Credit Insurance Program will operate, was authorized on June 1, 1992 at \$18 million. It was amended on March 19, 1993, raising the LOP funding to \$77 million and to expand activities in fiscal reform, adding a new component in the market environment. It was amended again on June 2, 1993 and LOP funding was increased to \$130 million. On January 6, 1994, the project authorization was amended for a third time. This amendment extended the PACD from June 1, 1996 to June 1, 1997 and added a new component for investment and trade.

It is proposed that the Ukraine Export Credit Insurance Program in the Ukraine, as described in the attached Program Description, be authorized under the Economic Restructuring and Financial Sector Reform Project, and that the Economic Restructuring and Financial Sector Reform Project Authorization be amended to reflect increased LOP funding and extension of the PACD from June 1, 1997 until September 30, 1998 which will allow for the completion of this Ukraine Export Credit Insurance Program activity.

Ukraine has an immediate need for agricultural inputs to ensure that this year's harvests will be bountiful. President Kuchma has stressed that increased productivity in this year's harvest is urgently important for the country's entire economy. US agricultural firms have a large number of potential clients in Ukraine, but cannot provide the needed products because EXIM cannot provide its programs to a country with Ukraine's current credit rating. A formal review has begun to upgrade Ukraine's credit rating, but will not be finished soon enough to affect this year's crops. Ukraine also requires substantial balance of payments support which only US leadership can ensure.

Because of the urgent nature of Ukraine's agricultural needs and the lack of regular EXIM programs, this interim facility provides the best opportunity to get needed agricultural inputs to Ukraine in time to make an impact on this year's harvest.

NOTWITHSTANDING: Because of the urgent and immediate need to establish the Ukraine Export Credit Insurance Program, as well as the program's essentially commercial nature, we are requesting that you invoke "notwithstanding" authority under Section 498B (j) of the Foreign Assistance Act of 1961, as amended, to waive and suspend all statutes and applicable regulations, under USAID programs, including USAID's Environmental Procedures (22 CFR 216). Instead, the EXIM will execute and enforce its own environmental regulations to implement the Ukraine Export Credit Insurance Program.

ENVIRONMENTAL CONSIDERATIONS: However, in recognition of the environmental significance of some of the likely export commodities, such as fertilizers and pesticides, USAID will undertake a series of parallel efforts to assist private agribusinesses and government agencies in the Ukraine to properly manage and control the transport, storage, and use of agricultural chemicals. These efforts will include: (1) collection of product and

related information from exporters (by use of an environmental questionnaire to be included in EXIM's application package); (2) the immediate commissioning of an environmental review of pesticide use and regulation issues in the Ukraine; and (3) development of both short-term and long-term program activities, to be carried out by USAID based on the findings of that review. These future program activities will be designed to foster sustainable agricultural chemical use practices which achieve improved agricultural performance consistent with human health and environmental quality improvement objectives.

IMPLEMENTATION ARRANGEMENTS: Using authorities within the fiscal year 1995 Appropriations Act, the FREEDOM Support Act, and the FAA, USAID will fund export credit insurance to support US agricultural exports to Ukraine. USAID will work with EXIM to issue the insurance and require the Government of Ukraine to provide a sovereign guarantee on all transactions for which it will provide insurance. To cover the US risk, USAID will pay into the Treasury Department's federal financing account an appropriate subsidy, up to a total of \$30 million in USAID funds. In case of default, the federal financing account will pay claims by US exporters.

To manage the financial transactions operating under this program, the Office of Management and Budget will establish program and financing accounts with Treasury. ENI will then request a reappropriation from the existing NIS account to the new Treasury program account. ENI/PCS/B will forward, through Management Bureau's Budget Office to OMB, the request for reappropriation from the NIS account to the program account. This involves requesting a decrease in the NIS account and an increase in the Treasury program account. The two requests will be prepared simultaneously. Once funds are reappropriated, the program account must be tracked by two different categories: (1) subsidies and (2) administrative costs for the program. The financing account will be established simultaneously with the program account. The purpose of the financing account is to pay claims arising from defaults.

As guarantee commitments for specific export transactions are cleared and signed in USAID's Financial Management Office/Loan Management Division (FM/LMD), a simultaneous reservation and obligation is recognized. A liability is assumed at that point and funds are obligated in the program account. Perfection of the contract is assumed by receipt of the insurance premium from the exporter. This triggers the outlay of the subsidy obligation from the program to the financing account. Also deposited into the financing account are premiums paid by exporters. Reservations and obligations for the administrative costs will be recorded in the program account including program oversight, contracts for audits, and other miscellaneous documents such as travel authorizations, as necessary. Payments for these expenses are made directly from the program account.

Payments will be triggered through EXIM provisions of notification to USAID/FM/LMD of a default by the importer. FM/LMD will arrange for payment through Financial Management/Cash Management and Payments Office (FM/CMP). Simultaneously, notification of the payment for default will be made by EXIM to the Government of Ukraine at the time the claim is forwarded to USAID by EXIM. Follow-up to ensure reimbursement by the Government of Ukraine will be the responsibility of FM/LMD.

Several concerns were raised and addressed on this program. First, it was claimed that the IMF does not count short-term export financing balance of payments support. This claim is wrong and we have confirmed our contribution with the IMF. Second, concerns were raised over Ukraine's repayment ability within the original 360 day repayment terms and the ability to affect this year's planting season. This has been met by extending the repayment period to 540 days, which also allows for sales of agricultural inputs for next year's planting season. Third, because of extraordinary requirements of time, the program's importance and uniqueness, the desire to make the program mirror normal EXIM insurance programs as closely as possible, and after consultations with the Management Bureau, it was recommended to invoke "notwithstanding" authority and specify that USAID would substitute EXIM's regulations in favor of USAID's. EXIM's regulations are considered more appropriate for the commercial nature of this program.

It is anticipated that USAID/Kiev will rely on support from the Office of the General Counsel and ENI/ED concerning the review and approval of conditions, covenants, and other project implementation matters which may require legal or technical reviews not otherwise available to the USAID Mission.

CONGRESSIONAL NOTIFICATION: The Congressional Notification (CN) was sent to Congress on March 17, 1995. This program has been thoroughly vetted with Congress. Two Congressional holds placed by the Senate and House Appropriations Committees have been lifted. Particular Congressional concern stemmed from repeated calls by the Government of Ukraine and the Ukrainian-American community for the immediate opening of the EXIM in Ukraine for medium and long-term credits. The US Government explained that this is not possible under current law and credit risk review, but the proposed program will help build the positive credit history Ukraine needs for its credit rating to improve enough so that EXIM can re-open short-term financing. With good repayment, the terms could ultimately open to medium and long-term. The extension of this program from 360 to 540 days also addresses this concern.

AVAILABILITY OF FUNDS: A total of \$30 million is to be made available for this Ukraine Trade Credit Insurance Program and will be obligated within the newly authorized PACD of September 30, 1998.

RECOMMENDATION: Based on the foregoing, we recommend that by signing below, you:

- 1) approve the short-term single-buyer trade credit insurance program proposed for the Ukraine with an estimated LOP Funding of \$30 million to establish the Trade Credit Insurance Program as described in the Program Description;
- 2) amend the Economic Restructuring and Financial Sector Reform Project (110-0009) by increasing LOP Funding by \$30 million and extending the PACD from June 1, 1997 until September 30, 1998 which will allow for the completion of this project activity;

3) invoke the authority of Section 498B (j) of the FAA, to enable EXIM to apply its own statutes, regulations, policies, and procedures in carrying out this program on behalf of USAID notwithstanding any statutes and regulations applicable to USAID which are inconsistent with or contrary to EXIM statutes, regulations, policies, and procedures.

Approved: Carlos Pascual

Disapproved: _____

Date: April 12, 1995

ATTACHMENTS:

Attachment A:	Program Description
Attachment B:	Project Authorization Amendment No. 4
Attachment C:	Guarantee Providing a Government of Ukraine Sovereign Guarantee
Attachment D:	Action Memorandum for Administrator Atwood



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

MEMORANDUM FOR THE RECORD

SUBJECT: USAID Procedures for Processing Applications Under the
Ukraine Export Credit Insurance Program

DATE: October 24, [REVISION]

The procedures outlined below represent the combined efforts of several offices involved in the processing of applications including ENI/PD, ENI/PCS/B, ENI/ED, M/B/RA, G/EG/CI and M/FM/LMD. Once actual processing of the applications begin, modifications will be made as necessary.

1. An application is received by the U.S. Eximbank (Eximbank), who will forward a copy to USAID (ENI/ED/AG) for initiation of its review and clearance process. Eximbank will process the application following its standard procedures and in accordance with the terms and conditions of the Inter-Agency agreement with USAID. Eximbank's review process should be completed within three days of the receipt of the application.
2. Upon completion of its review, Eximbank will forward a letter of recommendation with accompanying documentation, which will include a brief discussion of the factors behind its decision for USAID's records, to USAID (ENI/ED).
3. The established ENI Bureau Review Committee, consisting of representatives of ENI/ED/AG, ENI/NCA/WN and ENI/EEUD/ENR will analyze each application's appropriateness and acceptability from the agricultural input and environmental perspectives.
4. Applications which the Review Committee recommend for approval, on receipt of the recommendation from Eximbank, will be held until such time as an offer on sovereign guarantee is received for the subject transaction from the government of Ukraine.

5. Once an offer of Ukrainian sovereign guarantee has been received for an application, relevant information will be forwarded to G/EG/CI for calculation of the subsidy cost, and cleared by M/FM/LM, M/B and approved by the CFO, after which reservation of the necessary funds in the accounting system will be done by ENI/PCS/B. The package will be then be forwarded to the Director, ENI/ED, for approval of the application.
6. If USAID's Review Committee (see para 3) recommends disapproval of a Ukrainian approved application, a memorandum to this effect will be faxed to Eximbank and to USAID/Kiev once signed by the Director, ENI/ED. Pertinent details of the disapproved application will be forwarded to the Ukraine Eximbank and the Ukraine Ministry of Economy for information only.
7. Following its review and approval, the Ukrainian Eximbank will submit a Guarantee of Letter of Credit to U.S. Eximbank, which will forward a copy of this guarantee to USAID (ENI/ED). Upon receipt of these documents, ENI/ED/AG will forward the final memorandum of approval to the DAA/ENI for signature. This signature will serve to obligate the USAID funds.
8. Once signed, the original documentation will be forwarded to M/FM/LMD to record the obligation of the subsidy in the program account.
9. A copy of the signed document will also be faxed to Eximbank who, as USAID's agent, will issue a binding commitment on the transaction valid for up to 90 days. Exim Bank will then forward to M/FM/LM a copy of the 90 day commitment binder.
10. The exporter will make payment of a non-refundable premium to USAID.
11. M/FM/LMD will notify Eximbank of receipt of the premium. Eximbank will then issue an insurance policy on the transaction. Premium payment must be made prior to the expiry date of the commitment.
12. Once issued, the policy is non-cancelable by USAID. M/FM/LMD will outlay the subsidy from the program account to the financing account effective the date of the insurance policy.
13. Eximbank, following issuance of the insurance policy, will forward to M/FM/LM the original documentation of the transactions, including, but not limited to, the 90-day

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commitment document and the insurance policy with its attached endorsements.

ADMINISTRATIVE EXPENSES:

1. Reservations and obligations for the administrative costs will be recorded in the program account based upon the Inter-Agency Agreement, as well as contracts for audits and other miscellaneous documents such as travel authorizations, as necessary. Reservation of funds will be made as documents are cleared through ENI/FS and M/FM/LM. Obligation will subsequently be recorded by M/FM/LMD when obligations are executed. Payments for these expenses are made directly from the program account.

CONCURRENCE:

ENI/PCS/B:KSimpson	DRAFT	Date 10/24
ENI/ED/EG:CUphaus	DRAFT	Date 10/24
ENI/NCA:SGrossman	DRAFT	Date 10/27
M/B/RA:BBowlesbey	DRAFT	Date 11/6
G/EG/CI:LRassetti	DRAFT	Date 10/24

Date: 6/14/95

To: Mary Ann Walker, AID

From: Thomas Fitzpatrick, Exim *TF*

RE: Application review under the AID/Ukraine Insurance program

Applications submitted to Exim under the referenced insurance program will be reviewed under the following criteria:

1) COMPLETENESS OF APPLICATION

A determination will be made as to whether the applicant properly filled out the application. If certain questions were not completed or the applicant provided unclear responses on significant items on the application, Exim will contact the applicant to get the necessary information. Such a review will also include a determination as to whether the products are listed in Annex A to the application and whether the Disclosure Certificate (Annex C) was properly filled out. Unless requested by AID on a specific case, Exim will generally not make a determination on the completeness of responses to the Environmental Information Document (Annex B of the application). Eximbank will not be required to review or comment on the validity and enforceability of letters of credit, shipping documents or other pertinent documents relating to the transaction during the application stage. This information would only be reviewed in the event of a claim.

2) SCOPE OF EVALUATION

Exim will prepare a report addressing the acceptability of the applicant as an AID insured based on our evaluation of the application and any supporting information submitted with the application. Comment and recommendations on the acceptability of a particular applicant will be based on the applicant's responses in the application as well as the following:

A) Reputation of the applicant based on relevant credit information contained in the credit agency report submitted on the applicant.

B) An appropriate credit assessment will be made on the financial condition of the applicant based on their current financial statement. Where appropriate, Exim will follow-up with the applicant for clarification of any unusual or unexplained items on the financials. The purpose of such an analysis would be to determine that the applicant is financially viable and that we can reasonably be assured that based on their financial condition that the applicant can perform under the contract with

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the buyer.

C) If applicable, under certain cases, Exim will utilize relevant information in its own files on an applicant as an additional source of background information on the applicant.

D) Exim will forward a copy of the complete application with our report within a reasonable time of its submission to Exim and await AID's response to the request. Exim will assist AID in providing any additional information AID may require on a specific case. AID will make the final determination on whether the application should be approved after they consult with the appropriate authorities in the Ukraine on their willingness to include the transaction under the program.

E) Once Exim receives a clear written response from AID on the disposition of a particular application, Exim will promptly notify the applicant of the final decision. If the application is approved, Exim will issue the appropriate formal AID Commitment. If premium is paid during the Commitment period, Exim upon appropriate notification from AID that the premium was received will issue the AID policy to the insured. Exim will continue to address any questions that may arise in relation to the coverage afforded and consult with AID as needed.

CC Comiskey
Tinsley
Lubetzky

**APPROVAL MEMORANDUM FOR THE UKRAINE
EXPORT CREDIT INSURANCE PROGRAM**

Pursuant to the Authority delegated to the Director, ENI/ED, in the Delegation Memorandum dated xxxxx, you have been requested to approve the guarantee by the United States Agency For International Development to the below mentioned company [NAME, ADDRESS, CORPORATE STATUS, Telephone, FAX], hereafter referred to as the exporter/applicant (application attached), for repayment of credit advanced for the purchase of U.S. source origin goods.

The guarantee will cover the sum of Dollars XXXXX, issued as a Letter of Credit by the Ukrainian Bank [NAME, ADDRESS] payable to the exporter/applicant.

Applications by the exporter and Ukrainian importer have been reviewed by the U.S.EX-Im Bank, acting as agent for U.S.A.I.D., by the Ukrainian EXIM Bank and by U.S.A.I.D.'s committee set up for purposes of overseeing and managing the guarantee facility. As part of the criterion for final acceptance, a sovereign guarantee has been issued by the GOU, after review of the application.

Based on review of the application by the U.S.Ex-Im Bank and U.S.A.I.D.'s facility committee it is recommended that you

[APPROVE] or [DISAPPROVE]

of the proposed guarantee.

[BRIEFLY STATE REASON]

Approve _____

Disapprove _____.