

ABSTRACT

Title of Document: GREENING EXPORT PROMOTION: A
COMPARATIVE STUDY OF
ENVIRONMENTAL STANDARD-SETTING
FOR EXPORT CREDIT AGENCIES

Marcus Schaper, Doctor of Philosophy, 2008

Directed By: Associate Professor Miranda A. Schreurs,
Department of Government and Politics

Export credit agencies (ECAs), private banks and the World Bank are all institutions which facilitate the construction of infrastructure projects in developing countries, which often have significant environmental ramifications. However, although all three types of institutions have also been known to acquiesce to public pressure to consider the extent of the environmental impact of their projects, export credit agencies were able to resist this pressure for 25 years, implementing environmental rules in their operations much later than did the World Bank and private banks, which introduced similar reforms within a much shorter period of time.

This dissertation explains why ECAs as public institutions were less responsive to public demands than an international organization and even private banks. The answer to this puzzle is advanced in two dimensions: one dealing with the rule-making process and the other addressing the harmonization of policies among ECAs.

In a cost-benefit analysis approach covering both dimensions, the political costs and benefits of changes to existing rules as well as the regulatory costs of these changes are considered. Political costs and benefits are considered to result from the effects of these rules on competing groups combined with the power these groups wield in the rule-making process. Regulatory costs result from changes in rules and procedures. They are especially pronounced when adaptations go beyond changes to regulatory targets and include modifications in regulations or even challenge meta-regulatory principles engrained in regulatory cultures.

Diverging speed and scope of reform among these institutions is the consequence of variations in the power of competing demands made on them and variations in the institutional contexts enabling, channeling, and constraining the power of the groups making the demands. Adopted rules reflect these power relationships.

ECA harmonization involves changes to pre-existing regulations and compromises on meta-regulatory principles. This kind of agreement is very difficult to achieve – if achieved at all. Institutional *incompatibility* between rules proposed by the United States and continental European regulatory cultures was a decisive obstacle to harmonization.

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by

Marcus Schaper

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Advisory Committee:
Associate Professor Miranda A. Schreurs, Chair
Professor Ken Conca
Associate Professor Virginia Haufler
Associate Professor Bartłomiej Kaminski
Professor Matthias Ruth

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Dedication

Diese Dissertation ist meiner Familie gewidmet. Ohne Eure Ermutigung und uneingeschränkte Unterstützung wäre ich niemals soweit gekommen. Vielen Dank, auch an jene, die diese Zeilen leider nicht mehr lesen können!

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Chapter 1: Introduction

Export credit agencies, private banks and the World Bank are all institutions which facilitate the construction of infrastructure projects in developing countries, which often have significant environmental ramifications. However, although all three types of institutions have also been known to acquiesce to public pressure to consider the extent of the environmental impact of their projects, export credit agencies were able to resist this pressure for 25 years, implementing environmental rules in their operations much later than did the World Bank and private banks, which introduced similar reforms within a much shorter period of time. The speed and scope among export credit agencies themselves also differed with the United States Export-Import Bank implementing comprehensive policies in 1995 and the German Hermes credit guarantees being subjected to much less ambitious policies much later. Thus is the question of my dissertation: *How could export credit agencies resist for 25 years the same pressure that greened other financial institutions in a relatively short time?*

Public export credit agencies (ECAs) include bank-type organizations and government-backed insurers, and combinations of these two ideal-types as well (for a detailed discussion see Evans 2005; Walzenbach 1999). Government-backed export credits and export credit guarantees are critical for exporters in gaining access to markets in high-risk countries (often developing and transition countries). In these cases, governments act as “banks of last resort” and help finance domestic exports with either insurance against political and commercial risk (in the form of export credit guarantees), or with export credits. This fills the role refused by commercial insurers who are unwilling to cover such risky projects and the political risks they entail. However,

without at least some insurance against non-payment, exporters are unable to gain financing from banks.

ECA support is especially relevant for exports to risky markets, for sales with long repayment terms, or for transactions of high value; infrastructure projects in developing countries, along with the export of individual project components, fall within all three categories. This dissertation concerns itself with rules for such projects, and in particular, with why export credit agencies were able to avoid environmental restrictions on their operations, despite a history of public demands for the imposition of such conditions.

We must take into account two forces that are shaping economic regulation today: the increasing salience and relevance of environmental and social norms, and the need for market integration, or harmonization of market regulations. As environmental and social norms play into the environmental and social *regulation* of activities once considered sectorally distinct from environmental and social policy, and market integration forces states to seek the creation of common rules in facilitating the exchange of goods and services across borders, it is expected that the combination of these forces would translate into pressure on ECAs to consider social and environmental aspects in their operations, and, as state agencies, strive towards a harmonization of rules which would take these impacts into account. This, however, has not been the case to the extent one would expect. Social and environmental concerns in ECA rules have more nominal significance as they are substantially ineffective. Furthermore, the harmonization of such rules among ECAs has been similarly weak.

In seeking an explanation for these suboptimal outcomes, my analysis will focus on two different issues: standard-setting of ECAs vis-à-vis that of institutions such as the World Bank and private banks, and the harmonization of ECA rules. Thus, there are two related questions to be addressed:

1. *Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?*
2. *Considering the low relevance of ECAs for trade, why has harmonization been so slow and cumbersome?*

I address the first question by comparing ECA politics concerning the U.S. Export-Import Bank and German Hermes export credit guarantees with environmental-rule making within and among the World Bank and private banks. The functional outcome of activities of multilateral development banks (MDBs) such as the World Bank, and private banks (such as Citigroup, ABN AMRO, and West LB) are similar to those of ECAs' involvement in the provision of financing for infrastructure projects in developing countries. In addition, all three types of institutions have been subjected to public criticism because of their apparent neglect of environmental concerns. The World Bank Group developed environmental and social policies for its project loan business in the 1980s and 1990s (Weaver 2007; Park 2007; Gutner 2005a, 2005b; Nielson and Tierney 2005; Park 2005b; Thorne 2004; Nielson and Tierney 2003; Wade 1997). Private banks adopted the Equator Principles (EPs) in 2003 as a voluntary private-sector version of the World Bank policies to guide their project finance business (Wright and Rwabizambuga

2006; Amalric 2005; Missbach 2004). Both MDBs and private banks responded relatively quickly to demands for environmental policies. Although environmental standards for export credit agencies had been on domestic political agendas since the early 1970s, it was not until some 25 years later that they received serious political attention. Environmental reforms among ECAs also varied in speed and scope. Therefore, *given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?*

The second question suggests the comparison of ECAs' harmonization of environmental standards with the harmonization processes of financial aspects of ECA operations, which did not involve environmental concerns. Harmonization negotiations regarding financial aspects involved the same states and were conducted in the same OECD harmonization venue (Moravcsik 1989). Furthermore, as these negotiations were motivated by an effort to eliminate competition among ECAs over the terms of government support, so were negotiations on the harmonization of environmental standards. However, where agreement on common financial rules was timely and fairly comprehensive, agreement on harmonized environmental rules was slow to develop.

The harmonization of all sorts of product standards, process standards, and other regulatory barriers, in all sectors of economic activity, is the result of market integration brought about by globalization, and such harmonization has facilitated the cross-border exchange of goods (Woll and Artigas 2007; Carruth 2006; Elgström and Jönsson 2005; Drezner 2005; Heisenberg 2005; Brandhauer, Curti, and Miller 2005; Vogel and Kagan 2004a; Jordana and Levi-Faur 2004; Knodt and Princen 2003; Esty and Geradin 2001).

The creation of a single market has been the core European project for over 50 years; the General Agreement on Tariffs and Trade (GATT), its successor, the World Trade Organization (WTO), and the Organisation for Economic Co-Operation and Development (OECD) all have promoted and facilitated market integration and regulatory harmonization beyond Europe. The result is harmonization of all sorts of product standards, process standards, and other regulatory barriers among EU, OECD, and WTO member states. The harmonization of environmental rules for ECAs, however, despite being on the international agenda since the mid-1990s, was not successfully negotiated until 2003. *Considering the low relevance of ECAs for trade (less than 3% of exports are facilitated by them), why has harmonization been so slow and cumbersome?*

In seeking to unravel these two related puzzles, this dissertation advances the following explanations for both: the development of specifically environmental standards for ECAs was hampered by domestic power relationships and the influence of powerful actor groups on ECA policy (and therefore by the inherent structural power¹ of business to resist restrictions on access to government support), and harmonization of these standards was impeded by an incompatibility between the proposed policies and existing continental European regulatory cultures.

I introduce both of these core arguments in more detail in the following sections. In the end, obstacles to the development of standards and the harmonization of these standards ultimately led to the adoption of international environmental rules for ECAs

¹ Throughout this dissertation power is considered in its instrumental, structural, and discursive dimensions. Instrumental power refers to the ability to get one actor to do something this actor would not otherwise do. Structural power emerges from the dependency of one actor upon another. The dependent may choose not to engage in activities that would be against the interests of the actor it depends on, even if not instructed to do so. Discursive power refers to the ability to influence ideas and the meaning of things. Chapter two provides a detailed discussion of the concept and its implications.

which brought about neither substantial environmental standards nor truly harmonized policies. The resulting OECD agreement, the *Recommendation on Common Approaches on Environment and Officially Supported Export Credits* (Common Approaches), represents a more symbolic than substantial compromise.

A comparison of domestic standard-setting in both the US and in Germany provides an appropriate context in which factors contributing to the development of environmental standards can be identified. Germany and the US represented diametrically opposed positions regarding both domestic standard-setting for ECAs and international harmonization. The United States was the first country to establish comprehensive environmental rules for its ECA, the Export-Import Bank (Ex-Im), and it was also the key leader in pressing for international harmonization of these standards. Germany, on the contrary, was slow to devise domestic environmental rules for its Hermes export credit guarantees, it opposed the U.S. bid for harmonization, and it also emerged as the key laggard in international harmonization. Comparing domestic ECA environmental standard-setting and harmonization in the United States and Germany with rule-making among the World Bank and private banks allows us to identify factors working for and against environmental standards. Methodologically, the examination of both standard-setting and international harmonization will be done through the application of Mill's method of concomitant variations.

An analysis such as this, which examines both the impact of NGOs in the promotion of norm change and which details the relationship between globalization and harmonization, is both timely and necessary. Too much of the literature links NGOs and the emergence of new norms without paying much attention to how such change is

achieved. Similarly, globalization is associated with a drive towards regulatory harmonization without detailing how this occurs. An analysis which remedies these deficiencies in the literature is needed both to advance our theoretical knowledge of this process and to aid policy-makers in understanding obstacles to regulatory harmonization. The theoretical framework advanced in this dissertation makes it possible to integrate the study of domestic regulatory reform with international regulatory harmonization by employing the same explanatory factors of rule content and domestic power relationships for both. Below, I present the main arguments of this dissertation in brief, and in doing this focus attention on the following key variables: the power of competing actors making demands on financial institutions; political institutions enabling, channeling, and restraining their power; and the content of adopted rules and harmonization proposals..

1.1 Argument: obstacles to environmental standards

Six years after it became the target of a campaign by U.S.-based NGOs, the World Bank was pressured into establishing far-reaching environmental review procedures, which included the transparency of these reviews. Private banks, as the result of a similar campaign by a similar set of groups, responded within five years with the adoption of the Equator Principles as a private-sector version of the World Bank environmental policies that would guide their project finance business. ECAs, conversely, needed upwards of 20 years to respond to similar challenges. Since the 1970s, a similar campaign has pressured ECAs to consider environmental and developmental aspects in their operations, but the ECAs have not developed policies comparable to those developed by the World Bank and private banks until recently.

Ex-Im, the ECA of the United States, was subject to the same NGO pressure that also brought about the greening of the World Bank. Unresponsive to demands raised throughout the 1970s and 1980s to conduct environmental reviews of its export support under the National Environmental Policy Act (NEPA), Ex-Im finally implemented a comprehensive environmental policy in 1995 in response to a 1992 Congressional mandate to do so. Conversely, the German government refrained from such a step for its Hermes export credit guarantee program until 2001, when considerable political pressure for so doing had built up both domestically through NGO pressure and internationally through negotiations on the topic in the G7 and the OECD Export Credit Group (ECG).

NGOs are considered here as key actors in shaping and promoting environmental norms by attaching agency to these norms into political processes. Actors interested in maintaining the status quo or critical of the norms promoted by NGOs seek to oppose their influence in these rule-making processes. With this in mind, explanations for the diverging reform speeds can be found in the relative power of competing demands made on the financial institutions. These pressures not only affected the speed, but also the scope of reforms. We need to consider especially how the aggregate power wielded by a combination of actors making competing demands on financial institutions has impacted the costs and benefits to environmental rule-makers in creating these rules.

1.1.1 Institutions' reactions to competing demands

To start, the concerns of countries receiving the financed goods and projects were not effectively represented within any of the rule-making procedures for any of these types of institutions; only the demands made from within industrialized countries providing finance and exporting goods seemed to have had significance for the rule-

makers. It can be therefore posited that there are roughly two types of demands: those of environmental NGOs pressing for environmental rules, and those of actors dependent upon the availability of financing. Demands made of the World Bank and of private banks fall only into the first category, whereas the creation of rules for ECAs required the additional effort of balancing NGO concerns with the interests of exporters receiving export credit support

It is therefore argued that certain complications arose in the face of NGO demands, and that it is therefore important, now, to turn our attention to the role of NGOs in the standard-setting procedures of the three types of financing institutions referred to in this dissertation. Although NGO campaigns were similar in their goal of greening international finance, they differed in regards to the strategy chosen to maximize leverage on their targets. In the cases of both the World Bank and of Ex-Im, U.S. NGOs worked by lobbying Congress to establish legal requirements for environmental policies among these institutions. In contrast to this *instrumental* exercise of power, NGO campaigns targeted at private banks relied on *discursive* power through name-and-shame tactics aimed at damaging brand-name reputation to compel private banks to create environmental rules. Although lacking the legislative access of their US peers, German NGOs *nevertheless* targeted Hermes credits through *similar* discursive practices in order to change the terms of the debate on export credits and the environment.

This variance in strategies provides a good explanation for World Bank and private bank reform. Regarding ECA standards, however, it is important to consider, in addition to pressure exerted by NGOs, the role of exporters who had a stake in ECA politics and the power these exporters exerted. This should be contrasted with the fact

that similar client interests were effectively absent from the politics of the World Bank and private banks.

It is easy to see that business possesses a substantial amount of structural power vis-à-vis national governments in that national governments, unlike business, are dependent on the economic prosperity of the state. It is from the economic prosperity of the state that a government merits legitimacy, and it is this prosperity which enables a government to draw revenues from its population. Hence, decisions that may affect productivity are more difficult for governments to make than those that may not affect productivity. Policy decisions that undermine economic growth may not only reduce government revenue and thus the government's ability to sustain its public services, but they may also reduce the government's legitimacy in its role as the guardian of prosperity.

For national governments, environmental policies for ECAs fit the bill perfectly: the environmental policy objective comes with a trade-off in assistance to industry. Export credits, as a form of government support, were designed to facilitate exports. It follows thus, that an imposition of environmental restrictions on these government programs could potentially reduce the volume of supported exports, resulting in the reduced overall volume of exports, lower economic growth, and ultimately reduced employment. In light of this trade-off, governments fended off the imposition of environmental requirements for ECAs for as long as they could. They gave in only when the activities of NGOs raised the costs of non-action to the point that this political cost outweighed that of restricted export support.

1.1.2 Domestic power relationships and ECA reform

Among the ECAs themselves, reform reflecting environmental concerns occurred at different speeds and to diverging extents. The explanation for this variation lies in the differing domestic power relationships among ECAs, industry, and societal groups – resulting partially from diverging institutional contexts. The U.S. Ex-Im bank, however, is an outlier among ECAs: its environmental policies are comprehensive, and it adopted these rules unilaterally when no other ECA had similarly ambitious rules. Its unilateral rules are the unique consequence of US political institutions.

As a “sunset institution”, Ex-Im depends on regular Congressional reauthorization – its existence is at the complete mercy of Congress, which itself is open to the lobbying efforts of any group which manages to bring legislators on its side. Thus, NGOs were not only able to command direct instrumental power in Ex-Im politics, but industry groups were also forced to compete with NGOs for influence over political dynamics.

US-style interest group pluralism allows a wide range of functional interests to influence policy-making; even the US Senate as the chamber of regional representation in the legislature is subject to functionalist lobbying. As a result there is no moderating institution to balance functional interests with general ones. The consequences for policy-making are narrowly defined and poorly integrated policy initiatives that often result from the lobbying activities of different interest groups. Furthermore, initiatives tend to be ad-hoc in nature, and are designed to promote specific objectives while reducing the scope of reform to avoid obstacles to successful coalition building in the pursuit of these policy initiatives.

Such initiatives can contradict or circumvent policies promoted by other coalitions, and thus result in inconsistent and inefficient policy making. At the same time, this decision-making process allows for substantial reforms – albeit narrow in scope – which would otherwise fail in decision-making processes based on broad consensus. The process leading to environmental reform of the US Export-Import Bank may serve as an example of the development of such narrowly-defined policy reforms as the result of such a process. When the environmental reforms for development agencies were developed, Ex-Im was precluded from these reforms, despite a striking similarity of the kinds of projects supported by the US Agency for International Development (USAID) and those of Ex-Im. When pressure was put on the World Bank by Congress to develop environmental rules, this again did not affect Ex-Im. When Ex-Im was mandated to develop an environmental policy in 1992, this, too, occurred in isolation from initiatives elsewhere.

Its 1992 reauthorization required Ex-Im to integrate the environmental externalities of its export credits into its decision-making process. Despite its history of poor policy integration and a rather erratic environmental policy record since the Reagan administration, the United States took the lead in regulating access to export credits based on environmental criteria. This can be explained by the individualist policy making process in which a single Senator's initiative led to the inclusion in Ex-Im's 1992 reauthorization of an amendment calling for environmental export credit rules.

In German corporatist arrangements, the pattern of domestic power relationships is different; industry enjoys privileged access, while these same political opportunity structures remain closed to environmental NGOs (Dryzek et al. 2003; Kitschelt 1986;

Schreurs 2002). Furthermore, the administration of Hermes credit guarantees is also institutionally shielded from legislative control. Without the instrumental power that came with Congressional lobby access for NGOs in the United States, German NGOs could rely only on their discursive power to influence the debate over environmental reform, and industry was comfortably in a position to resist the introduction of environmental restrictions on Hermes guarantees. Limited reform was possible only when domestic demands for reform coincided with favorable international developments – that is, the implementation of Ex-Im’s policies in 1995, the adoption of an OECD Statement of Intent on Officially Supported Export Credits and the Environment in 1988 (OECD 1998b), and the development of the OCED Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits in 2001 (OECD 2001a).

The power of demands made on rule-makers affected not only the likelihood of reform, but also its scope. Demand from the US government for such reform, for example, led to the creation of the World Bank’s policies. Aside from the Bank’s own reservations, there was little opposition to these rules, and these clearly reflected the interests and terms of the Bank’s most powerful principal. Private banks responded to the environmental challenge quickly, taking ownership of the rule-making process and creating the Equator Principles to fit their business model. The ambitious Ex-Im rules were derived from World Bank policies and broad in scope in response to the Congressional mandate. Hermes rules, finally, represent the result of a tug-of-war between environmental and industrial policy objectives. The rules were based on a

minimalist interpretation of draft OECD rules and designed to sideline environmental criticism while interfering with operations to the least extent possible.

Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?

Environmental rules for the World Bank were developed relatively quickly, because the creation of these rules translated into political benefits for member states without domestic costs. The Equator Principles for private banks were adopted in relatively short time because the NGO campaign posed such a threat to brand name reputation that the benefits of incorporating environmental rules actually outweighed the reputational cost of inaction. Environmental rules for ECAs took much longer to devise because governments were faced with a trade-off between environmental and industrial policy objectives. Environmental reform was feasible only when this balance shifted in favor of environmental objectives.

Beyond the consideration of ECAs as a class of actors, we also need to consider Ex-Im and Hermes guarantees individually. The assignment of leader and laggard roles among these ECAs appears counter-intuitive. Given the recent environmental policy track records of the U.S. and the German governments, one would expect Germany to take the lead role as opposed to the United States. The answer to this puzzle can be found at the domestic level. If the environmental reform of ECAs is considered as a power struggle between NGOs fighting for environmental restrictions, and industry, which would rather operate without any restrictions, then the resulting balance of power between industry and NGOs in domestic politics becomes an important predictor for the

course and scope of environmental policy development. When confronted by the structural power of business, it is not surprising, then, that NGOs, by making use of *instrumental power* in the United States, were more successful in the United States than they were in Germany, where (without recourse to any variant of this instrumental power) they had to rely on *discursive* power, although this power was much weaker than the instrumental power of NGOs in the United States. This dissertation discusses these power relationships and cost-benefit considerations in detail.

1.2 Argument: obstacles to harmonization

Having addressed obstacles to environmental reform, I now turn to my second core argument, regulatory harmonization and its obstacles. The increasing exchange of goods and services across national borders has brought with it the necessity to harmonize and standardize national rules. Producers can reap the benefits of increased trade best if the various national markets, for which they produce their goods, would require little product differentiation. From a manufacturer's point of view, the ability to sell a single version of a product worldwide is an ideal situation. However, this is true only when the product is competitive in foreign markets. Producers of uncompetitive products fear competition by foreign producers in their domestic market, and would therefore prefer rules that shield their domestic market from these foreign competitors. National governments, for their part, seek to maximize benefits to domestic industry. This entails establishing regulatory barriers that serve domestic industry, while at the same time supporting this industry through working towards the removal of foreign states' regulatory barriers. Ultimately, this creates a drive towards harmonization and standardization, with some reservations guided by the interests for domestic industry.

Considering the low relevance of ECAs for trade, why has harmonization been so slow and cumbersome? The harmonization of environmental rules for ECAs is considerably more difficult than coming to an agreement on product or process standards which are the subject of most harmonization literature. This literature suggests that strict product or process standards can be implemented by any great power and then spread through market power (Drezner 2005). Once implemented, these rules exert pressure on other states, since exporters there will often adjust manufacturing output to meet the stricter standard, and then respond with a tightening of their own domestic rules to exclude other competition. This is typically referred to as the “California Effect” (Vogel 1995). Restricting market access shields domestic production, and environmental leadership, as a consequence of strictly unilateral decisions, can result in future trade benefits. This is the argument of the ecological modernization literature (Mol and Sonnenfeld 2000).

However, environmental rules for ECAs do not, in the end, benefit domestic exporters as ecological modernization suggests, since the rules restrict access to government support through their environmental criteria. Whereas protectionist environmental rules can work to the advantage of domestic *firms*, environmental rules for *ECAs* must always be to their detriment. The effects of environmental ECA rules can be neutral at best, and that is only when ECA rules among competitor countries are established with the same level of stringency. Tightening environmental rules for ECAs never benefits exporters, not even producers of environmental goods who could gain support under both lenient and restrictive rules. Consequently, governments can expect opposition from business to any rule that would restrict access to export credits. This

would be the case even if all competitor states established stricter values, because softer domestic rules would translate into the competitive advantages of gaining easier access to export support. Given the negative effects of restrictions on export credits on the competitiveness of domestic industry, it is not surprising then, that governments resisted the imposition of environmental rules for ECAs for as long as they could

Despite the disincentives to harmonize ECA rules, OECD countries have successfully harmonized *financial* terms for export credits and have thereby squeezed subsidization out of export credits (Evans 2005). The harmonization of *environmental* policies, however, was slow and cumbersome, even in a proven harmonization venue and with U.S. leadership. This discrepancy between environmental and financial standards harmonization cannot be explained on the international level. Negotiations on the harmonization of environmental standards were placed into a negotiation venue with a 30-year history of successful ECA policy harmonization. In addition, US leadership had led to successful negotiations in harmonizing financial aspects of ECA operations in the past. The presence of both factors did not lead to a similar outcome for environmental terms.

Explanations for the delayed harmonization can be found in the domestic costs and benefits of harmonization, which, again, are consequences of power relationships and rule content. The harmonization of financial terms provided states with an opportunity to both reduce their expenditures for export subsidies and to avoid a costly subsidy race. While this did mean a reduction in support for exporters, the ultimate effect on their relative competitiveness was not significant, since the new terms ultimately maintained a level playing field, albeit at a lower level of subsidization. Governments could, therefore,

benefit from reduced expenses without also incurring the substantial costs of foregone exports.

Cost-benefit consideration did not favor common environmental policies to the extent that they encouraged financial harmonization. From the perspective of a country with weak environmental policies such as Germany, however, harmonization of environmental terms creates considerable costs and brings only negligible benefits. These costs include the political costs of restricting access to government support to powerful firms, undoing institutionalized deals and bargains, and the regulatory costs of devising new rules and procedures.

In considering political costs of harmonization to a government, the agreement's effects on industry are important. This economic effect of environmental rules depends on the combination of the relevance of those rules to that ECA's export portfolio and the relevance of export credits to a nation's total exports. The sectoral composition of ECA portfolios vary, as does the impact that rules have on a nation's exports. When comparing U.S. and German ECA portfolios, a considerably larger share of German exports would be affected by environmental ECA rules than would be the case for U.S. exports. Coupled with industry's strong power position in German politics, the political costs of imposing such environmental rules was much higher than they were in the United States.

In addition to these political costs, harmonization of environmental rules also entails regulatory costs which stem from changes to rules and procedures. This type of harmonization entails regulatory adaptations that are broader and more substantial in scope than are involved in the harmonization of product and process rules. While product and process standards do not directly challenge government activity, ECA rules proposed

by the United States did challenge continental European regulatory cultures. That meant that harmonization required not only agreement on an optimal level of regulation, but also mandated changes in fundamental regulatory approaches. Put differently, proposals for the environmentally-oriented ECA rules put the stringency of rules into question, and moreover, challenged basic principles of government intervention. U.S. Ex-Im policies included provisions for environmental impact assessment, transparency of environmental information, and the reliance on nonnegotiable qualitative and quantitative evaluation criteria; all of which conflicted strongly with continental European regulatory cultures.

Thus, agreeing to such rules would require costly regulatory adaptation by European governments. This presented a real challenge, since ECA rules were being negotiated by the same bureaucrats who would later be in charge of their implementation. Furthermore, these negotiator-implementers were unlikely to consider proposals that would require modifications to rules beyond their jurisdiction, since broadening the regulatory community to additional members could also introduce further unwanted reforms in addition to the adaptations necessary for the implementation of harmonized rules. Enlarging a regulatory community is likely to change the majority patterns supporting prior compromises, and could thus lead to even greater regulatory reform which could go beyond the control of the negotiator-implementer.

The way out of this predicament would have been a symbolic political compromise providing the United States with a face-saving environmental agreement and at the same time minimizing the need for regulatory adaptation in Europe. However, such a draft compromise was rejected by the White House in 2001. Negotiators were caught in a situation that necessitated an environmental agreement, the terms of which were

defined by the US government. Agreement was possible only after enough flexibility was incorporated into the contentious U.S. terms so that they required only slight modification of preexisting rules on the European side.

The combination of (i) costs associated with raising environmental standards for ECAs and (ii) the incompatibility of U.S.-style ECA rules with continental European regulatory frameworks made harmonization of ECA policies difficult, despite the overarching transatlantic trend towards market integration. This dissertation analyzes the harmonization process in detail to explain how the nature of ECA rules worked against the U.S. campaign for common environmental standards among ECAs.

1.3 Result: Weak Policies and Limited Harmonization

The combined effect of the obstacles discussed in the previous sections manifests itself in limited harmonization. Here, environmental policies have been established and harmonized to the extent where governments can benefit from having addressed the issues, but those governments are not required to bring about dramatic policy change.

Before environmental standards for ECAs were established, projects were examined primarily for commercial viability, and social and environmental considerations were only marginally considered in cover decisions. A prominent example of this from the time between the environmental Congressional mandate for Ex-Im and the adoption of the resulting Ex-Im policies is the Three-Gorges-Dam in China. In addition to the large-scale involuntary resettlement of local populations, this controversial project also included potentially significant yet poorly understood environmental effects. Both the World Bank and the U.S. Ex-Im Bank denied their support out of social and environmental concerns. European ECAs, however, were, at the time, exempt from

regulations concerning social and environmental impacts, so nothing prevented them from supporting the project and facilitating it through the export support of key components.

The cover decisions of the Three-Gorges-Dam pre-date the OECD Common Approaches and most European environmental ECA rules. If the OECD agreement was effective, such a cover decision should not have been taken after the adaptation and implementation of the OECD Common Approaches and the European rules. However, the German, Swiss, and Austrian ECAs have approved support for the Turkish Ilisu Dam in April 2007. This Dam project also entails involuntary resettlement, the destruction of cultural heritage, and the reduction of cross-border water flows to Syria and Iraq in an arid area, in addition to considerable environmental impacts. The Ilisu Dam had been considered by European ECAs for a number of years, and had emerged as a highly problematic project. The Austrian, German, and Swiss ECAs approved support for this project, despite the lack of much information regarding its environmental impact and any implementation plans. The Terms of Reference for the project were approved before a comprehensive evaluation of environmental impacts could be conducted; this constituted a fundamental breach of the World Bank rules to which ECAs committed themselves. World Bank rules regarding project evaluation required full impact assessment as well as the development of implementation plans prior to granting cover (Erklärung von Bern, WEED, and ECA Watch 2007).

The Ilisu Dam can be seen as a crucial test for the ECA environmental policies. In this case, project evaluation was carried out after the ECAs involved had signed on to the Common Approaches. While a single case may provide an incomplete picture of the

Common Approaches' implementation, ECA reports to the OECD Secretariat suggest that implementation is also lacking in other areas of ECA operations, especially with regard to transparency provisions. It is to be noted that these observations concern the formal compliance with the text of the agreement only. What might be of even more relevance for the environmental performance of these projects are the loopholes that were incorporated into the Common Approaches to facilitate European governments' agreement with U.S.-style rules. These loopholes concern transparency requirements and adherence to international standards (Görlach, Knigge, and Schaper 2007). As the detailed analysis in this dissertation shows, the Common Approaches allow relatively weak environmental policies among ECAs, and the degree of harmonization achieved by the agreement is low. Common rules were established on a symbolic level, and often lacked substance. This may have facilitated agreement, but it also impeded effectiveness.

1.4 Power, Institutions, and the Greening of International Finance

The arguments introduced in the preceding sections build on the combination of an actor-centered institutionalist inquiry with an analysis of power relationships in their instrumental, structural, and discursive dimensions. Establishing and harmonizing environmental rules requires changes in pre-existing institutions. These changes, in turn, put prior bargains and compromises in question. Clearly, actors need to exert power to bring about such changes. As the primary drivers behind these environmental reforms, NGOs often lack direct instrumental power to affect this kind of change. By leveraging the power of intermediary actors with more direct means of control over those who *can* change the rules, NGOs transformed their discursive power into more immediate structural and instrumental leverage. NGO interests were typically opposed to those of

business. Business actors held both structural power over the policy agenda and instrumental power over governments through lobbying. Business' structural power was closely related to an industry sector's relevance for national exports and the sector's susceptibility to environmental rules. Export-oriented sectors subject to environmental rules (such as suppliers of hydropower components) were more influential in domestic policy-making than those sectors not subject to such standards (such as arms manufacturers) or those not dependent on export credits

Power relationships among NGOs, states, and business actors, however, explain only part of the story. In addition to power, it is also important to consider the costs of regulatory change. The more substantial a reform or harmonization challenge is in terms of the required regulatory change, the higher the costs of its implementation are. These costs consist of the regulatory cost of changing existing rules and institutions, as well as the political costs of undoing prior deals and compromises. The political costs, in turn, are clearly related to the power relationships within a regulatory community. The more powerful an actor is, the more costly it is to modify the rules to that actor's disadvantage. Dynamics of environmental reform and regulatory harmonization can then be explained in terms of the costs and benefits of regulatory change.

Political and regulatory costs and benefits arise on the domestic level: domestic rules need to be adapted, and governments must be mindful of competing constituencies' demands on policy-making. These domestic considerations in turn determine governments' positions and strategies on *international* bargaining. Thus, this dissertation is concerned with both domestic politics and international relations. The emphasis,

however, is on the domestic level since it is the domestic level that is crucial in defining international-level preferences and for implementing the resulting agreement.

1.5 Outline of this Dissertation

Financial aspects of ECA operations have been covered in the academic literature; however, the environmental policies of these institutions and the international harmonization of these policies – issues which have emerged as policy challenges in the 1990s – have thus far escaped detailed academic scrutiny. This dissertation is the first comprehensive academic examination of these policies.

Chapter two reviews the literature on export credit agencies and surveys the theoretical bases of my arguments. The following two chapters analyze the creation of environmental rules for international finance. Chapter three analyzes NGO campaigns that have pushed environmental policies for international finance on the political agenda. Studying the strategies and impacts of these campaigns on the World Bank and private banks aids in understanding the obstacles experienced in ECA reform. Obstacles to establishing similar rules for ECAs are addressed in chapter four.

The next two chapters are then concerned with regulatory harmonization. By placing ECA politics in this context this again helps in appreciating the obstacles ECA reform faced in the harmonization dimensions (chapter six). The focus here is on diverging regulatory cultures in hampering harmonization of ECA policies.

The seventh chapter ties the preceding parts together by assessing the effects and limitations of environmental standards for international finance. The conclusion in chapter eight, finally, revisits the questions raised here as well as the hypotheses generated in chapter two. It also posits suggestions for future research.

Chapter 2: Literature Review and Theoretical Context

This chapter frames the discussion in the remainder of this dissertation by first introducing the reader to the existing literature on export credits and the environment, developing the theoretical framework, and introducing the research design and methodology. As the literature review in the first section of this chapter shows, specialized literature on the topic is very scarce; only financial aspects of export credits have received some attention in the scholarly literature. As a consequence of this lack of analytical literature, applicable theoretical frameworks are not readily available. The theory discussion in this chapter's second section develops such a framework by first discussing environmental rule-making and regulatory harmonization as two distinct processes before offering a formal model that integrates both aspects with each other. This chapter's final section addresses the research design and methodology of this comparative interpretive dissertation.

The framework developed in this chapter suggests that an analysis of environmental rule-making for international finance needs to consider the power of groups making competing demands on the rule-makers, the institutions through which their power is channeled, and the impact these have on the resulting rules. The same analytical categories apply when analyzing regulatory harmonization. However, here the rule content is externally given in the form of a harmonization proposal; power and institutions affect whether harmonization proposals are accepted or rejected. These arguments will be detailed in the theory section following after the literature review section below.

2.1 Review of the existing literature

Cross-national research on environmental standards for export credit agencies is almost non-existent. A paper by Thomás Carbonell and Roland Stephen entitled *Unseen Agents and Global Standards: Export Credit, Institutional Design and the Environment* (Carbonell and Stephen 2003) is the only analytic inquiry into the topic that is international in scope thus far. Environmental Defense, a NGO active in this area, commissioned a study by the Yale Environmental Protection Clinic in 1998. This mostly descriptive summary compiled by students (Hsieh et al. 1998) of environmental standards in place for export credit agencies has since become outdated, due to the developments since its publication. Furthermore, it did not attempt to analyze the reasons for the divergence in environmental standards. Carbonell and Stephen note that “no academic study of the *causes* of environmental reform at official ECAs has been undertaken to date. This void in the literature is surprising given the increasingly important role of ECAs [...]” (Carbonell and Stephen 2003: 6, emphasis in original).

Carbonell and Stephen (2003) provide the first academically analytical attempt at coming to terms with diverging levels of national environmental standards for ECAs. Their approach is very straightforward, arguing that the level of autonomy of the export credit agency within the government, the export orientation of a nation (measured in exports to GNP ratio), the size of the domestic international financial services sector, and environmental values among voters may impact the level of environmental standards for export credit agencies. However, only the export orientation emerges as a consistently significant predictor across their models. They argue that the level of environmental standards is a function of the relative strength of the ECA’s client base measured by

export orientation and size of the international financial services sector. Furthermore, high autonomy of the export credit agency may also facilitate capture of the ECA by relevant economic actors. Environmental sentiments held among the electorate do not appear to be significant predictors.

2.1.1 Literature on export credits and the environment

Carbonell has since contributed to a number of reports for NGOs working on ECA Reform. One paper (Carbonell 2004) addresses the relationship between the WTO Agreement on Subsidies and Countervailing Measures, the Arrangement, and rules for ECAs; another co-authored with the former ExIm chairman James Harmon, addresses the role of ECAs in development finance (Harmon et al. 2005).

Christian Steinreiber (2002) discusses the role of ECAs and their impact on global sustainability. His graduate thesis is a mostly descriptive account of ECA policies in Austria, Switzerland, and Germany. Wolfram Kuoni's dissertation addresses environmental aspects from a developmental perspective as part of his comprehensive legal treatment of the Swiss ECA Exportrisikogarantie (Kuoni 2004). The OECD Export Credit Group periodically compiles surveys of its members' environmental policies (OECD 2003a, 2005c, 2005d, 2004c, 2006); these surveys provide snapshots of existing environmental policies. However, these matrices are mere compilations of national ECAs' responses to the surveys and do not really provide for analysis; they need to be analyzed carefully given national ECAs' tendencies to describe their policies in only favorable terms. Since implementation of the Common Approaches, the Export Credit Group also reports on "Category A" and "Category B" projects reported by Member States (OECD 2004b, 2005b, 2007a). The United States General Accounting Office

compiled a report on the convergence of environmental guidelines for ECAs in 2003 (United States General Accounting Office 2003). This report provides a good overview in a cross-national perspective of the development of environmental standards up to that point.

Gerster (1997) analyzed the significance of export credits for developing countries and their contribution to Third World debt. He suggested that “steps proposed in a G-7 communiqué following the Denver summit offer a good starting point for environmental issues. Nongovernmental organizations could build on these steps to advance the cause of coherent development policy in a meaningful way.” A number of NGOs are now active in this field; among them are the U.S. Environmental Defense and German Urgewald. Bruce Rich (1998; 2000) and Aaron Goldzimer (2002) of Environmental Defense provide interesting and substantial NGO perspectives on the issue. Recently, Jon Sohn and Jennifer Villemez (2003) of Friends of the Earth compared environmental guidelines of the U.S. Export-Import Bank and the French Coface. Their very detailed analysis discusses oil and gas guidelines in particular.

In a report for the World Resources Institute (Evans 2004), Evans evaluates options for promoting the export of renewable energy technology through modifying rules under the Arrangement and argues that such changes in terms are unwarranted. Other reports from the NGO community that compare national environmental standards are also good sources of empirical material (e.g. Bree and Hunter 1998; Udall 2000). A number of case studies of ECA support for individual controversial projects have been compiled by the NGO network ECA Watch (www.eca-watch.org).

An expert workshop in September 2003 hosted by the Royal Institute of International Affairs in London provided stakeholder groups with an opportunity to discuss the state of ECAs and sustainable development. A preliminary summary of the results of this multi-stakeholder workshop (Calder 2003) provides a good account of the contemporary policy debate. I had the opportunity to take part in this meeting and the workshop discussions were very helpful in refining my thinking on the subject as were similar meetings convened by UNEP-FI in London (2003), Germanwatch (2004), and the European Commission (2006).

This body of literature is a rich data source and provides descriptive accounts of ECAs and their relationship to the environment, but it does not address the *drivers* of environmental policies for these institutions. There is clearly a lack of analysis concerning ECA environmental politics. Beyond this international literature and case studies of projects, there is also literature dealing with national ECA politics. The following subsections briefly consider existing writing on Germany (Hermes credit guarantees) and the United States (Ex-Im Bank).

2.1.1.1 Germany

In Germany, critiques of Hermes originated from the context of development policy. A report published by the Gemeinsame Konferenz Kirche und Entwicklung (GKKE - Käpernick and Kulesa 1994) provides a synopsis of the discussion concerning export credits and development policy up to the early 1990s. Five years later, the scientific advisory committee to the German Federal Ministry for Economic Cooperation and Development (BMZ) assessed the compatibility of Hermes cover with development policy goals (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung

1999) and came to the conclusion that export credits do not have to stand in conflict with development policy as they are not really an instrument particularly well suited to development objectives. Armin Sandhövel (Sandhövel 2000) of the German Environmental Council argued for an integration of environmental goals into ECA policies to increase the legitimacy of ECAs and showed how such integration could be achieved in Germany as well as throughout the OECD. He argued that harmonization within the EU was needed but that it would not be enough to stop at the EU-level.

All of the German reports were targeted at policy audiences. Only the BMZ report analyzed ECA activities. However, its economic analysis was limited to the suitability of export credits as a development policy instrument; it is, thus, only tangential at best for the discussion in this dissertation.

2.1.1.2 United States

A number of authors touch on the issue of environmental standards in broader discussions of individual ECAs. Becker's and McClenahan's otherwise comprehensive history of Ex-Im (Becker and McClenahan 2003) gives little attention to environmental critiques of Ex-Im operations prior to its 1992 re-authorization requiring the establishment of an environmental policy, and they barely mention U.S.-initiated harmonization endeavors. Theodore Moran's treatment of the U.S. Overseas Private Investment Council (OPIC) (Moran 2003) deals with OPIC's environmental standards on four pages of the main text and in an eight-page appendix. Also published by the Institute for International Economics is a volume on the U.S. Export-Import Bank edited by Gary Clyde Hufbauer and Rita M. Rodriguez. *The Ex-Im Bank in the 21st Century: A New Approach?* (2001) contains a chapter by Peter C. Evans and Kenneth A. Oye on

International Competition: Conflict and Cooperation in Government and Export Financing which touches on environmental standards briefly as one area in need of harmonization.

Similar to internationally oriented reports, country-specific literature either does not address the bases for environmental policies or is prescriptive rather than analytical.

2.1.2 Export Credits in general

Most literature on export credit agencies does not focus on environmental standards. Attention is usually paid to credit terms, use of controversial instruments such as tied aid, untied aid, market windows, and their implications for trade, competitiveness, and welfare. This group of authors includes Walzenbach (1998; 1999), Brander and Spencer (1985), Carmichael (1987), Krugman (1984; 1986), Ho and Werkhorst (1995), Schickinger (1999), Backhaus, Köhl, and Werthschulte (2000), and Milner and Yoffie (1989). Out of this group, Walzenbach's *Co-ordination in Context* (1998) is the most relevant to my analysis as he discusses harmonization of ECA terms in the OECD and EU contexts by linking international and super-national discussions to domestic politics in his interdisciplinary institutionalist framework which integrates legal, economic, and political approaches to the issue. Taking Britain, France, and Germany as cases he inquires

“how does the use of export credits, export credit insurance and development aid in three leading European countries match with repeated and long-standing efforts undertaken by the European Community (EC) and the Organisation for Economic Co-Operation and Development (OECD) to control state aids to industry? Why have both organizations failed to keep national support measures to exporting firms competitively neutral? Which direction did institutionalized expert advice take before it became influential at the various levels of the co-ordination process, and what influence had institutional reforms on the co-ordination capacity of the control system for subsidies as a whole?” (Walzenbach 1998: 2)

While Walzenbach's study predates the emergence of environmental concerns in the OECD Export Credit Group, the direction and theoretical framework of his analysis are similar to my project. Like Walzenbach, I am interested in the coordination of ECA policies within the OECD, and similar to his study, my analysis also considers the roles NGOs and business interests play in shaping domestic ECA politics.

Ho and Werkhorst (1995) are also concerned with regulatory harmonization in the EU context, and argue that European harmonization has largely failed because of the prevalence of intergovernmental factors over supranational or transnational ones. Despite the Commission's activity in this area and fairly clear treaty language establishing the Commission's competence, Member States have retained control over their ECAs' policies as tools of national export promotion. This is important in understanding the EU Commission's limited role in ECA politics which may have complicated ECA harmonization considerably. The lack of a European filter in ECA politics increases the relevance of domestic power relationships and institutions, the effects of which would have been attenuated through consensual politics on the European level otherwise (see Hoornbeek 2004). In other words, the member states prerogative empowered functional interests that worked against effective harmonization.

Ray's *Managing Official Export Credits: The Quest for a Global Regime* (1997) and Moravcsik's *Disciplining Trade: The OECD Export Credit Arrangement* (1989) provide good historical accounts of the development of the OECD Arrangement. More recently, Malcolm Stephens (1999) analyzes the *Changing Role of Export Credit Agencies* in an international perspective. Gianturco (2001) provides a descriptive account of ECAs in both developed and developing countries. Stolzenburg's (1987) description of

the German export credit system is rather outdated. Stankovsky and Url (1998) analyze the costs and benefits of Austrian export credits in a study commissioned by the Austrian ECA OeKB.

Peter Evan's dissertation (2005) discusses the Arrangement as a cartel "comprised of the leading suppliers of state-backed trade finance." According to Evans, compliance with the Arrangement is high because it serves the collective interest of supplier states.²

The International Monetary Fund (IMF) periodically publishes reports on ECAs (Stephens 1999; Wang et al. 2005; Kuhn, Horvath, and Jarvis 1995) which provide a good overview of the financial aspects of export credits, but do not devote much attention to environmental aspects of ECA operations.

As this brief overview of literature in the field indicates, there is little analytical work dealing with environmental standard-setting for export credit agencies. The considerable degree of attention civil society actors and governments dedicate to the issue illustrates the need for comparative analyses. This dissertation moves beyond this largely descriptive literature and seeks to address the question: *How could export credit agencies resist for 25 years the same pressure that greened other financial institutions in a relatively short time?* The analysis of this question involves an examination of environmental rule-making among financial institutions, including ECAs, as well as an investigation of harmonization of ECAs' environmental policies. The second part of this chapter develops a theoretical framework for this analysis.

² Evans has also compiled information on the development of Ex-Im environmental policy but has not published on this topic. He has made this material available to me which has proved very helpful in developing the historical outline of environmental policy development in chapter three.

2.2 Theoretical Context

This study is at the intersection of comparative politics, international relations, and political economy. The politics analyzed here span from the national, to the supra-national, to the international level. Standard setting and implementation are mostly domestic processes, whereas harmonization entails supra-national and international coordination. This theory discussion, consequently, draws on insights from literature across all levels. In terms of substance, this theoretical framework centers on institutions, power relationships, and their impact on the development and harmonization of environmental rules. In drawing from this literature, I focus my arguments on the impact of competing demands on the content of the resulting rules and the role of domestic actors and institutions in influencing the acceptance or rejection of harmonization proposals.

The establishment of environmental policies is a struggle among those favoring environmental rules and those opposed to them. Analyzing power relationships within the involved regulatory communities is important to understanding the outputs of domestic standard setting processes. Analysis of domestic rules setting must, therefore, include consideration of actors having a stake in ECA politics and the institutional framework through which their power is channeled.

Harmonization of national standards also involves a struggle among promoters of harmonized rules and those opposed to common rules. Contrary to the central tenet of much of the regulatory harmonization literature, ECA harmonization cannot easily be explained as a power struggle among states on the international level because the unique character of environmental policies for ECAs renders market power as a coercive

instrument ineffective. Instead, the analysis of ECA harmonization requires attention to be paid to the interaction of rules proposed on the international level with national-level institutions. The primary struggle is between those who seek to upload their own rules to the international level and those who would need to change their national rules as a consequence. The degree and type of required adaptations is important to understand the costs and benefits of harmonization. Cost-benefit analysis of harmonization must, therefore, include both political and regulatory cost considerations.

Environmental rule-making and regulatory harmonization are the main building blocks of the theoretical framework developed here. Of these, rule-making is considered in the following part before turning to harmonization in the second part of this theory section. The final part ties rule-making and harmonization together in a cost-benefit model that applies to both regulatory reform and regulatory harmonization.

2.2.1 Environmental rule-making: power, institutions, and politics

This dissertation addresses the issue of environmental standard-setting for export credit from a domestic perspective and it is rooted in a new institutionalist framework. My analysis traces the processes by which the standards are set. The focus is on actors, their power, the institutional framework within which they are acting, and their influence on environmental rule-making. Diverging institutional frameworks in the cases studied limit actors with respect to the policy choices available to them and promote different policies in each of the cases studied.

Environmental rule-making involves a struggle among actors making competing demands on the rule-makers. The next section addresses the power relationships in this struggle. This discussion distinguishes between instrumental, structural, and discursive

forms of power and also suggests that actors can transform one form of power into another if they channel it through an intermediate actor. Following this discussion of power, the next section deals with the role of institutions in channeling, enabling, and restraining power. Here it is important to recognize that different institutional contexts favor different actors. The level and ease of access to the political process determines what kind of power which actor can employ effectively. The third and final section of this part of the theory discussion on environmental rule-making then considers the power of competing demands made on ECAs. The second part of this theory section turns to regulatory harmonization, before the final part presents a model to integrate regulatory reform and harmonization in the same cost-benefit analysis.

2.2.1.1 Power³

Financial institutions restrict access to financing through the imposition of environmental constraints. Both the restriction of access to financing and the mere existence of such rules are manifestations of power which are explored in this dissertation: financial institutions exert power over their clients, while the institutions themselves are subject to pressure requiring the adaptation of such environmental requirements. Many infrastructure projects in developing and transition countries are now designed with consideration of international environmental rules – even when such environmental regulations are weak or absent in the recipient country; such is a

³ Parts of this section have been published as “Leveraging Green Power: Environmental Rules for Project Finance” (Schaper 2007). They are used here with permission of the copyright holder Berkeley Electronic Press.

manifestation of financial institutions' power over business actors developing projects or exporting components to such projects.⁴

Examining financial actors “as either *instruments* of power or as *independent governing agents*” (Haufler 2005) situates the power they wield within the context of their relationship with other actors. Financial institutions govern the activities of actors that depend on their financial support. The use of finance as leverage is anything but new. However, what we are observing now is that this control is not manifested in rather diffuse financial policies; instead, access to finance is contingent upon the fulfillment of non-market criteria which serve to realize policy goals in other policy areas. Financial institutions build on their structural power in order to green their clients' projects.

Financial institutions wield considerable power over business actors in other sectors. States and civil society actors have successfully employed the finance sector's leverage over business in establishing these policies. The public or private nature of a financial actor is important on the input side for the choice of strategy to employ the actors' leverage over clients, but it is irrelevant on the output side with regard to this actor's power over business. Private financial actors' power over other types of business is similar to that of public financial actors over business.

Actors may choose to employ financial leverage if their direct power over business is limited or when channeling their power through an intermediate financial

⁴ This dissertation is primarily concerned with the creation of environmental policies for international finance as an important step in reducing negative environmental impacts of supported projects. Obviously, the adoption of policies says little about their implementation or even their outcome on the ground. The literature on the World Bank suggests that the environmental performance of Bank supported projects has not changed much (for example Gutner 2005a); implementation of the Common Approaches among ECAs is uneven (Görlach, et al. 2007); and the impact of the Equator Principles is limited to few regions at best (Wright and Rwabizambuga 2006). In fact, the impact of all three sets of policies hinges upon the availability of alternative financing not subject to environmental requirements (see chapter 7). Still, the proliferation of environmental policies among these institutions is an important step and deserves attention.

actor allows them to instrumentalize the financial actor's more immediate power over the business target. Such cooptation can occur in both policy development and implementation. The literature on agency theory in World Bank environmental reform deals with these power relationships in the context of Principal-Actor models (Gutner 2005b, 2005a; Nielson and Tierney 2003, 2005; Nielson, Tierney, and Weaver 2006), but does not address different manifestations of power. This particular analysis is concerned with power in the initial delegation of rule-setting tasks amongst a broader group of financial institutions.

An examination of the international finance sector shows that power is manifested in at least three different ways in its interaction with other sectors: (i) Through the provision of project financing, financial institutions wield structural power over project sponsors. (ii) Through name-and-shame tactics, NGOs can exert direct discursive power of financial institutions or utilize other actors' more immediate forms to effect change (see also Sell and Prakash 2004). (iii) Through the adoption of comprehensive environmental policies, the World Bank, Equator Principle banks, and Ex-Im establish far-reaching environmental norms which provide these institutions with new sources of discursive power (see also Park 2005a, 2007). The next section considers different manifestations of power in the control of access to financing contingent upon non-market criteria.

2.2.1.1.1 Power and the conditionality of finance

Fuchs' classification of power (Fuchs 2005a, 2006; Fuchs 2005b) suggests analyzing business power within the context of its instrumental, structural, and discursive dimensions. *Instrumental power* refers to the ability of A to "get B to do something that

B would not otherwise do” (Dahl 1957). In her discussion, Fuchs suggests that such an exertion of instrumental business power most clearly relates to the lobbying and campaign finance activities both within the state and on sub-, supra, and international levels. NGOs also exert instrumental power through lobbying activities. The ability to engage in such activities depends on the institutional context these actors operate in. Different political opportunity structures privilege different actors in participation in the political process.

Business’ *structural power* pertains to the “input side of policy and politics and the predetermination of the behavioral options of political decision-makers” (Fuchs 2006). In this view, states’ dependence on economic growth to deliver their services provides business with agenda control power over those policies which limit business activity and which may, therefore, negatively affect a state’s economic performance. Even without active intervention in the policy-making process by business, governments are likely to concede privileged consideration to business concerns, since states cannot afford to undermine economic growth which fuels government activity, or to risk business re-locating to other polities (Levy and Egan 1998). Fuchs further argues that this source of structural business power also “endows actors with direct rule-setting power” (Fuchs 2006). This rule-setting power is most obvious in industry self-regulation and in public-private partnerships as forms of governance where the state concedes its authority over rules to non-state actors. NGOs do not possess a structural power base of their own, but they can attempt to transform discursive power into structural power (see below).

Discursive power, finally, is the least direct form. It “shapes perceptions and identities and fosters the interpretation of situations as of one type rather than another”

(Fuchs 2006). Instead of exerting direct influence over another actor or controlling the policy agenda, discursive power shapes the frames of policy debates (Sell and Prakash 2004), creates and modifies norms and acceptable behavior, and even creates interests. In the sphere of business power, such activities as re-framing social policy debates in terms of competitiveness or supporting of cautious scientific interpretations of environmental problems constitute applications of discursive power. Discursive power is also the staple of NGO influence – especially in polities where societal groups lack effective lobby access and thus need to rely exclusively on the power of words and ideas.

This dissertation extends Fuchs’s discussion in two ways. Finance as a class of business actors is not merely seen as an actor influencing policy-making or being the target of policies, but also as a *conduit* by which other actors exert leverage over businesses dependent on finance. Instead of analyzing only the exertion of power, this dissertation distinguishes between the bases of power and the way it is applied, that is, it considers the transformation of one type of power into another.

Table 2.1 Power base matrix

Direct power base	Of states	Of NGOs of	Of IBRD	Of ECAs	Of EPFIs	Of Business
Over states	*	Discursive; instrumental	Structural (client states)	-	Structural	Structural
Over NGOs		*	Discursive	-	Discursive	Discursive
Over IBRD	Instrumental; structural (client states)	Discursive	*	-	Discursive	Discursive
Over ECAs	Instrumental	Discursive	Discursive	*	Discursive	Discursive
Over EPFIs	Instrumental (limited)	Discursive	Discursive	-	*	Structural
Over business	Instrumental (limited)	Discursive	Structural	Structural	Structural	*

Table 2.1 provides an overview of the possible direct power relationships among the actors considered here. States take a central position in this analysis. They have direct

control over actors operating within their borders, as well as over ECAs and the World Bank. At the same time, they depend on business (including financial institutions) structurally. Client states are also structurally dependent upon the World Bank. Financial institutions yield structural power over other types of business requiring financing. The remaining power dyads are discursive in nature: actors can seek to exert influence by framing issues or by modifying norms, but they consequently lack more immediate means of control. Influence of ECAs over actors other than their clients is not considered here since most ECAs as creatures of their respective governments do not engage in much political activity of their own. The World Bank, on the other hand, has developed quite a life of its own despite being the agent of states (Haas 1990).

Of these relationships, instrumental ones are the most direct and discursive relationships are the least direct. Any actor can augment indirect sources of power by enlisting intermediate actors that yield more direct control over their targets as power conduits; that is, they can leverage the power held by third actors. In this perspective, discursive, structural, and instrumental sources of power of one actor over another are instrumentalized by third actors. Thus, it is argued that business actors employ their structural power over states in combination with states' own structural power over third actors to augment their indirect discursive power over NGOs, ECAs, and the World Bank with indirect structural leverage. Similarly, NGOs can leverage states' instrumental power over the World Bank, ECAs, EPFIs, and business through discursive and instrumental power within domestic politics. With regard to influencing business, NGOs can also build on the power held over business by the World Bank and EPFIs (see Table

2.2). When utilized in such a way, structural and discursive bases of power are transformed into instrumental applications.

Table 2.2 Power leverage matrix

Power leverage	Of states	Of NGOs	Of IBRD	Of ECAs	Of EPFIs	Of Business
Over states	*	Discursive	Structural (client states)	-	Structural	Structural
Over NGOs	Instrumental	*	Discursive	-	Discursive	Structural via states
Over IBRD	Instrumental	Discursive/instrumental via states	*	-	Discursive	Structural via states
Over ECAs	Instrumental	Discursive/instrumental via states	Discursive	*	Discursive	Structural via states
Over EPFIs	Instrumental	Discursive	Discursive	-	*	Structural
Over business	Instrumental via ECAs; MDBs	Discursive/instrumental via states and ECAs; via states and MDBs; via EPFI	Structural	Structural	Structural	*

Hence, the power base of finance over other types of business is structural in nature: business depends upon the availability of financing for the development of projects.⁵ This dissertation examines how this structural basis of power is instrumentally employed by both state and non-state actors. Financial institutions' power is then considered to be structural rather than instrumental in nature since the existence of environmental policies is likely to influence the design of projects for which financing is sought from a particular institution. The institution's instrumental power over project design is limited, as clients can choose to source financing elsewhere.

Furthermore, actors with structural power of their own can then become the instruments of others, and the line between structural and instrumental power is thus

⁵ This structural dependence is mutual: firms need financing and financial institutions need clients. However, given the scarcity of financing, financial institutions are in a privileged position, thus reducing the power of clients over them.

blurred. In addition to these first and second-face conceptions of power exerted by financial actors, the discursive power of non-state actors in changing norms of acceptable behavior plays a crucial role in causing finance to exert its power over other business actors; NGOs thus instrumentalize the structural power of finance through discursive practices. Finance, in turn, responds to this normative challenge by attempting to reclaim authority over determining the appropriate interpretation of the role of the environment in their operations – albeit with varying levels of success in their exercise of discursive power.

NGO strategies exploiting weak links in commodity chains have been discussed in the literature. The argument here suggests that the privileged position of financial institutions and states allows NGOs to transform their discursive power into instrumental power. Schurman (2004), for example, has analyzed the anti-biotech NGO campaign in Europe. In the United Kingdom, NGOs targeted supermarket chains as an important link in the commodity chain. Producers of genetically modified foods depend on the retailers to bring their goods to the market and the highly concentrated nature of the food retail business allowed activists to concentrate their campaigns on few pivotal actors. Activists “consciously targeted a handful of big food retailers” in distributing leaflets about the dangers of GMO foods to consumers – potentially driving them from particular chains in this highly competitive market and thereby causing retailers to take GMO foods off the shelves (Schurman 2004: 253). Cast in power terms, NGOs exploited the structural power of supermarket chains over food producers. This allowed them to transform their discursive power over consumers into structural power over food producers.

Carbonell and Stephen's (2003) model presumed that citizens take an interest in ECA politics, otherwise their indicator of environmental orientation among voters would not matter. They neglect that ECA policies are a rather obscure topic and highly technical in nature, and this is not conducive to generating public interest in the issue. What is needed here is an analysis of NGOs' ability to raise the issue salience of ECA environmental reform. Environmental orientation among voters may be an important facilitating factor in that NGOs can enlist green voters to exert political pressure, but they need to be mobilized to care about an obscure and marginal issue. Considering NGOs' discursive power does exactly this. The next section turns to the role of institutions in affecting the power relationships discussed above.

2.2.1.2 Institutions – channeling, enabling, and restraining power

Power is channeled, enabled, and restrained by institutions. Different institutional contexts result in different power relationships. Institutions, in turn, are manifestations of power relationships at the time of their creation or modification. Thus, the preceding actor-centered discussion of power needs to be placed within an institutional framework to account for national differences in power bases and relationships. This section introduces two institutional concerns that are important for the impact competing demands have on financial institutions. The institutional autonomy of an ECA affects its overall susceptibility to political demands and a political system's political opportunity structure determines the level of access different groups have to the political process.

Of interest are particularly the financial institutions themselves, as well as legislatures, the respective ministerial bureaucracies, organizations representing industry, and NGOs working on the issues. Most important is the political process of standard

setting, but it can be analyzed only by studying the interactions of the relevant actors. Since this project compares standard setting in different states, the institutional frameworks in which these processes take place, as well as the variation among the frameworks, are of interest.

Following Carbonell and Stephen's (2003) argument, the institutional autonomy of an ECA is an important factor in pre-determining the likeliness and level of national environmental standards for ECAs. Where ECAs are directly accountable to a legislature (e.g. the U.S. Export Import Bank), that legislature may impose policies and restrictions upon the ECA as legislators see fit. If, on the other hand, an ECA has been created as a rather autonomous executive agency equipped with a clearly defined mandate (e.g. the German Hermes Kreditversicherung), it may be much more difficult for the legislature to impose policies and procedures upon the ECA. Furthermore, ECAs with a higher degree of institutional autonomy may be more prone to capture by business interests – no matter if they were designed in such a way to facilitate capture or whether capture occurred unintentionally. This is an observation of a classic principal-agent problem: *The level of environmental standards for an ECA and the ECA's institutional autonomy are inversely related: the more autonomous an ECA is, the more resilient it is against strict environmental standards.*

Keck and Sikkink (1998) have convincingly demonstrated the power advocacy networks have even when the domestic political opportunity structure is closed for them. Mexican NGOs' adaptation of their strategies to existing institutional constraints and cooperation with international NGOs created a feedback loop into their home state, and

thus bypassed the closed political opportunity structure. Related to this is Paul Wapner's (1996) observation that NGOs tailor their strategies to the ends they seek to achieve.

Political opportunity structures not only affect strategy choice by NGOs (Dryzek et al. 2003; Kitschelt 1986; Schreurs 2002), but also the power bases of all involved interest groups. In open systems with pluralist interest group representation all organized interests can exert pressure by lobbying. The only constraints on their activities are available resources and the legality of the actions. In an open competition for influence, NGOs as well as industry interests can exert instrumental power. This application of instrumental power is in addition to business' structural power and all actors' ability to change the terms of the debate through discursive power. The United States provides an almost perfect example for this type of interest group access: legislative lobbying is a powerful tool and open to all interest groups.

On the opposite end of the spectrum are corporatist systems which provide selected groups access to both policy-making and implementation, but tend to be closed to groups that are not involved in an established policy community (Mayntz 1997, 2002). Here, the ability to exert instrumental power depends on an actor's status; groups that are not included in tightly knit policy-communities find it very difficult or impossible to gain access. This is especially true for environmental NGOs as opposed to industry groups, which are typically included in corporatist arrangements. Consequently, excluded groups can only resort to their discursive power for lack of either instrumental or structural power over policy decisions. The usual examples for corporatist states are the Scandinavian countries, but Germany is not far from them on the pluralism-corporatism spectrum. German political opportunity structures for environmental NGOs, too, have

been historically closed on the input side (Dryzek et al. 2003; Kitschelt 1986; Schreurs 2002). This is also true to some extent for the EU that by virtue of its decision-making process privileges regional or functionalist interests (Hoornbeek 2004). *Institutional constraints – including the political opportunity structure – have an impact on NGO power and strategies.*

2.2.1.3 Power and ECAs

After discussing the relevant power relationships and their institutional channels, this section considers their impact on ECA politics. The power of NGOs and industry in making competing demands on ECAs depends not on their institutional context, but also on the affected industry's relevance for domestic exports and the presence of additional competing demands.

In their analysis, Carbonell and Stephen (2003) convincingly argue that power relationships and institutional arrangements are important. However, their proxies do not adequately capture the competing demands made on ECAs. Export orientation and size of the financial service sector are poor indicators for the power of firms relying on ECA support. Export orientation is questionable for two reasons: (1) it varies with size of the economy with small economies trading more than larger ones; (2) ECAs only cover a small portion of exports. Portfolio composition is the more relevant indicator, as it is related to an ECA's "vulnerability" to environmental policies. This requires a sectoral analysis. Carbonell and Stephen introduce the size of the financial sector; however, a sectorally sensitive analysis would need to assess the relevance of sectors which depend on export credits and which are also affected by environmental policies for ECAs.

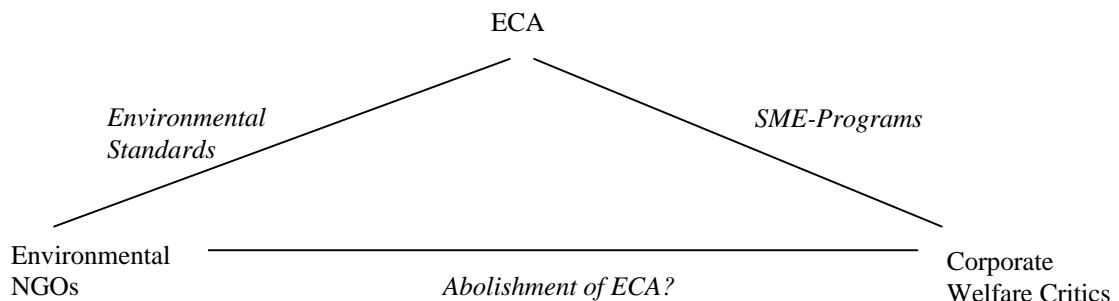
One way to consider industry's structural power over ECA policy-making is the export relevance of firms affected by environmental standards. The more relevant ECA facilitated exports are for a national economy, the more policy-makers will consider losses in job creation or government revenue that could occur as trade-offs with environmental policies. The key point to analyzing this aspect is an appropriate assessment of a state's vulnerability to environmental standards for ECAs as a proxy of likely responsiveness to structural industry power.

ECAs' business varies greatly from supporting small and medium sized enterprises seeking to enter an emerging market to assisting national industrial champions, to granting cover for arms and aircraft sales. Consequently, environmental standards may ultimately "hurt" domestic business more in some states than in others, depending on the respective ECAs' portfolios. This in turn means that business' structural power is more relevant for ECA policies in states where environmental policies would affect a large share of exports than in those polities where most exports would not be subject to environmental scrutiny. At the domestic level, this impacts the level of national standards. *ECAs supporting primarily business not affected by environmental standards are more likely to implement such policies because they only affect an insignificant share of their business. ECAs that support primarily infrastructure projects subject to environmental standards are less likely to pursue such policies.*

On the discursive level ECA politics in many states seem to resemble a tripartite arrangement: the ECA and its environmental and corporate welfare critics (see Figure 2.1). Environmental critics challenge ECAs on grounds of their sub-par environmental standards and policies and the resulting environmentally destructive projects. While

environmental critics seek to reform and turn ECAs “green,” they rarely question their continued existence, as reformed or “greened” ECAs are believed to be an important tool for spreading environmentally superior technologies and production processes. Corporate welfare critics, on the other hand, challenge the very existence of ECAs. They argue that the very existence of ECAs distorts markets, and that they should be abolished for this reason. Since ECA business tends to be heavily concentrated with a few large clients profiting disproportionately, these critics strongly emphasize that ECAs are no more than a tool to provide hidden subsidies to a small number of companies that know how to play the political game. ECAs respond to these charges by trying to diversify their business, particularly by offering SME programs or by reducing red tape for small projects. Domestically, the interplay between environmental critics, corporate welfare critics, and ECAs themselves is critical for the resulting level of environmental standards. *In states where corporate welfare critics are strong, ECAs may seek the support of the environmental critics (who do not seek to abolish ECAs) and implement high environmental standards. In cases where ECAs respond to corporate welfare critics by implementing SME programs they may not need to address environmental issues as thoroughly.*

Figure 2.1 Domestic ECA-politics coalitions and resultant policies



This discussion of institutions and politics constitutes the core of my argument. Not only do the power dynamics discussed above determine to a great extent the level of environmental standards, but, at the same time they are also crucial to national negotiation strategies in ECA policy harmonization. They are important; however, they are not enough to constitute a complete explanation. Politics across levels matter. Domestic politics shape states' positions in the OECD negotiations, while activities at the OECD level feed back into domestic politics.

2.2.2 Regulatory harmonization

My first concern was with environmental rule-making. Here, the relevant political actors interacted and shaped policy. The focus was on the power relationships through which these actors influence policy. The following second part of this theory section addresses the interplay between domestic politics and international harmonization of ECA policies. Here the focus is on institutional change as a consequence of harmonization and the involved costs and benefits. In rule-making, actors shape policies through the demands they direct at rule-makers. Rules, consequently, reflect the balance of power among these actors at the time of their creation. In harmonization, rule content is externally given and power relationships affect the acceptance or rejection of harmonization proposals.

After a short introduction of harmonization as a political concern, the next section turns to market integration as a driver of harmonization and the two possible directions of harmonization: up or down. It is important to realize that most established accounts of regulatory harmonization cannot make predictions about ECA harmonization, because ECA coordination affects domestic regulations and meta-regulatory principles whereas

most analyses of harmonization are only concerned with product and process standards. These aspects are discussed in the second section on regulatory culture.

Conflicts between trade and environmental concerns are becoming increasingly salient. Genetically Modified Organisms (GMOs) (see e.g. Bernauer 2003; Isaac 2002; Toke 2004), hormones in beef (see e.g. Josling, Roberts, and Hassan 1999), leg-hold traps (see e.g. Princen 2002), and chemicals regulation (see e.g. Selin forthcoming) have all proven their potential to create transatlantic conflict. Common to these challenges are the effects of behind-the-border environmental standards on international trade. What is intended as a domestic measure of environmental or consumer protection can, at the same time, represent a non-tariff barrier to trade by excluding goods which do not meet the standards from market access. Much of the trade-environment literature focuses either on the relationship of multilateral environmental agreements and WTO rules (e.g. Eckersley 2004), on the compatibility of national regulation with the WTO regime (e.g. Petersmann and Pollack 2003), or on the effects of standards in one polity on those in another (cf. Vogel 1995; 1997a; Busch and Jörgens 2004; Jacob et al. 2005). Less attention is being paid to the harmonization challenge on the national level in the international environmental politics literature, despite experiences with regulatory harmonization in the EU context (Héritier, Knill, and Mingers 1996; Knill and Lenschow 1998, 2000).

Many of these regulatory conflicts over environmental issues are of a different nature than global environmental summitry: they occur within a realm governed by the WTO and are ultimately affected by WTO rules, dispute settlement procedures, and WTO-authorized trade sanctions. In addition to enforceable international law in the trade area, the removal of such regulatory differences requires harmonization of domestic

regulations, which can be more challenging than agreement to a lowest-common-denominator international treaty with no or poor enforcement mechanisms. These conflicts are about different domestic approaches to regulating a certain issue area, and they require substantial concessions by the parties that need to change their domestic regulations as a result. As such, regulatory harmonization is a difficult task, because it questions existing domestic regulations that are not only a product of complex political bargaining processes, but which also reflect what is considered the proper and right way of regulating an issue area. As a result, many regulatory conflicts are allowed to simmer indefinitely as Mark Pollack observes (Pollack 2003: 71).

Environmental standard-setting for export credit agencies, the subject matter of this dissertation is among the more under-researched of the regulatory harmonization challenges. It lies outside of the focus of much of the trade literature as these environmental standards cannot be applied in a protectionist manner. It is nevertheless an intriguing topic for study, as in this case, ambitious environmental standards do not help domestic firms by shielding the market from foreign importers, but rather, these standards work against domestic firms by impeding access to export support. Consequently, they provide an opportunity to assess the applicability of approaches developed to analyze standards with a protectionist potential to this non-protectionist class of environmental standards.

In this context, regulation refers to the establishment and enforcement of rules governing a given policy domain. This includes governments governing through laws, but also includes rules which exist beyond state authority (Picciotto 2002). In this sense, regulation covers more activities than the rather popular regulatory governance literature

primarily concerned with deregulation and principal-agent problems in the context of public governance through independent regulatory agencies overseeing network and natural monopoly industries.

2.2.2.1 Regulatory harmonization: racing up or down?

Globalization is usually credited with being the driver of market integration and regulatory harmonization. Chase-Dunn et al. define it as “*changes in the density of international and global interactions relative to local or national networks*” and suggest that “[e]conomic globalization means greater integration in the organization of production, distribution, and consumption of commodities in the world economy” (Chase-Dunn, Kawano, and Brewer 2000: 78, their italics). The integration of national markets into a global one results, among other phenomena, in the convergence of rules governing national markets. This convergence of rules is driven by firms’ interests in producing identical products for various national markets. Similarly, governments may choose to harmonize their rules with those in other polities in order to facilitate access to foreign markets by domestic exporters. These dynamics not only challenge national rules put in place to address domestic concerns, but they also re-define the relationship between firms and the state. Susan Strange (1996) calls this the “Retreat of the State.” In Strange’s analysis, multinational firms become involved with states in interactions resembling traditional diplomacy among states. States no longer negotiate the shape of the world economy among themselves, but are joined by increasingly stronger private companies with considerable bargaining strength. Their bargaining strength is usually defined by their potential for shifting production from one state to the other; that is, by

the potential for influencing the economic well-being of the states they deal with (structural power).

Such market integration arguments typically presume that firms are hindered by strict regulations, and that the removal of regulatory barriers will always result in economic gains. However, strict regulation can both aid and hinder domestic firms. Some rules can shield markets from foreign competitors and thus help domestic firms – something often called “protectionism.” Others impose additional costs on domestic firms and thus hurt them. Basic economic reason tells us that the former type should be difficult to remove, while we should expect a “race-to-the-bottom” among rules with respect to the latter type. However, races-to-the-bottom are rarely occurring as many empirical accounts show. Still, we do see convergence in many regulatory fields, just not on the lowest common denominator. Crucial questions are: *when can we expect rules to converge? And in which direction is convergence likely?*

The race-to-the-bottom hypothesis suggests that states seek to attract mobile factors of production – capital and high-skilled labor – by relaxing rules and thus lowering costs of production. Competition among states then results in a downward spiral in levels of regulation. David Vogel calls this the “Delaware” effect (Vogel 1997b). Empirical evidence for this hypothesis is not clear. While it is generally accepted that labor regulations have an impact on firms’ investment decisions, the evidence for environmental rules is more ambiguous. David Vogel suggests that “in contrast to labor standards, the costs of complying with stricter consumer and environmental standards has not been sufficiently large to force political jurisdictions to lower their standards in order to keep domestic firms or plants competitive” (Vogel 1997b: 6). Similarly, Braithwaite

and Drahos find that “while ratcheting-up is more common than races-to-the-bottom in the regulation of safety and environment, the opposite is true of economic regulation” (Braithwaite and Drahos 2000: 5).

Vogel goes on to suggest that stricter environmental and consumer regulation may in fact benefit domestic producers because compliance with such rules is easier for them than for their foreign competitors. He labels such races-to-the-top a “California Effect,” where states ratchet standards up in an attempt to support domestic firms. Once one state introduced strict rules, others may harmonize their own rules upward to retain market access. This is the core of the regulatory competition issue that is often not clearly spelled out: some rules inflict costs on domestic firms, and we should expect races-to-the-bottom in these instances; other rules, on the opposite, can shield domestic markets from foreign competitors, and we should expect upward harmonization.

In his study of rules for trapping and data protection, Princen has documented processes where we would expect upward harmonization. He also showed in cases of genetically modified organisms and beef hormones that upward harmonization does not always occur, even if expanded market access provides clear incentives (Princen 2001, 2002, 2004).

While Princen’s analyses point to the relative costs of target country regulatory adjustment as a predictor for upward harmonization (Vogel and Kagan 2004b), Dale Murphy suggests in his study of cases prone to races-to-the-bottom that firms are often not as mobile as assumed: the more specific their assets, the less likely they are to exploit regulatory opportunities through re-location (Murphy 2004). Most of the literature deals with setting and harmonizing rules, but it does not address outcome. Neal Woods’ study

of strip-mining regulations in the United States (Woods 2006) reminds us that a race-to-the-top with regard to standard-setting can be linked to a race-to-the-bottom in the implementation of the very same rules. Such a combination of races can be expected where downward harmonization of rules is not politically feasible (concerned constituency), but influential organized interests (industry) nevertheless requires leniency.

Given the unclear empirical evidence for both upward and downward harmonization processes, and even the linkage of both types of races with regard to the same policy challenges, it is clear that it is not sufficient to study only the structure of competition in a regulatory domain, the type of rules, or the distribution of costs and benefits. I argue that we also need to look inside the states and consider the nature of rules. Convergence requires more than agreement on an abstract optimal level of regulation. It is not just about the purpose or goal of rules, but also about the means to achieve a regulatory goal.

Besides the nature of the standards, we also need to consider the instruments used to achieve regulatory objectives. While objectives may not be controversial, the means to achieve them may differ considerably among states. Environmental standards for export credit agencies provide a good opportunity for studying the effects of regulatory instruments on the prospects for harmonization, since the arguments discussed thus far do not provide sufficient explanations for the course of their harmonization process. ECA environmental policies regulate access to government support for domestic exporters. Thus, strict rules hurt domestic exporters. We should expect a race to the bottom; however, the Common Approaches have provided for upward harmonization of

environmental policies among providers of officially supported export credits. Dale Murphy suggests that strong and concentrated industry will lobby against strict standards. Still, harmonization proceeded in an upward direction despite affecting national champion industries.

2.2.2.2 Harmonization and regulatory culture

Regulatory harmonization is occurring in all sectors of political activities which have an effect on trade or cross-border business activities. However, the range of these harmonization endeavors is broader than the well-documented area of product and production process standards. The difference between the two lies in that environmental standards for export promotion instruments being a far more complicated matter than the technical devices that save dolphins and turtles from being caught in fishing nets. Also, implementation of environmental standards and review procedures is much more involving than setting a standard for a certain product. While product standards can be implemented more or less uniformly across varying polities and then enforced by import restrictions, environmental requirements for access to government support require more coordination. Regulatory harmonization can occur on four levels of increasing complexity:

- *Harmonization of product standards*: prescriptions for qualitative product characteristics pose considerable barriers to trade, but in most areas harmonization is mostly a technical matter
- *Harmonization of production processes*: the question of how products are made is more challenging, but adaptation is possible provided the resulting increase in market size can compensate for the cost of adaptation

- *Harmonization of domestic regulation*: domestic rules which govern behavior in a given area are embedded in a broader institutional framework. Harmonizing these regulations can be a very challenging task when domestic institutional contexts suggest different fundamental approaches to the same regulatory task
- *Streamlining of meta-regulation*: basic regulatory principles or philosophies that inform how states regulate a given issue area. I.e. how are rules and regulations created? What kind of instruments and policies are favored? Meta-regulatory disagreements are the most challenging harmonization task.

While the first three levels of regulatory harmonization require little explanation, *streamlining of meta-regulation* does beg a more detailed explanation. Whenever governments set out to regulate a given issue area, certain regulatory instruments may appear as a “natural” tool for addressing that task. However, this selection of tools is not only driven by the regulatory task but also by the cultural and institutional context in which regulation is occurring. This means that instrument choices may differ among states. An instrument considered a perfect fit for the task at hand in one state may be considered an ill-advised choice elsewhere. However, when domestic regulations are harmonized beyond the establishment of goals and targets, regulatory instruments will inevitably be affected. Contemporary examples for such meta-regulatory tools and principles that have proven to be of a rather contentious nature include transparency in government and regulation, regulatory impact assessments (RIA), environmental policy integration (EPI), and the precautionary principle. All of these are considered ingredients

of “good” regulation by their proponents, while their opponents may view their spread as regulatory imperialism on behalf of their promoters.

Radaelli discusses meta-regulation in the context of integrating European regulations in the “Better Regulation” paradigm. In his activist perspective, meta-regulation is defined as “an experiment in politics in that its major aim is to change governance and institutional behaviour by altering the political opportunity structure” (Radaelli 2007: 11). My use of the concept departs from Radaelli’s approach and is more in line with Morgan’s original use: “The social logic of metaregulation is characterized as an instance of nonjudicial legality, situated at the intersection of two trends -- an increasing legalization of politics and a growing reliance on nonjudicial mechanisms of accountability. The political implications can be summed up as an 'economization' of regulatory politics” (Morgan 2003: 489). The difference in the usage of this term is that both Radaelli and Morgan are concerned with regulatory reform, that is, an expansion of the tool set available to regulators. Regulatory harmonization is a different process, but poses similar challenges in that regulatory tools may be imported from other polities that can be at odds with existing regulatory culture. In this sense, regulatory harmonization may provide a stimulus or external forcing event for regulatory reform.

Harmonization of ECA environmental policies involved the harmonization of domestic regulations as well as concessions on the meta-regulation level by continental European states that agreed to environmental assessment, transparency, and public consultation provisions which run counter to their established regulatory cultures. Thus, ECA harmonization took place at the two most complex levels of regulatory harmonization.

A key term that I have not defined thus far is regulatory culture. From the previous discussion, it should be clear that regulatory culture impacts – if not determines – regulatory instruments chosen to address given regulatory tasks. Just as culture in general contains shared understandings, norms and practices as well as prescriptions for standard patterns of behavior, regulatory culture generally prescribes accepted modes of devising and implementing regulations. On a material level, this includes the tools and instruments regulators choose to achieve a regulatory objective. However, regulatory culture entails more than instrument choice. In a constructivist perspective, Meidinger suggests that regulatory communities (including regulators, regulatees, and other stakeholders) are defined not only by the prevailing regulatory culture, but also themselves re-define regulatory culture.

[Regulatory] traditions become as important in regulatory interactions as any other factors. Whether we call them settled expectations, policies, standard operating procedures, conventions or regulatory culture, they generally play a central role in organizing regulatory interactions. They may of course be changed in the course of these interactions, but they constitute the stuff of collective organization which must be changed if the pattern of regulation is to change. In this view, the pattern of collective action cannot effectively be changed without changing the developed culture of regulation (although one way of doing this is to systematically change the membership of the regulatory community, as by admitting or excluding certain types of participants). (Meidinger 1987: 372)

The burden of much of the above argument is that critical aspects of regulation are in fact worked out in the daily interactions of regulatory communities. In these interactions structural constraints, political pressures, general cultural assumptions, legal requirements, and bureaucratic procedures are actually turned into a form of regulatory culture which organizes the activity of regulation. (Meidinger 1987: 373)

Regulatory harmonization then requires agreement on potentially different normative visions of appropriate regulation (meta-regulation level) as well as over potentially incompatible institutional and legal frameworks (domestic regulation level) by two or more autonomous regulatory communities. At the same time, the harmonization task and the involvement of an external regulatory community can bring about the change in the pattern of collective action needed to make the adoption and implementation of

new rules possible. Regulatory harmonization then becomes externally induced regulatory reform (see also Woll and Artigas 2007). The problem is how to reach an agreement when this agreement requires us to rethink fundamental convictions of how something ought to be done.

The second quote also makes clear that more than normative agreement is needed for successful regulatory harmonization. Regulatory cultures also include institutional aspects that may require changes and reform beyond the specific regulatory arena in order to make harmonization or reform within the arena possible. However, such changes require cooperation by actors beyond the regulatory community who may have no interest in making the necessary changes. After all, most policies and rules are the products of complex bargaining processes, the outcomes of which may be put into question if reforms were pursued. This suggests that harmonization initiatives are most promising when the proposed harmonized rules are compatible with the regulatory cultures of all involved parties. This, in turn, requires regulatory communities to understand not only their own regulatory culture but also that of the other affected communities to identify any potential overlap.

Among such institutional differences are legal systems (common law, civil law), the role of the judiciary, as well as the nature of the regulator (state bureaucracy, regulatory agency, independent regulator). Ogus notes: “The *functioning* of the regulatory system may be strikingly different if, for example, State A has a panoply of process values incorporated into its general administrative law and enforced by an independent judiciary, whereas in State B the matter is simply one of bureaucratic *diktat*” (Ogus 2002: 2, his italics). The cases in this study are almost perfect examples for these opposing

poles in regulatory system characteristics: U.S. regulation is rich on process, and the actual implementation of rules depends highly on their interpretation through an independent court system (substantial judicial review). German administration, on the other hand, still operates very much on the ethos of an independent professional bureaucracy as described by Weber more than 80 years ago (Weber 1977). This difference plays out not only in the way regulations are designed but also in the way rules are interpreted. The German *Rechtsstaat* operates on the principle that administrative actions must conform to formal legal rules. The role of administrative courts is then to scrutinize compliance with these rules. U.S. courts, on the contrary, also evaluate the appropriateness of rules. (Ogus 2002: 5-6) As a consequence, U.S. rule-makers have an incentive to provide much more detailed procedural details that leave less room for interpretation by the courts.

The difference in legal systems not only has an effect on the nature of rules, but also on their end-effects. Identical rules could have very different effects on either side of the Atlantic. Litigation costs are substantially higher in the United States than in Europe, and litigation culture differs, too. Shaffer (2000) notes:

Individuals are more likely to bring suit against companies in the United States, the costs of litigation (and particularly of discovery) are substantially steeper in the United States, and damage awards are larger, increasing average settlement costs. In addition, activist groups will more likely challenge agencies before courts in the United States for failing to stringently apply regulations. In contrast, in continental Europe, non-governmental groups play only a limited role in challenging governmental and corporate actions before courts and regulatory bodies.

Thus we need to consider the legal system not only from an administrative perspective (which rule will withstand litigation?) but also from a political point of view, since the likelihood of costly adversarial litigation can have an impact on business support or opposition to a rule and thus impact political costs.

2.2.2.3 Conclusion

The preceding sections have dealt with the costs of changing existing rules without providing a clear conceptualization of the involved costs and benefits. Cost and benefits of harmonization arise in the economic, political, and regulatory realms. Economic costs are borne by firms. They include opportunity cost stemming from strict national rules and adaptation costs when harmonized rules require changes in business and production processes. Political costs affect policy-makers when they need to consider the popularity of harmonized rules among their constituency. This is where business' structural power enters regulatory harmonization, because acting against business interests can result in political costs. Regulatory costs, finally, are the costs that bureaucrats and policy-makers face in changing rules and procedures. This includes challenges to established power balances as a consequence of harmonization.

Benefits from harmonization are closely related. Economic benefits include reduced transaction costs as a consequence of level playing fields. Political benefits derive from the satisfaction of domestic constituents favoring harmonization, the avoidance of international disputes over the issue, and the exertion of influence on the international stage. Regulatory benefits are mostly limited to those parties who could maintain their pre-existing rules without change by diffusing their own rules. But all involved parties benefit from more clarity about and easier monitoring of competing states' rules.

The regulatory harmonization part of this theoretical framework has established the importance of the compatibility of harmonization proposals with regulatory cultures to minimize adaptation costs. This can serve as a predictor for successful harmonization.

The next part ties the rule-making and harmonization aspects together in a coherent formal model that allows for considering both regulatory reform and regulatory harmonization using the same cost-benefit analysis approach.

2.2.3 Politics across levels

This third part of my theoretical discussion ties together the previous parts on rule-making and regulatory harmonization using the same cost-benefit analysis approach for both aspects. After discussing and expanding a model developed by Daniel Drezner (2005), the second section advances a hypothesis for ECA harmonization derived from the regulatory cost aspects of this model.

Table 2.3 Coordination game (based on Drezner 2005: 845)

		State B	
		Switch to country A's standards (a)	Retain national standards (b)
State A	Retain national standards (a)	Coordinate at A (p, p-c)	No coordination (0, 0)
	Switch to country B's standards (b)	Mutual switching (-c, -c)	Coordinate at B (p-c, p)

p = benefits from regulatory coordination
c = adjustment cost of switching standards

Drezner provides a fairly sophisticated account of regulatory harmonization. His argument is based on a cost-benefit analysis, which includes political and regulatory cost considerations. Aiming to explain harmonization of product standards, he argues that market power is crucial in explaining harmonization. While the market power argument is irrelevant to ECA politics, he augments his analysis with a consideration of domestic costs that is very relevant to my analysis. Drezner's study is concerned with harmonization among the great powers (EU and United States), since disagreements

among these polities are the only harmonization conflicts that cannot be settled by either power's unilateral exertion of market power (Drezner 2005).

In its simplest form, Drezner's coordination game is based on pay-offs that are defined by costs and benefits of harmonization. The balance between costs and benefits of harmonization decides a country's strategy. If the benefits are greater than the costs ($p > c$), then a government may choose to switch to the other country's standards. If costs exceed benefits ($p < c$) then the only equilibrium outcomes are no coordination or coordination at one's own standards. The most costly (and also unrealistic) outcome is mutual switching of standards. In this basic form, the coordination game does not pose a challenge to IR theorizing. However, when considering cost and benefits more closely the importance of domestic politics becomes very apparent.

As discussed above, cost and benefits fall into economic, political, and regulatory categories. Of these, regulatory benefits can be omitted since the best possible harmonization solution is coordination at one's own regulatory standards, that is, the absence of adaptation costs. Thus, the first extension of the model must be the consideration of these:

$$p = f(p_{\text{economic}}, p_{\text{political}})$$

And

$$c = f(c_{\text{economic}}, c_{\text{political}}, c_{\text{regulatory}})$$

Economic costs and benefits include opportunity and adaptation costs as well as reduced transaction costs on the benefits side. However, these will not be specified further since they are beyond the scope of this analysis. Furthermore, economic costs and benefits only become relevant for political decisions, when they are brought into political

process by firms. In this sense, economic costs and benefits become components of political costs and benefits.

Political cost and benefits are much more central to this analysis. They include domestic political costs and benefits (i.e. the popularity of harmonized rules among policy-makers' constituents) and international benefits of avoiding international disputes over regulatory disparities and exerting international influence:

$$P_{\text{political}} = P_{\text{pol-domestic}} + P_{\text{pol-international}}$$

And

$$C_{\text{political}} = C_{\text{pol-domestic}} + C_{\text{pol-international}}$$

The domestic costs and benefits are functions of the power positions held by the competing constituencies:

$$P_{\text{pol-domestic}} = f(\text{power}_{\text{industry}}, \text{power}_{\text{NGOs}})$$

And

$$C_{\text{pol-domestic}} = f(\text{power}_{\text{industry}}, \text{power}_{\text{NGOs}})$$

This in turns demands differentiation of the different types of power exerted, including instrumental, structural, and discursive power:

$$\text{power}_{\text{industry}} = \text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}}$$

And

$$\text{power}_{\text{NGOs}} = \text{power}_{\text{NGOs-instrumental}} + \text{power}_{\text{NGOs-structural}} + \text{power}_{\text{NGOs-discursive}}$$

Furthermore, economic costs and benefits are brought into the political process through industry power. Especially, industry's structural power is derived from a combination of the industry's relevance for exports and the costs/benefits to industry resulting from new rules:

$$\text{power}_{\text{industry}} = f ((p_{\text{economic}} - c_{\text{economic}}), (\text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}}))$$

International political costs and benefits which states derive from the absence of regulatory conflict or the gratification of having been involved in the creation of new international standards are not further specified here since they can be assumed to be small compared to the domestic political costs and benefits. Summing up, political costs and benefits involve complex calculations based on the relative power of competing constituencies. Substitution yields these models:

$$p_{\text{political}} = f (((p_{\text{economic}} - c_{\text{economic}}), (\text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}})), (\text{power}_{\text{NGOs-instrumental}} + \text{power}_{\text{NGOs-structural}} + \text{power}_{\text{NGOs-discursive}})) + p_{\text{pol-international}}$$

And

$$c_{\text{political}} = f (((p_{\text{economic}} - c_{\text{economic}}), (\text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}})), (\text{power}_{\text{NGOs-instrumental}} + \text{power}_{\text{NGOs-structural}} + \text{power}_{\text{NGOs-discursive}})) + c_{\text{pol-international}}$$

Regulatory costs are most directly related to Drezner's adaptation costs. These include the bureaucratic costs of changing existing rules and procedures. Since Drezner's analysis was concerned with the harmonization of product standards as the simplest of the four harmonization challenges introduced earlier, he could specify the adaptation costs relatively easily as a function of the difference between the stringency of State A's and B's rules:

$$c_{\text{regulatory}} = f (a - b)$$

However, if we move beyond product standards to also include harmonization of process standards, regulation, and meta-regulation, this function becomes multi-dimensional to account for differences in all four dimensions. Furthermore, the different

levels of harmonization also contribute to differing extents to adaptation costs; meta-regulatory change is much more costly than adaptation in the product standard dimension. Given the complexity of this aspect, it shall suffice for now to define regulatory costs as a function of the differences in rules without specifying the exact relationship:

$$c_{\text{regulatory}} = f(a, b).$$

Putting together all these components yields fairly complicated models:

$$p = f(((p_{\text{economic}} - c_{\text{economic}}), (\text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}})), (\text{power}_{\text{NGOs-instrumental}} + \text{power}_{\text{NGOs-structural}} + \text{power}_{\text{NGOs-discursive}})) + p_{\text{pol-international}}$$

And

$$c = f(((p_{\text{economic}} - c_{\text{economic}}), (\text{power}_{\text{ind-instrumental}} + \text{power}_{\text{ind-structural}} + \text{power}_{\text{ind-discursive}})), (\text{power}_{\text{NGOs-instrumental}} + \text{power}_{\text{NGOs-structural}} + \text{power}_{\text{NGOs-discursive}})) + c_{\text{pol-international}} + f(a, b)$$

One important insight these models yield is that neither costs nor benefits can be assumed to be static. Since both of these are functions of domestic power relationships, domestic politics matter and shifts in domestic politics can change the payoffs in the international coordination game.

Remembering that the benefits of harmonization must outweigh the costs of adaptation ($p > c$) for a state to consider switching standards, we can also see that changes in the terms of the harmonization proposal can change the cost-benefit analysis. Slightly changing the harmonization proposal in one or more dimensions (from a to a'), may decrease the adaptation costs for B (and thus also increase overall benefits to B). However, change is limited by A's cost and benefits since its cost will rise and its benefits will decline. Compromise over previously irreconcilable positions becomes

possible if the required change in the harmonization proposal changes the costs-benefit analysis for B without upsetting A's incentive for harmonization:

$$f_A(a', b) - f_A(a, b) < p_{A,\text{political}} - c_{A,\text{political}}$$

And

$$p_{B,\text{political}} - c_{B,\text{political}} - f_B(a', b) > 0$$

While it is difficult to attach numbers to all these factors, it should be clear that both domestic politics and the terms of the harmonization proposal are important in influencing the likelihood of an agreement on harmonized rules. Another concern that is not clearly evident from this formal discussion is linkage across levels. While the impact of changing domestic politics is captured in the political cost and benefit functions, ongoing harmonization negotiations also impact domestic politics and may also modify domestic power relationships. The success of harmonization negotiations can thus be impacted by changing either costs or benefits of agreement or non-agreement. Such changes can come about in either the domestic political spheres or by modifying the harmonization proposal.

The above model was developed for regulatory harmonization, but it can easily be adopted for one actor's regulatory reform. Moving from the old set of rules a to a new set a' entails cost-benefit considerations just like making decisions about harmonization. Regulatory reform is only likely when the benefits of the new rules are net positive. That is, political benefits from the new rules must outweigh political and regulatory costs:

$$p_{\text{political}} - c_{\text{political}} - f(a, a') > 0.$$

2.2.3.1 Applying cost-benefit analysis to ECAs

One key aspect in determining regulatory adaptation costs is the business model of ECAs which differs from state to state. While all ECAs support domestic exporters by facilitating access to finance, they can do this in a number of different ways. Here, a very crude distinction between two ideal types of ECAs shall suffice (in reality hardly any two ECAs are alike): ECAs may operate as either banks or as insurers. An agency like the U.S. Export-Import Bank needs to examine a project before granting credit, because the project details will determine its viability, associated risks, and the terms under which the ECA will grant credit. An insurer like the German Hermes Kreditversicherung can set certain requirements and only needs to confirm that requirements have been met when a client wants to collect the insurance premium. Here we observe the fundamental differences between finance and insurance business, and their respective evaluation processes. While banks need to conduct most project assessment ex-ante, insurers require relatively little information before underwriting a policy. However, insurers will screen an insurance claim very thoroughly ex-post. Naturally, environmental screening for ECA-supported projects occurs ex-ante and thus does not pose a major obstacle to bank-type ECAs that conduct intensive ex-ante project screening in any case; insurance-type ECAs, on the other hand, would need to adopt a different approach to project evaluation. Furthermore, clients of insurance-type ECAs would have their projects screened twice - once by the finance provider and once by the ECA – whereas their competitors may have had their projects evaluated only once by a bank-type ECA. Thus, *ECAs acting only as insurers are confronted with higher regulatory costs in comparison to bank-type ECAs when implementing environmental project screening.*

Note that these preferences are all consequences of domestic politics that cannot be assumed identical across states. A purely international analysis is not possible.

2.3 Research Design and Methodology

My analysis builds on data gathered through analysis of public documents, statements, press articles, and – most importantly – elite interviews. Between December 2003 and August 2004 I conducted 27 interviews with experts on export credits on both sides of the Atlantic. All formal interviews were conducted for background information only. Participation in conferences on environmental standards for ECAs in London, Berlin, and Brussels between October 2003 and May 2006 enabled me to follow policy development closely in discussions with the ECA policy community. Beyond these formal encounters I also exchanged views with many academics and practitioners working on international finance and the environment. With this data I traced the policy-making process in Germany and the United States and isolated relevant factors that influenced the policy process at critical junctures. Contrasting ECA politics with environmental reform at the World Bank and private banks, puts the environmental NGO campaigns into a broader comparative context.

Starting from a scientific-realist logic of causal inference (Schwartz 2003) this analysis focuses on processes that allow to a researcher to infer causality rather than just observe co-variations. Margaret Levi and Robert Bates (Bates 1998; Levi 1997) have developed the concept of analytic narratives to structure such inquiries, and Alexander George and Andrew Bennett (Bennett and George 1997; George and McKeown 1985; George and Bennett forthcoming) encourage the use of process tracing in case study research. Both of these approaches focus on processes and mechanisms (Tilly 2001).

Methodologically, this dissertation takes the approach of a theoretically informed narrative: the focus is more on interpretation and explanation than on theory evaluation. Still, this dissertation tests explanations from other harmonization challenges on a case with unusual properties (standards which hurt domestic firms).

Theoretically, it speaks mainly to the literature on domestic sources of foreign policy (e.g. DeSombre 2000, 2005), environmental standards (e.g. Vogel 1997a, 1986, 1995), regulatory harmonization (e.g. Esty and Geradin 2001; Mattli and Bütte 2003; Knodt and Princen 2003; Brandhauer, Curti, and Miller 2005), and writing on regulatory politics in the EU (e.g. Elgström and Jönsson 2005; Mastenbroek and Keulen 2004; Oates 1998) which is applied to OECD harmonization here.

Following van Evera's (1997: 89-95) typology of political science dissertations, this project is a hybrid of the theory testing and historical explanatory types. He states that historical explanatory dissertations are not highly regarded but suggests that "this bias is misguided. [W]ithout explanatory historical work history is never explained" (Van Evera 1997: 92-3). This is especially true for a topic like environmental export credit politics which, until now, lacked both comprehensive description and analysis.

2.4 Conclusion

The discussion of costs and benefits has established the core categories for comparison that will be used throughout this dissertation: power and rule content. These categories are relevant for both domestic standard-setting and international harmonization. Different power positions of industry and NGO actors affect the political costs of regulatory reform and harmonization. Institutions which channel, enable, or constrain power are important in estimating an actor's effective power. While power and

institutions mostly affect political costs, regulatory costs are largely a product of rule content. High adaptation costs can make regulatory reform unlikely even if it comes with political benefits. At the same time, the absence of regulatory costs does not make reform likely if there are no political benefits to be had. However, economic costs and benefits (which are in turn part of political costs and benefits) also depend on rule content. Therefore, it is unlikely that a change in rules would not affect political costs and benefits. The question is: into which direction and to what extent? If costs and benefits from rule change are not net positive, nothing will change. There is clear bias towards maintaining the status quo.

For the consideration of overall costs and benefits, political costs and benefits and rule content are all independent variables. Rule content, however, is the only factor of these over which rule-makers have close control. When designing rules, rule-makers react to perceived political costs and benefits. This means that rule content, in fact, depends on likely political costs and benefits. In another words: rules reflect the interests of the powerful.

This chapter first showed the lack of analytical literature dealing with ECAs and environmental standard setting. It then continued to develop a theoretical framework for such analyses. This framework consisted of two components; one dealing with environmental rule-making and the other with regulatory harmonization. As the references between these parts indicated, neither component can be assessed without considering developments in the other dimensions. The final section on cost-benefit analysis brought both aspects together in a formal model of regulatory harmonization that considers political costs and benefits that arise in environmental rule-making as well as

regulatory costs that result from harmonization. With these considerations in mind, this dissertation now proceeds to analyzing the greening of international finance as the first trend under consideration before turning to regulatory harmonization as the second force behind common environmental policies for ECAs.

Chapter 3: Spread of Environmental Policies for International Finance

This and the following chapter address the proliferation of environmental policies among international finance as the first trend affecting environmental standard setting among ECAs. The second trend towards regulatory harmonization is the subject of chapters five and six. This chapter provides a historical account of environmental policy development among ECAs, the World Bank, and private banks and compares these policies with regard to their creation and substance. The next chapter then analyzes the obstacles to standard setting that affected ECAs but did not affect rule making among the other international finance institutions which both responded to environmental critiques with the creation of environmental policies much faster than ECAs did.

The World Bank and private banks are covered as important benchmarks for evaluating ECA politics. These institutions financed similar projects, encountered similar environmental problems in their operations, and were subject to very similar NGO campaigns. Still, environmental policy development occurred in different trajectories and at different speeds. The next chapter will explore how different power relationships among the involved regulatory communities have led to the different modes of environmental policy development discussed here. *Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?* This is the guiding question for this first set of empirical chapters.

Environmental standards for export credit agencies did not evolve in a political vacuum. They are the result of a broader NGO campaign advocating the “greening” of international financial institutions. Over the last two decades, we have witnessed the proliferation of environmental policies among providers of international finance. Under the pressure of an international NGO campaign, with the support of the U.S. government, the World Bank Group and other multilateral development banks (MDBs) adopted environmental rules for their operations. A second wave of NGO activity then forced private banks to adopt a comparable set of policies known as the Equator Principles, to which their large-scale project finance business is subject. Export credit agencies had been the target of environmental NGO activity since the early 1970s but they did not adopt environmental policies until the late 1990s. ECAs responded to similar challenges much slower than the World Bank or even private banks. The overall result has been a proliferation of related policies (rooted in the U.S. National Environmental Policy Act’s environmental review logic) among many providers of international project finance. This has developed out of widespread concern about the past environmental performance of such projects.

3.1 U.S. NGO Campaigns and the Greening of International Finance

Export credit agencies, multilateral development banks, and Equator Principle financial institutions (EPFIs) now all follow substantially similar guidelines when evaluating environmental impacts of projects which they consider financing. This overarching international financial regime regulating environmental review of projects and providing performance standards for supportable projects is a rather recent

phenomenon. It took ECAs much longer than the World Bank or even private banks to arrive at this point.

Much of the large-scale infrastructure development of the 1960s and 1970s not only promoted economic development, but also resulted in unintended environmental problems. The World Bank became the first international target of a coalition of activists in the early 1980s who criticized the Bank for environmental problems and unjust resettlement policies that were the consequence of Bank-sponsored colonization projects in Brazil and dam projects in India. The Polonoroeste and Narmada dam projects showcased the need for the consideration of environmental and social consequences up front. The Bank started to react to NGO concerns once the activists managed to exert considerable influence through the U.S. Congress so that the U.S. government threatened to withhold funding for the World Bank's International Development Agency (IDA). The combined pressure of NGOs and the U.S. government resulted in slow and step-wise development of World Bank environmental policies throughout the 1980s and 1990s. Today, the World Bank policies are considered strong and serve as the international benchmark for other organizations' environmental rules. The World Commission on Dams (WCD) and the Extractive Industries Review (EIR) are recent World Bank initiatives that have defined internationally acceptable practices in dam and mining development (Gutner 2002; Horta 1996; Rich 1994; Wade 1997).

A second target of the same coalition of NGOs that pressured the World Bank to develop its environmental rules were private banks. Using name-and-shame tactics, NGOs branded banks active in international project finance as environmentally irresponsible because they made loan decisions without having rules in place to consider

the environmental impacts of projects financed by them. In this regard, the private bank campaign was similar to the World Bank and ECA campaigns. However, this campaign was not aimed at governments but rather at consumers at customers of these banks. Banks responded to this challenge to their brand name reputation fairly swiftly by adopting the Equator Principles (EPs) as a private sector version of World Bank policies. The EPs apply to the project finance business of those banks that have adopted this voluntary industry code.

Export credit agencies had been subject to NGO pressure since the early 1970. These are public or semi-public national agencies which serve as lenders or insurers of last resort to support exports by domestic firms into high-risk markets. Prominent ECAs include the United States Export-Import Bank, the British Export Credit Guarantee Department (ECGD), French Coface, and the German Hermes guarantees. While their operations include everything from short-term buyer credit for export of goods to support for exports of ships and aircraft to cover for infrastructure development, the discussion here is concerned with their long-term business which includes the very same types of projects the World Bank got in trouble for earlier: dams, pipelines, mining, pulp-and-paper plants among other types of large infrastructure projects.

Components are often sought from producers headquartered in many different countries. Exporters supplying components to such projects seek support from their domestic ECA. ECAs cover the political and commercial risks involved in the export transactions, and thus provide insurance against non-payment by the project developer – a key requirement for exporters so that they can seek financing from banks. Some ECAs also operate as banks and provide both cover and financing. Financing is needed to cover

the period between delivery and payment of the supplied project components. This cover becomes especially important in project finance arrangements when payment may only occur years later once the project has become operational and generates revenue (for ECA politics in general see: Evans 2005; Walzenbach 1999). The following section provides an overview of the NGO campaigns targeted at the World Bank, ECAs, and private banks.

3.1.1 The 1970s: Advocacy groups target domestic U.S. institutions in lawsuits seeking to extend NEPA to U.S. actions beyond its borders

After the enactment of the *National Environmental Policy Act (NEPA)* in 1969, which established environmental review procedures for federal U.S. government agencies, advocacy groups engaged in a protracted battle over the applicability of NEPA to U.S. government actions with effects beyond U.S. borders. NEPA itself was not clear as to whether it applied only to domestic activities, or whether it also covered activities by the U.S. government beyond its borders (*Sierra Club v. U.S. Atomic Energy Commission* 1974; *Environmental Defense Fund v. U.S. AID* 1976; *Sierra Club v. Coleman* 1976; *NRDC v. Ex-Im* 1979; *NRDC v. NRC* 1981). Most internationally active government agencies preferred a narrow interpretation of NEPA, while environmental activist groups demanded that these “internationally active agencies” perform the same environmental reviews of their activities as were required of domestic agencies. Litigation ebbed off when President Carter issued an Executive Order in 1979 that sought to clarify and limit the reach of NEPA (The Extraterritorial Scope of NEPA's

Environmental Impact Statement Requirement 1975; Renewed Controversy 1977; Forthcoming CEQ Regulations 1978; Peirce 1979; Allegra 1980; Pincus 1981).⁶

Environmental advocacy groups sued a number of government agencies not conducting environmental reviews as postulated by NEPA for their external activities. The U.S. *Agency for International Development (USAID)* and its pesticide program was one of the first targets (*Environmental Defense Fund v. U.S. AID* 1976). The lawsuit resulted in the creation of environmental policies for USAID based on the procedures established in NEPA. Later, these policies were to become the template for the World Bank (IBRD) environmental guidelines which in turn served as the model for the International Finance Corporation (IFC), export credit agencies, and private bank Equator Principles.

Two lawsuits were targeted at Ex-Im: in *Sierra Club v. U.S. Atomic Energy Commission*, the court ruled that the Commission needed to conduct an Environmental Impact Statement for its nuclear power export process, but that Ex-Im would not need to conduct environmental reviews of projects themselves as this would result in a duplication of efforts (*Sierra Club v. U.S. Atomic Energy Commission* 1974). In response, the NRDC sued Ex-Im in January 1977 to establish environmental review procedures under NEPA. This second suit was pending at the time of Ex-Im's 1979 reauthorization, and the NRDC later agreed to settle once Ex-Im introduced its first environmental review process in 1979 (Peirce 1979).

⁶ Currently, a lawsuit brought forth against Ex-Im by a coalition of NGOs is pending in which the plaintiffs argue that through their impact on the global climate all fossil fuel projects facilitated by Ex-Im affect the U.S. territory and therefore ought to be subject to a full environmental review conforming with NEPA.

Congressional action on environmental rules for Ex-Im was prompted by a controversial September 1976 memo to *Heads of Agencies on Applying the EIS Requirement to Environmental Impacts Abroad* from the President's Council on Environmental Quality (CEQ) (42 Fed. Reg. 61068-69). This memo sought to clarify the applicability of NEPA to international federal actions, rather than solving the uncertainty created by unclear language in NEPA and the pending lawsuits, it sparked an inter-agency dispute over the applicability of NEPA to actions beyond U.S. borders. CEQ draft regulation dating from January 1978 further intensified controversy among federal agencies and Congress (for agency comments on the CEQ draft see: United States Congress 1978b: 86-127).

The Senate bill for Ex-Im's 1979 reauthorization contained an amendment proposed by Senator Adlai Stevenson III that would have exempted Ex-Im from its obligations under NEPA, with the exception of environmental effects within the United States (United States Senate 1978; United States Congress 1978b; Peirce 1979). Both Ex-Im chairman Moore and C. Fred Bergsten as the responsible Assistant Secretary of the Treasury for International Affairs were critical of this initiative (United States Congress 1978a: 126-7), and in the end, the amendment was not signed into law.

The uncertainty around the external applicability of NEPA continued until President Carter set guidelines for the applicability of NEPA to federal agencies by Executive Order No. 12114 in 1979 (for a recent review see: Schiffer 2004; for the legal discussion preceding the Executive Order see: Renewed Controversy 1977). However, even Carter's EO did not succeed in resolving conflicts surrounding the applicability of

NEPA until implementation guidelines were issued by the CEQ under environmental champion and NRDC founder Gus Speth.⁷

Following this order, Ex-Im only had to subject its nuclear business and any other projects that would have an environmental impact on U.S. territory to the stringent review under NEPA. For its remaining business, Ex-Im established the “Concise Environmental Reviews” stipulated in the Executive Order, which amounted to little more than a “boiler plate form added to project documents” (Evans 2000). Peirce argues that “this pervasive emphasis on administrative discretion is the executive order’s most significant departure from the position taken by the draft regulations” (Peirce 1979: 266). The review process remained largely unchallenged until the 1992 reauthorization.

3.1.2 The 1980s: NGO campaign targeted at the World Bank results in World Bank environmental policies

Indigenous rights groups had been criticizing the World Bank for the effects of its projects on tribal people since the 1970s. However, their protests resulted in no tangible political response until early 1983, when a group of Washington-based activists started planning a campaign aimed at “greening” an influential international organization. Activists chose to target their campaign at the World Bank for strategic reasons: (i) the Bank was well-known; (ii) they could use Congressional appropriations for Bank funding as an effective lever; and (iii) the Bank was conveniently located in Washington (Rich 1994). Their campaign strategy was to highlight instances of poor environmental performance in highly visible Bank-funded projects, and to use these in lobbying for

⁷ Interestingly, Gus Speth was also NRDC plaintiff in a number of these lawsuits and later founded the World Resources Institute (WRI) which still plays a key role in the NGO campaign to green international financial institutions.

environmental policy improvements at the Bank. The first project chosen was *Polonoroeste*, a colonization project in the Brazilian Amazon region. This project entailed a combination of poor environmental planning and considerable negative impact on the livelihoods of tribal peoples. Thus, it was to be advantageous to generate public outrage over the Bank's activities. Towards the late 1980s, the NGO campaign also featured the *Narmada* dam project in India, which involved a similar combination of environmental impacts and forced resettlement. Activists used this project to follow up on Bank commitments made in response to the *Polonoroeste* campaign that did not appear to have a considerable effect on Bank operations (Gutner 2005b, 2005a; Nielson and Tierney 2003, 2005; Rich 1994).

From 1983 to 1987, NGOs managed to put the Bank's environmental record on the U.S. Congressional agenda in some 20 hearings, and this resulted in support for the campaign from both a number of influential Congressional committee chairs, and from the U.S. Treasury. Congress threatened to cut or withhold World Bank funding a number of times, should the Bank fail to respond to U.S. demands for environmental policy reforms, and ultimately did withhold funding, when the Bank did not cooperate to the extent deemed acceptable. By the end of the 1980s, U.S. pressure had resulted in the establishment of a central environment department, the creation of environmental divisions within the Bank's regional departments, and the adoption of environmental assessment procedures (Bøås 2001; Park 2005b).

In 1989, the Pelosi amendment institutionalized U.S. environmental policy regarding MDBs. The Pelosi amendment required that from 1991 on, U.S. Executive Directors (EDs) in MDBs could vote in favor of projects only if (i) their preparation

included sufficient environmental assessments, and if (ii) these assessments had been available to the EDs, U.S. federal agencies and the interested public for at least 120 days before a decision was to be made. Prior to the amendments, consultation periods varied among MDBs, but were generally shorter than 120 days. The Pelosi amendment effectively uploaded the NEPA consultation period requirement up to the international level, only six years after NGOs had started to target the World Bank (Keck and Sikkink 1998; Park 2005b; see also Bøås 2001).

In addition to environmental assessment procedures which reflect NEPA provisions, World Bank rules also contain substantial decision criteria that go beyond a simple uploading of NEPA to the Bank. The environmental policies of the IBRD consist of a number of general and sector-specific policies contained in its operations manual. The Bank also developed the *Pollution Prevention and Abatement Handbook* (PPAH), which provides both quantitative and qualitative information regarding acceptable pollution levels as well as mitigation strategies. Following U.S. pressure, environmental rules and procedures were designed to include broad transparency provisions and opportunity for public comment on projects and policy development. In the 1990s, continued NGO and U.S. government pressure increased the transparency of World Bank environmental assessments and led to the establishment of an independent inspection panel to examine complaints regarding the Bank's operations. The inspection panel acts on requests from the public, and investigates whether approved projects conform to the Bank's policies (Fox and Brown 1998; Clark, Fox, and Treakle 2003).

3.1.3 The late 1990s: NGOs rally around common environmental rules for ECAs

At the initiative of Senator Timothy Wirth (D-Colorado), Section 105 “Environmental Policy” was inserted into the Senate version of the 1992 reauthorization bill for Ex-Im in order to provide “a permanent statutory authority for environmental policies and procedures currently being carried out by the Bank” (United States Senate 1992). The House version did not contain any such environmental provisions. The environmental provisions ultimately survived the conference committee unchanged and appeared as Section 106 in public law 102-429, and were signed by President H. W. Bush on 21 October 1992. The reauthorization of the Export-Import Bank contained among other provisions a section establishing environmental requirements for Ex-Im:

Directs the Bank, for any transaction involving a project for which support of \$10,000,000 or more is requested and certain environmental concerns exist, to establish procedures to take into account the potential benefits and adverse environmental effects of the goods and services which it may support under its lending and guarantee programs. Authorizes the Board to withhold financing for environmental reasons or to approve financing after considering the potential environmental effects of a project. Encourages the Bank to use its programs to support the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects. (United States Congress 1992b)

Prior to the 1992 reauthorization, however, Ex-Im had no authority to withhold financing out of environmental reasons. The 1992 standards requirement also moved the question regarding the applicability of NEPA to Ex-Im operations off the political agenda by establishing the basis for an in-house environmental review process (personal communication with Peter C. Evans, 26 June 2004).

The Congressional mandate came as a result of a more than 20-year-long quarrel over the applicability of the National Environmental Policy Act (NEPA) to activities outside of U.S. borders. In retrospect, the Wirth amendment did much more than providing “a permanent statutory authority” for what Ex-Im was already doing: it resulted

in the development of the first set of comprehensive environmental review procedures and standards for project evaluation for an export credit agency anywhere.

Ex-Im policies were implemented in 1995 and required projects to be screened for their potential environmental impact. More detailed assessments are required for those projects likely to have a significant environmental impact. Summaries of the completed assessments are then made available for public comment by Ex-Im. In addition to establishing this review procedure and the associated transparency provisions, Ex-Im policies also establish qualitative and quantitative criteria for project evaluation. Projects failing to meet these environmental requirements can be denied Ex-Im support if they are not brought into compliance.

The imposition of environmental requirements set a precedent for other export credit agencies. Ex-Im's environmental policies were the first comprehensive set of national environmental standards for an export credit agency (ECA) anywhere. This unilateral step resulted in disadvantages for U.S. exporters seeking Ex-Im support, whose exports had to comply with Ex-Im's environmental policies. Foreign competitors, on the other hand, could gain ECA support without those projects having to adhere to environmental standards.

3.1.4 2000 on: NGOs target private financial institutions

The shift of NGO attention from MDBs to private banks has been part of a deliberate strategy. The protagonists of the IBRD campaign, including Bruce Rich of Environmental Defense, also became leading figures in the international ECA campaign of the 1990s. The NGO community started brainstorming about the next targets for their financial institutions campaign in the late 1990s. A historical overview by the BankTrack

network (BankTrack 2005) mentions 1996 as the year the private financial institutions campaign was born. This was when NGOs started their *Quantum Leap* project to make campaigners financially literate by the following year. A number of reports and papers from that time showcase the reasoning behind the targets and campaign strategies later chosen. *Investing in the Future: Harnessing Private Capital Flows for Environmentally Sustainable Development* (French 1998) by the World Watch Institute and *Go with the Flows?* (Seymour 1998) by the World Resources Institute, as well as an activists guide (Ganzi and World Resources Institute 1998) prepared the community for targeting private banks.

In addition to this expansion of the international financial institutions (IFI) campaign, the Rain Forest Action Network (RAN) started targeting Citigroup for its financing of environmentally controversial politics. While the IFI campaign relied on traditional lobbying and litigation, RAN specialized in private politics, that is, the targeting of corporations with the intent to influence their environmental behavior. What the campaigns have in common is the goal of establishing environmental policies for institutions active in international project finance.

For the World Bank and ECA campaigns, Congressional budget and statutory authority was an important tool. Changes in MDB policies were possible when Congress could threaten to withhold U.S. contributions to these organizations. With regard to Ex-Im, Congressional power is even more immediate, as the Bank's charter needs to be re-authorized by Congress periodically; its very existence is effectively at the mercy of Congress. Gaining leverage on private sector entities obviously requires different tools and strategies. NGOs mounted a campaign aimed at the banks' reputation by publicizing

environmentally problematic projects and by threatening consumer boycotts. In this case of international project finance, this strategy was complicated by the fact that many of the target banks specialized in commercial banking and that these banks were, therefore, largely immune to threats of consumer boycotts. However, one of the industry leaders, Citigroup, is also involved in private banking worldwide, with an especially strong presence in the U.S. credit card market. Not surprisingly, Citigroup was chosen as a first target, as it combined vulnerability through its private customer business with significant impact on international project finance.

The NGOs in the BankTrack campaign (and its predecessor campaign “Focus on Finance”) played a key role in prompting financial institutions to adopt the Equator Principles (for a detailed discussion see chapter four). In January 2003, parallel to the World Economic forum, NGOs launched the Collevocchio Declaration as an appeal to private financial institutions to acknowledge their responsibility in fostering social and environmental sustainability by making six concrete commitments to (i) sustainability, (ii) 'Do No Harm', (iii) responsibility, (iv) accountability, (v) transparency, and (vi) sustainable markets and governance (BankTrack 2003).

The Equator principles address a few of the concerns highlighted in the Collevocchio Declaration, but they fell short of NGO demands, especially with regard to accountability and transparency provisions, where banks continued to invoke commercial confidentiality to fend off any such demands. BankTrack monitors equator banks and their implementation of the principles. Aside from the lack of monitoring and accountability provisions in the Equator Principles, NGOs criticized their limited applicability: project financing only of projects greater than \$50 million. While this

captured about 97% of the project finance market, it did leave out other forms of financing and thereby entire sectors (e.g. mining) not usually financed through project finance.

The NGO Rainforest Action Network (RAN) pressed Citigroup, through a two-year campaign of consumer boycotts and protests, to set a new industry standard by committing to environmental standards that exceeded the Equator Principles, of which Citigroup had been a key promoter. Beyond the Equator Principles, Citigroup's Enhanced Environmental Policy defined "high-caution" zones, such as critical natural habitats and areas in which indigenous people live, and established tropical forests as "no-go" zones where no logging activity was to be supported. The policy also included an explicit section on how to prevent the support of illegal logging, an investment strategy for sustainable forestry and renewable energy, and on reporting greenhouse gas emissions of financed projects (Citigroup 2004; Lobe 2004; Rainforest Action Network and Citigroup 2004).

A few months after Citigroup's commitment, Bank of America also announced an environmental policy that defines "no-go" zones and set ambitious greenhouse gas emission targets for its project finance operation. As in Citigroup's policy statement, this step was a reaction to the pressure and resulting reputational risk generated by the RAN campaign (Rainforest Action Network 2004). Similar to the Equator Principles, Citigroup's and Bank of America's enhanced policies did not provide for outside compliance monitoring.

3.1.5 U.S. NGO campaigns and the greening of international finance

Ex-Im, the World Bank, and private banks were all targets of campaigns orchestrated by the same group environmental NGOs. The goal of forcing these financial institutions to adopt environmental policies for their operations was the same for all campaigns, while the strategies to achieve these goals differed. Lobbying Congress proved successful to green the World Bank and Ex-Im. Private banks were targeted through name-and-shame tactics that threatened to undermine bank's brand name reputations. All three institutions eventually adopted environmental policies, but at different speeds. Six years passed between the formation of the World Bank campaign and passing of the Pelosi amendment that institutionalized environmental review and transparency requirements for the World Bank. Private banks adopted the Equator Principles less than five years after they became the targets of the U.S.-based NGO campaign. Ex-Im, however, managed to weather NGO demands to create an environmental review process for some 20 years until its 1992 reauthorization. The campaigns and their influence on environmental rule-making are analyzed in chapter four.

3.2 Developmental Activism and the Hermes Critique in Germany

Environmental concerns regarding export credits were first voiced by European NGOs working on development issues. In Switzerland, the Berne Declaration and the Swiss Coalition of Development Organizations successfully lobbied for legislation that required application of the principles and guidelines of Swiss development policy to export credits to low-income countries (Fues 1994). This 1980 amendment of Article 1, Paragraph 2 of the federal law on the Swiss ECA Exportrisikogarantie (export risk

guarantee; ERG) marks the first incorporation of non-trade concerns into ECA policy in Europe. The law stipulates that the principles of Swiss developmental policy need to be taken into account for exports to poor developing countries (Kuoni 2004: 232). For the Swiss ERG, this was the first time that non-governmental groups other than trade associations – in this case trade unions and developmental groups – exerted considerable influence on Swiss export promotion policy (Kuoni 2004: 66).

The Swiss discussion around ERG's 1980 revisions foreshadowed German discussions on Hermes reform, as it pitted those favoring the inclusion of developmental concerns into export credit policy against those who argued that such rules would hinder the swift and effective use of ERG as an instrument of economic policy. The question of primacy of job creation over developmental goals was raised also as early as 1980 (Kuoni 2004: 233). The amendment as adopted in 1980 was a compromise, as it limited the consideration of development policy concerns to *poor* developing countries as opposed to *all* developing countries, as proponents of the amendment had originally demanded (Kuoni 2004: 234). German development NGOs took up the issue around the same time.

3.2.1 The 1980s: Greens put Hermes on the legislative agenda

When the German Greens first entered the Bundestag in 1983, political action followed. A 1985 inquiry (Große Anfrage) into the issue (Deutscher Bundestag 1985) was followed by a steady stream of inquiries (Kleine Anfragen), fielded by Green members of parliament. Until 1990, when the Western Greens failed to win enough votes to return to the Bundestag, they kept the issue of reforming Hermes (the German ECA) on the parliamentary agenda. However, with no access to the executive agency, and with little leverage in the Bundestag, they could achieve little beyond keeping the issue alive.

Responding to a Green parliamentary inquiry, the German government asserted as early as 1985 that “the consideration of ecological and developmental aspects occurs as part of the evaluation of an individual project’s supportability based on available information and development policy objectives” (Deutscher Bundestag 1985), but no formal rules and basis existed for these considerations. After the 1990 elections and the subsequent departure of the West German Greens from the Bundestag, key staffers of the Green faction took up the issue outside of parliament. Barbara Unmüssig, former staffer to Uschi Eid and Ludger Volmer, joined the environmental think-tank WEED (World Economy, Ecology & Development), and Thomas Fues, who was behind most parliamentary inquiries on the issue from 1983 to 1990, worked with various NGOs, including GKKE, Eurodad, and WEED on Hermes reform from a developmental perspective. The Chinese Three-Gorges Dam project also served as a catalyst for ECA reform in Germany. Whereas it was the first project not receiving support from the U.S. Ex-Im Bank on environmental grounds, the German ECA was the first agency to support the export of turbines for the project. NGOs seized this opportunity and used the controversial project as a focal point in the campaign (personal communication with German activist, 17 July 2003).

Their efforts broadened the NGO community working on Hermes reform to include Urgewald, Germanwatch, and others which built up the issue’s political salience over time. This eventually led to formal political recognition in the 1998 red-green coalition agreement; this called for a reform of Hermes along “ecological, social, and developmental criteria” (Bündnis 90/Die Grünen and SPD 1998: 48). Inclusion in the

coalition agreement was also aided by the NGOs' close ties to Green politicians drafting the coalition agreement (personal communication with German activist, 17 July 2003).

3.2.2 1998 on: Hermes is moving

The rather bold policy statements on Hermes reform in the 1998 coalition agreement between the Greens and the Social Democratic Party (SPD) are less a product of conviction than of favorable negotiation dynamics. When the SPD negotiators responsible for trade and economic issues worked on other sections of the agreement, language pertaining to export credits slipped into the foreign policy and development sections of the agreement, because negotiators in these areas did not recognize the issue's political relevance (interview with Bundestag staffer, 27 January 2004). Thus, the text on Hermes in the coalition agreement marked the first (or only?) victory of Green environmental concerns over SPD economic interests.

Starting in 1995, exporters were required to supplement their application for Hermes export credit guarantees for projects exceeding DM 25 million with an informal memorandum outlining any environmental project externalities that they were aware of. As the format and scope of this memorandum was left mostly to the exporter's discretion, one can hardly speak of an environmental standard, as there were neither established environmental criteria, nor any environmental review process. Hermes decisions were based on these exporter-supplied memoranda and information sourced from German diplomatic representations in buyer countries (Hermes Kreditversicherungs-AG 1998). 1995 was also the year in which U.S. Ex-Im environmental policies went into effect, which introduced both a formal environmental review process and environmental criteria for cover decisions.

Advocacy work by environmental NGOs and their lobby work – especially WEED and Urgewald – resulted in higher salience of the issue, but it did not result in active policy-making by the new government in this realm. Still, it did prompt the inter-ministerial coordination committee (IMA)⁸ to first initiate timid environmental reform in summer 1998 – even before the elections, which brought the red-green coalition to power. This reform roughly coincided with the OECD Export Credit Group’s adaptation of a Statement of Intent concerning environmental policies among OECD ECAs. The new guidelines refined the memorandum requirement by requiring applicants for Hermes coverage to answer five questions when preparing the memorandum:

1. Does this project bear significant environmental aspects?
2. Project surroundings: In what kind of surrounding or environment is the project located? Is this a specifically protected or threatened environment?
3. Are there environmental requirements by the buyer country? If so, what are they and is it guaranteed that these requirements will be followed?
4. Has there been or will there be an Environmental Impact Assessment conducted? If so, by whom and which standards are applied (local, German, or e.g. World Bank standards)?
5. Will this project substitute environmentally harmful installation, productions processes, or products?

These questions are to be answered in general terms, i.e. without technical specifications, in so far as they are relevant for the project and known to the exporter. (Hermes Kreditversicherungs-AG 1998)

The June 1998 requirement could hardly pass as an environmental standard either, as established environmental criteria or an environmental review process were still lacking. The requirements were enacted to “document to the outside, that environmental aspects are considered in the decision-making process” (Hermes Kreditversicherungs-AG 1998) – most likely with a view towards the emerging OECD deliberations on the issue.

⁸ Hermes guarantees are administered by a consortium Euler Hermes Kreditversicherung and PriceWaterhouseCoopers under the authority of the economics ministry. Decisions for coverage are made by a committee including representatives from the ministries of economics, finance, economic cooperation and development, and the Foreign Office.

The inter-ministerial coordination committee still held wide discretionary power. Question 5 above hints at the political discourse on environmental standards that existed at that time. For industry the debate was mostly about exportation of environmentally superior technology, in which Germany was considered a world leader. Consequently, stricter standards were viewed unnecessary, as German exports by themselves would advance environmental objectives (Drillisch, Unmüßig, and Zúñiga 1998).

In early spring 2001, negotiations between the coalition factions and the Ministry of Economics resulted in draft environmental guidelines for Hermes credit guarantees, and prompted further parliamentary debate. All parties presented their own bills, calling for some extent of reform in the Hermes instrument. The exception was the Free Democratic Party (FDP), which favored the status-quo and called for an exclusion of explicit environmental requirements from Hermes guidelines (Deutscher Bundestag 2001b). While the Party of Democratic Socialism (PDS, the reformed East German socialists) presented the broadest – and at the same time most unrealistic – proposal calling for far-reaching inclusion of NGOs and stakeholders in the decision process, a list of project types to be excluded, and promotion of environmentally innovative technology. The Christian Democratic Union/Christian Social Union (CDU/CSU) coalition presented a scenario (Deutscher Bundestag 2001a) that closely resembled the final outcome of the reform process. The SPD/Green majority bill used rather weak language in calling for the consideration of human rights in the decision process and the reporting of problematic and large-volume cases to the economics committee (in addition to the budget committee which had been the only parliamentary body to have some degree of oversight of Hermes credits). Furthermore, the bill called for strict adherence to the new guidelines –

especially with respect to sensitive exports, such as nuclear power generation, arms, dangerous chemicals and large dam projects. Higher transparency was to be negotiated within the OECD framework (Deutscher Bundestag 2001c). This weak majority coalition bill was a clear indication of the parliamentary faction's weak standing vis-à-vis the Ministry of Economics (Schmid 2001). Ironically, the CDU and FDP bills reflected positions held by the ministry and industry associations (Hagelüken 2001) thereby strengthening the ministry's position vis-à-vis the coalition that legitimized it.

In retrospect, the Greens now attribute the weakness of the outcome partially to the lack of power and influence of the Green parliamentarians in charge of the issue prior to the 2002 elections. Faced with opposition from an influential group of trade specialists within the SPD faction and an economics ministry that had been dominated by the non-interventionist FDP for some 20 years, these green members of parliament did not have enough clout to bring about more decisive change (interview with Bundestag staffer, 5 January 2004).

The current environmental “Guidelines for the Consideration of Ecological, Social, and Developmental Criteria for Granting Export Guarantees of the Federation” were passed by the interministerial committee for export credit guarantees (IMA) on April 26, 2001. This step again coincided with a milestone in OECD deliberations. Similar to standards applied since mid-2000, they included:

- The screening of projects with a volume of €15 million and more, and a significant German share;
- review for cases in which the screening indicated the need for further investigation. More information may be requested from the buyer. Other

analyses such as information from other ECAs and buyer/seller provided assessments may be considered; and

- classification of projects into three categories: A, B, and C – with category A containing projects that have considerable environmental impacts.

While WEED's and Urgewald's advocacy work was rather successful in terms of media coverage and political action – though more symbolic than substantial – it did not generate the broad public support for stricter environmental rules needed to define the political cost calculus in ways conducive to substantial reform. All parties in Parliament took up the issue in inquiries into the government, calls for action, and policy statements on reform. However, parliament proved to be a weak negotiation partner; the government – especially the Ministry of Economics – played a highly successful two-level game (Putnam 1988). They did this by referring to the OECD negotiations on environmental standards for export credits as the relevant international benchmark, and at the same time slowing the OECD process to bring about low international standards. In this way the Economics Ministry successfully retained ownership of the reform process, and in the end, largely dictated the standards. Parties in parliament did not see – or ignored? – their own opportunity to set the stage for the OECD negotiations by clearly defining acceptable negotiation results.

German ECA politics have been mostly reactionary. The United States initiated broad domestic environmental standards; German politics, on the other hand, has only addressed environmental policies for Hermes when internal and external pressures required action on the topic. The domestic discourse was dominated by the importance of easy access to export credits for job creation; U.S. calls for thorough environmental

screening prior to granting cover, and a publicly transparent approval process appeared as an attempted assault on German industry's competitiveness that needed to be fended off. Twenty years of FDP domination in the Economics ministry also provided for a great deal of inertia that worked against the greening of Hermes guarantees.

After considering the impact of U.S. and German NGO campaigns on environmental standards setting for international finance, the next section discusses the content of these rules in detail. Beyond the mere existence of environmental rules, their specific provisions are also the products of competing demands on the rule-makers.

3.3 Environmental standards for international finance

Environmental policies of the World Bank, ECAs, and EPFIs share common roots and history. All are based on the environmental review procedures established by the U.S. National Environmental Policy Act in 1969 and all were promoted by a similar group of NGOs. However, the policies are not identical, and they differ especially with respect to compliance mechanisms and the degree of transparency incorporated into these rules. The World Bank Group has become very transparent in its operations and has established its Inspection Panel as an independent body to monitor compliance with Bank policies. Transparency provisions among ECAs vary and so do domestic compliance mechanisms. Private banks are the least transparent financial institutions discussed here. The Equator Principles require only that stakeholders are granted access to environmental reviews, and compliance monitoring is limited to reviews of project documents by independent experts hired by the financial institutions themselves. There is no formal authority or secretariat to administer the Principles. In fact, even the hosting and maintenance of the Principles internet site (<http://equator-principles.com/>) is a

contentious issue, as member institutions are concerned about the bureaucratization and formalization of the Principles (personal communication with Christopher Wright, 2 March 2007). Still, NGOs use the little information available to pressure banks into improving their compliance with the Principles.

The following sub-sections discuss each of these policies in detail to allow a comparison of their provisions and thus provide benchmarks to evaluate ECA policies.

3.3.1 World Bank policies

World Bank environmental policies are contained within the Bank's operational manual and deal with a number of general and sector-specific aspects of operations. Both qualitative and quantitative standards for project performance as well as mitigation strategies are contained in its Pollution Prevention and Abatement Handbook (PPAH). Where it once was criticized for its secretive operations, the Bank has now become a fairly transparent organization that not only makes its reports publicly accessible, but also uses consultation procedures in both project and policy development. Stakeholders are involved in designing projects and their input is also sought when the Bank revises current policies and develops new ones. The World Bank has coupled its disclosure policies with institutionalized compliance mechanisms. Thus, outsiders such as NGOs can not only monitor Bank operations, but can also trigger review mechanisms in those cases where operations do not comply with rules. The Bank's inspection panel enables the affected public with an effective means to initiate independent reviews of problematic projects. The panel is a strong compliance mechanism that allows the public to file requests for investigations into potential violations of Bank policies in project development and implementation (for detailed discussions of the World Banks'

environmental policy development see Gutner 2002; Horta 1996; Rich 1994; Wade 1997). The effectiveness of the Bank's policies and especially its inspection panel remain contested (Park 2007; Gutner 2005a; Clark, Fox, and Treakle 2003).

Beyond its own operational policies, the Bank now serves as an international standard-setter: its policies serve as models for other organizations, and it has taken over a leading role in the development of the international regime governing the environmental performance of infrastructure development. The World Commission on Dams and the Extractive Industries Review were convened by the Bank to develop international guidelines for use in dam-building and mining projects. Over time, the World Bank has evolved from an "environmental laggard" to an "international leader," raising the bar for acceptable environmental and social performance of projects.

Thus far, I have equated the term "World Bank" with the most prominent part of the World Bank Group, the International Bank for Reconstruction and Development (IBRD). However, in addition to the IBRD and the International Development Association (IDA), both of which provide direct financing for projects, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) are also part of the Group. The IFC's environmental policies have slowly evolved from World Bank policies. Initially, the IFC applied World Bank environmental policies which did not match well with its different type of business. This was highlighted by a controversial dam project in Chile in the early 1990s, which led to the subsequent adaptation of the Bank's safeguard policies to IFC business (Park 2003). The IFC has recently replaced its safeguard policies from 1998 with new environmental and social standards. Its new policies represent a shift from a process-oriented approach to one

focused on outcome. This change also delegates environmental review responsibilities from the financial institution to its client – analogous to the ECAs’ and EPFIs’ procedures. Building on the previous safeguards, these standards were expanded to include labor rights, human rights, community health and safety, and greenhouse gas emissions; the new policies also incorporate expanded disclosure requirements which have resulted in increased transparency of IFC operations (see International Finance Corporation 2006).

The IFC policies are not only relevant in this comparison because of their modification to better match IFC operations, but also because the IFC played a crucial role in facilitating the development of the Equator Principles. ECAs also follow policy development at the IFC since this organization best resembles their own operations.

3.3.2 Equator Principles

The World Bank Group’s International Finance Corporation (IFC) helped to give birth to the Equator Principles, which established a common framework for private financial institutions to address environmental and social risks in project financing (see Amalric 2005; Wright and Rwabizambuga 2006). Initiated at a meeting in London in October 2002, the Principles’ early adopters and promoters included ABN AMRO, Barclays, Citigroup, and WestLB. The Equator Principles served the dual purpose of both managing reputation risk stemming from controversial projects and integrating environmental and social concerns into overall credit risk management. Similar to World Bank rules and Common Approaches, the Equator Principles required environmental assessments and stakeholder consultations for projects likely to harm the environment. In July 2006, the Principles were updated and expanded from their initial 2003 version to

include monitoring and reporting requirements among other changes (The "Equator Principles" 2006).

Figure 3.1 The Equator Principles

<p>The Principles require that similar to IFC guidelines (see The "Equator Principles" 2006):</p> <ol style="list-style-type: none">1. projects are categorized based upon the IFC environmental and social screening criteria;2. for all category A (significant adverse environmental impact) and category B (less adverse environmental impact) projects the borrower completes an environmental assessment;3. environmental assessments evaluate projects based on IFC environmental standards or host-country standards in high-income OECD countries;4. for all category A and some category B projects an action plan and environmental management system is prepared;5. for all category A and some category B projects stakeholders are consulted and are provided with access to the environmental assessments;6. for all category A and some category B projects the borrower establishes a grievance mechanism for groups and individuals from project-affected communities;7. for all category A and some category B projects independent experts review the assessment, action plan, and consultation process as well as assess compliance with the principles;8. for all category A and some category B projects the borrower covenants to comply with the principles;9. for all category A and some category B projects an independent environmental expert is appointed to verify monitoring; and10. EPFIs report on their implementation of the principles at least annually.
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Private financial institutions have been the latest group of financial institutions to have adopted a similar set of environmental policies for their project approvals in project finance transactions. The Equator Principles (see Figure 3.1) are the weakest re-incarnation of NEPA provisions discussed here. World Bank rules are written into its operational policies. The Equator Principles are simply a list of ten principles concerning project evaluation which leaves implementation completely to the adopting institutions. Still, the list of principles invokes the same environmental review logic as contained in ECA rules: classification according to likely environmental impact, environmental

assessment of projects with considerable environmental impact, and consultation with stakeholder groups.

Since 2006, the Principles have applied to all project finance transactions of \$10 million or more. Being a voluntary industry code, financial institutions adopt the Principles with an announcement and a declaration of intent to integrate them into their operations. However, the adoption is entirely voluntary, and no authority monitors implementation or requires reports from adopting institutions. Without a body dedicated to administering the Principles, performance monitoring by participating institutions or by outside actors can rely only on information made available by the adopting institutions. On the project level, independent experts are to evaluate the environmental review process and assess compliance with the Principles, but their work is limited to providing input to the financial institution, and this information is unlikely to become publicly accessible. Institutions adopting the Principles are to require their clients to provide environmental assessments to their stakeholders and EPFIs are required to report annually on their implementation of the principles. However, no further transparency requirements exist and formal accountability chain ends at the level of the individual financial institution; this is quite typical for industry self-regulation (for a discussion of the UN Global Compact see Hemphill 2005).

Still, even limited information disclosure practices provide an implicit compliance mechanism by raising the reputational risk of non-compliance (see also Overdevest 2005). Despite the secluded nature of banking operations, NGOs have been successful in identifying projects with EPFI involvement that conflict with the Principles. Similar to the Common Approaches, the lack of a formal compliance mechanism is mitigated by

NGOs' name-and-shame tactics which induce compliance by raising the reputational risks of noncompliance (for NGO critiques see BankTrack 2006; Chan-Fishel 2005; Missbach 2004).

3.3.3 Ex-Im standards

Current Ex-Im guidelines require that applications for long-term financing are filed with a one-page Environmental Screening Document which includes project information (size, new project/rehabilitation/expansion), information about the location of the project (protected areas), and the type of project (sector or industry). Based on this rather superficial information, environmental experts at Ex-Im assign the project to one of four categories of environmental impact:

A – Large Greenfield Projects or Projects located in, or impacting a Sensitive Site: “require submission of an EIA”

B – Expansions, Upgrades and Projects having Limited Environmental Impact: “impacts are site specific;” Ex-Im only “require[s] submission of environmental information sufficient to establish whether or not the project meets relevant host-country environmental guidelines and applicable international guidelines.” For expansions it requires “environmental information that focuses on the environmental effects associated with the actual expansion or upgrade.”

C – Categorical Exclusions: “excluded from further review because they are likely to have minimal or no adverse environmental impacts”
(<http://www.exim.gov/products/policies/environment/envproc.cfm>)

N – *Nuclear*: nuclear projects are classified into and reviewed according to five subcategories which differentiate among the type of reactor (U.S. or not) and the type of export (commercial reactors and components, fuel rods, research reactors, or services). Environmental review is not required for fuel rods supplied to operational reactors or exports “not identified with the physical operation of any particular project or facility.” (<http://www.exim.gov/products/policies/nuclear/envnucp.cfm>)

Depending on a project’s classification, Ex-Im will require the applicant to supply additional environmental information in subsequent steps. These steps differ depending on the type of financing for which the exporter applied. In all cases, Ex-Im requires an Environmental Impact Assessment for Category A projects, and for Category B projects sufficient environmental information for evaluating compliance with host country and applicable international rules. In addition to information supplied by the applicant, Ex-Im can also draw on information provided by third parties such as U.S. government agencies or MDBs. EIAs for category A projects are made available to the public on Ex-Im’s website at least 30 days prior to making a final commitment. Comments and information provided by interested parties as part of this public comment period are also considered by Ex-Im staff in project evaluation. Projects are examined for compliance with host country standards and those international standards referenced in the Common Approaches. Applicants have the opportunity to provide additional information if input from third parties gave rise to environmental concerns. Ex-Im monitors projects for the duration of Ex-Im’s support through review of project documents and site visits (<http://www.exim.gov/products/policies/environment/envproc.cfm>). The current policies

are largely similar to those that were in place prior to a revision in July 2004 that removed inconsistencies between the category labels used by Ex-Im and those referenced in the Common Approaches. Prior to the U.S. adoption of the Common Approaches, Ex-Im also applied its own standards based on World Bank guidelines: in other words, guidelines similar to those prescribed by the OECD agreement (United States General Accounting Office 2003).

3.3.4 Hermes standards

Current German guidelines were passed by the interministerial committee in July 2001 while Revision 6 of the Common Approaches was being negotiated. In this sense, they represent an early implementation of that version of the Common Approaches which was implemented and adopted by all ECG Members except Turkey and the United States. Since 2004, these policies have been applied side-by-side with the Common Approaches, but the Hermes guidelines have not been updated to incorporate the revised OECD agreement. Key differences to Ex-Im policies include the lack of ex-ante transparency, limitations on transparency after commitment, a higher threshold of EUR 15 million, a less rigorous EIA requirement for category A projects, limitation of the evaluation to the German export component to a larger project, and an exclusion of nuclear technology from support (Hermes Kreditversicherungs-AG 2001; United States General Accounting Office 2003).

Applications for support of exports greater than EUR 15 million must include a memorandum in which the applicant describes the project in a detailed fashion. The application form implies the inclusion of information on “financing, infrastructure, economic relevance, environmental impacts including information on the project location

– e.g. industrial area, Greenfield, sensitive area -, on environmental assessments (if available), on environmental standards, and on positive environmental impacts such as the consequences of upgrades, etc.” (Antrag auf Übernahme einer Exportkreditgarantie für ein Ausfuhrgeschäft; http://www.agaportal.de/pdf/antrag_b_g.pdf; accessed 12 October 2007).

For exports greater EUR 15 million (which also represent a significant contribution to the overall project), information provided in the memorandum is used to screen the application for likely environmental impact. Smaller projects may also be screened if “concrete information” such as location within a sensitive area suggests potential environmental impacts (Hermes Kreditversicherungs-AG 2001). The screening process primarily determines whether the project meets sector-specific requirements, or whether more information for an in-depth analysis is needed.

If the initial screening indicates environmental relevance, more environmental information is sought from applicants. Such information requirements are balanced with an exporter’s share of a project. Exporters who contribute a relatively small share of a large project are only required to supply proportionally little information, irrespective of the project’s overall impact. The reasoning here is that exporters who supply only small components to a large project may not have access to much project information, and their position may also not allow them to exert much influence on project design. Additional information may also be sought from other ECAs scrutinizing the same project. At this stage, information requests to the exporter are limited to specific questions on the project at hand. If environmental studies/assessments were submitted as part of the application, they are also examined for plausibility.

The information gathered in the screening phase is used to evaluate the project's compliance with host country standards, which in turn, are also benchmarked against international standards. It is also categorized into one of three categories of environmental impact. Category A requires "an exhaustive description of all relevant environmental aspects, – possibly through an environmental assessment or studies," while "plausible criteria for environmental relevance or generally acceptable information is sufficient" for Category B projects (Hermes Kreditversicherungs-AG 2001: 5; United States General Accounting Office 2003). This is a point where German and U.S. standards clearly diverge: Ex-Im requires an EIA for all Category A projects, while German exporters are allowed to submit environmental information in various formats that do not necessarily address all aspects of an EIA, such as the consideration of alternatives or consultation with stakeholders. The German guidelines merely *suggest* that the exporter should encourage and facilitate consultation with affected stakeholders; they do not make this a requirement (Hermes Kreditversicherungs-AG 2001).

If environmental problems are to be expected, the applicant is asked to mitigate those in cooperation with the project developer. The goal is to bring a project into compliance with standards rather than deny it support. However, the size of the contribution relative to the overall project is also considered, suggesting more flexibility with the environmental performance of large projects with small German contributions (Hermes Kreditversicherungs-AG 2001).

The German guidelines mention the consideration of ex-ante transparency in OECD negotiations, but provide for the publication of project information only after the commitment of guarantees, provided the applicant agreed to publication. The relevant

section of the application form reads: “We consent to the publication of this project after the final submission of the application: exporter/financial institution, type of good/project, size, host country, credit term.” Immediately following this statement the form suggests in bold typeface: “Please delete this paragraph if you do not consent” (Antrag auf Übernahme einer Exportkreditgarantie für ein Ausfuhrgeschäft; http://www.agaportal.de/pdf/antrag_b_g.pdf; accessed 12 October 2007). Thus, OECD transparency requirements only apply if an exporter does not opt out by striking out this statement.

3.4 Conclusion

This chapter provided a historical outline of environmental rule development for international finance and introduced the rules. The trend towards environmental rules is a very apparent one. However, this trend has not affected ECAs to the same degree it has affected MDBs and private banks.

Ex-Im managed to resist NGO pressure until its 1992 reauthorization. Compared to the 20-year effort to green Ex-Im, the World Bank and private bank campaigns were very fast-paced. The Pelosi amendment requiring the World Bank to conduct environmental assessments and making them publicly available was passed in 1989, six years after the start of the World Bank campaign. Private banks adopted the Equator Principles in 2003, less than five years after they became the targets of the U.S.-based NGO campaign. German Hermes credit guarantees even withstood serious environmental reform until 2001 despite having been subject to similar NGO pressure.

In addition to amount of time that passed by until these institutions adopted environmental policies, the scope of environmental reform is also of concern. All

institutions now screen, categorize, and review projects for environmental impact. However, their rules differ with respect to the transparency of the review process, the use of decision-making criteria, and the existence of compliance mechanisms (see Table 3.1).

Table 3.1 Environmental policy content

	Ex-ante transparency	Ex-post transparency	Decision criteria	Compliance mechanism
World Bank	120 days	Yes	PPAH, Safeguards	Inspection panel
Equator Principles	None	Unspecified annual reporting requirement	IFC standards	None
Ex-Im	30 days	Yes	World Bank PPAH, Safeguards	None; courts
Hermes	None; OECD requirement 30 days	Yes	Benchmarking against international standards	None; courts

Clearly, the diverging content is related to the demands made on the financial institutions. World Bank rules are the result of a concerted push by NGOs and the U.S. government and are the most comprehensive ones, including extensive transparency provisions, firm decisions criteria, and a compliance mechanism to trigger independent reviews. The Equator Principles build on these rules, but neither require transparency of environmental reviews nor provide a mechanism to enforce compliance with the rules. Ex-Im’s environmental policies are also derived from World Bank rules and then updated to match the OECD Common Approaches. German environmental rules for Hermes guarantees were derived from the Common Approaches, but OECD rules were adopted to only the minimal extent necessary to quell domestic demands for such rules, while retaining flexibility with regard to transparency and the use of firm decision criteria. Both sets of ECA rules do not provide for compliance mechanisms, but they are enforceable through the respective legal systems.

This brings us back to this section's guiding question: *Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?* The comparison presented here also begs an explanation of the variations in rule content. The next chapter will analyze the dynamics leading to this situation by applying the comparative categories of power and rule content developed in chapter two.

Chapter 4: Obstacles to Environmental Rule-Setting

Despite similar trajectories, environmental policy development among international financial institutions occurred over very different time horizons. The Equator Principles were adopted after only 5 years from the time NGOs started targeting private banks with their campaign. The World Bank was also fairly responsive to demands made by the U.S. government and an alliance of NGOs. It took a quarter century, however, for ECAs to develop environmental standards for their operations. NGOs had put this issue on the agenda in the early 1970s, but we did not see substantial changes in ECA policies until the mid/late 1990s. The guiding research question for this discussion is: *Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?*

This chapter compares environmental policy development among international financial institutions guided by the comparative categories of power and rule content (see chapter two). The following analysis shows how different power constellation in domestic ECA standard-setting made rule development much more difficult for ECAs than for the other financial institutions. The U.S. Ex-Im Bank is the outlier among ECAs because of its vulnerability to political demands that is a result of its dependence on regular reauthorizations. Differences in power constellations also help explaining varying rule content. The type of adopted rules reflects the relative power of the various demands made on the financial institutions. The first section addresses power relationships before turning to rule content in the second section.

4.1 Power

The power competing groups wield determines their ability to influence the rule-setting process. From the perspective of the rule-setter this results in political costs and benefits that need to be considered when designing rules. The more power a particular actor has the greater is his ability to create political costs and benefits. Disregarding a powerful actor's interests creates political costs, satisfying them results in political benefits. Rule-setters seek to maximize their benefits and minimize their costs in designing new rules. Institutions channel, enable, and constrain power. Thus, the following analyses of power relationships are prefaced by discussions of institutional arrangements that privilege or constrain certain actors in exercising their power on the rule-setting process.

This analysis builds on Fuchs' framework for assessing business power in global governance (see chapter two and Fuchs 2006). She suggests taking a threefold approach to studying power: instrumental, structural, and discursive power. In this view, instrumental power is exercised when A "can get B to do something that B would not otherwise do" (Dahl 1957). Structural power precedes exercises in instrumental power in the sense that the structural power of actors may impact whether issues and concerns ever reach the public policy agenda, and the kind of salience attached to them. In Fuchs' words: "Proponents of structuralist concepts of power argue that the material structures underlying behavioral options and allocating indirect and direct decision-making power need to be analyzed to get a comprehensive assessment of the distribution and exercise of power" (Fuchs 2006: 6). Thus, structural power defines the policy space by defining both issues and non-issues as well as by delineating the range of acceptable solutions to policy

problems. Discursive power as the third face in this framework, then, is prevalent even prior to the exertion of instrumental or structural power. Such approaches “adopt a sociological perspective on power relations in society. According to this view, power is seen to be a function of norms, ideas, and societal institutions” (Fuchs 2006: 9). Norms and ideas precede interests – and thus also exercise of instrumental and structural power – in that they enable the development of issues and interests by providing their content. Thus discursive power, which is also the most difficult to analyze – is located at the top of the power hierarchy in this framework. But discursive power is also the least immediate form and actors may seek to transform it into more direct forms of instrumental and structural power by channeling it through intermediate actors (see chapter two).

The following pages consider power relationships in greening international finance in four different ways. (i) Through name-and-shame tactics, NGOs exercised their discursive power and framed debates over environmental policies in such a way that the desirability of rules per se was not put into question; only the specific of rules were contested. (ii) Through oversight of the World Bank and ECAs, governments had the power to create policies for these institutions. (Thus, these entities were, in effect, delegated by governments to exert leverage over clients.) (iii) Through control over access to project financing, financial institutions wielded structural power over project sponsors by either granting or withholding support. (iv) Through the adoption of comprehensive environmental policies, the World Bank, the Equator Principle banks, and Ex-Im established far-reaching environmental norms which provided these institutions with new sources of discursive power.

4.1.1 Power and NGO strategies

Common to all three types of financial institutions is that NGOs publicized projects with negative environmental impacts which were supported by these institutions. They questioned whether commercially viable projects were then worthy of support when they included considerable environmental externalities. In framing projects with negative social and environmental impacts as morally repulsive, institutions were branded as “greedy” and “irresponsible” when they supported them and when such financial institutions had the power to prevent such projects by not providing financing.

These frames challenged traditional development norms centered on economic viability and projects’ contribution to economic growth. NGOs could then tie their interpretation to emerging norms as sustainability which expanded the economic development discourse to “sustainable development” (World Commission on Environment and Development 1987). Notions of environmentally sustainable development in particular suggest that environmental externalities need to be internalized, and that disregarding environmental impacts in the short-run amplifies their impacts and imposes their costs on future generations.

The criticisms were then cast directly at the financial institutions, where these challenges resonated only to a limited degree. However, NGOs also used the same discursive practices to co-opt other actors with more immediate power over the financial institutions; NGO discursive power traveled through other actors with more immediate means of control over the campaign targets, which, in turn, controlled clients’ projects.

By framing the activities of the World Bank and ECAs as morally unacceptable (see for example Berne Declaration et al. 1999; Norlen et al. 2002; Rich 2000) in national

policy discourses, civil society could bring governments to their side in order to exert their instrumental power towards environmental reform at these state controlled financial institutions. In states with political opportunity structures open to environmental activists (Dryzek et al. 2003; Kitschelt 1986; Schreurs 2002), NGOs could also exert instrumental power by lobbying legislatures and governments (for example Blackwelder 2001).

With regard to private banks, name-and-shame tactics were designed to influence popular opinion rather than political actors. Given their structural dependence on customers, banks need consumers who may take their business away from banks with bad reputations. Governments which are structurally dependent on banks for economic prosperity were considered less relevant in influencing banking industry practices. Taken together, all three campaigns were driven by NGOs branding financial institutions for environmentally irresponsible behavior. The effects of the campaigns, however, were not direct. NGOs' discursive power was channeled through states and consumers resulting in a transformation into more immediate forms of instrumental and structural power over financial institutions and their clients.

In addition to this input side perspective, the costs of adopting environmental policies are also analyzed. Governments could task MDBs to develop environmental policies almost free of cost: there were no strong domestic interests to oppose such policies. Private banks had to balance the prospect of losing consumer business with potential losses in project finance business. However, improved risk management through the consideration of environmental risks also produced benefits in the form of lower risk exposure. ECAs on the other hand, had been created to support powerful domestic industries. Restricting their access to government support could not come without

political costs. With the exception of private banks under certain circumstances, client country considerations are not relevant. Governments consider client interests relevant in neither MDB nor ECA standard-setting, because client country interests are not represented in domestic politics in donor states.

4.1.1.1 Power and the delegation of rule-setting

Environmental regulation of finance providers occurred in a delegated fashion: pressured by NGOs exercising their discursive power (see Fuchs 2006; Park 2005a), states, MDBs, and private banks established environmental conditionalities for access to finance. This pattern of delegation becomes especially apparent in the cases of MDBs and ECAs: instead of seeking international environmental standards for infrastructure development, governments tasked MDBs and ECAs with developing policies that restricted access to support if certain environmental performance criteria were not met. Regarding Equator Principles (EPs) for private banks, ECA standards, and IFC policies, these standards did not directly affect project design, but instead put pressure on project developers to (re-)design their projects in such ways that the projects complied with the standards. As Haufler observes, this “turn to using financial leverage over companies to effect change in other countries is less costly, more competitive, and potentially more effective than other options” (Haufler 2005).

The relevant power relationships are those among rule-makers, their constituents, and the financial institutions. Client country interests are largely irrelevant in rule-setting. While client countries are represented as members on MDB boards, their power is very limited due to the prevailing modes of representation which favor donor countries. Private banks are primarily concerned with their commercial and private customers. At

times, commercial clients' interests may align with client country interests, but this does not give them a strong position in influencing rule-making. ECA rules are set domestically and this precludes the representation of interests from other polities by definition.

Consequently, all three sets of rules are dominated by the interests of the providers of finance, and only take into account the interests of receivers in terms of providing for a better environment as an unspecified common good. Material interests of the clients (e.g. costs associated with preparing environmental assessments or providing mitigation measures) are externalized. In all three cases, establishment of the policies was possible because of diffused costs and concentrated benefits. The reputational benefits of having implemented environmental policies went exclusively to the providers of finance, whereas the costs generated by these policies were borne by the receivers. This was possible, because client country interests were not represented in donor country policy-making and violating their interest therefore bore no political cost.

4.1.2 World Bank

As an international organization, the World Bank's principals are its member states. In contrast to most international organizations, however, the Bank is not governed by the one-state-one-vote principle. Instead, representation is organized by the shareholder principle: the more a state has paid into the Bank's capital stock, the larger is its role in Bank governance. This means that the World Bank is dominated by the advanced industrialized countries, and especially by the United States. The Bank has always been presided over by an U.S. national per an informal rule that among the

Bretton Woods organizations, the Bank is headed by an American, while the International Monetary Fund (IMF) is under European leadership.

In addition to the institutionalized influence of the U.S. executive director on the Bank's board, this instrumental influence is further strengthened by the Bank's structural dependence on regular replenishments for its International Development Association (IDA). IDA makes loans to the poorest countries free of interest. Therefore, it is not self-sustaining like the IBRD which can cover the costs of operations and inflation through interests earned on its loans. IDA, on the other hand, generates losses by design that need to be compensated for through recurring replenishments.

The United States has exploited this source of structural power in its quest for environmental reform at the Bank. Not content with the progress of environmental reforms at the Bank, it withheld IDA support on occasion to drive the Bank towards further environmental reform. Even if the U.S. government instrumentalized its structural power base only on a few occasions, its structural power over the Bank cannot be overstated.

The principal-agent literature on environmental reform at the World Bank (Gutner 2005b, 2005a; Nielson and Tierney 2003, 2005; Nielson, Tierney, and Weaver 2006) starts from exactly this premise: delegation of the rule-setting task to the Bank by a mighty principal. Gutner and Nielson et al. then analyze what the effects of this delegation are. Their assessments of the effects of Bank policies diverge, but this school argues jointly that recipient states, which are also member states, and thus – albeit weak – principals, had little impact on policy development. Their structural power, however, became relevant in implementation, exposing World Bank agency slack. The strong force

towards environmental policies is somewhat countered by the World Bank's need to continue lending. In this sense, client countries hold additional structural power over the Bank (Weaver 2007). Critics charge that it is exactly this pressure on operations that undermines the implementation and application of its own safeguard policies in project design. World Bank staff may be driven more by a project-approval culture rather than being guided by Bank policy (Park 2005a; Rich 1994).

As the premier provider of international finance for development projects in many countries, the World Bank wields considerable structural power over its client countries: only projects that conform to Bank policies are to receive support. Project developers need to take the Bank's policies into consideration during project design in order to not jeopardize their ability to gain support.

Besides establishing these policies in response to pressure by NGOs and governments (see also Weaver 2007), the Bank has also assumed a leading role in developing international environmental policies (see also Vetterlein 2007). The World Commission on Dams and the Extractive Industries Review are independent expert panels initiated by the Bank, and which have evaluated the Bank's and other financial institutions' involvement in these sectors, resulting in recommendations for future hydropower and mining projects. These recommendations now provide a reference point for such projects, and are likely to become the relevant international norms in these sectors.⁹

Hence, the Bank's environmental policies are not only a manifestation of the U.S. government's instrumental and structural power and the source of the World Bank's own

⁹ The Bank has been less ambitious, however, in adopting the committees' recommendations.

power over clients, but they also comprise the basis for its discursive power in the realm of sustainable development. The Bank's environmental safeguard and operational policies have become internationally-accepted benchmarks for environmental governance of international financial institutions. ECA policies, as well as the Equator Principles, are derived from this role, and the World Bank Group's IFC has been an important facilitator in the adoption of the Equator Principles. This trend increases the Bank's discursive influence beyond the projects it finances itself – it also provides the international standard for financial institutions (Park 2005a, 2007; Reed 1997).

This source of discursive power became evident in my discussions with U.S. bureaucrats working on ECA reform. When asked why the U.S. government would push for the incorporation of World Bank standards into harmonized ECA policies, they suggested that the virtue of these policies being World Bank policies was that it made them morally superior to any nationally framed harmonization pitch, because they are policies for the “world” (personal communication with U.S. official, 25 June 2003; interview with three U.S. officials, 7 July 2004).

4.1.3 Private banks

The NGO Rainforest Action Network (RAN) pressed Citigroup, through a two-year campaign of consumer boycotts and protests, to set a new industry standard by committing to environmental standards that exceeded the Equator Principles, of which Citigroup had been a key promoter (Citigroup 2004; Lobe 2004; Rainforest Action Network and Citigroup 2004). A few months after Citigroup's commitment, Bank of America also announced an environmental policy that defines “no-go” zones and set ambitious greenhouse gas emission targets for its project finance operation. As in

Citigroup's policy statement, this step was a reaction to the pressure and resulting reputational risk generated by the RAN campaign (Rainforest Action Network 2004). These policies were the results of NGOs exerting their discursive power directly at private banks and through consumers who wield structural power over banks.

Citigroup's and Bank of America's reactions can be explained as strategies to manage reputational cost (Levy 1997). Both banks are not only active in international project finance, but also operate considerable personal banking in the United States which NGOs could target with boycott campaign. Bank of America is among the largest banks on the East Coast, and Citigroup is a national market leader in the credit card business, in addition to its worldwide personal banking operations. Their brand-name reputation was put at risk by the NGO campaign. Damage to this very valuable asset in a market with little product differentiation meant that banks had to act quickly and comprehensively.

Another explanation may have to do with lessons learnt from the World Bank campaign, and to a lesser extent, from the ECA campaign. Here, financial institutions were unwilling to adopt policies promoted by NGOs, but in the end, had to concede to orchestrated pressure. Throughout the 1980s, the World Bank found itself reacting to outside demands and showed little environmental initiative of its own. By moving ahead with the Equator Principles, the private banks took ownership of the environmental standard-setting process and reversed the burden of proof. Instead of needing to demonstrate green behavior, they were in a position where NGOs had to point out deficiencies in the principles and their application. This is quite different from the defensive stance that was taken by the World Bank for most of the time. This equipped

EPFIs with a source of discursive power in environmental standard development. These financial institutions now consider themselves a stakeholder in World Bank policy development (Mulder et al. 2004) and also provide the international reference standard for private sector environmental regulation in finance.

Equator Principle banks used their structural power over other sectors to set environmental standards for project finance. At the same time, the Equator Principles are an example for the exercise of discursive power. Initially pressured by an NGO campaign over the poor environmental performance of projects in their loan portfolios, which threatened to undermine their consumer lending business, banks seized the initiative by establishing the Equator Principles, and took ownership of their further development. Though they are still closely scrutinized and criticized by NGOs, they are less vulnerable to NGO attacks since having assumed ownership. However, this new-found source of discursive power may prove fragile when conflicts between “doing good” and their primary mission of generating profits occur.

4.1.4 ECAs

Similar to World Bank and private bank policy development, client countries did not have the power to bring their interests to consideration in ECA politics. This is because ECA standards are transdomestic in nature. These standards are domestic regulations aimed at domestic exporters. Their impact, however, occurs elsewhere: in effect, environmental conditions in another polity are being regulated. Furthermore, since the exporters need to make environmental impact information available to their ECA, project sponsors need to conduct environmental impact assessments, even if their domestic regulations provide for no such requirement. By means of these environmental

standards, advanced industrialized countries project their environmental regulations into other polities (see also chapter seven).

In most states, these rules were devised without input from those polities in which the standards have the most direct impact. For many developing countries, environmental concerns are secondary to the establishment of infrastructure. While it is generally accepted that donors have a say over what is acceptable or unacceptable in terms of social and environmental externalities of development projects, this does not apply to ECA supported projects. By definition, ECAs provide support at market or near-market conditions, and supported projects are usually either of a commercial nature, or they are funded with little or no aid. As such, it is not surprising that project sponsors and recipient country governments are concerned about a loss of autonomy and control if the exporting countries' ECAs require environmental impact assessments and potentially costly modifications to the projects' design, despite compatibility with the recipient countries' regulations. After all, costs that result from the compilation of assessments or from modifications to the projects are borne either by the project sponsor or by the recipient country.

Recipient country concerns are not relevant for ECA policy-making, since they are not represented in seller country domestic politics. What does matter are the demands made on ECAs by domestic stakeholders, most importantly industry receiving government support through export credits and societal groups criticizing ECA operations.

The following two sections provide detailed discussions of U.S. and German ECA politics guided by the question of why these ECAs responded differently to similar environmental challenges.

4.1.4.1 Ex-Im

As a federal agency, Ex-Im is subject to oversight by the Treasury Department. In this organizational context, it would be fairly immune to politics beyond the executive. However, Ex-Im is a sunset institution and its charter needs to be renewed by Congress periodically. This makes Ex-Im subject not only to executive politics, but also to politics in the legislature. Given U.S. style interest group pluralism, this means that any interest group can lobby in ECA politics. Groups can bring their demands into Congressional lobbying and onto legislators' agendas. The only requirement for groups to exercise this sort of instrumental power is finding support by a legislator. Once a group has linked up with a Representative or Senator sympathetic to their cause, they can exercise direct instrumental power irrelevant of group composition and orientation.

This feature allows U.S. environmental groups a level of access to ECA politics, which their German counterparts can only dream about: they can exercise instrumental power through a body which has complete control over Ex-Im. Congressional power over Ex-Im is a direct consequence of its need for statutory renewal. The U.S. Export-Import Bank exists at the mercy of Congress. Its charter needs to be reauthorized periodically and each reauthorization affords critics with an opportunity to modify Ex-Im's mission or to simply retire this organization. A consequence is that Ex-Im becomes tasked with additional purposes to its primary mission of job creation through export promotion. U.S. lawmakers can write additional missions into Ex-Im's charter and thus employ the

organization as a Congressional foreign policy instrument. At the same time, this direct legislative oversight makes the U.S. ECA very open to innovation; the environmental policy requirement written into Ex-Im's 1992 reauthorization was only possible due to openness of Ex-Im's reauthorization process.

4.1.4.1.1 Power relationships

The range of powerful competing demands on Ex-Im becomes obvious when one considers the missions the U.S. ECA is expected to accomplish: create jobs, serve foreign policy objectives, support small business, and protect the environment. These are demands that are made in similar form on German Hermes guarantees as well. In the United States, however, all of these proved successful, whereas the power constellations surrounding Hermes have rendered many such concerns less influential. The U.S. Congress has a history of tasking Ex-Im with foreign policy and other goals, restricting access to Ex-Im support based on these criteria rather than on prudent financial considerations. At times, such missions can stand in conflict with Ex-Im's primary purpose of job creation through exports. In the individualistic U.S. legislature, the political benefits of furthering non-trade policy objectives, such as preventing the transfer of missiles from Russia to China (see below), may outweigh the political costs of hampering U.S. exports to Russia. This is not to say that business is powerless in U.S. ECA politics, but its structural power is not as pervasive as it is in Germany, since competing constituent interests can exert instrumental power in U.S. ECA politics.

Export credit agencies almost everywhere have critics demanding stricter environmental requirements. Some ECAs are further challenged by a more fundamental critique seeking to abolish them altogether. These 'corporate welfare' critics claim that

ECAs distort markets and provide hidden subsidies to national champion industries, and thereby inefficiently allocate public funds. An ECA facing ‘corporate welfare’ critics may choose to appease and align with the environmental critics who usually want to retain and redirect this interventionist instrument. This coalition-building behavior makes ECAs facing multi-faceted critique, more open to environmental concerns than ECAs which have only to deal with environmental critics. Dryzek et al. (2003) make a similar argument about states’ reactions to social movements. Citing environmental initiatives by the Nixon administration, they argue, that states are more likely to include activists and their goals when their own legitimation is challenged than when they are left unchallenged. A variant of this behavior appears to be the case in regards to U.S. Ex-Im policy.

Table 4.1 Top 10 U.S beneficiaries of Ex-Im Bank loans and long-term guarantees FY2000 (Lukas and Vásquez 2002)

U.S Company	Revenues*	Total (Loans and Guarantees)*	Percentage of Total
Boeing Co.	51,321	3,384	43.1
Bechtel International	14,300	1,475	18.8
Varian Associates Inc.	704	674	8.6
United Technologies ¹	26,583	334	4.3
Willbros Engineers	314	200	2.5
Halliburton Co. ²	11,944	172	2.2
Raytheon Engineers & Constructors	16,895	150	1.9
Enron Development Corp.	100,789	132	1.7
General Electric Co.	129,853	127	1.6
Schlumberger Technology Corp.	10,034	87	1.1
TOTAL		6,735	85.9
GRAND TOTAL	362,737	7,844	

* In millions of U.S dollars.

Sources: Export-Import Bank, 2000 Annual Report (Washington, D.C.: Export-Import Bank, 2000); and the 2000 annual reports from each of the listed companies.

Notes: (1) The figure for United Technologies includes loans and guarantees for Sikorsky Aircraft Corp., which is a wholly owned subsidiary of United Technologies. (2) The figure for Halliburton Co. includes loans and guarantees for Brown and Root International, Inc., which is a wholly owned subsidiary of Halliburton Co.

Every five years, when the Ex-Im Bank is reauthorized by Congress, it needs to defend itself against ‘corporate welfare’ critics, most prominently represented by the Cato Institute (Wayne 2002; personal communication with German activist, 17 July 2003, see for example: Lukas and Vásquez 2002) as well as environmental critics. Corporate welfare critics charge that ECAs benefit mostly large corporations which could do without such support and that they therefore represent an inefficient and redundant government expenditure. Table 4.1 illustrates Ex-Im’s portfolio concentration, which is at the center of this critique: most of Ex-Im’s cover is afforded for exports of a few large corporations. German Hermes Kreditversicherung, on the other hand, faces neither parliamentary reauthorization nor ‘corporate welfare’ critics. Thus, Hermes has little incentive to appease its environmental critics from whom it is also institutionally shielded, while the Ex-Im Bank must carefully balance its opponents to avoid a potentially strong coalition of corporate welfare critics and environmental critics that may undermine its very existence. In response to the corporate welfare critics, Ex-Im has been repeatedly tasked with the development of SME programs, most recently in its 2006 reauthorization (Hammer 2006).

Trade interest groups did not lobby against Ex-Im’s 1995 environmental policies. However, once they had been adopted, the administration considered it its responsibility to re-level the international playing field through harmonization. An industry lobbyist explained that Ex-Im’s policies did not pose considerable problems to industry and that industry did not lobby for international harmonization. The lobbyist attributed the administration’s harmonization initiative as driven by environmental advocates in the Clinton administration (interview with U.S. lobbyist, 7 July 2004). At the same time,

bureaucrats felt that they had an obligation to seek harmonization in order to level the playing field. They referred to a pact to seek international harmonization that was struck with U.S. exporters before Ex-Im's environmental policies were implemented in 1995 (interview with three U.S. officials, 7 July 2004). Structural business power is certainly not absent, but instead of controlling the agenda, business concerns merely inform implementation and mitigation of regulatory externalities.

Being the first OECD country to have broad environmental policies for its ECA in place provided the U.S. government with considerable discursive power in this realm. It could frame the international harmonization initiative on its own terms and compelled other OECD governments to concede, that environmental regulation of export credits was indeed possible. Besides this morally advantageous position, early leadership also promised to reduce future adaptation costs from harmonization. The outcome of harmonization can be expected to most clearly resemble the initial proposal when compared to all other parties' policies. Making a proposal on its own terms, thus enabled the U.S. government to tilt harmonization negotiations in its favor (see also Ochs and Schaper 2005).

4.1.4.2 Hermes

German Hermes export credit guarantees are organized very differently than U.S. export credits. They are administered by a consortium of private firms for the German federal government. Oversight is exercised by the Ministry for Economics, but the Bundestag has almost no control over the instrument. The corporatist setup including the Economics Ministry, the consortium of Euler-Hermes/PWC, and German trade

association, especially the powerful industry peak association Bund der Deutschen Industri (BDI), lends itself to industry capture.

Parliamentary (§70 Geschäftsordnung des Bundestages) and executive rules (§24 Gemeinsame Geschäftsordnung der Bundesministerien, Teil II (GGO II)), regulate the role of experts and associations in policy-making. According to those provisions, these individuals and groups have a right to be heard in Parliament, and the Executive can draw on their expertise in drafting and implementing legislation. In practice, this means that the executive and legislature can decide whom to give access to deliberations and whom to exclude.

Generally, the German state makes use of corporatist arrangements more in administrative procedures than in policy-making processes. However, in instances where fundamental policy challenges have the potential to trigger conflict, the government seeks to include relevant actors in policy formulation so as to base the new policy on a broad consensus. Analytically, this mode of politics falls short of ‘Konkordanzdemokratie’ (Lane and Ersson 2000), but certainly goes beyond the standard practice of other parliamentary systems; Reutter labels this as the ‘middle way’ (Reutter 2001: 75). He states that “though Germany was never considered a strongly corporatist country, the significance of associations for the political system’s capability to steer and integrate can hardly be overestimated” (Reutter 2001: 96).

The executive almost exclusively – especially the Ministry for Economics and Technology – defined access to and the scope of negotiations for environmental standards for Hermes guarantees. The inter-ministerial committee (IMA) serves as an almost perfect example for a tight policy community. Composed of representatives from the ministries

for Economics, Finance, Economic Cooperation, and the Foreign Office, it resisted demands by the Minister for the Environment to be represented in this group. Economic peak associations, e.g. the Association of German Industry (BDI), have long secured influence by providing experts for the committee, but the policy community proved closed to environmental and social NGOs until the adoption of the 2001 standards. And even now, their role appears to be weaker than that of trade interests, which have successfully captured Hermes. Industry associations are formally included in deliberations to bring their expertise to the table, environmental NGOs are not.

4.1.4.2.1 Power relationships

Capture of Hermes is aided by the structure of Hermes clientele: Over a third of the total volume of guarantees is granted to a few large companies, resulting in a close-knit relationship between the export credit agency and these firms. A phenomenon typical for export credits agencies; in the United States in 2001, “more than 60 percent of the U.S. Export-Import Bank’s loans and loan guarantees went to just three corporations, and almost 90 percent went to just ten” (Goldzimer 2002: 11). This means the industry wields considerable structural power over ECAs in either case. Developing policies against the preferences of national champion industries like Boeing in the United States or Siemens in Germany must always be politically costly. However, the corporatist policy community around Hermes guarantees also provides firms with privileged access to the IMA controlling German export credits and thus grants industry direct instrumental power over Hermes environmental policy development. Environmental and developmental NGOs, on the other hand, were largely barred from direct access.

German industry speaks with a unified voice when it comes to keeping access to export credits open and free of environmental restrictions. BDI, the German industry's peak association, maintains close ties with the Economics Ministry. The association represents companies ranging from Siemens to SMEs, which use Hermes guarantees to facilitate their exports, regardless of company size. In a corporatist arrangement, the inter-ministerial committee also draws on associations' expertise for cover decisions in the committee. In the United States, industry interests are more fragmented. Ex-Im's largest client Boeing (see Table 4.1 for concentration of export credits among Ex-Im's clients) has little to fear from environmental conditionalities attached to U.S. export credits, while smaller companies do not possess as much leverage. In Germany, Siemens and SMEs are equally affected, and can join forces against environmental standards for Hermes. Furthermore, Siemens' hydro, nuclear, and other power operations are directly affected by environmental rules which specifically target large-scale infrastructure development. The influential German industry coalition managed to frame the debate on environmental standards for Hermes guarantees in terms of a zero-sum game: the environment vs. jobs. In the United States, the Coalition for Employment through Exports (CEE) lobbies for Ex-Im clients' interests, but it is only one lobbying group among many in the pluralist U.S. system and has therefore nowhere as much power as the BDI wields in Germany. While the pluralist U.S. system limits access for special interest groups to the policy-making process, the corporatist German system explicitly co-opts such societal groups into the policy process.

Industry's structural and discursive power becomes apparent when analyzing the German policy debate on environmental standards for export credits. By 2001, NGOs had

managed to frame the debate in such a way that the desirability of some sort of environmental policy for Hermes guarantees was largely accepted. However, industry had also managed to establish job creation as another important discourse in discussions about Hermes reform. Thus, two intertwined discourses dominated the Hermes debates. The prominent issue was the importance of Hermes guarantees for job creation. As Germany ranked second in exports worldwide, a third of German jobs was said to depend on exports, and “Hermes secure[d] more than 216,000 jobs per year, many of them in the high technology sector”, according to a Prognos study (Weidig et al. 2000) cited by Economics Minister Müller. This argument, used heavily in the support of the Hermes instrument and thus often against stricter environmental standards, made Hermes appear more important for German industry than it was. While Germany did rank second in export volume world-wide, its relative export dependency was not as high. In fact, many smaller countries exported a higher share of domestic production. Here, the Economics Ministry and industry were successful in shaping the discourse and raising the political cost for any reform attempts that might complicate access to Hermes financing for exporters.

Table 4.2 clearly demonstrates that the political discourse on the question of the importance of exports for the German economy provided a skewed interpretation of reality. While Germany may depend on exports to a larger degree in absolute terms when compared to other OECD nations, its relative export orientation comes in at only around 16th within an OECD field of 24.¹⁰ Steinreiber (2002) showed that the hypothetical

¹⁰ Not surprisingly, Australia, the United States, and Japan share the last three places and it is these countries that have been most active in raising environmental and/or transparency standards for export credit agencies.

elimination of export credits in Germany would result in a loss in GDP of 0.4% - 0.6%, whereas a small country like Austria would lose 1.1% - 1.8% of its GDP.

Table 4.2 Exports of goods and services (% of GDP) of OECD member nations, 1997-2000

Country	1997	Rank 1997	1998	Rank 1998	1999	Rank 1999	2000	Rank 2000
Luxembourg	118.36	1	127.53	1	137.78	1	155.86	1
Ireland	79.8	2	86.59	2	88.74	2	94.87	2
Belgium	74.61	3	75.12	3	75.61	3	86.29	3
Netherlands	61.08	4	60.95	4	60.56	4	67.23	4
Austria	41.85	6	43.53	7	45.58	5	50.13	5
Sweden	42.67	5	43.7	6	43.52	7	47.18	6
Norway	40.88	7	36.92	11	38.95	10	46.61	7
Switzerland	39.62	9	40.27	9	42.19	9	46.35	8
Canada	39.95	8	41.92	8	43.53	6	46	9
Korea, Rep.	34.73	13	49.72	5	42.34	8	44.79	10
Denmark	36.45	12	35.78	12	37.87	11	43.77	11
Finland	39.07	10	38.79	10	37.83	12	42.91	12
New Zealand	28.64	15	30.03	15	31.32	14	36.74	13
Iceland	36.89	11	35.53	13	34.65	13	34.71	14
Germany	27.92	17	29.01	16	29.71	16	33.73	15
Portugal	30.42	14	30.85	14	29.81	15	31.9	16
Spain	26.75	18	27.25	17	27.49	17	29.99	17
France	25.5	20	26.11	20	25.94	19	28.55	18
Italy	26.37	19	26.35	19	25.54	20	28.36	19
United Kingdom	28.56	16	26.61	18	26.27	18	28.11	20
Greece	19.69	22	19.84	21	20.56	21	24.98	21
Australia	20.27	21	18.94	22	20.02	22	22.85	22
United States	11.71	23	11.07	23	10.75	23	11.24	23
Japan	10.74	24	10.67	24	9.99	24	10.76	24

Source: World Development Indicators 2003 (World Bank 2003). Rank ordering added by the author.

The Economics Ministry and industry were also successful in defining the job security discourse. The Prognos study (Weidig et al. 2000) estimated that the Hermes instrument would secure 140,000 – 216,000 jobs (on average, 1995-99). The Economics Ministry and industry usually referred to the high end of this range – even exaggerating this figure as cited above. However, neither the Greens, the PDS, nor the NGOs attempted to debunk these arguments which could have possibly strengthened their positions in the policy process.

The second discourse regarded the appropriateness of environmental standards for Hermes guarantees. Here, the Economics Ministry and business interests also attempted to redefine the discourse. They did not succeed, however, in framing the debate as one on the export of environmentally beneficial technology. The environmental NGOs were critical in structuring this discourse as one concerned with the cumulative environmental impacts of projects to which German exports contributed. At the heart of the matter was the question about whether the appropriateness of environmental standards for export credits is one that accepts environmental and economic concerns as fundamentally linked, or whether one sees them as opposing concepts. While the former notion can be linked to a holistic view of the world, i.e. the New Environmental Paradigm, the latter represents a more traditional productionist view, i.e. the Dominant Social Paradigm (Milbrath 1984).

In examining the discourses, I conducted a content analysis of statements by representatives of the four parties represented in Bundestag, the Economics Ministry, the Association of German Industry (BDI), and the NGO coalition, Hermeskampagne. Statements found in the record of the 14th Bundestag's 183rd session (Deutscher Bundestag 2001e) provide the sources for the party and Economics Ministry statements. As these are prepared statements outlining the parties' positions, similar documents were chosen for the NGO and BDI positions. Alexander Böhmer, the BDI's ECA expert, contributed an article to the BDI's Info-Service bulletin in March 2001 (Böhmer 2001) and the Hermeskampagne network of German NGOs working on the topic issued a "Call to Parliamentarians" (Hermeskampagne 2001) in January 2001. Key terms such as "environment," "sustainability," "export promotion," and "efficiency" were counted and coded according whether they were used in a neutral/descriptive fashion, supportive of

the dominant social paradigm, or used in such a way that favored the new environmental paradigm. Table 4.3 summarizes the results of this examination.

Table 4.3 Paradigmatic orientation of parties, economics ministry, NGOs, and BDI

	Number of references in statement	Relative support for Dominant Social Paradigm	Relative support for New Environmental Paradigm
Gudrun Kopp, FDP	10	90 %	0 %
Alexander Böhmer, BDI	25	44 %	0 %
Siegmar Mosdorf, BMWi	16	25 %	6 %
Rolf Hempelmann, SPD	43	35 %	20 %
Siegfried Helias, CDU/CSU	40	25 %	40 %
Hermeskampagne	71	1 %	42 %
Carsten Hübner, PDS	17	0 %	53 %
Angelika Köster-Loßlack, Bündnis 90/Die Grünen	23	0 %	67 %

While all analyzed statements made references to environmental, social, and developmental concerns, these references displayed varying support for either paradigm or neutrality. Clearly, the need for some sort of environmental standard was generally accepted; the contentious issue remained to what extent these standards could be allowed to jeopardize economic interests. While all statements referred to environmental, social, and developmental concerns, statements by the Greens, the PDS, and the NGOs completely left out questions relating to job creation through Hermes and to international competition, while these issues took a central position in the statements by SPD, CDU/CSU, FDP, BMWi, and BDI. CDU/CSU, FDP, and BMWi (actors who can be said to be relatively close to a position promoting industry interests) engaged in both the economic and the environmental discourses, whereas the Greens and the PDS who are closer to the NGOs on this issue only engaged in the environmental discourse and did not challenge the other parties' definition of economic trade-offs.

Industry pulled all stops in its crusade against environmental standards to Hermes. In addition to its solid instrumental and structural power over export credit policy, it also managed to introduce job creation as the primary concern into the discourse over Hermes policy. NGOs, on the other hand, did not have sufficient power to influence this policy making process considerably beyond defending environmental protection as a desirable goal. Their allies in the Bundestag, the Greens and the PDS, did not even dare to debunk the pre-dominant job-creation discourse. The alliance with the Greens, who were part of the ruling coalition at that time, should have given NGOs indirect instrumental access to Hermes policy making, but overpowering industry interests meant that even the Green environmental and foreign ministries were weary to pick a fight with the economics ministry on this issue.

4.1.5 Assessing power relationships

Power has been exerted in two directions: NGOs successfully pressed for environmental policies and financial institutions used their new policies to re-position themselves in the debate over environmental standards. NGOs targeted financial institutions to adopt environmental policies through channels that allowed them to instrumentalize their discursive power: through the U.S. government in the World Bank case, through national governments in the ECA case, and through consumers with regard to private banks. Though all showed vulnerability vis-à-vis these strategies, the resulting environmental policies provided three of these actors – the World Bank, Equator banks, and Ex-Im – with an additional source of discursive power which they now wield with respect to defining standards of acceptable environmental performance. Table 4.4

summarizes the manifestations of structural and discursive power discussed on the preceding pages.

Table 4.4 Financial Institutions and manifestation of power

	World Bank	Equator Principle Banks	Ex-Im	Hermes
Targeted by NGOs through	Member state governments	Consumers	Congress	Economics Ministry
Sources of own structural power	Lender of last resort; especially for least developed countries which qualify for IDA support	Control 80% of project finance market.	Provider of finance and insurance for non-marketable risks in export transactions	Provider of credit guarantees for non-marketable risks in export transactions
Power exerted over	Client countries	Project sponsors	Domestic exporters which in turn influence project developers	Domestic exporters which in turn influence project developers
Constraints on rules	Implementation hampered by dependence on new projects	Dependence on clients; competitiveness	Structural industry power	Instrumental, structural, and discursive industry power
Newly found discursive power	International authority for environmental and development policies	Created new industry standard	First ECA with environmental policies	None

All sets of standards rely on financial providers' structural power to pass regulatory tasks on to the recipients of finance. This concentrates the *benefits* of regulation on the side of the providers, whereas the *costs* are borne by the recipients. As such, using financial leverage as a regulatory instrument is highly efficient from the perspective of the regulator.

Furthermore, all of these finance providers were subject to similar pressures. They were all targets of concerted NGOs campaigns, and were all subsequently exposed to a proliferation of environmental norms promoting the integration of environmental objectives into business decisions – a.k.a. NGOs' discursive power which was channeled through chains of other actors. This channeling occurred with different degrees of

effectiveness. It was highly effective for promoting environmental reform at the World Bank, private banks, and Ex-Im. German Hermes credits, however, proved to be well shielded from NGO influence beyond their discursive power. This is in line with Carbonell and Stephen's (2003) hypothesis that ECAs with great institutional autonomy are less prone to change than those with less autonomy.

What differs among the three sets of policies is the length of chains of delegation in regulating environmental impacts of development projects. It is longest for ECAs and shortest for private banks. Pressured by NGOs, governments tasked their ECAs to devise environmental policies. The effectiveness of these policies, in turn, relies on exporters to use their role in implementing the project to pressure the project developer to bring the project into compliance. Equator banks, on the other hand, have direct influence on the project developer to make the project compliant with their policies. The World Bank standards occupy a middle position with regard to the length of this chain of delegation: governments required the Bank to develop environmental policies which affected both in-house project development as well as required clients to plan their project in line with Bank standards and policies.

Much more interesting than the process by which these policies proliferated and their operating mechanisms are their implications for the institutions' power sources. While the German government failed to assume ownership of the environmental reform process and reap the benefits of an increased power base, the World Bank, Equator Banks, and Ex-Im fared much better. By comprehensively engaging the issue of environmental policies, they have established themselves as authorities on this question and set the benchmarks against which they themselves will be judged. This gain in

discursive power may not be instrumental in regular operations, but it increases the legitimacy of these policies as much as it helps to improve the institutions' standing.

The Bank's environmental safeguard and operational policies have become the internationally accepted benchmark for environmental governance of international financial institutions. ECA policies as well as the Equator Principles are derived from this standard and the World Bank Group's IFC has been an important facilitator in the adoption of the Equator Principles. Similarly, the Equator banks now have ownership of the further development of these policies. Though they are still closely scrutinized and criticized by NGOs, they are less vulnerable to NGO attacks since assuming norm ownership. However, this new found source of discursive power may prove fragile when conflicts between "doing good" and their primary mission of generating profits occur. The World Bank has solved this challenge by re-defining its primary mission to sustainable development. It remains to be seen how the Equator Banks will manage this tension. Ex-Im's policies put it into a position where the U.S. government could team up with NGOs to push for change at other OECD ECAs. Ex-Im turned from being a target into being an ally of NGOs and gained partial ownership of the reform process.

This section has shown how targeting financial actors allowed NGOs to transform their rather weak discursive power base into instrumental power over business actors in other sectors. The preceding discussion has demonstrated that financial leverage was not applied directly, but that civil society actors rather utilized a chain of power relationships to effect change in infrastructure project design. Along these chains of leverage, power was transformed from NGOs' own discursive power base to structural power over project developers. Though power has thus morphed into a more immediate kind, this chain may

also amplify countervailing forces during the implementation of these rules, potentially weakening them.

Through the provision of project financing, financial institutions wield *structural* power over project sponsors. When project developers expect the involvement of ECAs, the World Bank or Equator banks, they design projects with the financial institution's rules in mind. This is a decision made by business whether to get involved with an environmentally problematic project, and whether to seek support from a "greened" financial institution for such a project. This decision is impacted by the likelihood of success for such an application as well as by the financial institution's transparency provisions. Projects which are likely to fall into a category of high environmental impact are subject to publication of their environmental reviews for World Bank and ECA support. In this process, the identity of a business associated with a problematic project may become public and create reputational risks in addition to competitors learning about the firm's intents through the available environmental information. Thus, transparency provisions create an incentive not to seek support from greened institutions for morally hazardous projects which are likely to spark public opposition. In effect, this is an instrumentalization of the policies' discursive power: firms need to consider the effects of being branded "environmentally unfriendly." Transparency provisions for Equator banks are weaker which also reduces reputational risks for clients. However, this is where NGOs continue to exert considerable pressure on EPFIs (BankTrack 2006; Chan-Fishel 2005) and it would not be surprising if transparency provisions in future modifications of the Principles were tightened, thus equipping Equator policies with additional structural power akin to the World Bank and ECAs.

Through name-and-shame tactics, NGOs can exert direct *discursive* power over financial institutions or utilize other actors' more immediate forms to effect change. In all three instances of standard-setting, NGOs discursive power was transformed into structural power over project developers. In the case of ECAs, NGOs pressured governments and legislatures, which in turn mandated ECAs to devise such policies. By requiring environmental assessments from exporters, they in turn need to rely on exporters to furnish this information and to work with project developers to implement any project modifications. It is apparent that given the delegated authority along this chain, governments – ECAs – exporters – project developers, any effects can be only rather indirect. The impact that any single ECA or group of ECAs can have on project implementation further depends on the relevance of ECA support for the project in question, i.e. that ECA's structural power with regard to the specific project. If financing of a project would likely fall apart without ECA cover, project developers are more likely to be responsive to environmental requirements by ECAs than if ECA support is not crucial for project success. In cases where ECA support is not essential, ECAs furthermore find themselves caught between the competing mandates of promoting domestic exports and protecting the environment. These power chains are shorter for the World Bank and EPFIs. The World Bank can work directly with project developers as can Equator banks. Neither needs to utilize exporters as yet another intermediary. Equator banks were subject to NGOs' direct discursive power (with some of it channeled through consumers), whereas the World Bank campaign instrumentalized state leverage over this international organization. Similar to ECAs, the World Bank's and EPFIs' influence on project design hinges on the relevance of their financing. The fewer alternative sources of

finance are available to the project developer the greater is the structural drive towards green projects. The impact of NGOs' transformed discursive power depends on the availability of alternatives to "green" financing (chapter seven and Wright and Rwabizambuga 2006).

Through the adoption of comprehensive environmental policies, the World Bank, Equator Principle banks, and Ex-Im established far-reaching environmental norms which provided these institutions with new sources of *discursive* power. In addition to the effects on bank business, one cannot ignore the leadership role Equator banks have assumed with respect to setting a new banking standard. Their comprehensive response to criticism by NGOs which was facilitated by the IFC has enabled them to take ownership of the discussions relating to the environmental performance of projects supported by them. Analogous to the World Bank, their adoption of environmental rules has equipped them with a source of considerable discursive power: they are setting industry standards against which all actors in the field are evaluated. Thus, they wield not only structural power over their clients, but also discursive power over peer institutions, including those that have not adopted the Equator Principles. Instead of defending the application of environmental criteria to project evaluation, non-adopters need to justify why they choose not to sign onto the emerging industry standard. Being the first ECA to have a comprehensive environmental policy allowed Ex-Im to define the terms of the international harmonization game which will be analyzed in the following chapters.

What sets ECAs apart is that recipients of their support have a powerful position in domestic politics. World Bank client countries have little control over this institution, whereas donor countries are very powerful due to the distribution of votes according to

contributions and the Bank's dependence on regular IDA replenishments. Private bank clients also have little power of these financial institutions beyond the banks' structural dependence on clients. Given the scarcity of capital, this is not a strong source of structural power, because banks are more likely to find new clients for their services than vice versa. This means that ECAs are the only group of financial institutions that are subject to substantial client power. The next section explores how these varying power relationships are related to the content of environmental rules.

4.2 Rule Content

The theoretical framework developed in chapter two suggests that both power held by those making demands on rule-setters and rule content matter in determining the costs and benefits of new rules. Political benefits can offset regulatory costs and vice versa. Realizing that rule-setters need to satisfy competing demands for environmental reform and unhindered access to finance, this section analyzes rule content and how it has been impacted by these competing demands. Rule content is the only aspect rule-makers have close control over. Since they are reacting to perceived political costs and benefits of rules, we can consider rule content to depend on political costs and benefits.

Given the predominance of the U.S. government's and NGOs' power over World Bank rule-setting, the rules governing environmental performance of World Bank supported projects reflect primarily the interests of these actors. However, World Bank rules evolved over time with the Bank initially responding to demands for environmental policies and procedures with small and incremental reforms that did little to satisfy U.S. and NGO demands. In repeated reform rounds, pressure by the Bank's largest shareholder and NGO resulted in increasingly more ambitious rules. This minimalist and

incremental process was less driven by client country concerns than by a desire to minimize adaptation costs at the Bank. The delegation of the rule-setting task made regulatory costs irrelevant to the principal governments. However, these costs did matter for the World Bank as the agent; the logical consequence was foot-dragging by the Bank in rule-making and agency slack in implementation until the creation of the inspection panel for fire-alarm oversight. The Bank's environmental policy history has been covered in the literature and a detailed evaluation of the change in rule content over time is beyond the scope of this dissertation. What seems clear from existing accounts is that client states did not have the power to influence this environmental reform process considerably and that rules therefore represent U.S. government preferences (see for example: Danaher 1994; Farooqi 1993; Fox and Brown 1998; Rich 1994; Reed 1997; Thorne 2004; Brown 2002; Wade 1997; Horta 1996; Park 2007; Nielson and Tierney 2003, 2005; Gutner 2005b, 2005a; Clark, Fox, and Treakle 2003).

With the inclusion of qualitative and quantitative criteria for making project decision and the creation of the inspection panel to monitor compliance, World Bank rules go much further than U.S. NEPA provisions and USAID rules. NEPA merely requires the assessment and consideration of environmental externalities of supported projects. Once such a review has been conducted, NEPA establishes no environmental performance criteria. Even a highly environmentally damaging project can receive federal support, as long the potential for environmental damage and mitigation strategies have been assessed properly before deciding on support. World Bank rules go beyond this purely procedural requirement: the *Pollution Prevention and Abatement Handbook* (PPAH) prescribes limits to acceptable environmental impacts. These rules not only

detail how to assess environmental impacts but also provide criteria based on which under-performing projects need to be turned down.

Another innovation in World Bank rules is the inspection panel, which allows affected people to trigger investigations concerning the compliance of operations with Bank rules. In national contexts, this function is typically provided by the court system. For an international organization, like the World Bank, it is unusual to have a mechanism in place so that individuals can bring their grievances forward.

Both, PPAH and inspection panel clearly represent the principal's interest to reduce agency slack. Neither the establishment of clear-cut decision criteria nor a provision for hearing citizens' grievances are in the interest of client countries seeking uncomplicated access to finance. Regulatory costs also make them unattractive from the perspective of the adopting institution. They are, however, a clear manifestation of the principals' dominance over decision-making at the Bank (see Gutner 2005b, 2005a; Nielson and Tierney 2003, 2005).

The Equator Principles were sketched out in very short time. Possible explanations can be found in the low-profile nature of the principles which do not prescribe specific procedures beyond requiring classification of projects and subsequent environmental management plans for certain categories of projects. Combined with the complete lack of compliance mechanisms, adopting banks would face only minimal costs from the adaptation of the principles, regardless of whether or not they intended to implement them. The Equator Principles were designed so that participating banks could derive reputational benefits from having instituted environmental policies while at the same time minimizing adaptation costs. Adopting financial institutions declare to adhere

to the principles while the implementation is mostly left to the banks themselves. This allows them to design internal rules and procedures that only require minimal changes in operations and thus minimize adaptation costs.

Addressing environmental risks was also important to banks from a risk management perspective. Identifying environmentally problematic projects and removing them from their portfolios allowed banks to reduce their overall risk exposure. The key to success laid in the correct level of environmental standards: strict enough to sort out bad projects, but lenient enough not to jeopardize too much business volume.

4.2.1 Ex-Im

The lawsuits of the 1970s presented Ex-Im with a formidable challenge: implementation of NEPA's review procedures to all its transactions. Given the administrative burden an adoption of NEPA rules would have resulted in, it is not surprising that Ex-Im, just as any other internationally active agency, sought to escape this requirement. USAID developed its own set of "NEPA-light" rules early on to escape further criticism. Ex-Im, however, weathered the lawsuits of the 1970s with few concessions. The 1979 compromise required of Ex-Im to conduct concise environmental reviews, but it did not have to follow NEPA rules with the exception of nuclear projects and such projects affecting the domestic U.S. environment. The fairly unspecific concise reviews provided Ex-Im with a considerable degree of administrative discretion and helped to lower adaptation costs (Peirce 1979).

Initially this appeared to be a highly beneficial bargain. Ex-Im could pacify NGO criticism with minimal changes in rules and procedures. In other words, political benefits came at low regulatory cost. However, in contrast to USAID, the question of stricter

environmental rules for Ex-Im never completely left the political agenda. The environmental policy requirement in Ex-Im's 1992 reauthorization was a direct consequence of the still lingering criticism. At that point there was considerable pressure to develop policies that would contain both substantial standards and transparency provisions (interview with U.S. lobbyist, 7 July 2004).

The 1992 reauthorization also introduced Ex-Im's authority to withhold financing out of environmental reasons; a provision that was explicitly and prominently mentioned in the reauthorization bill's passage establishing the environmental policy requirement. This provision brought with it a substantial innovation. Not only did Ex-Im rules contain transparency provisions and environmental review modeled after NEPA, but by allowing for the negation of support based on environmental project performance, the new Ex-Im rules also required criteria to differentiate supportable projects from those not worthy of help by Ex-Im. To that point, no other domestic agency had comparable evaluation criteria. Only the World Bank, after which Ex-Im policies were molded, had similar rules contained in the PPAH. Given the propensity towards litigation in the United States, such unambiguous decision criteria were important so that Ex-Im decisions could withstand legal challenges, but they also complicated access to export credits. Since the United States did not have an explicit industrial policy, such limitations were considered unimportant (interview with three U.S. officials, 7 July 2004). These rules were only possible because of industry's limited structural power over Ex-Im policy development.

The 1995 policies mandated screening and categorization of projects followed by a review of those projects with significant environmental impacts including the solicitation of public comments for the impact assessment. Cover decisions were to be

made based on qualitative and quantitative criteria that were loosely derived from World Bank policies. Neither environmental review nor transparency were substantial regulatory innovations for Ex-Im. While screening, categorization, and assessment of all supported exports was a change in operations, Ex-Im already possessed the required regulatory tools since it already (and still does) conducted full-blown NEPA-compatible environmental reviews for its nuclear business and those projects affecting the U.S. domestic environment. Implementation of the 1995 standards required an adaptation of this already established review process in a lighter form, but it did not require any substantial regulatory reform beyond modifying project review procedures. The political benefits of environmental reform could be harvested at limited regulatory cost.

World Bank policies were chosen as the reference standard for Ex-Im since they were generally recognized, easily obtainable, and they promised to keep bad projects out of Ex-Im's portfolio (interview with three U.S. officials, 7 July 2004). The choice of reference standard was not guided by concerns of its effects on business beyond the motivation to purge problematic projects. This is quite different from German Hermes politics, where the government's preference for certain international standards to be referenced in the Common Approaches was driven by the restrictions one or another international standard could impose on supportable exports.

The introduction of clear-cut decision criteria was a substantial innovation over prior environmental policies among U.S. federal agencies. However, the similarity of the World Bank environmental review process with its roots in the U.S. NEPA and Ex-Im's own NEPA-inspired review process meant that the World Bank standards were fairly

compatible with Ex-Im's procedures. Even this innovation did not entail significant adaptation costs.

Ultimately, decisions about U.S. export credits were made by Ex-Im's board. The board could approve exports credits even if the project did not meet the relevant environmental criteria. Early on, the board used its discretion quite widely to approve projects that did not meet individual requirements, especially those pertaining to NO_x emissions. By 1999, most applications for support were in compliance with Ex-Im's policies. The only two projects that were formally turned down were the Three Gorges Dam (prior to the implementation of the 1995 policies) and the Camisea pipeline. Nevertheless, a number of projects were withdrawn by the applicants before final decisions were made by the board. These included inter alia the Turkish Ilisu dam (which is now supported with German Hermes credit guarantees), hardwood forestry in Peru, and a mine in Papua New Guinea (interview with three U.S. officials, 7 July 2004). The discretion left to the Ex-Im board created a safety valve to deviate from established policies when necessary. Clearly, this can also be interpreted as a cost-limiting measure. Their freedom of choice over support application allows the Ex-Im board to side-step its own established criteria when refusing support to an exporter could result in significant political costs.

Ex-Im's environmental policies were designed in a way to provide the political benefits of addressing the environmental challenge and reducing its exposure to problematic projects without requiring costly regulatory changes. Beyond the domestic immunity from further environmental challenges, Ex-Im's environmental policies also provided this agency with a good bargaining position for international harmonization of

ECA policies. The combination of early domestic leadership with rules and procedures similar to the international ones used by the World Bank, meant that Ex-Im could attempt to upload its policies to the international level and expect them to survive largely unchanged through harmonization.

4.2.2 Hermes

Similar to Ex-Im policy development, Hermes rule-setting was guided by a strategy of providing sufficient political benefits while minimizing regulatory costs. Until 2001, all Hermes rules regarding the environment only addressed the application process, but not decision-making as opposed to Ex-Im rules which contained detailed environmental review procedures and decision criteria. Starting in 1995, applicants for Hermes guarantees were required to supply an informal memorandum on the environmental effects of the project for which support was sought. With the scope and format left entirely to the applicant, this requirement imposed relatively small compliance costs on the exporter and next to none on the ECA. No formal rules existed for the further treatment and usage of the memorandum. In 1998 the memorandum requirement was specified by introducing five questions which applicants were to address in their submissions. Purpose of this was “document to the outside, that environmental aspects are considered in the decision-making process” (Hermes Kreditversicherungs-AG 1998). By establishing low-profile procedural rules for the content of applications, that did not deal with internal review and decision processes, policy-makers obviously hoped to gain the political benefit of having new environmental rules in place without committing themselves to changes which could bear substantial regulatory costs.

The 1998 modifications did not bring closure to the issue but rather helped to spawn even more pressure on Hermes. The new guidelines adopted in 2001 took their cues from the OECD negotiations on the Common Approaches which had produced a draft set of common rules for ECAs at that time. In a substantial departure from prior German practice, the domesticated OECD draft rules established procedures for screening, classification, and review of environmental impacts and also linked cover decisions to international standards. In this respect, the new rules represented a major innovation for the administration of German export credits requiring considerable adaptations in internal procedures. Nevertheless, the new rules also contained considerable flexibility. Environmental reviews of category A projects did not require full environmental impact assessments in all cases and instead of tying cover decisions to specific standards, a benchmarking process was established in which project performance was compared to a range of international standards without requiring compliance with either one.

Compounding political pressures stemming from domestic critics and international harmonization in the OECD Export Credit Group required the German government to adopt environmental rules for Hermes that were compatible with those being negotiated in Brussels. At the same time, the government sought to limit political costs of implementing these rules by maximizing flexibility in their terms. The result was a set of provisions that by-and-large resembled U.S. and OECD rules, but allowed to minimize the impact of these rules on export support. Given the restriction to OECD-compatible regulation, the new rules created considerable regulatory costs, but their provisions were nevertheless designed in a way to best balance political costs and

benefits stemming from industry and NGOs. Flexibility in apparently rigorous rules was the key ingredient in meeting competing demands. For category B projects, for example “plausible criteria for environmental relevance or generally acceptable information [wa]s sufficient” for environmental review (Hermes Kreditversicherungs-AG 2001: 5; United States General Accounting Office 2003). Similarly, stakeholder consultation (typically a key ingredient in environmental impact assessments) was merely suggested, not required, or even expected. Finally, the passage concerning transparency on the application form instructed the applicant: “Please delete this paragraph if you do not consent” to making your EIA public (Antrag auf Übernahme einer Exportkreditgarantie für ein Ausfuhrgeschäft; http://www.agaportal.de/pdf/antrag_b_g.pdf; accessed 12 October 2007).

When compared to Ex-Im rules, German provisions appear fairly similar at first view. Both sets of rules were built around screening, categorization, review, and decisions using established standards. However, below the surface, German rules are much weaker. They do not provide for ex-ante transparency and exporters can even opt out of ex-post transparency. German rules apply to projects beyond a higher threshold of EUR 15 million and evaluation is limited to components supplied by German companies rather than entire projects. Coupled with the flexibility discussed above, they represent a considerably weaker incarnation of U.S. rules. This weakness appears to have been brought about by two compounding factors: industry’s structural power opposing environmental rules and high adaptation costs to fully implement U.S. style procedural rules and transparency provision. This latter aspect will be discussed in detail in chapters five and six in the context of regulatory harmonization.

One key difference between German and U.S. regulatory cultures concerning ECA politics is the range of policy objectives export credits are expected to serve. While German politics has limited Hermes credits to be employed for export promotion and industrial policy concerns only, U.S. policy-makers have tasked Ex-Im with additional missions. The inclusion of language in Congressional reauthorizations of the Ex-Im Bank that pursues goals not directly related to trade is common-place in the United States. The 1992 reauthorization which established Ex-Im's environmental policies, for example, also included provisions prohibiting assistance to "Marxist-Leninist countries" and to countries which violated human rights (United States Congress 1992a). In 1997, the Export-Import Bank Authorization bill provided for a prohibition of transactions involving Russian firms, in case Russia were to transfer SS-N-22 Sunburn or SS-N-26 Yakhont missiles to China (United States Congress 1997).

German Hermes credits were granted in connection with other political objectives, but Hermes' only political mandate has been domestic job creation through export promotion. Examples of politically-minded export credit deals include the German government's support for the construction of a Transrapid maglev train connection in Shanghai, and the extension of the Hermes program to Pakistan at a time when an international coalition was created for a post-Taliban government in Afghanistan.

In addition to a grant of Euro 100 million, the German government provided Euro 500 million in Hermes export guarantees to the Chinese for the construction of a Transrapid connection between downtown Shanghai and the Shanghai airport (Eichels Baustelle in Shanghai 2002). The Transrapid case is a good example of a combination of both diplomatic and economic reasoning behind credit guarantees. Diplomatically, it

improved relations between Germany and China, and at the same time, helped to establish hitherto experimental technology on world markets. In the Pakistani case, diplomatic reasoning certainly played the predominant role (Ehrlich, Thornhill, and Bokhari 2001).

Nevertheless, these politically motivated cases of export promotion fall short of the U.S. practice of tasking the ECA with programmatic political objectives or defining exclusion criteria on political grounds. The sole exception to this rule are the environmental conditions attached to Hermes credits: both the establishment of an environmental review process and the adoption of the nuclear exclusion criterion are uncharacteristic of the sectorally-conceived Hermes instrument.

The only aspect where German rules markedly exceed the U.S./OECD reference standards is the exclusion of nuclear technology from support with export credit guarantees. This is owed to the SPD/Green coalition's joint interest in phasing out nuclear power production and the absence of major domestic producers of nuclear technology. Siemens' remaining nuclear power plant business is considered conventional since it supplies conventional technology only. The only ambitious aspect of German environmental ECA standards can be found where political benefits can be had without compromising support to exporters.

Since 2004, domestic Hermes policies are implemented side by side with the Common Approaches, but the government has thus far refrained from adapting the 2001 standards to the new OECD rules – most likely out of concern over additional regulatory costs and a loss of flexibility that could be politically costly.

4.2.3 Assessing rule content

Environmental rules adopted by the financial institutions discussed here all reflect the power of competing demands made on these institutions. World Bank rules almost exclusively represent the interests of the U.S. government as its most powerful principal. Detailed environmental review procedures coupled with firm decisions criteria, broad transparency, and a strong compliance mechanism substantially green this institution and limit agency slack in implementation. Private banks were subject to NGO's discursive power and consumer pressure. Their Equator Principles employ similar review procedures and decision criteria as World Bank rules, but they lack transparency provisions and a compliance mechanism to monitor and enforce them. This is a result of the banks taking ownership of the rule-making process and devising rules to their liking instead of being forced to adopt a particular set of rules. Ex-Im environmental policies were also adopted from World Bank rules. Similar to the Equator Banks, Ex-Im was free to develop its own rules, provided that they fulfilled the requirements of its Congressional mandate. World Bank rules originated from domestic U.S. rules and were thus a good fit with Ex-Im regulatory culture. Given its prior experience with environmental review under NEPA for a subset of its projects, the imported World Bank rules did not provide a fundamental challenge on the operational level. Nevertheless, the incorporation of firm decisions criteria was a substantial innovation over strictly procedural NEPA rules. Discretion held by Ex-Im's Board helped to soften the impact of these new rules on project decisions, but this innovation was only possible due to limited opposition by industry. Environmental rules for German Hermes guarantees were created in reaction to environmental criticism of Hermes. Minimal and incremental reforms were meant to

appease critics without substantially interfering with operations. This holds true even for the 2001 standards which were derived from the OECD Common Approaches and for the first time introduced procedural rules for the review process, established limited transparency of cover decisions, and referenced international standards for these decisions. Nevertheless, they represent the weakest possible interpretation of the OECD rules owed to the overwhelming structural power of industry over the rule-making process.

4.3 Conclusion

Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks? In providing an answer to this chapter's guiding question, both power relationships and rule content matter. All financial institutions were subject to similar demands by environmental critics and all institutions needed not consider the interests of recipient countries much. This leaves competing demands made on the institutions from industrialized countries as explanatory factors.

World Bank reform is a fairly simple case: the Bank bowed to the demands of its most powerful principal, the United States. However, even this direct exertion of instrumental power resulted in a step-wise reform process. Confronted with U.S. power, the Bank sought to minimize adaptation costs with limited reforms which resulted in additional pressure from the U.S. government when these reforms were considered insufficient. A ratcheting process eventually resulted in rules to the principal's liking. The

U.S. demands did not encounter substantial opposition beyond the Bank's attempts to minimize adaptation costs.

Similar to the World Bank reform process, NGO demands for environmental rules among private banks were only offset by the institutions' own interests to limiting the impact of rules on operations. Provided with the experiences of the World Bank and ECA reforms, banks did not challenge the drive towards environmental rules, but rather took ownership of the reform process and developed the Equator Principles as rules best compatible with their business models.

Contrary to the World Bank and private banks, client interests play an important role in domestic ECA politics. ECAs were created to assist exporters and these exporters have an interest in keeping their access to government support free of restrictions. Thus, the power wielded by business benefiting from export credits is important in ECA rule-making. However, the power of these actors differs among states depending on sectoral composition of ECA portfolios and institutional factors. A greater share of German export business receiving export credits is subject to environmental rules than is the case for U.S. exports. Additionally, German industry has privileged access to ECA policy-making, whereas U.S. business needs to compete with other groups for influence through Congress.

The impact of ECA rules on domestic industry explains the slower reform pace of ECA reform when compared with World Bank and Equator bank policy development. Different ECA portfolios and institutional contexts explain the varying speed and scope of reform among Ex-Im and Hermes. Ex-Im reform was also aided by prior experience with environmental review under NEPA, whereas the establishment of environmental

rules in Germany was hindered by a very sectoral conception of export credits that did not favour the incorporation of objectives other than export promotion and industrial policy.

The impact of these domestic policy histories on establishing common rules for ECAs is considered in the next two chapters. Chapter five surveys harmonization among ECAs and chapter six then turns to analyzing the harmonization processes.

Chapter 5: Regulatory Harmonization

One consequence of ExIm's new environmental policies, implemented in 1995, was the disadvantage to U.S. exporters seeking ECA support vis-à-vis their competitors from other countries which did not have to comply with similar rules. The unilaterally implemented policies amounted to a hurdle in access to ECA financing that only ExIm clients faced. From 1994 on, the U.S. government sought to re-level the playing field for American exporters by initiating international negotiations on a common baseline for ECA environmental policies across the OECD. Negotiations on the *OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits* were slow and finally led to an agreement on a set of procedural policies and benchmarks in 2003 after an earlier draft agreement was not supported by the United States and Turkey in 2001.

The Common Approaches established environmental review procedures and referenced international standards, including World Bank criteria, as benchmarks in project evaluation. They followed the same logic as World Bank policies: projects need to undergo environmental assessments, results of the environmental reviews are made available for public comment and support decisions need to take projects' environmental performance into account. The Common Approaches now provide harmonized environmental review procedures among OECD ECAs and have re-leveled the playing field to some extent (Görlach, Knigge, and Schaper 2007; Knigge et al. 2003).

Given the trends towards market integration among the leading industrialized nations, the eventual agreement on common environmental policies for ECAs is not too surprising. However, this process took almost a decade from the point when the United

States raised the issue of harmonizing environmental rules for export credits in G7 and OECD forums. *Considering the low relevance of ECAs for trade (less than 3% of exports are facilitated by them), why has harmonization been so slow and cumbersome?* This is especially surprising because an established and proven group was tasked with developing these policies. The OECD Export Credit Group (ECG) has negotiated export credit rule harmonization since the 1960s and has succeeded in squeezing once rampant subsidization out of export credits. The *Arrangement on Export Credits* managed to bridge fundamental disagreements about the proper level of subsidization despite countervailing economic interests by influential players. Still, agreement on environmental terms has been difficult to achieve.

This and the next chapter argue that the answer lies in domestic political costs and benefits that result from the content of the harmonized rules. Harmonizing financial terms of export credits has allowed ECAs to escape a costly subsidy race. By establishing common guidelines for the interest rates, premiums, and terms offered by ECAs, governments could provide their exporters with competitive support conditions while at the same time operating their ECAs cost-neutral. A lack of harmonization would have resulted in ever greater public costs of export credits. Diverging environmental standards for export credits, on the other hand, facilitated access to export credits in states with lower environmental standards without driving up the cost of officially supported export credits. That meant that governments had an incentive to maintain lower standards than their competitors in an effort to provide their national exporters with a competitive edge in international competition over environmentally problematic projects.

The unilateral strict U.S. standards, however, created grounds for the United States to seek harmonization on the basis of its domestic rules, contrary to the preferences of the other OECD countries. The United States pressed for binding international standards and a transparent review process, while the German government blocked these aspects of common rules throughout most of the negotiations by preferring to maintain the status-quo over new procedural rules. Flexibility regarding the international standards used in project evaluation and a provision allowing the retention of environmental information for select projects prior to a coverage decision, made it easier for Germany and a few other states to accept binding standards and ex-ante transparency.

In negotiating ECA harmonization, the German Red-Green government emerged as the key laggard in creating common environmental policies. It was not the creation of environmental rules themselves, but rather the institutional compatibility of certain aspects of these rules that made an agreement difficult. These institutional obstacles to harmonization are discussed in detail in chapter six.

This chapter begins with an account of the establishment of common financial rules for ECAs in the Arrangement. This discussion exemplifies the ECGs' long history in harmonizing ECA policies that should have been highly conducive to establishing common environmental rules in a swift manner. The second part of this chapter then turns to the harmonization of environmental policies which has been much more difficult to achieve than one would expect given the lower stakes involved as compared to ceasing subsidization through export credits. The specifics of proposed rules encumbered agreement more than anything else.

5.1 Negotiating export credit financial terms

Prior to the current concern with environmental standards, OECD members harmonized the financial aspects of export credits throughout the 1960s, 1970s, and 1980s (Moravcsik 1989). Competition among ECAs had led to a situation in which increasingly favorable terms offered by ECAs resulted in products being sourced in a particular country not because of product properties but rather because of the export credit terms offered by the exporting country. Export support had turned into heavy export subsidization and placed a strain on public budgets without resulting in proportional domestic economic gains. OECD member states negotiated the Arrangement on Export Credits to provide for a level playing field for national export credit agencies and exporters. Ultimately, buyers were to base their purchase decisions on the good itself rather than on the terms of the ECA support facilitating its export (Moravcsik 1989).

Subsidies affect the prices of products and can consequently distort trade. While traditional subsidies affect both domestic and export prices, subsidized export credits affect only foreign prices. As their purpose is geared more towards giving domestic exporters an edge in international competition than correcting market failures (which would affect domestic markets also), they are more controversial among states than traditional subsidies. Furthermore, their role may be obscured by the salience of import restriction despite their potential for greater impact on trade (Moravcsik 1989: 173). Export credits have been subsidized in three different ways, including through grant elements, subsidizing interest rates, and increasing repayment terms (thereby shifting risks to the lender). Initially, subsidization of interest rates served as the most prominent support mechanism; governments would raise funds at low cost on financial markets

using their superior credit ratings and then provide export credits at these or even below these rates utilizing government budgets to cover the spread.

Prior to the establishment of the Arrangement, ECAs competed over interest rates and repayment rates. The Parties to the Arrangement then dealt with the use of tied aid (the inclusion of a grant element export financing packages). Current challenges include the use of market windows (semi-public financial institutions offering unsubsidized credit below market rates because of their ability to raise funds on government terms) and untied aid (grants which are not required to be spent on exports from the donor country but that are dispersed with this expectation in conjunction with export credits). Moravcsik suggests that “even modest government credit subsidies can be decisive” since products/services, aid, and export credits are evaluated as a package (Moravcsik 1989: 176-7).

Compliance with the Arrangement has been remarkably high compared to the performance of other OECD agreements. In a recent article, Janet Koven Levit argues that the Arrangement has performed so well because of being “elastic (its soft form permits experimentation and revision), pragmatic (its processes redefine compliance in a way that accommodates ECA practice with the Arrangement’s rubric), measured (it embraces consensus decision-making without diluting its rules with generalities and platitudes), and [...] dialogic (the camaraderie of the Participants groups and the Arrangement’s unique processes assure that the Arrangement remains a vibrant and progressive discussion)” (Levit 2004: 68). Peter Evans, on the other hand, argues that Members comply with Arrangement provisions because they have an interest to do so. In his view, export credits are a private good to which the Arrangement as a cartel of

suppliers regulates access. Compliance with the Arrangement thus occurs both out of an interest to keep the cartel functioning and to avoid a costly race for more favorable financing terms (Evans 2005; see also Kohler and Reuter 1986).

It appears that U.S. policymakers were less optimistic about compliance with the export credit regime (United States Congress 1994): The United States monitors other Members' compliance with Arrangement provisions closely, and matches offers by other ECAs that do not comply with the Arrangement with funds from the "war chest" (Tied Aid Capital Projects Fund – TACPF), authorized by Congress for this particular purpose (Sheppard 2002). Although the Arrangement is not an OECD Act, it is incorporated into European Community law via a Council Decision, and thus enforced by the Commission among EU members (OECD 2001b).

5.1.1 1934 – 1978: Pre-Arrangement disciplining of interest rates

The British ECGD was founded in 1919 and most Western states followed suit through establishing their own ECAs by the 1930s. At the same time, they also founded the International Union of Credit and Investment Insurers (Berne Union) as the international organization of ECAs in 1934 (see Aldcroft 1962). The need for harmonizing ECA terms arose only after World War II when industrialized nations increasingly sought to provide their exporters with assistance for exports to newly industrializing countries and were drawn into competition over their terms (see Marx 1963). States initially addressed the issues through the Organization for European Economic Cooperation (OEEC – predecessor to the OECD), from 1960 on under the General Agreement on Trade and Tariffs (GATT) and in various other arenas until

negotiations moved under the umbrella of the OECD in 1963 after GATT Member States ignored a ban on export credits below government cost (Moravcsik 1989: 179).

An initial Understanding on Export Credits for Ships was worked out by an OECD working party between 1963 and 1969. 1963 also saw the creation of the Export Credit Group (ECG) as a new body within the OECD. The ECG agreed on a “gentleman’s agreement” for long-term export credits in 1974 once ECAs’ cost of funds were considerably affected by the oil crisis. This agreement established a minimum interest rate of 7.5 per cent for exports to wealthy countries (Streng 1976). In 1976, these rules were expanded in the *Consensus* which established maximum repayment terms, minimum downpayments, and prior notification for derogations in addition to minimum interest rates. The *Arrangement on Guidelines for Officially Supported Export Credits* of 1978 formalized these guidelines (Duff 1981: 895-905). All of these negotiations occurred outside the Berne Union. Despite the creation of a new negotiation venue with no prior track record of fostering cooperation among ECAs, negotiations proved successful in limiting subsidization through export credits.

Initially, states agreed to minimum interest rates and limits on repayment terms. However, fixed interest rates were more disadvantageous to states with low interest rates than to those with high internal interest rates since they could undo the competitive advantages of those economies with low domestic rates. Japan was hit especially hard in terms of competitiveness, where minimum interest rates resulted in an actual premium over commercial interest rates that had to be charged by Japan’s ECA. Ex-Im, on the contrary, had to subsidize a spread between Arrangement rates and its cost of borrowing which rose to over 5 per cent in 1980 (Duff 1981: 893). The spreads for Britain and

France amounted to 7.36 per cent and 8.7 per cent, respectively (Moravcsik 1989: 182). This situation was later remedied by linking ECA rates to commercial interest rates. Agreement was possible because the linkage of minimum interest rates with maximum repayment terms required concessions by those countries favoring subsidization through low interest rates (like France), and those favoring support through long repayment terms, like the United States which could rely on robust financial markets making long-term credits relatively cheap.

5.1.2 1980 on: Expanding the Arrangement

Work on linking interest rates for export credits to commercial ones was soon begun after agreement on the initial Arrangement, and in 1980, the Export Credit Group also started to review tied aid, which was the combination of export credits with grant elements. By 1983 compromise was reached on increasing the cost for tied aid by setting a minimum threshold of 20 per cent for tied and requiring advance notification for tied aid offers to competing ECAs; members signed on to a revised version of the Arrangement. The 1983 agreement also introduced an automatic adjustment of rates for low-interest countries mitigating their disadvantage under the old fixed interest regime. In 1985 and 1987 the Arrangement was tightened again by raising the tied aid threshold to 25 and then 35 per cent (Moravcsik 1989: 185-90).

The 1987 Wallén Package replaced the matrix of subsidized interest rates with a mechanism linking rates to commercial interest rates for exports to relatively rich countries. This was further refined with the Schaerer Package in 1994, which finally abolished all remains of the old fixed interest system. Tied aid for relatively rich developing countries and commercially viable projects was outlawed in 1991 with the

Helsinki Package. In 1997, the Arrangement was re-written to incorporate the changes and additions in its 20-year history into a more accessible text (OECD 1998a).

5.1.3 Assessing the Arrangement

The Arrangement which was first adopted in 1978 is organized around three mechanisms: *discipline*, *automaticity*, and *transparency*. It creates reliable rules for financial aspects of export credits, links interest rates to developments on the commercial credit market, and requires ECAs to report to their peer agencies on their operations as well as on derogation from Arrangement rules in advance. By 1985, subsidies through export credits had been reduced to less than \$1 billion (Moravcsik 1989: 178). A report by Ex-Im suggests that export credit negotiations typically go through five stages:

1. Agreement to exchange information or establish transparency in order to provide the basis for work on a particular issue;
2. Creation of a system or framework of rules that can lead to reductions in subsidy and/or further level the playing field;
3. Establishment of a yardstick within the framework by which progress can be measured (e.g., charging market level interest rates or requiring a project to be commercially non-viable in order to allow tied aid);
4. Moving the yardstick higher (i.e., requiring ever higher interest rates until zero subsidy is achieved, or increasing the minimum concessionality in tied aid); and
5. The ongoing process of refining and adapting any rules as more knowledge becomes available and/or the world changes. (Export-Import Bank of the United States 2004: 101)

At the same time that participants to the Arrangement have been successful in creating discipline on interest rates, repayment terms, and tied aid, new challenges emerged when individual ECAs found ways to better assist their exporters. Among these challenges, untied aid and the use of market-windows has occupied the OECD Working Party on Export Credits and Credit Guarantees.

After the use of tied aid was rigorously reduced through Arrangement rules limiting the coupling of export credits with tied aid and enforced by use of the U.S. war chest to match any tied aid offers, a number of states started providing untied aid in combination with export credits. Since untied aid is governed by the less restrictive OECD Development Assistance Committee (DAC) rules, and thus need not be spent on products and services from the donor country, the practice is technically in-line with relevant international rules. However, even though untied aid can be spent anywhere, it may come with a strong understanding that it ought to be spent in connection with the export credits it has been provided with. States have used this strategy to facilitate exports without breaking the rules of the Arrangements. However, states not involved in this practice see it as an unfair export subsidy and as a circumvention of the tied aid rules in the Arrangement.

Similarly as it did with tied aid, the United States had taken the lead in combating this practice. Following its step-wise approach, it first negotiated for reporting requirements for untied aid among ECAs and then achieved increased transparency in a November 2004 agreement. The 2004 rules stipulate transparency not only among ECAs, but also provide for the publication of information about tied-aid to the public at large in a two-year pilot-program. Under this agreement, untied aid offers are disclosed so that competitive international bidding may occur, and ex-post reporting includes the nationalities of winning bids (Export-Import Bank of the United States 2006: 46; OECD 2005a). The Working Party has yet to review the experiences from this pilot program

Ex-Im has also been concerned about competition from market windows operated by the Canadian ECA Export Development Canada (EDC) and the German federal public

bank Kreditanstalt für Wiederaufbau (KfW). Although both institutions are public, they both provide commercial-bank-style lending to their clients. Through these “market windows” they do not have to follow the disciplines established for official support, but clients at the same time profit from low interest rates which these institutions can provide due to their superior (government-backed) credit rating that reduces their own cost of money. Market windows have been on the OECD agenda since the late 1990s. However, the issue became less pressing after EDC bowed to U.S. pressure and re-organized its market-window business. Similarly, KfW was restructured after demands made by the European Commission to organize public German banks in a way to allow for more competition with privately owned ones.

Squeezing subsidization out of ECA financial terms required more than two decades of negotiations and remains incomplete. This can be attributed partially to different conceptions as to what constitutes proper export promotion. For states favoring liberalized trade, such as the United States, ECA support should be limited to compensating for market imperfection, but ECAs should not subsidize their financing beyond matching terms that private finance would offer if it were to finance the transactions covered. For other states, like France, however, providing subsidies through export credits to domestic exporters is perfectly acceptable if it helps generate domestic production through exports. After all, providing generous export subsidies may be less costly than paying for increased unemployment in the absence of export-led growth. Finding a compromise on financial terms for export credits was ultimately about reconciling these diverging views on export credits and agreeing on terms that would strike a balance between export subsidization and free trade. As such, this harmonization

process occurred on the relatively undemanding level of standardizing terms and standards. Beyond compromising on the appropriateness of export subsidization in general, it only required agreement on thresholds and limits for the terms offered by ECAs. This step-wise approach of dealing with one aspect at a time has been highly successful. As we will see in the next section (and also chapter six), environmental standards for ECAs pose a much more formidable challenge as they require not only the harmonization of standards, but also compromises on fundamental approaches to governing export credits.

5.2 ECA environmental rules

The Arrangement clearly demonstrated that harmonization of ECA terms was possible. What is more, the discussions leading to the Arrangement and continuing cooperation to maintain and expand the agreement meant that the OECD Export Credit Group had build a solid foundation on which harmonization of environmental terms should have been easy to achieve. Nevertheless, negotiations on environmental terms proved very difficult despite the existence of a proven harmonization venue.

Negotiations on environmental standards for ECAs were placed in the Export Credit Group by the G8 members after the 1997 G8 summit in Denver with its good track record of negotiating and maintaining the Arrangement. However, the group struggled from 1998 to 2003 to establish a common set of environmental standards. As it was the Arrangement's goal to purge competition over financing terms, the aim of the Common Approaches on Environment and Officially Supported Export Credits was to eliminate competition over environmental requirements (OECD 2005f: 4). Similar to provisions for minimum interest rates and limitation on bundling export credits with aid, the initiative to

establish common environmental rules for export credits came from the United States, which sought to level the playing field on Ex-Im's terms.

The OECD Export Credit Group is comprised of 29 of the 30 OECD member states (all except Iceland).¹¹ Country delegations typically include ECA representatives as well as the responsible government departments, usually finance or economics. The U.S. delegation is headed by the Department of the Treasury and also includes Ex-Im representatives as well as a State Department official. Germany is represented by the economics ministry, Hermes employees, as well as a representative from the Foreign Office. As such, the ECG is a body dominated by technical experts. Stakeholders outside of the relevant government departments have little direct influence. The Export Credit Group conducts one short consultation session with NGOs per year, but does not allow for further involvement by stakeholders.

The Export Credit Group is therefore a mix between a transgovernmental network of experts and intergovernmental negotiations. ECA specialists meet regularly and hammer out the details of agreements. However, these agreements can only come about when all members consent, and final endorsement is left to the OECD Council that needs to give its diplomatic stamp of approval. The formalized infrastructure of the ECG and its secretariat provide a robust framework for the rules and their implementation, but at the same time, this formality can slow negotiations on and experimentation with new rules.

¹¹ ECG members are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States. See: http://www.oecd.org/document/56/0,2340,en_2649_34181_21688824_1_1_1_1,00.html [accessed 19 July 2005].

5.2.1 OECD environmental negotiations

Ex-Im Chairman Jim Harmon first suggested environmental standards harmonization in the G7 ECA Chairperson Group soon after he took office in 1997. This unofficial group is regarded rather critically by the U.S. Treasury, which has the political authority over Ex-Im and heads the U.S. delegation in international negotiations on ECA matters. He was outvoted 6-1 by the other G7 ECA heads who opposed common environmental rules. After sharing this experience with President Clinton, the issue of environmental standards harmonization was put on the agenda of the 1997 G7 summit in Denver, over which the United States government, as host, had agenda control (personal communication with former U.S. official, 3 September 2003).

5.2.1.1 1997 – 2000: Tasking the OECD ECG

At the G7 summit, the U.S. concerns received political endorsement at the cabinet level, and the work of the OECD Working Party on Export Credits and Credit Guarantees was recognized in the final communiqué:

Environmental Standards for Export Credit Agencies

24. Private sector financial flows from industrial nations have a significant impact on sustainable development worldwide. Governments should help promote sustainable practices by taking environmental factors into account when providing financing support for investment in infrastructure and equipment. We attach importance to the work on this in the OECD, and will review progress at our meeting next year (G8 1997).

However, the U.S. initiative was met with tremendous resentment in the OECD (personal communication with U.S. official, 25 June 2003; interview with three U.S. officials, 7 July 2004). The ECG was slow in taking up the new agenda, partially because members had little interest in pursuing the environmental issue, and partially because the group had been bogged down by negotiations on premia (personal communication with Swedish official, 3 September 2003). A *Statement of Intent on Officially Supported*

Export Credits and the Environment was issued in 1998, and then followed up by an *Agreement on Environmental Information Exchange for Larger Projects* in 1999. This pattern is in line with the first stage in Ex-Im's five-stage model of ECA negotiations (see above).

The 1998 Statement contained a list of six items, only two of which addressed the objective of establishing common environmental procedures; the remaining four covered restrictions and caveats that were to be taken into account. These included respect for the buyers' countries sovereign right concerning implementation and enforcement of environmental rules, a call for cooperation with exporters, financial institutions and buyers' countries, a requirement not to establish a competitive disadvantage vis-à-vis exporters from non-OECD countries, and a recognition of commercial confidentiality. Given the clear G7 mandate, this list of reservations and qualifications can hardly be considered ambitious. By this point, the major stumbling blocks – *which standards should be applied* and *how much transparency was possible* – were already clearly manifested in the statement's points on buyers' countries rights and commercial confidentiality (OECD 1998b). The statement's German interpretation was that the goal was neither to harmonize standards, nor to create a common evaluation system, but rather to ensure “measured and sufficient appreciation” of environmental aspects in national systems. Furthermore, the German interpretation stressed that the statement's final point on confidentiality set clear limits to any transparency measures (Hermes Kreditversicherungs-AG 1998). Nevertheless, the OECD initiative did lead to the adoption of Germany's 1998 environmental guidelines (for details see chapter three).

The 1999 agreement laid out rules for exchange of environmental information among the participating ECAs for projects in sensitive sectors involving multiple ECAs. This agreement enabled ECAs to share their views with other ECAs concerning the adequacy of environmental information available, but it did not spell out any requirements for the review process other than that the project sponsor had to provide an environmental impact assessment in those cases where (a) no EIA was available and (b) the involved ECAs agreed that such an assessment would be essential for project evaluation (OECD 1999a). At the May 1999 OECD Ministerial Meeting ministers

welcomed the progress towards the OECD Agreement on Environmental Information Exchange for Larger Projects in relation to officially supported export credits and urged that the work continue with a view to strengthening common approaches and to report on progress made at the next Ministerial Council Meeting (OECD 1999b).

The G8 was similarly unimpressed with progress in the ECG when it revisited the issue one year later than planned, and explicitly committed the OECD to the development of common guidelines at the Cologne Summit in 1999:

32. We agree to continue to support the Multilateral Development Banks in making environmental considerations an integral part of their activities and we will do likewise when providing our own support. We will work within the OECD towards common environmental guidelines for export finance agencies. We aim to complete this work by the 2001 G8 Summit (G8 1999).

Development of common policies did not commence until the Spring of 2000, when the ECG adopted an *Action Statement on the Environment* in February and produced a detailed work-plan in April. The Action Statement stressed the development of national procedures for environmental assessment and suggested in only one out of six items to “explore ways to synthesise common elements and best practices [...] in order to strengthen a framework of common approaches” (OECD 2000a). The ambitions of the Action Statement did not go beyond identifying common ground for a lowest-common-denominator framework. Similarly, the work-plan detailed the Action Statement items

concerning the development of national procedures and sharing of experiences; it also established November 2000 as the deadline for completing these tasks (OECD 2000b). Development of common environmental guidelines as mandated in the G8 communiqué was apparently low on the ECG's list of priorities. This was in line with Germany's preferences which favored intensification of information exchange among ECAs, but not the establishment of hard standards or increased transparency (Benze et al. 2000: 6; Deutscher Bundestag 2000b: 2). It had been actively involved in formulating both the Statement of Intent and the Action Statement to these ends (Deutscher Bundestag 2000a: 5). However, this position was diametrically opposed to the U.S. one, which favored both hard standards and transparency as outlined by Ex-Im Chairman Jim Harmon at the same time (Harmon 2000).

5.2.1.2 2000 – 2001: Negotiating the Common Approaches

The G8 remained unimpressed with progress in the ECG, and explicitly placed the consideration of MDB experience in the development of common environmental guidelines on the OECD agenda:

68. Export credit policies may have very significant environmental impacts. We welcome the adoption of the OECD work plan to be completed by 2001. We reaffirm our commitment to develop common environmental guidelines, drawing on relevant MDB experience, for export credit agencies by the 2001 G8 Summit. We will co-operate to reinvigorate and intensify our work to fulfill the Cologne mandate (G8 2000).

ECG members failed to meet the Summer 2001 G8 deadline, as Europeans and the United States could not agree on common recommendations. The U.S. demands for commitment to World Bank standards and increased transparency proved to be a major obstacle to agreement (Rademaker 2001; see also an op-ed by a former U.S. Assistant Secretary of State: Sandalow 2001). The U.S. government had its embassies in OECD countries distribute a statement making this point very clear two weeks prior to the

Genova G8 summit and a day before ECG members were to declare their formal consent to the then current compromise document:

First, the US Government (USG) cannot accept language that does not explicitly require projects supported by ECAs to comply with the same standards as that applied by the Multilateral Development Banks. [...] ECA-supported projects must meet the more stringent of host country or World Bank standards. [...] Second, the USG recognizes that transparency is an integral element to the process of evaluating the environmental effects of projects. Therefore, it cannot accept an agreement that does not contain provisions for the public release of environmental information on sensitive projects prior to the decision to support a project (quoted in WEED 2001).

The Ex-Im chairman added later: “We are sticking our feet in the dirt and saying that we will not sign a toothless, empty agreement. [...] We believe it is good environmental policy and good commercial policy that all nations, particularly the G-7 countries, are obliged to follow at least World Bank standard environmental rules” (quoted in Dunphy 2001). At the 2001 Genova G8 summit, the group received an extension until the end of the year:

29. We are committed to ensuring that our Export Credit Agencies (ECAs) adhere to high environmental standards. We therefore agreed in Okinawa to develop common environmental guidelines for ECAs, drawing on relevant MDB experience. Building on the progress made since last year, we commit to reach agreement in the OECD by the end of the year on a Recommendation that fulfils the Okinawa mandate (G8 2001).

The ECG, aided by strong involvement by the British ECGD, in fact managed to develop Common Approaches Revision 6 by the end of 2001. Even these rules failed to fulfil the G8 mandate because they did not represent true agreement due to the lack of support by the United States or Turkey (Export Credits Guarantee Department 2001). The remaining ECG members nevertheless implemented Revision 6, despite lack of consent and monitoring – a feature unique to an OECD agreement which was therefore considered a milestone by the actors involved (personal communication with Swedish official, 3 September 2003).

Revision 6 could have sufficed as a symbolic political compromise: it established common environmental rules for ECAs, and thus fulfilled the G8 mandate while also retaining much discretion for ECAs in their national implementation. However, the United States denied its support because the recommendations were vague with respect to which standards should be applied in project evaluation, and neither did the rules provide for effective monitoring. Therefore, the U.S. government considered the Revision 6 ineffective at levelling the playing field and establishing meaningful environmental rules. With respect to decision criteria, ECAs were required only to benchmark projects against international standards such as those of the World Bank or other weaker MDB rules, or even host country standards. Not meeting these would not automatically disqualify a project for ECA support. ECAs could also pick and choose international standards to their liking and thus approve problematic projects under standards that were the least problematic for a given project. Finally, weak reporting requirements (not requiring the disclosure of buyer country and project location) rendered effective peer monitoring among ECAs next to impossible (personal communication with U.S. official, 25 June 2003, U.S. Faces Uphill Battle 2001; United Kingdom Parliament 2001: Column WA 78).

5.2.1.3 2003: Revising the Common Approaches

Revision 6 of the Common Approaches included a mandate for assessment and revision in 2003. The Common Approaches were re-negotiated from September to November 2003 and were passed by the OECD Council in December of the same year. From 1 January 2004 on, the 2003 Common Approaches established the basis for national standard-setting among all OECD ECAs. Six years of negotiations had finally

lead to the second of five stages in ECA harmonization, the creation of a framework of rules.

In Spring 2003, the United States floated a suggestion among ECG members to establish binding standards while providing the option to opt out from the application of these standards on a case-by-case basis, with prior notification to other OECD ECAs. Such a derogation clause would have been in line with other ECA rules under the Arrangement that allowed for intended violation of rules as long as prior notification was given to other ECAs so that they might offer support on similar terms. Still, this establishment of binding standards went beyond the benchmarking approach preferred by Germany; subsequently it was its opposition to the U.S. proposal that killed this initiative (personal communication with U.S. official, 25 June 2003). Although the German benchmarking approach used international standards as a point of reference, it did not require full compliance, and thus provided more flexibility in implementation.

By Summer 2003, the United States had given up on binding standards as its primary negotiation objective and had put transparency at the top of its agenda. Concessions on standards could still lead to effective implementation if transparency would aid in monitoring and enforcing (personal communication with U.S. official, 25 June 2003). This appeared to be a promising strategy, since Japan was also opposed to binding international standards after it just had established new domestic rules that might be put into question by new international rules (interview with German official, 5 December 2003). However, increased transparency – especially ex-ante transparency – was even more contentious from the German perspective.

Members submitted their revision proposals to the ECG Secretariat, which then compiled a set of draft rules based on these suggestions. The resulting draft was quite ambitious and went beyond many members' expectations. As far-reaching as it was, the draft established a good basis for negotiations, made agreement without polarization among groups possible, and required only two meetings and a written process to reach agreement (interview with German official, 8 January 2004).

German preparation for the 2003 revisions of the Common Approaches took place outside of Parliament. Prior to fall 2003, the Economics Ministry almost exclusively and independently defined Germany's foreign policy on ECAs. Little coordination took place with the Foreign Office, the Ministry for Development and Cooperation, and the Finance Ministry as the other agencies in charge. New personnel on task in the Foreign Ministry and the – technically not responsible – Environment Ministry asserted more involvement in the issue and initiated formal coordination meetings in preparation for the talks in Paris. The initial OECD meeting was marked by the Economics Ministry's delegation head seeking to play his usual role of representing his agency's position as the delegation position. In preparation for the second meeting, however, the other agencies' opinions found their way into the German negotiation position and facilitated agreement (interview with German official, 30 January 2004).

Japan emerged as a pivotal player between the U.S. preference for both binding standards and ex-ante transparency, and the German position seeking to avoid either. Japan wanted both mandatory EIAs and an accountability mechanism, but it was opposed to binding international standards that might conflict with its domestic rules. It thus sided with Germany on standards and with the United States on EIAs and transparency

(interview with German official, 5 December 2003). This weakened opposition to transparency within the ECG and paved the way for ex-ante transparency as preferred by the United States.

At the same time, the Japanese sided with those nations wanting to retain flexibility. They handled categorization of projects rather loosely, leading to “big B” projects but relatively few projects in the highly environmentally sensitive category A which required environmental review.¹² This approach was much to the liking of Hermes administrators who argued for scrutinizing the covered components rather than projects at large (i.e. transmission equipment supplied for a dam project rather than the entire dam).

With Paragraph 12.3, the U.S. derogation suggestion found its way into the text of the Common Approaches, and thus made agreement on somewhat more binding standards possible. However, instead of requiring advance notice to the Secretariat as is the norm for derogation under the Arrangement, paragraph 12.3 of the Common Approaches requires only ex-post reporting:

12.3 If a Member finds it necessary to apply standards below the international standards against which the project has been benchmarked, it shall report and justify the standards applied on an annual ex- post basis in accordance with paragraph 19 (OECD 2003b).

Nevertheless, this tightened the range of applicable standards, and increased pressure on ECAs to ensure that supported projects comply with a clearly defined set of internationally accepted minimal standards (those of multilateral development banks, regional development banks, and other higher standards, such as EC ones).

The German agreement to the Common Approaches during the second meeting in fall 2003 was an almost complete reversal of policy, which nearly included a switch of

¹² A German official asserted that Japan had not reported a single Category A at the time of the interview (8 January 2004).

positions with the United States in the OECD negotiations. While the U.S. negotiation delegation was interested in closing the Common Approaches and moving the issue off the agenda, parts of the German delegation were considering to not support the Common Approaches because of perceived weaknesses in the negotiation results. By not supporting the agreement, the negotiations would have been kept open, possibly allowing for a tightening of flexibility clauses and elimination of loopholes.

In fall 2005, special conditions for renewable energy projects were added to the Common Approaches that allowed for preferential financing terms for environmentally beneficial renewable energy development (for a review of these challenges see Schaper 2004a, 2004b; United Nations Environment Programme 2004).

5.2.1.4 2005-2007: Revising the Common Approaches again

The most recent review of the Common Approaches was concluded with the adoption of their 2007 version on 12 June 2007 (OECD 2007c) – half a year later than scheduled, after the ECG had reviewed the 2003 Common Approaches since late 2005 (ECA Watch 2006c). At the same time, the ECG was also caught in a deadlock on anti-bribery measures when a coalition of Germany and Japan blocked an initiative spearheaded by the United States (Alden, Pilling, and Williamson 2006). With the ECG devoting much of its attention to anti-bribery measures, the 2007 updates to the Common Approaches were rather limited compared to the 2003 revisions. NGOs, in fact, actually consider the current Common Approaches a step back from their preceding version.

The lack of ambition of the 2007 Common Approaches was most evident in the absence of modification to the benchmarking procedure used in applying international standards and in the limited change with regard to transparency provisions. Retaining the

benchmarking process as well as the possibility of derogation from international standards resulted in much flexibility for ECAs in applying standards for project evaluation – a practice which cannot be monitored effectively due to deficient transparency provisions.

NGOs criticized ECAs mainly for retaining a derogation clause in the text that allowed them to opt out of the application of international standards if they reported to the ECG Secretariat on this ex-post in their annual reporting to the OECD (paragraph 13 in the 2007 version; paragraph 12.3 in the 2003 Common Approaches). However, it appeared that NGOs only zeroed in on this clause in the 2005-07 review, despite it having been included in the earlier version. The approval of export credits for the Turkish Ilisu dam (see also Mossman 2007) around the time of the revised Common Approaches adoption by the German, Swiss, and Austrian ECAs especially put focus on the question of adherence to international standards – and thus on compliance with the Common Approaches – within the public agenda. Approvals of export credits to the Turkish dam had been pending for a number of years due to unresolved problems with the resettlement of affected local populations and the destruction of cultural heritage in the dam's future reservoir site. The ECAs approved the dam with a list of 150 undisclosed conditions to be met by project sponsors; they refused, however, to make this list public (Strittmatter 2007a, 2007b; Gottschlich and Kreutzfeldt 2007; Ahmia 2007). NGOs suspected that an approval of this project could be possible only by derogation from international standards (ECA Watch 2007, 2006b). The dam thus represented a clear example of why such a derogation clause should be purged from the Common Approaches.

Transparency provisions were updated slightly for Category A projects in that ex-ante transparency clauses were stated more explicitly, but the continued limitation of ex-ante transparency to 30 days prior to final approval of projects did not represent a major improvement over previous rules. Paragraph 16 of the 2003 Common Approaches required member ECAs to “seek to make environmental impact information publicly available (e.g. EIAs, summary thereof) at least 30 calendar days before a final commitment to grant official support” (OECD 2003b: 4). The updated version made this requirement more explicit in that it stipulates that members should

disclose publicly project information, including project name, location, description of project and details of where additional information may be obtained, as early as possible in the review process and at least 30 calendar days before a final commitment to grant official support; and require that environmental impact information be made publicly available (e.g. EIA report, summary thereof) as early as possible in the review process and at least 30 calendar days before a final commitment to grant official support. (OECD 2007c: 7)

Thus, the new Common Approaches attach more urgency to the ex-ante publication of environmental project information, but they do not provide for substantial changes to the process. NGOs had argued that the established 30 days period was too short and should be extended to 90 days (ECA Watch 2006a).

One significant extension over the 2003 approaches, representing common practice among many financial institutions, is the inclusion of all ten World Bank safeguard policies, as opposed to only the limited set of safeguards that were referenced in the previous versions. While the range of applicable World Bank standards has been extended, and the list of other applicable standards clarified, the Common Approaches still reference only the World Bank policies current at the time of adoption of the Common Approaches, rather than automatically including future changes as the Equator Principles for private financial institutions do (see chapter three). For project finance transactions, the equivalent IFC policies are to be applied.

NGOs asserted that a coalition of the German and Italian ECAs prevented agreement on a strengthened text in November 2006 (ECA Watch 2006c), which then resulted in the continuation of talks until April 2007. At that time, the ECG agreed on the version which was subsequently passed by the OECD Council on 12 June 2007. The agreement calls for yet another revision of the Common Approaches by 2010.

The ECG praises the current Common Approaches as an important step towards increasing the awareness for the relevance of environmental considerations in export credit transactions among non-OECD countries (OECD 2007b). This reflects an old concern for competition from countries not bound by the Common Approaches. The Chinese Export Import Bank has made considerable inroads in Asia and Africa, potentially taking business from OECD countries (see chapter seven).

The consultation process which led to the current text included presentations by non-OECD ECAs to the ECG, and thus represents an important step in bringing these agencies into the fold. At about the same time of these consultations, the Chinese ECA made their (rather ambiguous) environmental policies public, which have been said to have been in operation for a few years (see chapter seven). Thus, while the current Common Approaches can hardly pass as a strengthening of environmental review among OECD ECAs, they may actually be the first indication of a diffusion of such policies among ECAs beyond the major industrialized nations.

5.2.2 Assessing Strategies

After this discussion of the course of negotiations in the ECG, it is helpful to consider the strategies pursued by the United States and Germany, the pivotal players

negotiating internationally-harmonized rules for the consideration of environmental aspects in the approval process of officially supported export credits.

5.2.2.1 United States

The United States' undeclared goal in negotiating the Common Approaches was to upload its domestic Ex-Im Bank rules to the OECD level. This entailed the adoption of procedural rules, establishment of standards for project evaluation, and transparency provisions. Referencing World Bank standards in this pitch for procedures, binding standards, and transparency equipped the U.S. position with legitimacy and a certain level of moral authority: it could not be bad if the World Bank was already doing it (personal communication with U.S. official, 25 June 2003).

After an early initiative by Ex-Im Chairman Harmon in a technical G7 body had failed, the U.S. government worked to make environmental standards for ECAs a high-level issue. The endorsement of environmental considerations in ECA cover decisions by the Denver G8 summit elevated the negotiation task from one conducted by experts on technical grounds to a topic with high political salience yet apparently limited substantial ramifications. This should have facilitated agreement by outranking technical concerns with high-level political ones.

Though this initial initiative did not bear immediate fruit, the U.S. government nevertheless continued to display high-level commitment to the issue. The December 2000 delegation to the ECG included Assistant Secretary of State David Sandalow and Ex-Im Member of the Board Dan Renberg, both of whom outranked all other delegations which are normally comprised of technical experts and mid-level bureaucrats. This “show of force” attached weight to the U.S. initiative, and the inclusion of Renberg (a

Republican), also underlined the U.S. insistence on strict guidelines under the incoming Bush administration, just shortly after Al Gore had withdrawn his claim for the Presidency. Sandalow was quoted on this occasion: “We thought it was important to come at the high-level to show our friends from the other 27 countries that we are still committed to reaching an agreement, and this issue has strong bipartisan support in the United States” (International Trade - U.S. Urges Talks 2000, interview with former U.S. official, 22 July 2004).

Despite the political commitment to binding standards and transparency on the U.S. side, not all Europeans supported the U.S. position, and they refused to modify the Common Approaches’ 6th draft revision to meet U.S. demands. Consequently, the U.S. government decided to derail the agreement by not signing on to the draft document on a very high level (personal communication with U.S. official, 25 June 2003, Rademaker 2001).

Revision 6 had failed to meet U.S. demands with respect to both binding standards and transparency requirements. Specifically, the omission of the project location from the transparency requirement made it difficult for U.S. officials to identify projects and thus evaluate other ECA’s compliance with rules (personal communication with U.S. official, 25 June 2003). Subsequently, the United States switched strategies by offering some flexibility with standards while still insisting on transparency provisions. In spring 2003, the United States suggested adopting World Bank safeguard policies with the option of derogation from their application with advance notification to the ECG Secretariat. Such an approach would have been in line with established practice regarding the use of tied aid under the Arrangement. However, Germany rejected this proposal

(personal communication with German activist, 2 June 2003; personal communication with U.S. official, 25 June 2003).

The United States increasingly tried to pressure the German delegation into giving up its blocking position. This was done both on the intergovernmental level by building coalitions in the ECG, and transnationally in concert with NGOs. The United States teamed up with other states against the recalcitrant continental European nations Germany, Austria, and Spain. These “divide-et-rege” coalitions included the United Kingdom and Japan among others. The U.S. government also maintained a good working relationship with the Washington-based NGO coalition that exerted pressure on the laggard countries through its local members.

5.2.2.2 Germany

Whereas the United States was actively leading international efforts to establish binding environmental standards and transparent approval processes for ECAs, the German strategy was mostly reactive: it sought to resist U.S. pressure and prevent the ECG from adopting either binding standards or transparent review processes.

The German position was predominantly defined on a technical level by the responsible personnel in the Economics Ministry. These expert bureaucrats were largely immune to political considerations and perceived the quest for environmental policies as an attack on the effectiveness of their export promotion instrument. It appears that their strategy was to give in as much as necessary, but only as little as possible with respect to environmental standards, both domestically and internationally. Domestic standards remained considerably unambitious, despite clear political mandates to develop strong environmental rules for Hermes credits. Similarly, the German negotiation position in the

ECG was not affected much by the political discourse on the issue at the time (see chapter four).

Support for environmental concerns in the OECD context was restricted to improvements in information exchange, but the Economics Ministry supported neither hard standards nor broad transparency (Benze et al. 2000: 6). In fact, it lobbied for the inclusion of host country standards in the Common Approaches' Revision 6 to secure a standard to which compliance would be easy. Notwithstanding the fact that compliance with host country rules should be a minimum legal prerequisite in any case (personal communication with U.S. official, 25 June 2003), since such a standard merely implies legality in the host country. At the same time, there was considerable support among German politicians for adoption of World Bank standards and transparency, but this had little sway over the German delegation to the ECG (personal communication with U.S. official, 25 June 2003).

The Economics Ministry was in fact playing a two-level game (Putnam 1988): it resisted political mandates for pursuing ambitious environmental rules within the ECG, while at the same time referring to the state of play in the OECD in response to demands for strict domestic rules. The Bundestag passed a resolution in Spring 2001 that the German administration should pursue the G8 Cologne mandate ("work within the OECD towards common environmental guidelines") intensively, and that it should also increase transparency of ECA cover decisions by making project information publicly available (Deutscher Bundestag 2001c). This mandate is an almost perfect reflection of the U.S. position; however, German negotiators did not follow parliamentary directive. Even the conservative CDU/CSU (the opposition party at that time) suggested to take cues from

Ex-Im rules (Deutscher Bundestag 2001d: 16207). The CDU/CSU and the libertarian FDP, however, both argued for limited transparency through the OECD on an anonymous basis that would protect exporters' interests. The 2002 coalition agreement explicitly established transparency and World Bank standards as government policy (Bündnis 90/Die Grünen and SPD 2002: 85), but this too failed to inform the German negotiation position. Especially regarding transparency, the Economics Ministry's argument in the OECD remained that they simply could not give in on transparency due to legal constraints and that the other parties simply lacked an appreciation for this obstacle. German negotiators maintained their position that ex-ante transparency was possible only with the exporters' consent due to German commercial and administrative confidentiality rules (which also prevailed in other states with continental European regulatory traditions) (Dunne and Simonian 2002).

The legal provisions usually cited in the context of commercial confidentiality are Paragraph 30 *Verwaltungsverfahrensgesetz* and Paragraph 203 *Strafgesetzbuch* (*Strafgesetzbuch* 2007). The section in the *Verwaltungsverfahrensgesetz* (*Verwaltungsverfahrensgesetz* 2007) stipulates that the government may not disclose any personal or commercial secrets, and Paragraph 203 establishes penalties for individuals (including bureaucrats in official capacity) who violate confidentiality. Thus, German bureaucrats cannot release their clients' information to the public unless they are authorized to do so. German negotiators made this argument the center-piece of their negotiation strategy. However, as a German environmental expert contended, this strategy was less the consequence of insurmountable legal obstacles than an indication of a lack of political will among the ruling SPD-Green coalition to broadly tackle Hermes

reform. Related laws could have been changed in an encompassing reform package (personal communication with German activist, 17 July 2003).

Similarly, Germany could have taken cues from Great Britain: instead of publicizing project information by the agency, the British ECGD requires its clients to publish environmental project information as a pre-condition for coverage (see also Görlach, Knigge, and Schaper 2007). Even German confidentiality rules would have allowed such an approach without modification of existing rules. Nevertheless, such a requirement was never implemented, and the German consent-to-publication-approach resulted in only 59 projects out of a total of 155 (38 per cent) environmentally sensitive projects from October 2001 to March 2003 to be included in Hermes ex-post reporting (Deutscher Bundestag 2003). Figures for ex-ante reporting were not available at the time of this writing, but can be expected to be similarly low.

The tightly-knit Hermes policy community remained almost unchallenged in their control of defining the German position until 2003 when new personnel in the Foreign Office and the Environment Ministry sought to influence the German negotiation position in an interagency process (interview with German official, 30 January 2004). Prior to the inclusion of these agencies, the bureaucrats responsible in the Economics Ministry largely ignored the domestic political environment that was pre-disposed more positively towards environmental standards than the industry lobby that dominated issue definition in the Economics Ministry was. Reform became possible through a widening of the involved regulatory community (see chapter two).

5.2.3 Accommodating to regulatory imperialism

With its rejection of Rev. 6, the U.S. government made its disappointment with a symbolic political compromise clear, and rather sought a substantial agreement with clear commitments and monitoring provisions that would make it possible to follow-up on the implementation of these commitments. The resulting 2003 Common Approaches limited the range of applicable standards and required transparency among ECAs and to the public, thus empowering NGOs to monitor implementation of the agreement's rules. In the United States, regulations employing public transparency provisions are common practice; NEPA is built around similar rules. However, they are rather unusual in continental Europe. Thus, ECA standards can be seen as yet another example of spreading U.S. regulatory tools and ideas around the globe.

This is not a new phenomenon. The Washington Consensus on Structural Adjustment may serve as another illustration. "Structural Adjustment" is a broad term that describes policy reforms ranging from removal of tariff barriers to privatization of state-owned enterprises to reforms in public spending. John Williamson lists ten elements generally regarded essential to a program of structural adjustment (Williamson 1990: 5-35). This list of policy objectives, commonly referred to as the "Washington Consensus," represents a schedule of policy measures that Washington (i.e. the U.S. government and international financial institutions, such as the World Bank and the International Monetary Fund) expects debtor nations to employ. This neo-liberal reform agenda guided World Bank and IMF lending for about 20 years, and was strongly influenced by the U.S. government; in a way it served as an expansion of U.S. free-market philosophy to

developing countries and was implemented by the multilateral financial institutions through their adjustment lending.

Though unilateral leadership did not come for free to the United States, early leadership certainly paid a dividend in designing the international regime governing environmental aspects of ECA operations. U.S. exporters were disadvantaged from the implementation of Ex-Im rules in 1995 until the adoption of the Common Approaches in 2003, but adaptation costs were borne mostly by the European nations, while the United States reaped the political benefits. This is the hallmark of successful uploading: little adaptation costs at home, but concentrated political benefits for the initiator.

Since the voluntary implementation of Rev. 6 in 2002, ECG Member States have had experiences with environmental standards on a daily basis that contradicted many of the fears they initially held – be it that application of these standards helped them to better manage risk, or that they found ways of following the rules without substantially adapting their review procedures and cover practice. Adaptation to Rev. 6 may have thus facilitated agreement to the revised Common Approaches in 2003.

Implementation of Rev. 6 certainly raised the bar for what an acceptable negotiation outcome would need to look like. Negotiators knew they had to arrive at an agreement that would be acceptable to all export credit group members – including the United States – but that at the same time had to exceed Rev. 6 in at least two aspects: the role of international standards and monitoring provisions. Only a few years earlier, ECAs could still dismiss environmental concerns as irrelevant to their business, but then the negotiations around and implementation of Rev. 6 resulted in a different discourse that

was concerned with the design of suitable environmental rules rather than with the more fundamental questions of their general appropriateness.

5.3 Conclusion

Considering the low relevance of ECAs for trade (less than 3% of exports are facilitated by them), why has harmonization been so slow and cumbersome? Given the ECG's track record of successful harmonization of financial terms and the strong U.S. leadership, the slow progress and modest results of environmental harmonization are indeed surprising. In past harmonization negotiations, U.S. leadership was a strong predictor for success and the United States certainly put a lot of effort into harmonization of environmental policies for ECAs. The U.S. government repeatedly placed the issue on the high-level G-7/8 agenda despite countervailing European interests, it sent high-level delegates to meetings typically dominated by technical experts, and even coordinated with NGOs to build transnational alliances. Still, negotiations produced a non-agreement in 2001 that was turned down by the U.S. government at the highest level.

When considering the content and implications of harmonized rules, the course of negotiations is less remarkable. The distribution of costs and benefits differed between harmonization of financial and environmental conditions. On a normative level, the Arrangement required agreement on the appropriateness of export subsidization whereas the Common Approaches meant agreeing on the suitability of environmental policies for ECAs. This is the only aspect of ECA harmonization where agreement could be expected to be easier for environmental and for financial rules. Proliferating environmental norms make it next to impossible to oppose environmental policies out of principle. However,

the intolerability of subsidization is certainly contested and French-U.S. disagreements over this had to be bridged in negotiating the Arrangement.

Beyond these normative aspects, however, the Arrangement provided more benefits at lower cost to its Participants than the Common Approaches. Squeezing subsidies out of ECA support reduced public outlays and ended a costly subsidization race without affecting the relative competitiveness of domestic exporters considerably. This did result in some regulatory costs through the adaptation of terms and rules and also produced some political costs through less favorable terms for export support, but these were easily compensated by the benefits of lower deficits and a level playing field (see also Evans 2005).

From the perspective of a state with weak environmental policies, common rules conversely, result in costs without providing any benefits. Giving in to demands for higher environmental standards means giving up a competitive edge for domestic producers without providing any tangible benefits. Upward harmonization, however, does entail costs. These include regulatory costs stemming from the creation of new rules and procedures as well as political costs resulting from foregone export opportunities.

From this perspective it is not surprising that the U.S. harmonization proposal was not warmly received by the other ECG members. Not only did countries like Germany have a much narrower conception of the purpose of export credits which ran counter to the U.S. suggestion to use this export promotion instrument for transdomestic environmental policy, but the type of rules advanced by the U.S. government was also opposed in Europe. Especially, transparency provisions and binding standards were not to the liking of German negotiators from the Economics Ministry. Only when negotiations

after the failed draft Revision 6 in 2001 incorporated flexibility in these provisions did agreement become possible. This bargain was further facilitated by a broadening of the involved regulatory community on the German side to include the Foreign Office and the Environment Ministry. The next chapter will address these power relationships as well as the rule content of harmonization proposals in detail.

Chapter 6: Obstacles to Regulatory Harmonization

Domestically, the United States has been a fore-runner in the establishment of environmental standards governing export credit agencies. It had more stringent domestic standards and has been the one country pushing for the international harmonization of export credit environmental standards within the OECD. Germany, on the other hand, opposed these developments, despite its strong Green Party. I argue that this distribution of roles is not a consequence of varying shades of “greenness”, but can be explained with reference to the compatibility of proposed rules with domestic institutional frameworks and regulatory cultures. This provides an opportunity to assess transatlantic environmental relations beyond the often too-hastily ascribed roles of “environmental leader” and “laggard” (e.g. Vogel 2003).

Considering the low relevance of ECAs for trade (less than 3% of exports are facilitated by them), why has harmonization been so slow and cumbersome? This chapter suggests that the answer to this question lies in a combination of domestic power relationships and the content of proposed rules. Compared to domestic standard setting, which was analyzed in chapters three and four, the relationship between power and rule content changes direction. In domestic regulatory reform, rule content depends on prevailing power relationships. In harmonization, proposals for rule content are externally given and the likelihood of acceptance depends on the domestic costs and benefits of the proposed rules. Negotiations allow for some change to these rules, but governments’ control over rule content is reduced since rule content depends on bargains with other states. This is because our concern is primarily with the success of harmonization and only to a lesser degree with the exact terms of the harmonized rules.

Instead of assessing the full domestic costs and benefits of harmonization proposals, as a first cut, it is sufficient to examine the compatibility of proposed rules with domestic regulatory frameworks and cultures. This is because historically prevailing power relationships have become institutionalized in the rules of the game. Thus harmonization proposals that are not compatible with existing institutional arrangements are likely to call prior bargains and compromises into question. The higher the degree of required adaptation is, the higher are not only regulatory costs in implementing such rules, but also their potential to run counter to prevailing power relationships among the government and influential constituents.

I argue that it is not the concept of environmental standards per se that made agreement in the OECD so complicated, but rather the issue of institutional fit for the proposed environmental standards. Domestic level issues of institutional fit are central to my argument. Depending on whether there exists a regulatory culture of procedural rule-making affects a nation's support for certain elements of the proposed environmental standards – especially those pertaining to the transparency of the environmental assessments and of the approval process. Similarly, states use their export credits to achieve non-trade policy goals to varying degrees. As I will elaborate in this and the next chapter, little institutional fit existed in at least three points: (i) the United States favors procedural rules which are incompatible with target-based regulatory culture in Germany; (ii) transparency of coverage decisions conflicts with German administrative law; and (iii) the explicit use of export credits for non-trade related policy objectives is commonplace in the United States, but not in Germany.

The primary concern of this chapter is with the challenge of negotiating harmonized rules. This focus sidelines another important aspect of regulatory harmonization: implementation. Domesticating internationally accepted rules has a profound impact on the meaning of provisions and can feed back into their further development (Bugdahn 2005). These concerns are addressed in chapter seven. This chapter proceeds by first analyzing rule content that would result in both considerable political and regulatory costs and then discussing domestic power relationships and how they were affected by the content of proposed rules.

6.1 Rule content

As is evident from the discussion of negotiations in chapter five, binding standards and transparency of the approval process were contentious issues in the harmonization process. These points were not only sticky because they affect the relative competitiveness of ECAs, but also because they pose differential challenges to the involved states' regulatory frameworks. Originating within the U.S. context, both procedurally detailed rules and broad transparency in their application posed no problem for states with Anglo-Saxon regulatory cultures. Continental European states, on the other hand, found it much more difficult to accept rules that did not seem to fit with their own regulatory cultures, would have required considerable regulatory adaptation, and would have upset institutionalized political bargains.

As mentioned in chapter two, U.S. litigious culture leads to rules and regulations to be challenged in the courts until a generally accepted interpretation and implementation is agreed upon and accepted in the legal system. Rules that contain few procedural details may be revised substantially in this re-interpretation process. Rules

which are rich on procedural detail, however, are much more likely to survive fundamentally unchanged. Thus, policy-makers have an interest in devising rules with as many procedural details as possible.

In continental European regulatory systems, judicial review is not as common, and rules are typically written with little detail, assuming that the professional bureaucracy will implement them faithfully. This also provides the implementing bureaucrats with considerably more flexibility in implementation. While this is true throughout continental Europe, in a direct comparison among Common Law countries, even Britain follows a path that affords much more discretion for the implementing bureaucrats than the United States does (Vogel 1986).

Similarly, transparency serves an important purpose in politically appointed bureaucracies where transparency provisions are the only means by which to evaluate performance of politically-minded administrators who may not always command the trust of the public, as they may often be guided by political considerations rather than by a professional ethos. For a state with an independent professional administration, one which does not suffer from the public mistrust towards government that is typical of the United States, transparency in administrative dealings may result in decreased efficiency and restricted flexibility in implementation. These are problems that apply similarly to U.S.-style politically appointed administrations, but with Weberian non-political bureaucracies (Weber 1977), European states do not have the same incentive to balance control and efficiency and can therefore forego increased control through transparency in favor of efficiency and flexibility in implementation.

The next sections apply the goodness-of-fit approach from EU compliance theory to transatlantic regulatory harmonization and then address the key institutional compatibility challenges individually: procedural rules, transparency, and incorporation of non-trade concerns. As the discussion on transatlantic negotiations in chapter five has already alluded to, agreement on common environmental policies was difficult because of the poor compatibility of rules proposed by the United States with continental European regulatory cultures. Compromise was possible only when loopholes were introduced into the text allowing European states to implement the Common Approaches without requiring major adaptation of regulatory frameworks. Thus, agreement became possible when harmonization was to take place on a symbolic rather than on a substantial level.

6.1.1 Institutional compatibility as a goodness-of-fit component

The goodness-of-fit concept has been a staple of EU compliance literature (Héritier, Knill, and Mingers 1996; Knill and Lenschow 2005, 1998, 2000) for a considerable time (for a review see Mastenbroek 2005; Mastenbroek and Keulen 2004). At its core, this theory suggests that the transposition of EU directives into member states' law depends on the compatibility of rules prescribed by the EU with domestic legal and institutional contexts: the better a directive's requirements "fit" with domestic legal and political traditions, the better it will be adopted. If the fit is poor, member states are less likely to transpose the rules in a faithful manner than to search for loopholes and ambiguities that allow them to implement the EU policies without considerable change to pre-existing national practices. Put differently member states seek to minimize adaptation costs.

Empirical evidence for this straightforward argument has been less conclusive than expected. Some directives have been implemented by member states despite the fact that they were required to implement major reforms, while other member states have not implemented rules that are highly compatible with their domestic contexts. In response, analysts have added auxiliary political hypothesis to account for the variation not explained by the main goodness of fit hypothesis (Mastenbroek 2005).

The established goodness of fit approach considers compatibility of rules in various dimensions. Compatibility is assessed in both a policy and an institutional dimension and also with regard to formal and informal rules and practices (Mastenbroek 2005: 1109), allowing for the consideration of regulatory culture beyond written rules. Institutional compatibility is the dimension considered here. In another departure from its application to EU politics, the treatment in this section is concerned only with the negotiation phase of regulatory harmonization, and not with the implementation of agreed rules which is covered in chapter seven.

By limiting this analysis to the negotiations rather than including the implementation phase, the main problems which plague the goodness of fit theory in EU compliance are not an issue. Auxiliary political hypotheses are usually introduced to explain the political process of implementation: domestic actors play different games in implementation than do their governments' representatives in negotiating EU policy in Brussels. In ECA politics, the number of levels and range of actors involved is much more limited: most ECA rules do not require parliamentary ratification; thus, legislatures are neither in a strong veto player position, nor can they considerably alter the substance of rules from what the international negotiators intended. Furthermore, the administrative

nature of ECA rules conflates the roles of both negotiator and implementer: the domestic rules are written by the same bureaucrats who negotiate the international guidelines. This reduces the regulatory community to those only directly involved with the formulation of relevant administrative procedures and removes the two-level game character of implementation which undermines the strength of the goodness of fit theory in EU compliance. At the same time, it also strengthens this theory by bringing the implementers' concerns directly to the international negotiation table. Institutional compatibility of proposed rules should thus have a strong impact on negotiators' acceptance of proposals.

Institutional compatibility can thus serve as an important predictor for the likelihood of adoption of proposals in negotiations, and it is also relevant in the domestication of international agreements; that is, their adaptation in the process of domestic implementation (see chapter seven and Bugdahn 2005). By anticipating implementation challenges, negotiators who will implement the bargaining outcome themselves can define negotiation strategies and acceptable negotiation results in a much more detail-oriented fashion than negotiators who are not in control of domestic implementation. Negotiator-implementers are likely to shirk high adaptation costs and seek an agreement that is easy to implement. Furthermore, they will limit the range of acceptable results to those that they can implement themselves. That is, rules requiring modifications of the legal/institutional framework beyond their sphere of authority are unlikely to be considered acceptable; since such provisions would introduce an additional game level in the implementation process, bringing with them all the problems evident by the limitation of the goodness of fit theory in EU compliance.

We can observe this behavior on both sides of the negotiation table: German negotiators perceived little compatibility between what the United States was proposing and what they could actually implement with little adaptation of existing rules. American negotiators, conversely, needed an agreement that established common environmental review procedures since the Congressional mandate had removed authority over environmental policies for Ex-Im from their sphere of influence. They were limited to negotiating harmonized rules that would not put the nature of Ex-Im's policies into question. In this sense, one could argue, U.S. negotiators did face a domestic ratification game which made their position even less flexible.

6.1.1.1 Procedurality of rules

Rules identical in content with respect to regulatory targets, objectives, as well as qualitative and quantitative evaluation criteria can still vary drastically with respect to the means and instruments used to achieve these objectives. Sidelining the choice of instruments for the moment, a key concern is whether rules prescribe objectives and sanctions for failing to achieve them (that is prescribing targets), or whether rules also determine the process for achieving these objectives. Target-based rules have the clear advantage of establishing goals while retaining flexibility in implementation, whereas procedural rules remove ambiguity from the implementation process by detailing the means of their execution. At the same time, target-based rules tend to reduce discretion in judging goal achievement and procedural rules pre-empt custom-tailored implementation strategies. Generally speaking, the United States is more pre-disposed towards procedural rules than Germany (for a related comparison among the United States and Britain see Vogel 1986).

Since the National Environmental Policy Act (NEPA) of 1969, all U.S. federal programs and projects have needed to evaluate their environmental impact. Over time, environmental assessments and environmental impact statements have become deeply institutionalized within the United States. While much of environmental legislation in Germany has been adapted from U.S. domestic regulation, environmental impact assessments have only been implemented in Germany after an EU directive required implementation. Dryzek et al. report:

Famously, the German government took five years to transpose the EU's 1985 Environmental Impact Assessment directive into national law, and another six years to introduce the administrative provisions required for its implementation – largely because, as Kraak and Pehle (2001: 6) explain, the European directive 'is comparatively blind when it comes to internal German administrative structures'. [...] The European Commission has since sued the German government (successfully) over the inadequacies of the provisions it did manage to implement (Dryzek et al. 2003: 116).

Demmke shares this assessment in his analysis of Germany's role in European environmental policy development. He suggests that Directive 85/337/EEC, the result of a French initiative, was the first instance of European environmental rules proving themselves incompatible with German regulatory culture. Up to this point European provisions were very compatible with German command-and-control legislation. However, the procedural nature of the Environmental Impact Assessment Directive was at odds with German regulatory tradition. Similarly, a number of directives passed in the 1990s proved foreign to the German legal system, including the Environmental Information Directive 90/313/EEC (Demmke 1999).

He suggests that pollution control measures and approvals of new substances governed by meeting command-and-control type requirements are much more in-line with German regulatory culture. This enabled Germany, for a long time, to upload its

rules onto the EU pollution control agenda, while other countries like Great Britain faced considerable adaptation costs (Demmke 1999: 57).

These two directives serve as almost perfect examples for the difficulties encountered in harmonizing ECA environmental rules. Rules proposed by the United States would have established detailed procedural rules for assessing environmental effects of projects, and relied on public transparency provisions for monitoring and enforcement. The same two aspects were at the core of German difficulties with the EU environmental directives which established environmental review procedures and transparency of administrative acts.

What in the United States stands as the norm appears to be at odds with German regulatory culture. Although it is a perfect fit for U.S. domestic institutions – especially the reliance on explicit policies and procedures – this set of rules is less compatible with the German preference for outcome-oriented measures and little procedural detail within its corporatist arrangements with industry. David Vogel (1986) identified related institutional differences between U.S. and British approaches in regulating industrial pollution. British administrators preferred to retain more flexibility in their dealings with industry than their U.S. counterparts. While flexibility is not a hallmark of the German legalistic style of regulation, these observations clearly highlight differences in preference for procedural rules.

Not surprisingly, the change in European environmental politics strategy from command-and-control to more procedural measures has been attributed to the successful uploading of domestic rules to the EU-level by states favoring rules that “do not fit with German regulatory philosophies” (Demmke 1999: 45). Related to this, Liefferink and

Andersen consider Germany the most ambivalent leader state, one which is highly active in some areas while being highly inflexible in areas that do not fit with its regulatory culture (cited in Demmke 1999: 49-50).

The procedural nature of the proposed rules allowed for little compatibility with German regulatory culture, favouring target-based rules over procedural ones. This was amplified by the fact that pre-approval review of projects is standard practice for bank-type ECAs which need to evaluate all risks a project may bear, while insurance-type ECAs like the German Hermes have little incentive to evaluate a project in detail prior to granting cover (see chapter two). An insurer's mode of operation not only suggests that conditions can be written into cover agreements, but also implies that there is no use in assessing whether or not these conditions have been met unless a claim is filed against this insurance. Thus, procedural rules provided a misfit not only with German regulatory culture, but also with the business model of German export credits.

6.1.1.2 Transparency

Adoption of U.S. style transparency rules for Hermes credits would require more than just modification of ECA rules. In fact, it may require extensive reform of German administrative law for which there was little political interest/drive at the time of the Common Approaches negotiations (personal communication with German activist, 17 July 2003), necessitating an expansion of the regulatory community involved which could spark further unintended reforms. However, when viewing ECA harmonization from a regulatory reform perspective, the Common Approaches – just like the Aarhus Convention and the EU Environmental Information Directive – already serve as external forcing events promoting such reforms with respect to transparency. While limiting the

regulatory community to its current members served to control the range of modification to Hermes policies, it did little to control the reform agenda in public discourse. German reluctance to agree to U.S. initiatives in fact increased the domestic political salience of Hermes reform.

Part of the environmental impact assessment process in the U.S. is the publicity of these assessments. This provides stakeholders with an opportunity to comment on the projects' anticipated impacts and possibly challenge the adequacy of the environmental review. Similar to the requirement of supplying an environmental impact statement, process transparency is deeply institutionalized in the United States. Quite to the contrary, such information is considered commercially confidential and not to be released by public agencies in Germany. New ways were sought out to integrate the Common Approaches' 30-day transparency requirement into German regulation, but not surprisingly, German negotiators were strongly opposed to this rule for a long time. As pointed out above, flexibility provisions incorporated in the Common Approaches facilitated agreement but also rendered the agreement less effective.

Legal provisions (Paragraph 30 *Verwaltungsverfahrensgesetz* and Paragraph 203 *Strafgesetzbuch*) regarding personal and commercial confidentiality could easily be changed or amended by law. However, this would mean involving the legislature in implementation rather than implementing environmental policies for Hermes credits via administrative procedure. As outlined above, negotiator-implementers seek agreements they can implement within their own sphere of authority. Modification of confidentiality provisions in German administrative and criminal law clearly lie beyond the reach of these bureaucrats, and, not surprisingly, German negotiators sought common rules that

could be implemented without modifications to fundamental legal provisions that would also entail a widening of the involved regulatory community. As Dunne reports:

On transparency, officials note that German privacy and data protection laws do not allow the sort of insight available in the US. 'We have to work within German law,' says Thomas Wohlwill, joint head of the agency's credit department, with special environmental responsibilities. 'If an exporter allows us to publish details of a project ahead of a decision, then we would do it. But if not, we have to respect that company's right to confidentiality'." (Dunne and Simonian 2002)

Wohlwill, a Hermes employee, was involved in negotiating the Common Approaches as an environmental expert in Germany's delegation to the ECG.

Beyond the specifics of transparency in ECA decisions, the general regulatory culture concerning transparency is informative. The U.S. Freedom of Information Act (FOIA) of 1966 predates NEPA (and thus environmental assessment procedures); the German legislator, however, has passed right-to-know legislation only rather recently in 2005, which went into effect on 1 January 2006, and, it should be noted, only after the Common Approaches had been negotiated. Freedom of information rules have been around since at least 1766 with the adoption of Sweden's Freedom of the Press Act. The U.S. FOIA marks a relatively early adoption of such rules, while Germany is clearly a late-comer. In France access to administrative documents is a constitutional right and has been law since 1978. The British freedom of information regime of 2000 went into effect in 2005 (Banisar 2005; Bugdahn 2005: 190).

In a comparison with the U.S. approach to information access, Wieland labels the German one a "denial of access" that "tends to increase [bureaucracy] power by excluding the public and by keeping its knowledge secret" (Wieland 2000: 98). Access to information is not intended to provide democratic control, but rather only serves to protect the individual in disputes over administrative acts (Wieland 2000: 98-9). The German Gesetz zur Regelung des Zugangs zu Informationen des Bundes of 5 September

2005 (*Informationsfreiheitsgesetz* 2005) was one of the last laws of its kind to be adapted in Europe. Though rather restrictive in nature, the German law took more than seven years to mature from initial proposal to final adoption (<http://www.freedominfo.org/countries/germany.htm>, accessed 31 July 2007 and Banisar, 2005 #3017}. Whereas the law does establish a right-to-know, it also upholds pre-existing limitations, including those confidentiality restrictions that Hermes supporters typically cite in support of a restrictive transparency regime for ECAs.

Prior to the adoption of general freedom of information regulation in Germany, the EU Access to Environmental Information Directive 90/313/EEC required the creation of laws governing the access to environmental information throughout Europe. Germany transposed this directive into national law in 1994. In her analysis of the directive's transposition in Ireland, Great Britain, and Germany Bugdahn argued that Germany "ha[d] a strong contradicting tradition and is most likely to adopt a transposition with conservative and cost-restrictive interpretations" (Bugdahn 2005: 186). Not surprisingly, the half-hearted transposition triggered infringement procedures by the EU Commission which conferred the case to the European Court of Justice (ECJ) in 1997 (Bugdahn 2005: 191) mirroring the reluctant transposition of the Environmental Impact Assessment Directive 85/337/EEC.

The meta-regulation story with regard to transparency is that it has spread to Germany at last. However, this harmonization process was driven primarily by "penetration by external actors" (Bennett 1991): the Aarhus Convention, EU directives, and a proliferation of international agreements stipulating transparency forced regulatory reform in Germany. The Common Approaches certainly fall into this category of

externally-forcing events, while their negotiation was also subject to a “last stand” mentality within a German bureaucracy seeking to fend off undesired infringements on their autonomy over administrative confidentiality. In any case, broad transparency provisions as part of the U.S. negotiation pitch certainly did not facilitate German agreement to the U.S. proposal. Not surprisingly, German implementation of the Common Approaches exhausted all flexibility in the Common Approaches’ language regarding transparency, and thus, agreement to the harmonized rules would have been unlikely without the passages that allowed implementation without fundamentally changing existing procedures (see chapter seven).

6.1.2 Moving beyond incompatibility

Cowles and Risse argue that misfit brought on by Europeanization not only poses a problem for harmonization, but it can also generate adaptational pressures on domestic structures that can help change existing practices (Cowles and Risse 2001). In this view, regulatory harmonization and competition can serve as external forcing events in regulatory reform.

With regard to environmental impact assessments and transparency, negotiation of the Common Approaches provided yet another external event pushing Germany further towards the incorporation of procedural meta-regulations that had been on the regulatory reform agenda for a considerable time. The consideration of both preceded the Common Approaches, but neither was fully institutionalized at the time the ECG was negotiating harmonized environmental rules for ECAs. Environmental impact assessments had been implemented in Germany from 1996 on, but the experience with the new instrument had not been a very good one in that it slowed down administrative

processes considerably. Given the Commission's infringement proceedings concerning Germany's transposition of the directive, it was not surprising that bureaucrats were not keen on establishing yet another administrative process that required formalized environmental review.

Freedom of information legislation was even more nascent at the time when consideration was being given to a general right-to-know act (starting in 1998); furthermore, the 1994 transposition of the Access to Environmental Information Directive was being challenged by the EU Commission at the same time. Here, too, German bureaucrats' aversion to transparency provisions is very understandable.

Nevertheless, the general climate in which the Common Approaches were negotiated slowly tilted towards environmental assessment and transparency, and complete resistance was therefore futile. The question was how much assimilation was necessary to secure agreement in the ECG while also protecting established domestic procedures. The timing of German domestic environmental rule revisions for Hermes in 1998 and 2001 – in each case pre-dating agreements within the ECG – suggest that the negotiations did exert considerable adaptation pressures even if German rules fell somewhat short of faithful implementation of the OECD agreements. Although this is not an example of complete harmonization, these negotiations did bring German policies much closer to the level playing field favored by the United States.

6.1.2.1 Incorporation of non-trade concerns

ECAs can serve multiple purposes. First and foremost, these agencies were created to create jobs by promoting exports. Beyond job creation, however, ECAs can be used to achieve additional objectives. Access to export credits can be used as a tool of

foreign policy: countries can be blacklisted for ECA-supported exports if they do not fulfill certain criteria. ECAs can also work as agents of development by facilitating exports into developing countries that may otherwise not be able to finance these products and services. ECAs can implement industrial policy by supporting specific sectors and products. Most recently, ECAs have been discovered by NGOs to provide considerable leverage in promoting sustainable development.

ECAs typically maintain lists of countries for which export credits are not available. Most of these lists are based on financial prudence; risks and exposure assumed by ECAs must be manageable. These agencies do support exports to much riskier buyer countries than commercial insurers could by relying on superior credit rating and the ability to write off losses with recourse to public budgets, but if buyer countries are unlikely to pay for exports, then even ECAs need to consider whether they can afford to provide credits and guarantees for exports to these countries. This restriction is dictated not only by financial and budgetary prudence, but also by WTO rules that stipulate that ECAs have to operate on a no-loss basis. Financial losses would equate to prohibited subsidies. Beyond excluding high risk-buyer countries from cover, some ECAs also exclude countries from cover for political reasons.

6.1.2.1.1 Targeting countries

Ex-Im reauthorization legislation is almost unthinkable without political considerations regarding countries that should be included or barred from Ex-Im support. The 1992 reauthorization prohibited assistance to “Marxist-Leninist countries” and to countries which violated human rights (United States Congress 1992a). In 1997, the Export-Import Bank Authorization bill prohibited transactions involving Russian firms, if

Russia proceeded to transfer SS-N-22 Sunburn or SS-N-26 Yakhont missiles to China (United States Congress 1997). The most recent reauthorization from 2006 allowed support for railroad construction between Baku, Azerbaijan, Tbilisi, Georgia, and Kars, Turkey only if such a connection was to traverse or include Armenia (United States Congress 2006). Furthermore, the Belarus Democracy Reauthorization Act of 2006 authorizes export credits to Belarus for delivery of humanitarian goods and agricultural or medical products only (United States Congress 2007).

While excluding recipient countries for exclusively political purposes is not practiced in Germany – guidelines and policies for Hermes are after all set by the Economics Ministry – considering individual transactions can involve political calculations. Export credits must be approved by the inter-ministerial committee, and each department involved brings its own considerations to the table. The Finance Ministry is most concerned about financial risks; the Ministry for Economic Cooperation considers primarily developmental aspects; but the Foreign Office takes foreign policy objectives into account when export credits are considered. Given the committee's consensual mode of operation, foreign policy considerations can lead to the denial of an application for cover. On the other hand, cover for individual transactions can also be politically motivated to improve relations with other states by encouraging exports. Similarly, political consideration can play a role in removing countries from exclusion lists. Russian defaults on old debt had resulted in the loss of eligibility for Hermes credits. However, the German government was politically interested in improving its relations with Eastern European countries in the late 1990s, and re-instatement of export credits to Russia therefore became a political issue. In 2001/02, support for

democratization and anti-terrorism were high on the political agenda. To this end, Cuba, Pakistan, Syria, Ukraine, and Yugoslavia were moved off Germany's blacklist – clearly a political move that was motivated more by the desire for improved relations than by changes in underlying risks (Süddeutsche Zeitung 2002; Frankfurter Allgemeine Zeitung 2001; Ehrlich, Thornhill, and Bokhari 2001; Süddeutsche Zeitung 2001; Schwennicke 2001). In a related high-profile move, export credits were granted to China for the construction of a maglev train line connecting Shanghai with its airport. In this case, the € 500 million in export credit guarantees (coupled with €100 million in tied aid) served a dual purpose: improving economic relations with China while establishing the first commercial adoption of German Transrapid technology (Eichels Baustelle in Shanghai 2002).

What sets this use of export credits for political ends apart is that the United States is much more likely to have general policy objectives and categorical exclusions in place while keeping the approval process rather apolitical. Germany, on the other hand, is unlikely to task Hermes with grand policy designs, but nevertheless makes policy considerations part of the approval process for export credit applications (see also chapter four).

6.1.2.1.2 Promoting development

ECAs support a considerable volume of exports to developing countries. While export credits facilitate only around 3 per cent of total foreign trade, around 20 per cent of trade with developing countries is made possible with export credits. Considering this share of exports, it is apparent that ECAs can have a significant impact on developing countries through the types of projects or exports they support. This developmental

aspect has long been recognized and incorporated into ECA procedures – albeit to different extents. The Swiss Exportrisikogarantie has included developmental experts on its advisory board since the 1970s. The German inter-ministerial committee for export credits includes a representative from the Ministry for Economic Cooperation.

However, ECAs' primary objective is job creation through export promotion. Developmental concerns are secondary (see also Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung 1999). This becomes especially apparent in the role of ECAs in supporting arms exports. Many have called on ECAs to stop providing credits and guarantees for arms exports to poor countries. Nevertheless, ECAs like the British ECGD continue to finance a considerable volume of arms to developing countries despite their negative developmental impact.

6.1.2.1.3 Implementing industrial policy

Targeted ECA programs can benefit specific sectors of the economy. Commercial aircraft would be much more difficult to sell without ECA support, and ships and nuclear power plants are also among the sectors for which OECD ECAs established sector agreements to harmonize ECA terms for exports areas considered central to ECA operations. Individually, ECAs have also implemented programs to help certain parts of their economy or to promote the export of specific products.

Regarding domestic programs, support programs for small and medium-sized enterprises (SMEs) are particularly popular among ECAs – especially among those ECAs defending themselves against corporate-welfare critics. The 2006 reauthorization for the U.S. Ex-Im Bank, which included the establishment of a Small Business Division, required small business specialists in each division and created a Small Business

Committee to coordinate SME activities within the agency (United States Congress 2006). The German government similarly strives to make its export credits easily accessible for SMEs (<http://www.agaportal.de/pages/aga/grundzuege/mittelstand.html>; accessed 3 August 2007).

Many ECAs have also established programs to support the export of environmental technology and thereby assist these sectors of their economy. Ex-Im has an Environmental Exports Program which offers preferential terms for qualified exports (<http://www.exim.gov/products/special/environment.cfm>; accessed 3 August 2007). The German export initiative for renewable energy is jointly run by the German energy agency and KfW and such exports are considered highly supportable through export credits (http://www.agaportal.de/pages/aga/grundzuege/erneuerbare_energien.html; accessed 3 August 2007).

Compared with the extensive SME and environmental exports initiatives at Ex-Im, German efforts in these areas are rather limited. While there are demands for both types of support in both countries, the United States government has been much more forthcoming in establishing broad policy-guided initiatives than the German administration where Hermes policies are rather immune to Parliamentary demands.

6.1.2.1.4 Protecting the environment

NGOs realized in the 1980s that challenging the sources of financing can be an effective tool for preventing the completion of unwanted projects. NGO campaigns which led to the adoption of environmental policies by international finance providers all started with environmental critiques of individual environmentally problematic projects. This leverage over large projects (see chapter four) means that even challenging relatively

moderate components supplied with ECA support can undermine the financial viability of a project. ECAs have responded to this relatively recent demand in a variety of ways, ranging from the denial of export credits' relevance for the environment to the incorporation of far-reaching environmental policies regarding their operations.

In Germany, the environmental response has been rather unenthusiastic. National environmental rules are at the low end of what is prescribed by the Common Approaches, utilizing all possible loopholes in the agreement. However, domestic nuclear phase-out has led to the inclusion of a nuclear technology exclusion criterion: German export credits are not available for exports of nuclear technology. This marks the only policy-guided categorical exclusion in Hermes guidelines, implemented by the SPD-Green coalition in 2001. This rule excludes nuclear technology from Hermes support but the rule was defined and implemented in such a way that *it allowed the export of technology for nuclear facilities as long as the products themselves were of a conventional nature or improved the safety level of existing installations*. The wording of this rule is considered weak, but it does represent the most the Economics Ministry was willing to concede to in 2001 (interview with German official, 30 January 2004).

The nuclear policy has been tested a few times since then. In December 2003, it became public knowledge that Siemens had applied for Hermes guarantees to cover its shipment of turbines to a new nuclear power plant in Finland. It was the first new nuclear power plant to be constructed in Europe after the Chernobyl disaster. This coincided with Siemens' request for permission to sell its Hanau reprocessing facility to China. Due mainly to this overlap, public opposition mounted against this sort of nuclear technology support, and thus resulted in Siemens withdrawing its request for Hermes guarantees in

an attempt to secure permission to sell the reprocessing facility to China after political opposition to these deals had increased. Since Hermes rules exclude only nuclear technology *per se* from support and not *components* of nuclear projects, initial enquiries for support by Siemens received support from Hermes officials. The ministries represented in the inter-ministerial committee (including the Green foreign office) did not object either. Only when the request became public, and the issue politicized, did members of the committee reconsider their support, and thus prompt Siemens to withdraw its request.¹³ Siemens' structural power prevailed until the political cost of approval increased dramatically through publicity of the request.

In addition to the nuclear exclusion provision, a special program for promoting renewable energy technology exports is the only other policy-oriented initiative regarding German export credits (see Schaper 2004b). Remarkably, both exceptions to general Hermes rules concern environmental objectives. No other such special rules exist for this export promotion instrument.

6.1.2.2 Politics and ECA terms

These political considerations should be irrelevant if ECAs would only serve to correct an aspect of market failure (i.e. the lack of affordable financing to many countries). However, ECAs are political creatures, and thus these concerns do matter to some extent. However, their relative importance varies across states: the U.S. Ex-Im Bank is frequently tasked with tasks beyond job creation by Congress. German Hermes credits, on the other hand, have proven largely resilient to such political interference. This culture regarding non-trade concerns in ECA objectives is a consequence of prior policy

¹³ The IMA always never turns down applications, but it does signal to applicants when it may be "appropriate" to withdraw an application for cover.

history and institutionalized political bargains and power relationships. It also impacts the organization's stance in negotiating international agreements that go beyond rules for core ECA business. Negotiating environmental terms came much more naturally to U.S. ECA representatives who had considerable experience in dealing with domestic political demands than to the German Economics ministry and Hermes representatives, who had a much narrower sectoral conception of appropriate ECA operations. Furthermore, the German government's establishment of a domestic environmental policy had already conceded much more ground than any other "secondary" policy objective had received prior to this. A German official argued that the government could not give into the environmental reform demands, even if it considered them appropriate, as this would open the door to even more demands, possibly spilling over to social policy and human rights demands (interview with German official, 8 January 2004). The sectoral conception of German export credits (see chapter three) did not allow accommodation of overarching policy concerns (see also Schaper 2003).

Consequently, Hermes credits serve their primary purpose of job creation through export promotion and are also employed as an industrial policy instrument. Cover decisions in a committee also involving representatives from the finance, development, and foreign affairs ministries enable the consideration of policy objectives beyond export promotion, but Hermes credits are unlikely to be used as a foreign policy instrument as in the U.S. case. Individual cover decisions may be politically motivated, but no policy objectives beyond export promotion guide the disbursement of German export credits.

6.1.3 Competing imperatives: how to overcome the dilemma?

The obvious solution to retaining easy access to export credits for European firms, while at the same time appeasing the United States and environmental critics of ECAs, was to attain agreement on policies satisfying the moral requirement of establishing common environmental rules while at the same time leaving enough room for ECAs to implement them in a way that would pose the least amount of interference with business as usual, and thus minimize adaptation costs while harvesting political benefits.

Both the United States and NGOs had suggested the World Bank's environmental policies as a point of reference. Establishing this particular frame of reference proved successful and convincing for at least two reasons. First, supporters of environmental policies for ECAs could argue that the types of projects supported by the Bank were similar to those for which ECA rules were sought. This pitch was even more convincing because it came from a coalition of actors that included the very same NGOs that had earlier criticized the Bank for its environmental performance. Negotiators were thus restricted to an agreement that would mirror, resemble, or at least reference World Bank environmental policies.

An initial agreement among these lines, however, was not supported by the United States in 2001. Revision 6 of the Common Approaches established common environmental rules for ECAs and provide flexibility in their implementation, but did not provide for strong monitoring or enforcement mechanisms. Rev. 6 did not provide a substantial solution to re-levelling the playing field among ECAs, but it could have provided a viable political solution by moving the issue off the agenda, it could have provided the U.S. Ex-Im Bank with a pretext to reconsider its environmental policies, and

it could have given European ECAs rules that were easy to implement without much adaptation. Still, the U.S. government objected to Rev. 6, and insisted on the negotiation of common guidelines reducing the range of qualitative standards which ECAs could apply, including stronger transparency and monitoring requirements.¹⁴ In other words, the United States sought an agreement that was more detailed in its provisions and provided more procedural guidance for implementation. Not surprisingly, continental European negotiators were opposed to rules that seemed out-of-step with continental regulatory culture (see chapter two).

In addition to these institutional factors, German domestic politics also attached a considerable political price to supporting the Common Approaches for German negotiators whereas U.S. negotiators could only benefit from any agreement that departed from the status quo. After assessing the compatibility of harmonization proposals with domestic regulatory cultures, the next section turns to the power of competing demands on ECAs and their effects on the acceptability of proposed rules.

6.2 Power

Environmental policies for ECAs are behind-the-border-rules with an effect on trade. However, this effect is only indirect. These policies regulate the access to export promotion for domestic exporters. They neither limit market access to foreign companies nor provide export subsidies. In fact, these rules restrict access to export subsidies. This means that these rules are a detriment to exports, and we should expect states engage in a race to the bottom in order to serve the interests of exporters. Thus, one should not expect

¹⁴ This decision was made by the White House, not on the level of the involved departments (interview with U.S. lobbyist, 7 July 2004; interview with three U.S. officials, 7 July 2004).

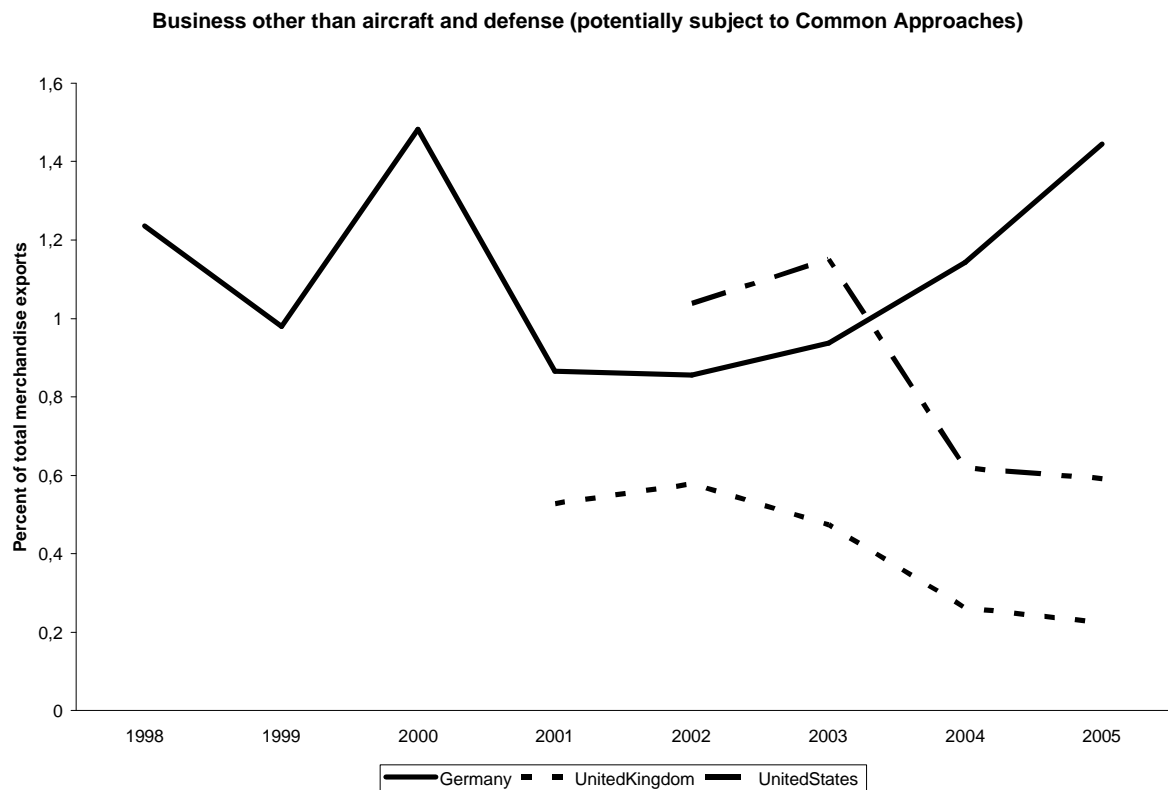
these regulations to be a primary target for upward regulatory harmonization (see chapter two). Nevertheless, the United States sought upward harmonization after it had put strict domestic rules in place unilaterally.

Strict environmental rules for access to export credits impose costs on domestic firms, and thus hurt them. The political cost of these standards not only depends on the stringency of these standards (that is the amount of cost each affected firm incurs), but also on the number of affected firms and transactions, and the power of the affected firms. Since environmental rules for ECAs primarily affect large-scale infrastructure development and are largely irrelevant for other important ECA business like commercial aircraft, ships, or military exports, their national relevance depends on the volume of ECA-supported exports for infrastructure development. In 2002, 35 per cent of total Ex-Im exposure was accounted for by aircraft financing; at the same time, the British ECGD had underwritten more than 60 per cent of its business for defense and aircraft, but only 15 per cent of German Hermes guarantees went towards aircraft deals during the same year (Wang et al. 2005: 36).

Among the exports supported by ECAs, environmental rules clearly play a more important role for those ECAs which support few exports in unaffected sectors. This is especially true for German Hermes guarantees which support far less commercial aircraft deals than either the U.S. Ex-Im Bank or the British ECGD. However, share of ECA portfolio is only part of the story. The size of the overall ECA portfolio must be considered as well: ECA relevance can be measured by the share of ECA supported exports of total exports. The more important an ECA is to national exports, and the more business it conducts in infrastructure development, the more relevant environmental

standards are for this particular ECA. This means that as much as 1.44 per cent of total German export of goods in 2005 were subject to the Common Approaches, whereas only 0.59 per cent of U.S. and 0.22 per cent of British exports fell into categories which could have required review under the Common Approaches (see Figure 6.1). These figures may be small, but considering that ECAs provide assistance for not more than 3 per cent of total exports (including short-term cover) on average, a difference of 1 per cent is highly significant.

Figure 6.1 Business subject to environmental review



Sources: Author's calculations based on OECD data on export credits, WTO data on merchandise exports, and UN data on SDR-USD conversion rates; Ex-Im Annual report 2006, p. 36; ECGD 2005-2006 Annual Report, p. 20; Hermes Annual Report 2006.

Environmental rules for export credits are most relevant where much ECA support is afforded for construction or components supplied to large infrastructure

construction. This is especially true for the #1 Hermes client Siemens, whereas Boeing and Airbus as the largest clients of Ex-Im and ECGD respectively, need not fear that environmental ECA policies would impact their support. Thus, if there exists a general incentive for downward competition on environmental requirements among ECAs, the downward-pull should be stronger among ECAs supporting much infrastructure business than among agencies involved primarily in exports lying outside the scope of the environmental assessment requirement.

This can serve as a partial explanation for Germany's reluctance to establish strict environmental rules, but it does not quite adequately account for the establishment of the Common Approaches after all. The distribution of differential gains from harmonization, depending on sectoral composition of ECA portfolios, provides an important backdrop for the following discussion of motivations and strategies for harmonization, but a look inside the rules is required for understanding the harmonization process beyond Germany's initial aversion to the establishment of common environmental rules. This was driven by its concerns about the proposed rules' impact on German exports – a clear manifestation of German industry's structural power.

6.2.1 U.S. motivation for seeking harmonization

The U.S. motivation for seeking common environmental rules among ECAs is easy to understand. The unilateral adoption of environmental requirements to gain support by Ex-Im resulted in a disadvantage for U.S. exporters vis-à-vis their foreign competitors. This disadvantage could only be removed by either relaxing Ex-Im's environmental policies or through the adoption of similar rules among other ECAs. Since Ex-Im's environmental policies were mandated by the U.S. Congress, the administration

could neither repeal Ex-Im rules nor significantly alter them on its own. Though the Congressional requirement did not provide particular details for these rules, it is obvious that significant relaxation of Ex-Im policies could be challenged during its next re-authorization. Thus, the only viable option for re-leveling the playing field was a solution at the international level. Even if this endeavor would have proven futile, it may have helped U.S. exporters, as such a failure might have provided the political context for scrapping Ex-Im's environmental rules. If uploading of Ex-Im's rules proved successful, no further domestic action would be required; either way, an international initiative was the only solution. The administration and Ex-Im were held hostage by supporters of environmental policies who had successfully instrumentalized Congressional power.

In addition to these strategic considerations, which were a consequence of the U.S. separation of powers, there were additional political motivations for uploading Ex-Im rules. In addition to industry (which favored the removal of a competitive disadvantage), environmental activists were also in favor of bringing environmental rules to other ECAs. This constellation of industry and activists is a perfect "Baptists and Bootleggers" coalition as described by DeSombre (2000; 2005); it can exert considerable pressure on the administration to act on their behalf, and is thus a good predictor of international environmental action by the U.S. government. The existence of strict domestic U.S. rules also suggests that the administration would actively pursue the establishment of international environmental rules for ECAs (Haas 2003).

Not surprisingly, the U.S. administration sought the establishment of international rules for ECAs soon after the implementation of Ex-Im's environmental policies. Initially, the issue was raised by the U.S. government in the OECD in 1994, subsequently

considered in the context of G-7 meetings (first at the 1997 Denver summit over which the United States as the host had agenda control), and after an endorsement at the head-of-state level at these meetings, the OECD ECG was tasked with the development of international environmental rules for ECAs.

6.2.2 Why harmonize?

Both Germany and the United States have a history of internationalizing their domestic environmental regulations, and at the same time resisting internationalization by others when the proposed rules were in conflict with their own domestic rules. While this is helpful in identifying conditions under which either nation is likely to be either a “leader” or “laggard,” it does not help us to understand when an internationalization attempt is likely to succeed, with the rare exception of a proposal acceptable to all parties involved. Although DeSombre makes the case that U.S. market power “over the target state is an important predictor” (2000: 247) of successful internationalization of domestic U.S. regulations, her argument only holds for domestic standards that can be used to limit non-conforming foreign products’ access to the domestic market. Since environmental standards for export credit agencies apply only to a nation’s own ECA and its clients, they cannot be used to exert external pressure on target states.

In the case of environmental standards for ECAs, setting unilateral standards does not directly result in pressures on competing nations to adapt. Such unilateral standards only serve as a barrier for domestic exporters to gain support from their national ECA. Consequently, a level playing field among ECAs can only be created by scrapping domestic environmental standards, that is, a race to the bottom, or by actively seeking an agreement with competing nations.

By attempting to internationalize its domestic export credit policies, the United States has followed an established pattern described by Elizabeth DeSombre (2000) and Peter Haas (2003). When both environmentalists and industry favor international environmental regulation, the United States is likely to promote internationalization of its domestic policies. Similar to the import restrictions for tuna and shrimp discussed by DeSombre, binding environmental standards for ECAs implemented throughout the OECD would provide for benefits to U.S. industry over the status quo. The difference in this case is the United States' dependency on international cooperation to achieve its goal. While import barriers are problematic under WTO rules, they only require passive cooperation – i.e. no appeals to the WTO against these rules –, harmonizing environmental standards, on the other hand, requires other states to actively cooperate by embracing the idea and working towards a common set of rules.

The U.S. dependency on international cooperation in its effort to harmonize environmental standards for ECAs is evident from the discussion above. Given the nature of export credit rules, the United States could not rely on its market power to promote its agenda, but rather, had to seek out cooperation from the other ECG members. The other ECG Member governments, however, had little incentive to concede to the American want for environmental standards harmonization, save with the exception of similar demands made on them by domestic activist groups and their concerned constituency. Consequently, the other ECG Member governments were much more concerned with the nature of the proposed rules. The U.S. proposals consisted of procedural rules for the evaluation of environmental impacts of supported projects as well as of binding standards to be used in the evaluation process, and of public transparency of the environmental

evaluation process. The transparency provisions, especially, were at odds with continental European regulatory traditions.

Since there is little economic reason for a nation to agree on stricter environmental standards which would result in a competitive disadvantage for its exporters, explanations must be sought elsewhere. Among the first candidates for such alternative explanations are domestic-level explanations such as public pressure or interest group politics. U.S. domestic standard-setting occurred in response to domestic pressure to establish such standards, and most ECG Members also experienced some degree of domestic political pressure for the establishment of environmental standards for their ECAs. Normative factors, for example, the way an issue is being framed in public discourse, can also influence the acceptability of various potential solutions to the harmonization challenge. Research by David Vogel (1995) as well as the Environmental Policy Research Centre at the Free University Berlin (Busch and Jörgens 2004), points to the effects of pioneer standards on the policies in other polities.

While it is easy to understand why the United States sought to upload its ECA rules to the international level, explaining the adoption of the Common Approaches is much more difficult. From a strategic trade perspective (Krugman 1986), only the United States had to gain, because ratcheting up of environmental requirements for ECAs would result in relative losses for all other involved ECAs as such international rules would restrict their exporters' access to export promotion, and thus remove the relative advantage they had over U.S. competitors who had to comply with Ex-Im rules.

6.2.2.1 Balancing environmental with industrial policy concerns

Thus far, this discussion has treated the issue of environmental policies for ECAs as one-dimensional, that is, being only about the departure from the status quo (non-existence of environmental rules for ECAs). Portraying this as a conflict simply about relative ease of access to export promotion neglects the environmental dimension. This negotiation game occurred in two dimensions: the desirability of limitations on export promotion and environmental protection. Each government had to cater to two competing constituencies: business and environmental activists. Only the United States was in the fortunate position to have a coalition of these groups backing its push for common environmental rules, thanks to its unilateral implementation of similar rules which put U.S. business in a position to favor harmonization, even if it meant legitimizing and supporting environmental conditionalities.

Keck and Sikkink's (1998) analysis of transnational advocacy networks has shown how activists can use transnational networks to put their concerns on the domestic political agenda, even if they lack political access domestically. By linking with activists in other polities they can inject their views into the international debate and even see to it that their concerns are fed back into the domestic debate via the international level. Advocacy networks can help activists bypass closed domestic political opportunity structures (Kitschelt 1986). While this may affect their domestic standing and political access only marginally, they can decisively influence discussions by re-framing the terms of debate through the strategic use of information. "When they succeed, advocacy networks are among the most important sources of new ideas, norms, and identities in the international system" (Keck and Sikkink 1998: x).

Though environmental activists lacked the clout to influence their governments' negotiation position through direct lobbying, they did manage to influence the terms of the public debate and thereby impose political costs onto any settlement that would not address environmental concerns. In a way, this opened a second front for European governments: while negotiating the U.S. initiative in Paris, they also had to justify lacking or weak environmental policies for their ECAs to domestic critics. They were caught in a two-pronged approach orchestrated in Washington (DC): the U.S. government exerted pressure on the intergovernmental level (G8, OECD) while NGOs networked transnationally and created domestic pressure by working as norm entrepreneurs, questioning the ECA mission of exclusive job creation. Instead, activists suggested, the public nature of export credits required broadening the objectives of export promotion beyond job creation to include developmental and environmental concerns.

The existence of groups favoring environmental rules for ECAs mattered not only where they were successful in shaping state preferences (namely in the United States) but also in states where they had little access. Even German negotiators with close ties to industry could not ignore the political cost of openly rejecting all environmental concerns. The only way out was to aim for a bargain that would establish environmental rules without compromising the preference of not placing strong restrictions on the access to export credits. German NGOs' influence was mostly limited to their discursive power, but this was sufficient to frame the debate to their ends.

6.2.2.2 Framing acceptable outcomes

The U.S. government sought to upload Ex-Im environmental policies to the international level through initiatives in the G8 and OECD. However, it was effectively

fighting an uphill battle against other states that had no interest in constraining access to support for their domestic exporters based on environmental criteria. Unlike product or process standards which can regulate access to (and thus shield) domestic markets, ECA policies govern exporters' access to government support. This means that governments cannot use their market power to drive other states to adhering to the same rules. Both the U.S. government and the international NGO network promoting common international rules for ECAs had to therefore rely on discursive power to work towards an agreement among states on environmental rules for ECAs.

The alliance between the U.S. government and the NGO network allowed the promoters to re-frame the discourse on ECAs and the environment both internationally and within other OECD Member States. Ex-Im could claim moral superiority by having environmental rules in place and by refusing to support exports to the controversial Chinese Three-Gorges Dam project which was made possible with support from European ECAs despite its unmitigated social and environmental impacts (“Export Credit Still a Race to the Bottom?” 2001). NGOs compiled extensive documentation of environmental impacts of ECA-supported projects (Berne Declaration, et al. 1999). Their combined efforts allowed the U.S. government and NGOs to raise public awareness, and also to reframe the debate from one over the desirability of environmental policies for ECAs in general to one over the specifics of common ECA environmental rules. The altered discourse, consequently, did not allow opponents to challenge environmental standards completely; they could merely seek to design the emerging *OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits*, the international agreement establishing common environmental policies

for ECAs, in a way that would minimize adaptational costs of these rules (Görlach, et al. 2007).

After 5 years of negotiations, all parties agreed on the Common Approaches in 2003 which required members' ECAs to screen and classify all applications for cover exceeding 10 million SDR for their environmental impact and conduct environmental reviews of these projects if they fall within two of three categories of potential environmental impact. The Common Approaches do not contain quantitative or qualitative criteria for deciding whether environmental impacts can be considered acceptable or not, but they do reference a number of international standards, including World Bank environmental policies.

Similar to the World Bank, public ECAs are in a privileged position vis-à-vis their clients: they are the sole providers of export finance in cases where the risks associated with an export are considered non-marketable. Their environmental policies define the range of acceptable environmental performance of projects to which supported goods may be supplied. The structural power flowing from these policies has resulted in a decline in applications for support of exports to projects which do not meet the requirements set forth in their environmental rules (see Görlach, et al. 2007). In affecting project design, ECAs do rely not only directly on their own power, but they also enlist exporters to exert pressure on project developers. Depending on the type and relevance of an export to a given project, the exporter may wield structural power of the project sponsor if the project depends on the availability of a certain export for completion. If this is not the case and the exporter lacks this hard structural power, persuasion may be

the only available strategy to convince the project developer of bringing the project into compliance with ECA standards.

6.3 Conclusion

Considering the low relevance of ECAs for trade (less than 3% of exports are facilitated by them), why has harmonization been so slow and cumbersome? At their root, many transatlantic disputes are caused by a misunderstanding or lack of knowledge about the other side's politics. Cornelia Ulbert (1997) has shown how different domestic discourses on global climate change in the United States and Germany have been a source of different policy responses. Similarly, Ansgar Baums (2001) has identified varying problem perceptions as a key factor in obstructing transatlantic agreement on GMOs. Common to these examples is the policy-makers' lack of knowledge of the other side's politics. When issues are framed differently, even agreement in word, may in effect be considered disagreement. Therefore, the basis to the solution of a transnational policy problem requires understanding and appreciation of the other side's politics.

In this case, a number of issues obstructed quick agreement: environmental protection by means of an export promotion instrument ran counter to sectoral conceptions of policy-making in Germany and other states; transparency provisions were at odds with continental European regulatory cultures; and international negotiations on environmental standards for export credits were the result of U.S. domestic politics – other states desired negotiations on the issue far less than the United States did.

The extent of time it took to arrive at a set of commonly accepted Common Approaches can be attributed to the U.S. attempt in pushing for an agreement, the terms of which were difficult to accept for many of the other parties involved. At the time of

my research, U.S. policy makers repeatedly expressed their dismay with the German unwillingness to increase transparency in the approval process for Hermes guarantees. They perceived this as inflexibility on behalf of their colleagues aimed at bolstering their own negotiation position. For German politicians, the provisions in administrative law against making project information available were a real issue that was not easily solved or circumvented. Not surprisingly, agreement in 2003 was facilitated by the flexibility incorporated into crucial provisions. The transparency loophole is contained in paragraph 16 of the 2003 Common Approaches:

16. [...] For Category A projects, seek to make environmental impact information publicly available (e.g. EIAs, summary thereof) at least 30 calendar days before a final commitment to grant official support. In the case where environmental impact information cannot, for exceptional reasons, be made public Members shall explain the circumstances and report these in accordance with paragraph 19 (OECD 2003b).

Had the Common Approaches not called for procedural standards outlining how environmental assessment was to be conducted, and had they only provided technical standards for exports and projects, agreement might have been much easier, because implementing states would have had more leeway in incorporating the new rules into their own regulatory frameworks.

Interviews with policy makers have also revealed that they had little knowledge of other states' environmental standards. Most could not evaluate their own ECA's policies vis-à-vis other ECAs. This seems to indicate that the relative strictness of standards compared to other standards did not matter much – most likely with the exception of the United States' benefits from an agreement in relation to the concessions necessary from all other parties.

Both the German and the U.S. negotiation positions throughout most of the OECD negotiations were shaped by the distribution of political power at home. The

United States needed an agreement that would provide for rules similar enough to its own to re-level the playing field, and to take pressure off Ex-Im. The German delegation, headed by the SPD-run Economics Ministry, had little incentive to support substantial reforms that could potentially alienate industry support needed for other reform projects. Knowing that the rules would not affect Ex-Im's largest client Boeing was certainly helpful for the U.S. initiative, while the German delegation was aware of the fact key production sectors of Hermes' largest client Siemens could be adversely affected by environmental requirements. For the German Greens, ECA reform was a critical topic, but the Green Environmental Ministry and Joschka Fischer's Foreign Office could only gain more influence on negotiations, and thus be able to facilitate agreement when changes in personnel in three ministries occurred almost simultaneously. The zero-sum game character of the domestic German discourse on the issue pitting the environment against jobs required such a power shift for environmental concerns to play a more significant role.

The lack of institutional compatibility between the rules proposed by the United States and the regulatory contexts of other members of the Export Credit Group provides a good starting point for explaining the difficulties in reaching an agreement. In comparing the German and the American regulatory contexts, little institutional fit existed in at least three points: (i) the United States favors procedural rules which are incompatible with target-based regulatory culture in Germany; (ii) transparency of coverage decisions is at odds with German administrative law; and (iii) the explicit use of export credits for non-trade related policy objectives is not commonly practiced in Germany.

Contrary to U.S. regulatory culture, which allows to utilize export credits for non-trade objectives, German policy-makers have refrained to task Hermes credit guarantees with any tasks other than export promotion. Long-standing membership of the Development Ministry in the inter-ministerial committee points to the relevance of non-trade concerns in coverage decisions, but Hermes has not been used to advance goals other than the promotion of German exports. Given this history, it is not surprising that a very sectoral conception of export promotion worked against the incorporation of sustainability objectives into Hermes policies.

Not surprisingly, the combination of minimal political pressure to resolve the issue with the proposed rules that would require substantial adaptation in Germany, resulted in the German delegation's hesitant approach throughout most of the negotiations. This case emphasizes the argument that domestic politics and national interests drive international environmental politics. Norms and values do matter and certainly help those negotiating parties that can invoke them on their behalf, but they first need to overcome hard material interests that may leave little room for "good" policy.

Chapter 7: The “not so Harmonized” Result: Implementation and Limited Effects

This chapter discusses the results of the transatlantic harmonization of ECA standards and places their effects in the context of the effects of World Bank rules and Equator Principles. Transparency emerges as a key component of strong rules and its absence is a good indicator for poor performance. The ECA agreement is less effective than it could be because of the flexibility provisions for transparency, project classification, and choice of reference standards included in it. Loopholes in the agreement have led to uneven implementation as the first section illustrates. Insights drawn from domestic regulatory harmonization in the United States and EU harmonization suggest that upward races in harmonization tend to be linked to downward races in implementation which in turn may feed back into subsequent harmonization rounds.

An assessment of harmonization would be incomplete without the discussion of the effects of harmonized policies in the second section. Building on the discussion in chapter four, the effects of the Common Approaches are discussed in the MDB policies’ and Equator Principles’ contexts as part of the assessment of the overall influence of these standards in international finance. The effects of these policies not only hinge upon their provisions but also depend on the availability of alternative sources of finance. For ECAs, the increasing role played by non-OECD ECAs – especially the Chinese Export-Import Bank – is crucial. With regard to private banks, the business underwritten by banks, which have not signed on to the Equator Principles, restricts the reach of the

principles. Both sets of rules have especially limited effects in Africa where Chinese export credits and loans from Middle Eastern banks provide alternatives to Western financing and their social and environmental requirements.

7.1 Implementation of the Common Approaches

Environmental policies of ECAs have been harmonized by the OECD Common Approaches which require ECAs to (i) classify projects over SDR 10 million according to likely environmental impact; (ii) conduct environmental reviews of projects with potentially significant environmental impact; (iii) apply international or home-country environmental standards to project evaluation; and (iv) make environmental review information available to the public prior to making support decisions.

The U.S. goal for environmental policy harmonization for ECAs was the establishment of a common set of binding environmental review procedures and criteria among OECD ECAs that was to resemble the U.S. Ex-Im Bank's procedures as closely as possible. While the final agreement was highly congruent with U.S. policy on paper, a range of loopholes in the Common Approaches reduced the status of its provisions to an almost advisory role. In particular, a broad range of international standards for project evaluation and flexibility with regard to information disclosure render the Common Approaches less effective than the specificity of its provisions would lead one to believe.

7.1.1 Standards

Members of the Export Credit Group report annually to the ECG Secretariat on the categorization and environmental assessment of projects. The most recent data available covers the period from 2002 to 2006, and thus includes two years of adherence

to Revision 6, plus three more years of ECA activity under the 2003 Common Approaches (OECD 2007a). Overall, as Table 7.1 illustrates, the share of category A projects receiving Environmental Impact Assessment has increased steadily from 67 per cent in 2002 to 93 per cent in 2006, but ECAs still do not review EIAs for all projects with significant environmental impacts. The proportion of category B projects subjected to EIA review has topped out at 17 per cent. While these projects do not require full EIA review under the Common Approaches, this category is likely to contain “big B” projects which could have been classified as category A projects, but were grouped into category B to receive less scrutiny.

Table 7.1 Environmental review standards

	2002	2003	2004	2005	2006
EIA review, category A	67 %	77 %	82 %	83 %	93 %
EIA review, category B	6 %	17 %	17 %	17 %	18 %
Intl' standards, category A	65 %	68 %	82 %	79 %	92 %
Host country standards, category A	20 %	26 %	13 %	17 %	5 %
Intl' standards, category B	50 %	61 %	63 %	69 %	80 %
Host country standards, category B	36 %	24 %	23 %	19 %	14 %

Source: OECD (2007a)

Due to the transition phase, compliance with the Common Approaches could not be perfect, and it is difficult to assess the extent to which the lack of environmental review for a number of projects is actually a consequence of this transition, or an indicator of insufficient compliance with the Common Approaches. Even more informative may be an assessment of the extent to which ECAs use the agreement's loopholes to formally comply with the established rules, while simultaneously evading the Common Approaches' requirements. Here, the degree of transparency in the approval process and the stringency of the applied standards are especially promising indicators.

The application of international standards has increased at the same time that the application of (presumably less rigorous) host country standards has decreased for both

category A and B projects. However, five per cent of Category A projects and 14 per cent of Category B projects are still evaluated against host country instead of international standards (see Table 7.1). With regard to the type of international standards applied, the report notes that ECAs increasingly benchmark against World Bank standards. Still, “one Member applied International Standards to 50% of its projects [...] and two Members applied International Standards to none of their projects” (OECD 2007a: 10). The available data (OECD 2004b, 2004c, 2005b, 2005c, 2005d, 2006, 2007a) suggests considerable differences in implementation (see also Görlach, Knigge, and Schaper 2007). Whereas some states revamped their domestic rules after the Common Approaches’ adoption and revisions, others – including Germany – retained their pre-existing rules which were either considered sufficient to comply with the Common Approaches’ requirements, or were augmented with the Common Approaches as a separate set of rules. While ECAs did not engage in a run towards “lesser” international standards such as regional development policies, the persistence of host country standards in project evaluation and the relative small share of category A projects requiring modification (around 50 percent since 2003 compared to almost 80 per cent in 2002) suggest that ECAs have found a way to implement the text of the Common Approaches without substantially altering their behavior. While the overall trend points upward, current ECA practice appears to be far from the universal application of World Bank policies envisioned by the United States, as the agreement’s key promoter.

7.1.2 Transparency

Similar to the implementation of the Common Approaches’ environmental assessment criteria, implementation of the transparency requirements has also been

uneven. Since these rules provide the basis for effective monitoring and enforcement, this deficiency is especially troublesome.

Being an OECD “gentlemen’s agreement,” formal procedures for ensuring compliance with the Common Approaches are, in fact, weak. Member ECAs report to the OECD Export Credit Group Secretariat annually on supported projects, project classification, and applied environmental standards. They also notify other ECAs if they intend to deviate from the agreement for specific projects, allowing other members to offer the same project-specific deviations to their exporters. Members can use the annual data as well as information about deviation from the Common Approaches to exert peer pressure on agencies which do not fully comply with the rules. Public reporting, however, is very weak: the Secretariat aggregates country data in its reports so that OECD reports are, essentially, only helpful in assessing overall compliance. Information about individual members’ compliance is not available unless it is supplied by the agencies themselves. There is no formal compliance mechanism beyond the reporting requirements. External government transparency to the ECG Secretariat is much better developed than domestic government transparency (Grigorescu 2003).

However, the need to make environmental review information available prior to cover decisions (ex-ante transparency) enables NGOs (and the press) to monitor the performance of individual ECAs and employ name-and-shame tactics in those cases where ECAs violate their own rules or obligations under the Common Approaches. The United States lobbied hard to incorporate ex-ante transparency into the agreement, knowing that such rules would provide for an implicit but effective compliance

mechanism by increasing the reputational and political risks of non-compliance (Chayes and Chayes 1995).

Disclosure provisions in the Common Approaches are modeled after NEPA and World Bank rules: environmental review information needs to be available to the public 30 days prior to making a cover decision. However, the Common Approaches do allow for deviation from this rule (see Görlach, Knigge, and Schaper 2007), and the transparency commitment is not backed up by a formal compliance mechanism. Still, the availability of environmental project information implicitly tasks NGOs with policing the agreement. Ex-ante transparency was introduced into the Common Approaches precisely for this reason (personal communication with U.S. government official, 25 June 2003).

Compliance monitoring is ‘outsourced’ to non-state actors via the agreement’s transparency provisions (see Görlach, Knigge, and Schaper 2007). Thus, the Common Approaches rely on peer monitoring among the Members through reporting requirements to the Secretariat and on monitoring by outside actors through external transparency. External transparency provisions empower civil society actors to assess ECAs’ compliance with the Common Approaches and allow them to enforce the agreement by highlighting problematic projects and the improper application of rules and procedures. Such fire-alarm monitoring (for a discussion in principal-agent relations see Cousins 2006; McCubbins and Schwartz 1984) can be only as effective as the information is complete. Inconsistent access to information thus leads to inconsistent enforcement. However, transparency provisions in the Common Approaches are only partly effective due to too much slack in the agreement.

The Common Approaches have established minimum transparency provisions to be implemented by all Members of the Export Credit Group. Thus, from 2004 on, all OECD ECAs were required to make environmental project information available prior to granting cover. In this sense, the Common Approaches mandated the extension of a practice employed by only a few ECAs (e.g. the U.S. Export-Import Bank) to all OECD ECAs, including those which had previously refrained from such a practice due to concerns of administrative and commercial confidentiality. The agreement established a public information period of 30 days during which environmental information for sensitive projects was to be made available to the public before a cover decision could be made. However, the rules also contained a deviation clause allowing ECAs to refrain from publishing such information on a case-by-case basis (Görlach, Knigge, and Schaper 2007).

The extent to which this deviation clause is applied has a strong influence on the effectiveness and impact of the Common Approaches. The ECG Secretariat has conducted annual surveys to evaluate implementation of the Common Approaches (OECD 2006, 2005d, 2005c; 2004c, the 2006 results have not been released as of 23 September 2007). Compared to earlier surveys, more ECAs currently adhere to the transparency requirement, but implementation is far from being universal or uniform. The German and Swiss ECAs consistently report that they make information available only in cases where the client has agreed to publication and that they are legally precluded “from requiring the applicant to provide the disclosure as a condition” (OECD 2006, 2005c) despite the Common Approaches’ requirement to create such provisions. Belgium, Greece, and Luxembourg cite confidentiality rules precluding them from disclosing any

information. On the other hand, many ECAs have faithfully implemented the transparency rules, make information available, and require clients to consent to the publication of environmental information in those cases where such disclosure would be limited by confidentiality rules. Australia's EFIC, Finland's Finnvera, Italy's SACE, the Dutch Gerling NCM, the U.S. Export-Import Bank, and Hungary all require their clients to agree to ex-ante disclosure (OECD 2006).

The most recent report on supported Category A and B projects (OECD 2007a) indicates an upward trend in the ex-ante disclosure of environmental impact information: for all 38 projects covered in 2006, some environmental information was made available to the public prior to granting cover (up from 62 per cent in 2004 and 81 per cent in 2005). Nevertheless, limitations on disclosure as in the German and Swiss cases continue to limit the effectiveness of the transparency provisions. The OECD figures cited here provide an incomplete view of the Common Approaches' implementation, as they represent only covered projects, and thus exclude the transparency track-record on projects which have been turned down or remain under consideration due to the unsatisfactory mitigation of environmental impacts. Reliance on voluntary consent by clients to ex-ante information disclosure results in a selection bias: consent is much more likely for unproblematic projects than for environmentally contentious ones. Therefore, even the upward trend in overall disclosure may still obscure a tendency for information about more problematic projects to remain unavailable. Coupled with the ECAs' flexibility in categorizing projects ("large B" projects do not require disclosure) the deviation clause limits the effectiveness of ex-ante transparency as the Common Approaches' most potent compliance instrument.

The German government's response to a parliamentary inquiry by the FDP faction in Bundestag (Deutscher Bundestag 2003) revealed that for only 38 per cent of the applications for cover through Hermes guarantees from October 2001 to December 2002 clients had agreed to the disclosure of environmental information. Thus, during this time period, environmental project information was unavailable for more than 60 per cent of the projects supported with Hermes guarantees, despite the Common Approaches' requirement to lay open all applications for Category A and B projects. The rules allow for exceptions in exceptional cases, but here exception appears to have been confused with rule. It is also not far-fetched to assume that environmentally problematic projects are more likely to be among those not authorized for disclosure.

7.1.3 Linked races

States were engaged in "linked races" with respect to environmental standards and transparency for ECAs: responding to domestic political pressures and prevailing norms of environmentally sound behavior, ECA policies were harmonized *upward*. However, in implementing these rules, the prominent direction of competition was *downward* with states seeking to exploit the agreement's loopholes to the greatest extent possible.

Neil Woods (2006) observed a similar dynamic in the regulation of surface mining in the United States. Responding to citizen groups that argued for the federalization of mining rules to counteract mine operators' desire for regulatory relief from strong state rules, the Surface Mining Control and Reclamation Act of 1977 harmonized state mining rules. In this case, citizen activism had resulted in upward harmonization. However, U.S. states engaged in considerable competition over lenient

interpretation and over an implementation of national rules which would result in competitive advantages for operations within their own state borders. Woods shows that

States adjust their enforcement in response to competitor states when their enforcement stringency exceeds that of their competitors. When competitors' enforcement is more stringent, however, their behavior does not have a significant effect. (Woods 2006: 174)

Here, upward harmonization is linked to a race-to-the-bottom in implementation.

While it is too early to assess whether similar races are occurring in ECA politics, it seems to be clear that some states attempt to offset the stringency of the Common Approaches with leniency in implementation. That way, they appease environmental critics while preserving some of their own competitive advantage vis-à-vis states with more stringent implementations of the agreement.

7.1.4 Domestication and harmonization

Observing the implementation of EU directives, Bugdahn (2005) suggests that competition in laxity during the domestication of a new rule may eventually result in a downward pull on the supra-national rules. She argues that

the implementation of EU policies is best conceptualized as a blend of domestic choices of options in a policy area, only some of which have been determined by the EU. Member states can make choices of non-prescribed, or non-recommended policy options that limit, mediate or accompany the Europeanization of the policy area in various forms ('forms of domestication')" (Bugdahn 2005: 178).

Her varying domestication strategies can be categorized according to the degree of adaptation in the domestic arena. These forms of domestication range from "Business as usual" as the most persistent category over "Conservative interpretation;" "use of domestic patterns," "Domestic supervision, and Organizational Incentives," to "Broader reforms; progressive interpretation" (Bugdahn 2005). Put differently, forms of domestication can range from "doing nothing" to sweeping regulatory reform.

Europeanization (i.e. harmonization in the European Union) goes through multiple rounds, whereby rules are interpreted to either work in domestic regulatory frameworks or to change these frameworks as external drivers for regulatory reform. At the same time different domestications feed back into harmonization.

Where the EU approves of a particular form of domestication adopted by a member state, EU actors may take the opportunity to ‘europeanize a domestication’ by promoting it as best practice (horizontal Europeanization) or even be adopting it as a new standard (vertical Europeanization), for instance when they review EU legislation. (Bugdahn 2005: 184)

Differences in domestication strategies can exert both upward pushes and downward pulls on the Europeanization process. Depending on the forms of domestication chosen by influential member states, additional rounds of Europeanization can either soften European rules (if pivotal members chose conservative domestication strategies) or ratchet them up (if pivotal members engaged in progressive regulatory reform overshoot the EU targets). Bugdahn links domestication strategies to the institutional compatibility of European rules with domestic regulatory frameworks. In her example of freedom-of-information legislation, she attests that

In Germany, domestication is most likely to trigger new Europeanization; this is due to the fact that Germany [...] has a strong contradicting tradition and is most likely to adopt a transposition with conservative and cost-restrictive interpretations (Bugdahn 2005: 186).

Within the context of the EU, the EU Commission as a central authority (in its role as guardian of the treaties) can attempt to counter-act downward forces by plugging holes in directives, tightening provisions or by initiating judicial proceedings. However, for lack of a central authority in OECD governance enforcing full compliance, differential domestication processes soften harmonized rules. Subsequent harmonization rounds may then take on weaker versions of the domesticated rules as their starting point in seeking to arrive at universally applicable rules. This dynamic appears to be at play for ECA policies: the 2007 review of the Common Approaches is widely considered to be a

step backwards from their 2003 version – an observation that negates the U.S. government’s perception that ECA harmonization typically starts at a low common denominator and then continues upward through a ratcheting process (see chapter five and Export-Import Bank of the United States 2004: 101). The key difference in environmental rules is the absence of an enforcing authority. Neither a central authority (such as the Commission in EU harmonization) nor the U.S. government (with its war chest to counter subsidized interest rates and tied aid) can effectively counter downward implementation, which then results in a downward pull on other Member’s policies.

7.2 *Effects of environmental standards for international finance*

Given the proliferation of environmental policies for international financial institutions, one has to ask what effects these policies would have on projects, besides being good PR for the financial institutions involved. Effects can be assessed either by the environmental quality of the projects supported or through the characteristics of rejected projects. Either approach is problematic. Environmentally questionable projects may still be developed, even if a “green” financial institution turns them down and alternate financing that does not adhere to environmental rules fills the gap. Furthermore, assessment of rejected projects may also be misleading, as environmental standards are likely to result in a self-selection process where developers avoid approaching certain financial institutions that would likely turn down problematic projects. The intervening variable in both cases is the availability of an alternative means of financing. There may still be an advantage to having a “green” institution in a problematic project over having such a project developed without any environmental rules.

Given the problems of assessing the outcome of these policies, procedural measures of extent of their application may be more helpful in identifying the degree to which financial institutions are serious about the content of their rules, as opposed to “green-washing” their reputation. All three sets of policies employ a similar process in assessing environmental effects: in a first step, projects are screened for their potential environmental impact, and then classified into one of three categories of likely impact. Depending on their categorization, projects then undergo different levels of environmental review. In terms of compliance with these rules, the categorization process allows for limiting environmental review (big “B” projects; i.e. category “A” projects that are misclassified to evade the more stringent review requirements). The product of the review process, then, may or may not lead to consequences in project design or making support decisions.

Common to all three sets of standards is that transparency of the environmental review process is employed as the most prominent compliance instrument. However, there are considerable differences in the *implementation* of transparency, ranging from the mandatory publication of environmental reviews and an inspection panel at the World Bank, to more restricted transparency among ECAs, to rather opaque processes at private banks.

7.2.1 Effects of World Bank policies

The environmental policies of the World Bank have turned this organization, once highly criticized for the environmental and social performance of its projects, into a model for environmental standards elsewhere. It may not have achieved its goal of streamlining the environment for sustainable development, but environmental concerns

are now an essential element of Bank operations. The Equator Principles, and ECA policies, reference World Bank Group standards and policies, and NGOs have pointed to the World Bank as the relevant role model in their campaigns.

A side-effect of the Bank's environmental policies, based on the U.S. environmental review model, is the vastly increased transparency of World Bank operations. Once an institution which regarded most information as clients' property (and was thus reluctant to share any of it), the Bank now makes many of its decisions in public.

Transparency and public participation are prevalent not only in the Bank's operations, but also in its development of new policies. Modifications to its environmental policies are not only open to public comment, but it also seeks independent input on the formulation of new policies, as has been evident in the World Commission on Dams and Extractive Industries Review.

The "greening" of projects has occurred in two dimensions: Environmental impacts are being considered in both project development and implementation, and a growing portfolio is being devoted to "environmental" projects, i.e. projects where the main objectives are of an environmental nature (e.g. clean-up or preservation).

Some of this change may be attributed to a changing organizational culture, but it is doubtful that Bank operations would have changed as much without an effective compliance mechanism. Operations transparency has been the primary tool in ensuring compliance with environmental policies. A particularly effective instrument has been the Bank's inspection panel. This independent panel reviews the compatibility of projects with Bank policies. Its review process can be initiated by citizen request, creating a

strong incentive among Bank staff to make their projects “inspection-panel-safe”- i.e. to make sure that they comply with Bank policies. A major criticism in the past has been that the organizational structure of the Bank has made it possible to obscure known environmental problems when decisions were taken several hierarchical levels removed from experts on the ground (Rich 1994). The independent inspection panel makes it therefore potentially dangerous at any staff level to omit or ignore project features which would violate Bank policies.

Another side-effect of the quarrel over the Bank’s environmental performance has been an instrumentalization and politicalization of Executive Director (ED) votes on the Bank’s board. Starting with U.S. abstentions in votes taken on environmentally problematic projects, the use of ED votes became institutionalized with the Pelosi amendments (see Keck and Sikkink 1998; Park 2005b) which linked U.S. ED approval to projects in compliance with this Congressional mandate. The Pelosi amendment effectively uploaded key NEPA provisions on environmental assessment and transparency to MDBs.

7.2.2 Effects of the Common Approaches

As mentioned above, assessing the outcome of standard-setting with respect to the environmental quality of development projects in general is difficult. In all three instances of standard-setting, authority for implementation of policies was delegated in several stages. In the case of ECAs, NGOs pressured governments and legislatures, which in turn mandated ECAs to devise such policies. ECAs, in turn, have control only over the applications for cover which they process. By requiring environmental assessments from exporters, they in turn need to rely on exporters to furnish this

information and to work with project developers to implement any project modifications. It is apparent that given the delegated authority along this chain (governments – ECAs – exporters – project developers), any effects can be indirect at best. The impact any single ECA or group of ECAs can have on project implementation further depends on the relevance of ECA support for the project in question. If the financing of a project were likely to fall apart without ECA cover, project developers would more likely be responsive to environmental requirements by ECAs than if ECA support were not crucial for project success. In cases where ECA support is not essential, ECAs furthermore find themselves caught between the competing mandates of promoting domestic exports and protecting the environment.

The long chain of delegation already makes it difficult for ECAs to contribute any substantial input on project performance. This difficulty is further amplified by their late involvement in the project cycle. By the time an exporter has responded to a tender and has approached an ECA with a request for cover, project design is mostly complete. Modifications in response to ECA requirements are therefore more likely to be of a mitigatory nature than to affect basic project design.

Thus, these policies can be expected to be most successful when project developers expect the involvement of ECAs, and consequently design projects with good environmental performance in mind. Given their primary objective of creating domestic jobs by promoting exports, ECAs have little interest in rejecting applications. The primary goal of ECA environmental policies is to bring projects into compliance with their standards so that they can extend support to their exporters.

The discussion above applies to projects for which ECA support is requested. Another important aspect is the effect environmental policies have on applications for cover. This is a self-selection process by exporters whether they pursue a tender for an environmentally problematic project and whether they will seek ECA support if they do make a bid for such a project. Here it is also noteworthy to emphasize that such a process may only remove “dirty” projects from the reach of OECD ECAs but that projects may nevertheless be completed outside the reach of the Common Approaches.

Assuming that an exporter has decided to make a bid for a problematic project, the next decision to make is whether or not to seek ECA support. This decision is impacted by the likelihood of success for such an application as well as by the ECA’s transparency provisions.

Projects which are likely to fall into Category A are subject to publication of their environmental reviews. Through this process, the identity of an exporter providing components to a problematic project may become public and create reputational risks; in addition, competitors can learn about the exporter’s intentions through the environmental information made available. Thus, transparency provisions create a disincentive in seeking ECA support for morally hazardous projects likely to spark public opposition (e.g. nuclear power and dams).

The down-side of this self-selection process includes projects executed with the support of ECAs not subject to the Common Approaches. The market for coal-fired power plants in developing countries, for example, is now dominated by Chinese companies selling equipment with comparatively lower-performing environmental

technology supported by the Chinese Export-Import Bank (which is not party to the Common Approaches).

Such self-selection processes can result not only in deals going to foreign competitors, but also in incentives for multinational companies to shift production of environmentally problematic products to countries more likely to support them. For example, Siemens hydropower turbines are now mostly made in Brazil, and its nuclear power competence has been shifted from Germany to France, where it found a more favorable political environment for this technology.

7.2.3 Effects of the Equator Principles

Considering the lack of disclosure requirements in the 2003 version of the Equator Principles, it is very difficult to assess the effect the Principles may have had on member bank business (see for example a recent NGO implementation assessment plagued by the lack of available information: Chan-Fishel 2005). NGOs have compiled considerable evidence pointing to rather uneven implementation of the Principles, and they also claim that adoption of the Eps has not prevented EPFIs from supporting problematic projects (BankTrack 2006). With expanded disclosure and transparency provision in the new 2006 version of the Principles, it should also be possible to provide a better assessment of their implementation in the future.

For now, it appears most promising to evaluate the reach of the principles. While MDB and ECA rules subject these institutions' entire project business to environmental scrutiny, the Equator Principles apply only to project finance activities which meet the threshold of \$10 million (\$50 million in the 2003 version). This means that a considerable share of banking transactions related to infrastructure development in

developing and transition countries is not accounted for: (i) direct lending to project finance less than \$10 million (\$50 million previously); (ii) indirect lending to such projects; as well as (iii) other sources of debt such as bonds.

Lowering the applicability threshold to \$10 million will result in a considerable increase in projects subject to the Equator Principles – including all but the smallest projects fit for project finance. The previous \$50 million threshold excluded a number of small- and medium-sized projects from the reach of the Principles. The 2006 Principles also include an expansion of the activities subject to the Eps. Previously, only direct loans were considered a case for application of the Equator Principles; now, advisory services in project finance also need to comply with the Principles.

With their limitation on project finance, Eps still exclude other sources of finance for infrastructure developments. A prominent source of international finance are bonds (which accounted for \$86 billion of debt flows to developing countries in 2003); bank loans (including project finance) amounted to only \$9 billion more the same year (World Bank 2004: 38). The controversial Three Gorges Dam in China, for example, has been largely financed with bonds issued by the China Development Bank and underwritten by Western banks. Missbach (2004: 79) similarly reports that “the bulk for forestry projects does not come from project finance.” According to a recent NGO report, HSBC, Citigroup, and JPMorgan Chase have adapted environmental rules to other products and services when proceeds go to projects that would be subject to the Equator Principles (BankTrack 2006: note 7), but these are voluntary initiatives which go beyond the requirements of the Eps.

Regional variation within the application of the principles also exists. Christopher Wright and Alexis Rwabizambuga (2006) have illustrated regional limitation of the Principles. Almost all EPFIs are headquartered in Europe and North America, and their project finance business is also limited in scope: while a majority of Latin American project finance loans are arranged by EPFIs, equator banks play a much smaller role in African and Middle East loans. None of the top ten arrangers of project finance in Asia has adopted the Equator Principles (Wright and Rwabizambuga 2006: 102-3).

Project finance packages are usually syndicated among a number of banks. Given the equator banks' market position (80 per cent of project finance by volume), the Principles can be expected to have a considerable effect on those markets in which the EPFIs are active, as arrangements not including any equator banks are rather unlikely in these markets. Their effect on the ground, however, depends on the Eps' faithful implementation, and this issue cannot be adequately assessed at this point.

Regarding the business to which the Equator Principles apply, the Principles relieve the adopting financial institutions of the need to investigate the environmental risks associated with projects themselves. In financing arrangements that include MDBs, they can rely on the development bank's environmental review of such projects. But with the retreat of MDBs from dam and mining projects, the Principles free the banks from conducting in-house environmental reviews of the increasing share of projects without MDB participation by delegating this responsibility to their clients (Amalric 2005: 10-1). In Amalric's analysis, the "retreat of the World Bank Group from its function as delegated monitor" (Amalric 2005: 11) is hypothesized to have motivated the adoption of the principles.

7.2.4 Role of non-OECD competition: impacts vary by region

Similar to the increased influence of the emerging economies of China, India, and Brazil, non-OECD ECAs play an increasingly relevant role in export credit politics. Not only do these new competitors challenge OECD ECAs' business positions, but they also delimit the political manoeuvring space available in the same way they re-define WTO politics. In international trade agreements, developing countries are increasingly weary of reducing tariffs, not because of OECD imports, but rather out of fear of being swamped by cheap Chinese imports – including agricultural products – that may challenge their domestic economies (Herald tribune, weekend 21/22 July 2007). This is mirrored by the large volume of Chinese export credits to Asia and Africa, exceeding Western credits considerably, and thus limiting the reach of the Common Approaches to those areas where OECD ECAs provide most of the support.

A crucial difference between environmental standards for access to finance and product or process standards is the leverage the rule-setter has over the regulatory target. When states or firms set product or process standards, their market leverage directly affects producers' or suppliers' decisions whether or not to conform with the standards: the larger the regulator's control over the market, the greater is his power over the regulatory targets. Environmental standards for access to finance, however, do not regulate access to a shielded market, but merely access to support by a cartel of financial institutions. As long as the cartel does not have complete control over the finance market, any number of financial institutions not bound by the rules of the cartel can render them ineffective by providing alternative financing. With respect to ECAs and private banks, the cartels are imperfect: only OECD-member ECAs are bound by the Common

Approaches allowing for an increasing role played by non-OECD ECAs such as the Chinese and Indian Exim Banks that can provide alternatives to OECD funding. The Equator Principles, too, have only limited membership, representing primarily North American and Western European financial institutions. Only in markets which are dominated by financial institutions bound by environmental standards can these be expected to carry much weight.

The reach of these standards varies by region. Similar to the relatively low relevance of the Equator Principles in Africa, the Middle East, and Asia, export credit standards reach only as far as OECD ECA business does. MDB policies, however, apply to projects throughout the developing world. The Common Approaches and Equator Principles apply only to projects for which sponsors seek support from equator banks or OECD export credit agencies. Thus, these standards travel only as far as there is demand for financing from these institutions. The effects of standards can be expected to be greater in regions in which the bulk of international financing provided is subject to such standards. The smaller the market share of Northern financial institutions, the smaller the likely impact.

In addition to variations among regional impacts, one also needs to consider the overall relevance of these financial institutions. A study by the IMF notes:

“Financial flows facilitated by official export credit agencies are large in comparison with official development assistance and gross lending by international financial institutions to developing countries” (Wang et al. 2005: 2).

“However, relative to total capital flows to developing countries or exports, export credits supported by ECAs in industrial countries have been on the decline. Preliminary estimates suggest that new commitments by official ECAs amounted to near 35 percent of total official and private lending plus foreign direct investment to developing countries in the early 1990s; the ratio declined to about 20 percent in 2000-02” (Wang et al. 2005: 7).

“New export credit commitments to low-income countries have been declining since 1995, and this trend has not been affected by the world economic cycle. The share of new commitments to low-income countries (excluding India) declined from 15 percent in 1995-

96 to about 8 percent in 2000-03. [...] Indeed, a number of ECAs have remained off-cover in many low-income countries, even in HIPCs that have passed the completion point (thereby receiving irrevocable debt relief committed under the HIPC initiative)” (Wang et al. 2005: 8-9).

Table 7.2 Long-term export credits by country category (over five years) – (million SDR)

Income Group	1998	1999	2000	2001	2002	2003	2004
Least Developed Countries (LDCs)	59 (0.5%)	205 (1.3%)	169 (1.1%)	700 (5.1%)	156 (1.2%)	179 (1.2%)	48 (0.3%)
Sub-Saharan LDCs	29 (0.2%)	54 (0.3%)	146 (0.9%)	626 (4.5%)	128 (1.0%)	168 (1.1%)	4 (0.0%)
Other Low Income Countries (OLICs)	1,854 (14.9%)	1,495 (9.6%)	526 (3.3%)	638 (4.6%)	992 (7.6%)	1,936 (13.0%)	1,392 (7.5%)
Sub-Saharan OLICs	134 (1.1%)	186 (1.2%)	87 (0.6%)	36 (0.3%)	338 (2.6%)	109 (0.7%)	138 (0.7%)
Lower Middle Income Countries (LMICs)	5,585 (44.7%)	5,320 (34.1%)	6,471 (40.9%)	5,259 (38.1%)	4,767 (36.5%)	3,584 (24.0%)	6,790 (36.4%)
Sub-Saharan LMICs	25 (0.2%)	125 (0.8%)	2 (0.0%)	31 (0.2%)	7 (0.1%)	2 (0.0%)	26 (0.1%)
Upper Middle Income Countries (UMICs)	2,542 (20.4%)	4,280 (27.5%)	4,485 (28.4%)	3,608 (26.2%)	3,644 (27.9%)	3,472 (23.3%)	2,244 (12.0%)
Sub-Saharan UMICs	39 (0.3%)	188 (1.2%)	47 (0.3%)	264 (2.0%)	27 (0.2%)	127 (0.9%)	339 (1.8%)
High Income Countries (HICs)	15 (0.1%)	177 (1.1%)	222 (1.4%)	-	2 (0.0%)	77 (0.5%)	*
All Developing Countries	10,054 (80.6%)	11,477 (73.6%)	11,872 (75.1%)	10,205 (74.0%)	9,561 (73.2%)	9,248 (62.0%)	*
All Sub-Saharan Countries	227 (1.8%)	553 (3.5%)	282 (1.8%)	957 (7.0%)	500 (3.8%)	406 (2.7%)	507 (2.7%)

Source: (OECD 2004a, 2005e); author’s calculation of Sub-Saharan figures; classification of economies from the July 2006 World Bank List of Economies (<http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS>; accessed 14 December 2006); LDC classification from the United Nations LDC list (<http://www.un.org/special-rep/ohrlls/ldc/list.htm>; accessed 14 December 2006); *= cannot be clearly identified due to changes in OECD reporting.

Table 7.2 illustrates the low relevance of long-term OECD export credits to Sub-Saharan Africa. Very few projects requiring environmental review under the Common Approaches are supported in Sub-Saharan Africa. Between 1998 and 2003 only six (out of 27) Sub-Saharan LDCs (least developed countries) generated enough export credit business so that their annual portfolio eventually exceeded \$10 million SDR for one or more years, thus possibly triggering the Common Approaches’ environmental screening process by volume (projects in sensitive areas require review irrespective of volume).

Five OLICs (other low income countries), four LMICs (lower middle income countries), and three UMICs (upper middle income countries) also generated enough business so that their transactions may have included projects subject to the Common Approaches. Due to the nature of ECG reporting, it is not possible to identify the number or share of projects in Sub-Saharan Africa that actually underwent environmental screening. The OECD reports on environmental reviews are not broken down by recipient country or region.

While OECD ECA engagement in Sub-Saharan Africa is limited, the Chinese Exim Bank – not party to the Common Approaches – is active in power generation, mining, and energy projects throughout Africa. Now among the top three ECAs by volume of new commitments, its lending volume has increased eight-fold from 1995 to \$8 billion in 2003 (Wang et al. 2005: 12). NGOs criticize the China Exim Bank both for its human rights and its environmental record.

The Exim Bank's portfolio includes projects such as the Merowe Dam in Sudan, the Imboulou Dam in Congo–Brazzaville, the Tekeze Dam in Ethiopia, the Lower Kafue Gorge Dam in Zambia, the Yeywa Dam in Burma, and the Nam Mang 3 Dam in Laos. China Exim has also signed deals for projects in other countries with human rights problems, including Nigeria (Papalanto and Omotosho power plants) and Zimbabwe (Zimbabwe Iron and Steel Company).

[...] One case in point is Merowe Dam, Africa's largest new hydropower project, which is currently being financed by China Exim. Located in Sudan, the project will create a reservoir with a length of 174 kilometers, generate electricity with a capacity of 1,250 megawatts, and displace 50,000 people. In spite of the project's large dimensions and potential social and environmental impacts, no independent environmental impact assessment was ever carried out. One of the companies involved in the project prepared a brief environmental assessment report. In violation of Sudanese law, the technical arm of Sudan's Environment Ministry did not receive a copy of the assessment, and was not able to review and clear the project. (Bosshard and Chan-Fishel 2005)

Moss and Rose list a number of large pending projects which may involve support by the China Exim Bank:

- A possible \$1.2 billion in new loans to Ghana, including \$600 million for construction of the Bui dam;
- \$2.3 billion in total financing for Mozambique for the Mepanda Nkua dam and hydroelectric plant, plus another possible \$300 million for the Moamba-Major dam;

- A \$1.6 billion loan for a Chinese oil project in Nigeria;
- \$200 million in preferential buyers credit for Nigeria's first communications satellite;
- A \$2 billion line of credit to Angola, with the possibility of another \$9-10 billion;
- Reports of loans and export credits for other projects in Congo-Brazzaville, Sudan and Zimbabwe. (Moss and Rose 2006)

Clearly, the effect of the Common Approaches is limited in Sub-Saharan Africa due to narrow engagement of OECD ECAs. At the same time, the Chinese Exim Bank provides an alternative throughout Africa. The Sudan, for example, is receiving US\$ 387 million in export credits from the China Export Import Bank for the construction of the Merowe Dam alone (Leadership Office of the Hamadab Affected People, International Rivers Network, and The Corner House 2007: 4) – more than 11 times as much as combined OECD export credits to Sudan between 1998 and 2005 (OECD 2007d). The China Exim Bank's Environmental Protection Policy of November 2004 (International Rivers Network and Environmental Defense 2007: Annex) is a relatively unspecific one-page document which establishes "approval or endorsement from the recipient country's environmental administration" as the only performance standard. While it mentions that projects harmful to the environment are excluded from funding, no standards or benchmarks for the assessment of harm are included.

The China Export Import Bank has approved loans with a volume of \$20 billion in 2005 (Bosshard 2006). This places the Chinese ECA in the same range as its top three OECD competitors Korea (\$22 billion in 2005), Japan (\$20 billion in 2005), and Germany (\$19.5 billion in 2005) (see OECD 2007d). In addition to China's increasing role in providing export credits, India is also playing an evermore important role. "Between 1994/95 and 2003/04, the [Indian Export-Import] bank's loan disbursements grew almost 30-fold, from \$48 million to \$1.5 billion" (Wang et al. 2005: 12). India does

not yet compete with the big OECD players in terms of export credit volume, but it already outpaces twelve smaller OECD ECAs such as those of Finland, Denmark, and Norway.

7.2.5 Reliance on non-state actors for monitoring and enforcement

All three environmental policies discussed here rely on transparency provisions as compliance mechanisms. While this mirrors the U.S. approach in NEPA (in which these policies find their common root and was championed by NGOs as well as the U.S. government), it places a considerable responsibility and burden on non-state actors.

These policies are effectively policed by NGOs utilizing the transparency provisions to flag problematic decisions and projects. With the existence of an inspection panel or ombudsman, the capability burden on these organizations is limited, as they can initiate a review process with little impact on their own resources. However, where such a mechanism does not exist –which is the case for most ECAs and all Equator banks – the only way to enforce these policies is by researching violations and making them public. In the absence of explicitly delegated authority to assume this function and no compensation for such services, the role of NGOs in this area is problematic.

Furthermore, faithful implementation depends on the existence of an active civil society to monitor institutions' conduct. As a consequence, thoroughness of implementation may vary with the capacity of civil society. At the same time, the combination of problematic projects with a transparent decision-making process may serve as a catalyst for NGOs to form around opposition to projects.

While it may be too early to assess the diffusion of these international rules for finance into recipient countries, it is clear that these policies can improve the

environmental performance of supported projects in countries where the government lacks either the capacity or the political will to implement similar policies. By making project sponsors directly responsible for the environmental impacts of their projects, ECA standards and the Equator Principles also avoid the involvement of public authorities that may be potentially ineffective in countries lacking regulatory capacity.

ECA standards and Equator Principles are a manifestation of norm diffusion among providers of international finance. However, their impact is limited by the availability of other sources of international financing, and their legitimacy is challenged by the lack of an accepted authority sanctioning them. Both of these deficiencies could be addressed by an international consensus-building effort aimed at establishing common rules for international finance. Such a process could both bring in actors that are primarily active in markets not integrated with Western project finance markets (e.g. Middle Eastern banks active in Africa) and also exert pressure on non-OECD countries to adopt the Common Approaches. Such a dialogue that includes recipient countries could furthermore provide policies, built on the resulting consensus with a great deal of legitimacy – no matter how they would be enforced, be it by a public, semi-public, or private regulator.

Chapter 8: Conclusion

The purpose of this dissertation was to provide an answer to the question *How could export credit agencies resist for 25 years the same pressure that greened other financial institutions in a relatively short time?* This was done by breaking this question in two related sub-questions: one addressing environmental rule-making, and the other analyzing regulatory harmonization among ECAs. More specifically, by comparing environmental rule-making among ECAs with that of other financial institution and by comparing different regulatory harmonization processes among ECAs.

This concluding chapter revisits these questions as well as the five hypotheses developed in the section discussing my theoretical approach, before outlining suggestions regarding areas in which further research would be most appropriate. These areas include: harmonization processes where the proponents of change cannot exert direct power, regulatory harmonization in the OECD, and transdomestic policy.

The first question this dissertation addressed was as follows: *Given the similarity in project portfolios and public demands for change, why were some ECAs slower than others, and all of them so much slower to respond to the environmental challenge than the World Bank and even private banks?*

All institutions were subject to campaigns by similar groups of environmental NGOs and were forced to address their challenges. The crucial difference between rule-making for the World Bank and private banks on the one hand, and for ECAs on the other, is the role played by client interests in the rule-making process. The World Bank and private banks are structurally dependent on their clients, as its clientele constitutes the basis of their operations. Clients' direct influence on shaping the institutions' policies

is, however, very limited. Only in matters of environmental policy-making for ECAs are clients actually formally and significantly involved in the policy-making process.

Exporters, who rely on their export credit agencies for support, exert considerable influence in domestic politics and can often influence their governments. Thus, ECA policies require the balancing of powerful competing interests in designing environmental policies, whereas the World Bank and private banks can respond to demands for environmental policies without further consideration of competing external interests.

The influence of exporters on ECAs is related to the power an industry sector wields, and that power is in turn affected by changes made to the rules it abides by. The power of the industry sector hinges upon the relevance of affected exporters to total national exports, institutional factors channeling industry power, and the power of competing demands made on the ECA. This meant that the higher susceptibility of German exports to environmental restrictions, German institutions favoring strong representation of the interests of industry, combined with institutional hurdles limiting the power of its NGO opponents, resulted in slower and less ambitious environmental reform for Hermes guarantees than for its U.S. counterpart, Ex-Im. U.S. exports, in contrast, were affected by environmental restrictions to a lesser degree, and industry had to compete on equal footing with environmental NGOs for influence on policy-making. Considering only the two situations, (i) a closed political opportunity structure for NGOs but privileged industry access and higher industry vulnerability in Germany, and (ii) open interest group access and lower industry susceptibility in the United States, it is not possible to determine whether the decisive factor is NGO power or industry power. Given the information contained in these two cases, it can be determined only that the power

balance between industry and NGOs matters, but we cannot determine which of the two is more relevant.

The second question I address is as follows: *Considering the low relevance of ECAs for trade, why has harmonization been so slow and cumbersome?*

ECA harmonization involves changes to pre-existing regulations and compromises on meta-regulatory principles. This kind of agreement is very difficult to achieve – if achieved at all. The Common Approaches, for example, avoided real agreement through the creation of loopholes that permitted the continuation of pre-harmonization practices. This led to a reduction in regulatory costs from adaptation to the new rules. Political benefits from agreement were concentrated on the U.S. side for the longest time. Over time, a joint effort made by the U.S. government and an international NGO campaign to re-frame the debate increased costs of non-agreement for European governments.

This study cannot decisively establish whether it was the increased political costs of inaction or the decreased regulatory costs resulting from the established loopholes that finally facilitated agreement. However, the Common Approaches' implementation record and, in particular, the recent approval of the Turkish Ilisu Dam by the Austrian, German, and Swiss ECAs, suggest that disregard for environmental demands may be less relevant than the minimization of adaptation costs. In either case, however, it is clear that institutional *incompatibility* between proposed rules and European regulatory cultures was a decisive obstacle to harmonization.

How could export credit agencies resist for 25 years the same pressure that greened other financial institutions in a relatively short time?

The answer to this question appears to lie less in ECAs' ability to resist pressure than in the World Bank's and private banks' ability to accommodate these demands relatively easy. For ECAs, responding to such demands meant balancing environmental with industrial policy objectives and as a result, accommodating such demands was much more difficult to accomplish than it was for the World Bank and private banks.

Variation in speed and scope of environmental reforms among ECAs themselves suggests that this balancing act involved different levels of complexity. The greening of ECAs as a group of institutions also required the harmonization of policies among them. This was difficult, however, because of the diverging regulatory cultures within these agencies' states.

Given the inductive nature of this inquiry, the results presented here are only *preliminary* results, and must be considered as such. Although my findings are based on sound theoretical reasoning, the limited number of cases studied here dictates that they should be further scrutinized by subjecting them to further testing. Examining only four instances of rule-making (World Bank, private banks, Ex-Im, Hermes) and two cases of regulatory harmonization (financial and environmental conditions) has provided enough variation among the factors under consideration to establish the claims made here, but given the interpretative nature of this research design, studies with additional cases are needed to test the broader applicability of the explanations advanced.

8.1 Limits to environmental rules for international finance

NGOs directed their campaigns at financial institutions not because these institutions promised to be "silver bullets" in greening infrastructure development projects, but rather because they were relatively easy targets. Consequently, 'greening'

such projects has been limited to projects supported by ‘greened’ financial institutions. As the implementation discussion in chapter seven has shown, ‘greening’ policies can be effective only where the ‘greened’ financial institutions command a large market share. Financing from other providers not subject to similar policies renders these providers ineffective, because environmentally problematic projects can nevertheless be carried out without modifications if a financial institution not bound by environmental rules gets involved.

Substantial greening of infrastructure projects would require standards not tied to particular sources of financing. During my research in Berlin, German lobbyists strongly opposed to environmental restrictions on export credits suggested that an international agreement on an environmental performance certification of infrastructure projects would be desirable because it would neither affect competitiveness nor slow down export credit approvals (interview with two German lobbyists, 20 January 2004). Certified projects would have undergone environmental review during the certification process and, thus, not require any further assessments when financing or export credits were sought.

Short of international agreement on project certification, such reviews could also be established as private sector agreements among parties involved in project design. Perez (2002) suggests that engineers should be involved in project design at a key stage when environmental effects can not only be assessed but also effectively managed. Relying on their international codes and practices promises considerable leverage and coverage, since “the international market for standard construction contracts is dominated by a small group of international organizations,” like the International Federation of Consulting Engineers (FIDIC) (Perez 2002: 86). However, the most effective

consideration of environmental effects (that is, early on in project design) typically pre-dates the inclusion of a consulting engineer (Perez 2002: 93). Nevertheless, the *lex constructionis* covering contractual relationships among project sponsors, contractors, and operators promises to be a well-suited framework for addressing environmental review requirements.

8.2 Hypotheses for further research on ECAs

Additional studies are needed to confirm the explanations for environmental rule-making developed here. Such further studies can build upon the explanations presented in this dissertation as well as upon a number of hypotheses developed within the context of the theory discussion in chapter two.

The level of environmental standards for an ECA and the ECA's institutional autonomy are inversely related: the more autonomous an ECA is, the more resilient it is against strict environmental standards.

This first hypothesis was adopted from Carbonell and Stephen's (2003) study. It clearly held up in this comparison of German and U.S. standard-setting. The highly autonomous German ECA clearly has more lenient environmental policies than its U.S. counterpart, which is under close Congressional control. Although this study did not falsify this hypothesis, it also did not establish institutional autonomy as an independent force. The arguments presented here consider institutional autonomy as an institutional characteristic that affects how the power of actors making demands on an ECA is channeled.

Institutional constraints – including the political opportunity structure – have an impact on NGO power and strategies.

The interaction of political opportunity structures and movement strategies are a staple of the environmental politics literature (Dryzek et al. 2003; Kitschelt 1986; Schreurs 2002). Clearly, this dissertation could not challenge this assertion. However, the power discussion in chapter two has added an important aspect to the consideration of institutional impacts on NGOs by suggesting that, in addition to strategies, we also need to consider different forms of NGO power. Differences in political opportunity structures primarily determine which forms of power are available to NGOs in different institutional settings. The choice of strategy is then a consequence of the availability of certain kinds of power. Strategy choice is, therefore, not a direct consequence of political opportunity structure, but rather an outcome of power availability.

ECAs supporting primarily business not affected by environmental standards are more likely to implement such policies because they only affect an insignificant share of their business. ECAs that support primarily infrastructure projects subject to environmental standards are less likely to pursue such policies.

The portfolio composition hypothesis is a critical ingredient for the business power argument made in this dissertation. It is clearly supported by the evidence presented here, and was also confirmed as an important consideration in my interviews (interview with German official, 5 December 2003; interview with German lobbyist, 16 December 2003). Business power is thought to result from affected exports' relevance for exports (this hypothesis) and institutional factors determining business access to policy-making. A refutation of this portfolio composition hypothesis would not necessarily put my entire business power argument into question since it is theoretically possible that environmental standards could negatively affect a considerable share of supported

exports, while the exporters themselves do not enjoy much clout in the political processes. Consequently, this hypothesis needs to be tested in cases where exporters affected by environmental standards possess good access to the policy-making process.

In states where corporate welfare critics are strong, ECAs may seek the support of the environmental critics (who do not seek to abolish ECAs) and implement high environmental standards. In cases where ECAs respond to corporate welfare critics by implementing SME programs they may not need to address environmental issues as thoroughly.

While not being refuted by this research, the hypothesis regarding welfare critics is nevertheless contested. Both the U.S. Ex-Im Bank and the British ECGD are subject to fundamental critiques and are also much more forthcoming with regard to environmental reform than other ECAs (like the German Hermes) which do not face this type of criticism. In interviews, however, one U.S. official dismissed the relevance of these critiques (interview with U.S. official, 21 June 2004), a lobbyist acknowledged its limited influence (interview with U.S. lobbyist, 7 July 2004), and another official suggested not only that these critiques mattered for Ex-Im, but that there was also no interaction among these demands (interview with U.S. official, 9 July 2004). Further research would require a comparison of ECAs facing multi-faceted critiques.

ECAs acting only as insurers are confronted with higher regulatory costs in comparison to bank-type ECAs when implementing environmental project screening.

Clearly, the business model of an ECA must have an impact on internal project review procedures. The question is: to what extent do these procedures differ, and how does this affect adaptation costs? This study could not test this question, given its focus

on *rule-making* rather than on *implementation*. German officials, however, cited this aspect as a key constraint to agreement on environmental review procedures (personal communication with German official, 3 September 2003).

8.3 Implications for theory development

This dissertation is the first thorough academic account of environmental standard-setting for ECAs and of the harmonization of these policies. As such, it is a mostly interpretive study which makes plausibility probes into the applicability of theories developed elsewhere. Based on the unique features of export credit policy harmonization, the cases analyzed here provide an important impetus for the refinement of regulatory harmonization theory. ECA harmonization provides interesting challenges to our thinking about regulatory harmonization in at least three ways: (i) promoters of stiffer rules cannot rely on market power to promote their agenda; (ii) in contrast to EU regulatory harmonization, lack of a central authority may result in divergent harmonization patterns; and (iii) the transdomestic nature of export credit rules goes beyond conventional categories of domestic and foreign policy.

8.3.1 Regulatory harmonization in the absence of market power

As is evident from the discussion in chapters two, five, and six, most accounts of regulatory harmonization are concerned with product or process standards which regulate the access of goods to markets. Thus, such rules can be used to shield domestic markets, and governments can utilize their control over markets as a bargaining chip in negotiating harmonized rules. However, an explanation which relies on market power to predict regulation outcomes does not work with regard to export credit harmonization. Export

credit rules govern the access of firms' access to government support, and unilateral tightening of these rules works only to the competitors' advantage. If races occur, they are more likely to be 'races-to-the-bottom' than 'races-to-the-top'. The history of ECA financial terms provides ample evidence for this.

How then, can upward harmonization be explained? Levit (2004) suggests that camaraderie among Members to the Arrangement fosters trust and cooperation among ECAs. Evans (2005) suggests that the cartel of OECD ECAs has an interest in maintaining harmonized rules in order to avoid costly subsidization races. Both explanations operate at the regime level and therefore do not help in understanding how the initial incentive for downward races can be overcome. While we could live with such a limitation to theoretical insight in the obscure niche of export credit policies, these rules, along with the harmonization process, really serve as examples of a broader range of harmonization of domestic rules and practices beyond the application of brute market power. What is driving the convergence of domestic rules (and even meta-regulation) beyond market integration and the hegemon?

8.3.2 EU theorizing and OECD harmonization

This analysis borrowed quite heavily from regulatory theory, which was developed in the EU context, and applied its principles to a harmonization endeavor within the context of the OECD. Many of the approaches work quite well. However, a key difference between the EU and the OECD is the lack of a central authority in the OECD. Given this difference, the OECD is often described as "tooth-less" or as a "talk shop." Lack of a central authority not only limits the OECD in enforcing its agreements, but it also leads to different harmonization dynamics. When the OECD operates as a

think tank, it is very influential in disseminating good practices and fostering policy diffusion. However, when it operates as a facilitator of international agreements, its bodies lack the authority of the EU Commission to promote specific policy options. As a consequence, repeated rounds of Europeanization (see chapter seven and Bugdahn 2005) are likely to lead to *upward* harmonization, whereas weak domestication in key OECD Member States would result in *downward* pressures in subsequent rounds of “OECDization.” We need to develop a better understanding of the dynamics of harmonization under the auspices of the OECD. Given the authority of the WTO over much of the trade-related issues negotiated in the OECD, it appears more appropriate to borrow from supra-national EU theorizing than from IR approaches which assume the condition of anarchy among states.

8.3.3 Need for further research: transdomestic regulation

The challenge to legitimacy posed by the transdomestic nature of ECA environmental standards has been addressed in chapter four. However, the concept itself remains underspecified. This section provides a sketch of “transdomestic policy” as a theoretical construct and illustrates some of its implications. However, the concept still needs more thoughtful development than the limited discussion on the following pages.

8.3.3.1 The concept

In general, policies can be described by the dimensions of nature and scope of intended impact: purely domestic, purely foreign, transdomestic (domestic foreign), and boomerang (foreign domestic). Different types of policies tend to be associated with their own particular policy communities and policy-making venues. However, hybrid types transcend these boundaries: domestically-oriented policy-communities devise external

policies (transdomestic), and externally-oriented policy communities work on policies targeted within their own domestic sphere (boomerang). Figure 8.1 organizes these types of policies by nature of the policy-making process and their arena of intended impact. If we accept that policy-making processes vary depending on the nature of the policy-making process, then these hybrid forms can provide both opportunities (the ability to circumnavigate veto players in the “proper” policy making process) and challenges (the exclusion of otherwise included actors and views).

Figure 8.1 Categories of policies

Impact Nature	Domestic arena	Foreign arena
Domestic	Domestic policy	Transdomestic policy (domestic foreign)
Foreign	Boomerang policy (foreign policy that targets own domestic arenas)	Foreign policy (deliberately external)

The obvious question, when stumbling across such a void in the literature is: “does it matter?” I contend that it does. Most prominent is the issue of sovereignty, i.e., to what extent do these different kinds of policies affect the sovereignty of the state in which they originate, and in which they have their effect. In a second stage, these sovereignty concerns become policy-relevant: states are more likely to engage in international agreements which pose little threat to their national sovereignty than in those which require sacrifices of sovereignty.

Also of concern is the question of voice in the policymaking process. States’ “voices” can be subsumed under the heading of sovereignty. However, those affected by regulation may or may not have an opportunity to bring their concerns to the table.

Domestic policy is the easiest candidate: origin and effect are located within the same polity, and thus, domestic policy does not pose any challenge to sovereignty.

Foreign policy is the other classic example: states devise policies intended to influence the behavior of other sovereign nation-states. Though by its very definition, the goal is interference with the sovereignty of another nation-state, it is usually deemed acceptable, so long as these policies follow the traditional rules of diplomacy. Interactions that include non-state actors – a.k.a. transnational politics – can be included under this heading as well. Those actors affected by regulation do have a voice within their own state, to the extent they are provided with voice in domestic policy-making. Be it in a pluralistic or in a corporatist setting, they can exert influence in foreign policy as highlighted by Putnam's (1988) two-level game metaphor.

Transdomestic policy, however, defies these traditional categories: policies appear to be domestic in nature, yet their deliberate *effects* occur within the borders of another sovereign state. This quality leads to unusual implications for state sovereignty. Little or no concerns exist for the state in which these policies are devised, and the state in which the policies will have their effect has little or no influence on the policy-making process. Infringement of state B's sovereignty comes at no cost to state A; state B, meanwhile, suffers from an infringement on its sovereignty and is left with little or no means of remedying it. Furthermore, foreign people in state B have no voice in this domestic policy process unless they can forge transnational coalitions with domestic partners in state A.

Boomerang policy is targeted at regulating behavior at home. However, it is formulated and implemented as foreign policy. Policy-makers may pursue this option if traditional domestic regulation would come at high political cost, or if domestic veto players make it impossible to regulate in a purely domestic fashion. Weidner proposes

that German environmental politics made considerable use of boomerang policy via the EU and international levels: “[...] the Federal Minister for the Environment used international environmental policy as a vehicle to overcome obstacles in his own country” (Weidner 1991, cited in Pehle 1997: 192).

This kind of policy has little implication for state sovereignty, but it does pose significant challenges to voice and legitimacy. If groups that are to be regulated possess enough voice to block domestic regulation, regulating them by means of a foreign policy detour questions the legitimacy of such a policy. Nevertheless, the boomerang path may be chosen for two reasons: either (i) other institutional channels are employed in foreign policy rather than in domestic policy making, thus rendering the veto players out of the game, or, (ii) the relevant veto players are mostly concerned with domestic policy and therefore do not monitor foreign domestic policy developments as closely. Once a policy commitment with other international actors exists, however, it is more difficult to undo than exclusively domestic regulation.

These categories are analytic in nature. Any of them can have effects both at home and abroad. The question is where the deliberate or target effects occur and how the policy is formulated.

While emerging literature on policy diffusion and regulatory convergence is a fascinating topic, it is not of central importance to my argument. The defining characteristic of transdomestic policy involves the intentional regulation of an external polity by means of domestic policy. Domestic regulations that diffuse by means of market forces or regulatory adoption, or domestic regulations that converge around an ideal type, are still domestic policies in nature. Even if EU regulation of biotechnology

has a strong impact on the U.S. market, for example, it remains a domestic EU policy as long as it is intended to regulate goods in the EU and not in the U.S. market. U.S. farmers may adapt their choice of crops to ensure marketability in the EU. Thus, EU policy may profoundly shape U.S. modes of agricultural production, but the policy still remains a domestic policy targeted at EU food markets.

If international agreement is to be reached over policies in these ideal categories, agreement will most easily occur in foreign policy, as foreign policy requires international cooperation by definition. Most difficult is the harmonization of domestic policies. Transdomestic policy falls between these extremes: because it is *domestic policy* that is to be harmonized, harmonization therefore infringes upon the freedom of the regulating state to devise its own policies. However, since the effects of these policies are located within another nation-state, they do not have to be of concern to the regulator, and thus agreement is simpler than it would be in the case of traditional domestic policy. Boomerang policy, devised in a way which minimizes impact in other polities with potential veto power, should face the fewest international obstacles.

8.3.3.2 Transdomestic policy reviewed

If the concepts of transdomestic and boomerang policy are accurate and can be analytically helpful, the question looms as to why no one has thought of them before? On one hand, this could be a result of the analytical categories we are concerned with; we study either domestic politics or international relations. On the other, it could be a consequence of policy makers' conceptions of politics; it is either domestic or it is foreign. As a result of both common views, we are left with an interpretation of how the world works that leaves out very interesting phenomena. Since these artificial divisions –

both in the academic sphere and in the policy world – are mostly analytical categories, we need to ask how politics works and adapt our categories to this reality. Thus, it is obvious that we need to address domestic sources of foreign policy, foreign sources of domestic policies, and policies that are neither purely domestic nor purely foreign.

Much has been written about domestic sources of foreign policy – much of it on American foreign policy – and following Putnam’s piece on two-level games, scholars of domestic politics cannot ignore the effects of the international level anymore. But this scholarship is still built on the exclusiveness of the domestic and foreign categories. It only asks about the policy arena, but not whether the regulatory arena can be disjointed from the policy-making one.

In analyzing ECA politics, this dissertation has provided a case study of transdomestic policy from the seller country perspective. The transdomestic nature of ECA politics allowed policy-makers to ignore the concerns of recipient countries in creating environmental rules. Full appreciation of these policies’ transdomestic nature would also require the consideration of their impact in the recipient countries where the policies unfold their primary effects. It should be noted that the irrelevance of client country concerns also was an important factor in facilitating the World Bank’s and private banks’ swift responses to environmental challenges. Obviously, the transdomestic label does not apply in these cases of International Organization and non-state regulation, but the dynamics are clearly related.

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