Document
Y
4
F76/1
Ov2/2

Storage

Congress } COMMITTEE PRINT
Session }
GOVERNMENT

RECEIVED
SEP 27 1973
THE LIBRARY
KANSAS STATE UNIVERSITY

THE OVERSEAS PRIVATE INVESTMENT CORPORATION: A CRITICAL ANALYSIS

PREPARED FOR THE

COMMITTEE ON FOREIGN AFFAIRS

BY THE

FOREIGN AFFAIRS DIVISION, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS

KSU LIBRARIES
A11900 911869

SEPTEMBER 4, 1973

KANSAS STATE UNIVERSITY
LIBRARY
MANHATTAN

U.S. GOVERNMENT PRINTING OFFICE

99-341 WASHINGTON : 1973

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1.30 cents
Stock Number 5270-01958

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON FOREIGN AFFAIRS

THOMAS E. MORGAN, Pennsylvania, *Chairman*

CLEMENT J. ZABLOCKI, Wisconsin
WAYNE L. HAYS, Ohio
L. H. FOUNTAIN, North Carolina
DANTE B. FASCELL, Florida
CHARLES C. DIGGS, JR., Michigan
ROBERT N. C. NIX, Pennsylvania
DONALD M. FRASER, Minnesota
BENJAMIN S. ROSENTHAL, New York
JOHN C. CULVER, Iowa
LEE H. HAMILTON, Indiana
ABRAHAM KAZEN, JR., Texas
LESTER L. WOLFF, New York
JONATHAN B. BINGHAM, New York
GUS YATRON, Pennsylvania
ROY A. TAYLOR, North Carolina
JOHN W. DAVIS, Georgia
OGDEN R. REID, New York
MICHAEL HARRINGTON, Massachusetts
LEO J. RYAN, California
CHARLES WILSON, Texas
DONALD W. RIEGLE, JR., Michigan

WILLIAM S. MAILLIARD, California
PETER H. B. FRELINGHUYSEN, New Jersey
WILLIAM S. BROOMFIELD, Michigan
H. R. GROSS, Iowa
EDWARD J. DERWINSKI, Illinois
VERNON W. THOMSON, Wisconsin
PAUL FINDLEY, Illinois
JOHN H. BUCHANAN, Alabama
J. HERBERT BURKE, Florida
GUY VANDER JAGT, Michigan
ROBERT H. STEELE, Connecticut
PIERRE S. DU PONT, Delaware
CHARLES W. WHALEN, JR., Ohio
ROBERT B. (BOB) MATHIAS, California
EDWARD G. BIESTER, JR., Pennsylvania
LARRY WINN, JR., Kansas
BENJAMIN A. GILMAN, New York
TENNYSON GUYER, Ohio

MARIAN A. CZARNECKI, *Chief of Staff*

KANSAS STATE UNIVERSITY
LIBRARY
MANHATTAN

Document
Y
4
F 76/1
Ov 2/2

FOREWORD

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
September 4, 1973.

This analysis of the Overseas Private Investment Corporation is the first of several studies which the Foreign Affairs Division, Congressional Research Service (CRS), Library of Congress, has prepared at the request of the Committee on Foreign Affairs. Other reports will be issued in the near future.

As a result of the passage of the Legislative Reorganization Act of 1970 each congressional committee was directed to give increased emphasis to its legislative review or "oversight" activities in order to ascertain how laws within its jurisdiction were being administered by the executive branch.

The Committee on Foreign Affairs has attempted in a variety of ways to meet its obligations for legislative review both through its own resources and through cooperative efforts with the Congressional Research Service and the Government Accounting Office.

The need for a review of the Overseas Private Investment Corporation (OPIC) is apparent. Created by the Foreign Assistance Act of 1969, the Corporation was to stimulate private investment in the less developed countries. Initially given a 5-year life by Congress, OPIC has had a history marked by controversy. A decision on its future must be made by Congress soon.

For that reason, the Subcommittee on Foreign Economic Policy of the Committee on Foreign Affairs, under the able chairmanship of the Hon. John C. Culver, held extensive oversight hearings on OPIC's operations during May and June, 1973.

Earlier, the full committee had asked the Foreign Affairs Division, CRS, to undertake this study in order to assist the subcommittee inquiry, and to provide additional information to the committee, as it considered changes in OPIC legislation proposed for the Foreign Assistance Act of 1973.

Findings and observations contained in this report are those of the Congressional Research Service staff people who prepared it and do not necessarily represent the views of the Committee on Foreign Affairs or its members.

THOMAS E. MORGAN, *Chairman.*

KANSAS STATE
UNIVERSITY
LIBRARY
MANHATTAN

MANHATTAN
LIBRARY
UNIVERSITY
KANSAS STATE

PREFACE

The principal instrumentality by which the U.S. Government seeks to stimulate private investment in the developing countries is the Overseas Private Investment Corporation (OPIC). This study analyzes the policies, directions, and effects of OPIC. The first two chapters consider OPIC's history, organization, and programs. The third chapter compares OPIC with similar programs in other countries and with other insurance and finance programs in the U.S. Government. The fourth chapter analyzes OPIC's current operations. Subsequent chapters discuss OPIC's financial status, its role in balance-of-payments problems, and its impact on foreign relations.

The study was facilitated by the OPIC staff's unqualified cooperation. Virtually every senior officer was interviewed, including President Bradford Mills, Executive Vice President Herbert Salzman, Vice President for Development Rutherford Poats, Vice President for Insurance Joseph Price, Vice President for Finance William Pistell, and General Counsel Marshall Mays. In addition, all requested OPIC documents were made available.

The study was prepared by Dr. Hans Binnendijk, analyst in international relations, of the Foreign Affairs Division, Congressional Research Service, under the direction of Dr. William C. Gibbons, specialist in U.S. foreign policy. Research and writing were also contributed by Janet Bancroft, analyst in international relations, and other CRS analysts, as noted. Carole Petty of the Foreign Affairs Division provided editorial assistance and prepared the eight graphs on pages 55–61.

PREFACE

CONTENTS

	Page
PREFACE	v
SUMMARY	
A. Operations and Programs	1
B. OPIC and the Negotiating Process	2
C. Self-Sustenance and Private Sector Participation	2
D. Effect of OPIC on the U.S. Economy	3
E. The OPIC Staff	3
F. OPIC Compared With Similar Programs in Other Countries	3
CHAPTER I. LEGISLATIVE HISTORY	
A. Pre-OPIC Investment Program	5
B. OPIC Legislative History	6
Senator Javits' Proposal	6
President Nixon's Proposal	6
House Hearings	7
Other Comments	8
House Floor Debate	9
Senate Foreign Relations Committee	9
Senate Floor Action	10
The Creation of OPIC	11
C. Subsequent Legislative Action	11
D. OPIC Proposals for 1973 Legislation	13
CHAPTER II. OPIC ORGANIZATION AND PROGRAMS	
A. Organization of OPIC	14
B. Investment Insurance Program	17
C. Financing Program	21
D. Preinvestment Surveys	23
CHAPTER III. OPIC COMPARED TO OTHER PROGRAMS	
A. Comparison of OPIC With Similar Programs in Other Countries	25
Political Risk Insurance Programs	27
The World Bank's International Investment Insurance Agency	30
Investment Financing Programs	33
Preinvestment Information Programs	35
Competition for Markets	35
B. Comparison of OPIC With Other U.S. Government Programs	37
Insurance Programs	37
Finance Programs	37
CHAPTER IV. OPIC OPERATIONS: AN EVALUATION	
A. Decline in Operations	39
Political Risk Insurance Declines	41
Continued Need for OPIC Insurance?	45
Guaranties and Direct Investment Loans	46
Productivity Credit Guaranty Program	47
Preinvestment Survey Program	47
The Cooley Loan Program	48
B. Development Assistance Gives Way to Risk Management	50
Political Risk Insurance	50
Loan Guaranty Program	51
Direct Loans	52
OPIC's Development Policy	52
Discussion	53

CHAPTER IV. OPIC OPERATIONS: AN EVALUATION—Continued Page
C. Geographical Distribution of OPIC Assistance 53
Present Insurance Exposure 53
Area Analysis of the Insurance Program 54
Geographic Diversity of the Insurance Program 62
Country Concentration in the Insurance Program 63
Geographic Distribution of Major Finance Programs 65
CHAPTER V. SELF-SUFFICIENCY, RISK MANAGEMENT, AND PRIVATE SECTOR PARTICIPATION
A. Finance Programs 67
B. Insurance Program 71
CHAPTER VI. OPIC AND THE AMERICAN ECONOMY
A. OPIC Policies 77
B. The Effects of OPIC Policies 78
CHAPTER VII. OPIC AND THE CHANGING INVESTMENT CLIMATE
A. Changing Attitudes Towards Private Investment in Developing Countries 82
B. Large and Sensitive Industries 84
OPIC Policy 85
Results of "Large or Sensitive" Projects: Sector Analysis 86
C. Analysis of Corporations Assisted by OPIC 88
D. Joint Ventures and Minority Ownership 91
E. New Approaches to Investments 93
F. Code of Conduct 94
G. OPIC as a Means of Supporting Friendly Governments 94
CHAPTER VIII. OPIC, INVESTMENT DISPUTES, AND THE NEGOTIATION PROCESS
A. Deterrence For Expropriation 96
B. A Channel for Expropriated Businesses 97
C. A Means of Controlling Multinational Corporations 98
D. OPIC Assistance in Claim Settlement 99
E. OPIC Pressure on Host Countries 100
F. Subrogated Assets and Government-to-Government Conflict 100
CHAPTER IX. FUTURE DIRECTIONS
A. Risk Management and Self-Sustenance 104
B. Foreign Economic Policy 104
C. Large and Sensitive Industries 104
D. Geographical Expansion of OPIC Operations 105
APPENDIX
A. OPIC Country List—Investment Insurance and Finance Program 109
B. OPIC Resolutions of the Board of Directors 111
C. OPIC-Type Programs in Germany, France, Japan, Sweden, and the United Kingdom 114
D. Guaranty Schemes for Overseas Direct Investment (tabular summary) 126
E. Draft of Articles of Agreement, International Investment Insurance Agency (IIIA) 130
F. OPIC internal memorandum on Federal Government Insurance Programs 150
G. OPIC/Agribusiness Council Project Development through December 1972 153
H. Preliminary Guidelines for Analysis of Developmental Effects of OPIC Projects 154
I. Projections of OPIC Finance Programs through 1980 157
J. Foreign Investment Disputes Involving U.S. Capital 159
K. OPIC General Policy and Guidelines for Insurance of Large and Sensitive Projects 163

SUMMARY

A. Operations and Programs

1. OPIC operations have shrunk severely in volume during recent years. Political risk insurance as now issued by OPIC has dropped 75 percent in dollar volume since the peak year of 1968, when it was handled by AID. Similar trends appear in virtually all of OPIC's programs. Yet, U.S. private investment in developing countries has increased during the same period. At least part of the decline in OPIC's business is due to selectivity required by congressional mandate and imposed by economic nationalism in the third world.

2. OPIC's geographical scope has also severely declined. At present, 83 percent of all OPIC-issued insurance by dollar volume is concentrated in eight countries: Korea, Indonesia, Brazil, Taiwan, Botswana, Singapore, the Philippines, and Israel. During the 22 years in which AID administered the political risk insurance program, 57 percent of its portfolio was concentrated in the top eight countries. Sixty percent of the entire finance portfolio serves just three countries: Indonesia, Korea, and Brazil.

3. Declining business volume and limited geographical scope raise the question of the continued necessity of OPIC political risk insurance. A partial answer is that without OPIC there would probably be less private U.S. investment in the LDC's. According to a study of the situation in 1971, up to $220 million in direct private investment to developing countries would probably not have taken place during that year without the availability of OPIC insurance.

4. The emphasis of OPIC's programs has shifted away from exclusive concern with its economic development mission. There has been a corresponding shift of emphasis in the direction of low-risk projects, due in part to the congressional mandate requiring that risk management principles be applied to the insurance program and that the finance program undertake to become self-sustaining.

5. OPIC's policy of reducing support for the larger and more sensitive projects has combined with a decline in U.S. investor interest to greatly reduce issuance of insurance to extremely large projects. The proportion in dollar volume of insurance issued to mining industries has dropped from 24.7 percent under AID to 2.2 percent under OPIC.

6. However, OPIC still issues the preponderance of its political risk insurance to the large multinational corporations. Since 1971, about 79 percent of all insurance by dollar volume went to institutions on the Fortune lists of the top 500 corporations and 50 commercial banks. More than half of the projects supported by OPIC's finance program are partly owned by corporations on the Fortune 500 list. The trend in the finance program, however, appears to be in the direction of support for smaller businesses.

7. Although OPIC encourages joint ventures with local investors and minority U.S. ownership in overseas ventures, a Harbridge House study of 20 OPIC-insured investments shows that 13 are joint ventures but only 6 of the 20 investments are joint ventures with U.S. minority participation. The proportion of projects financed by the guaranty and direct loan programs that involve joint ventures with local participants has decreased from 72 percent under AID to 53 percent under OPIC.

B. OPIC and the Negotiating Process

8. OPIC plays a beneficial role, primarily, in the negotiation of investment disputes. It can deter expropriation, serve as a channel of communication between expropriated corporations and host governments, help in various other ways to reduce friction between U.S. corporations and foreign governments, and assist in claim settlement. So far, OPIC has successfully settled 25 of the 40 major investment disputes in which it has been involved.

9. A major foreign policy consideration of OPIC involvement in investment disputes is the chance of direct government-to-government conflict over subrogated assets. To date this has not happened. However, OPIC currently holds assets of four companies expropriated by the Governments of Chile, the Sudan, and Haiti. Those rights could be pursued at any time. If either or both of the ITT and Anaconda claims are arbitrated in favor of the companies, OPIC says it will "vigorously pursue" its subrogation rights in Chile. Such action could lead to new political problems between the United States and the Government of Chile.

C. Self-Sustenance and Private Sector Participation

10. An OPIC staff study prepared for the Congressional Research Service shows that, granting certain assumptions about the future, OPIC's finance program now "operates and grows on a self-sustaining basis." Self-support could be maintained, for example, with $30 million annual growth of the guaranty program, losses not to exceed $50 million over the next 8 years, and assignment of finance program income to the finance reserve. In order to make this part of OPIC self-sustaining, however, OPIC officials are attempting to compensate for losses in the finance portfolio inherited from AID. The result has been a cautious policy which some officials admit has detracted from the developmental purposes of the program. Perhaps only the OPIC-issued financial guaranties should be required to become self-sustaining.

11. OPIC officials state that with a $200 million insurance reserve, the political risk insurance program can become self-sufficient except for a "catastrophic" set of losses. If the $72.5 million appropriation request is granted and placed entirely in the insurance reserves, the program will have over $200 million in reserves. Two threats exist to the insurance program's chance of self-sufficiency. First, pending and probable claims could cost the insurance reserve up to $122 million. Second, declining insurance volume could eventually lead to decreasing income from insurance premiums.

12. Although the insurance program involves the private sector in OPIC's operations through reinsurance, neither the insurance program nor the finance program will be able to become fully private in the near future. Both programs need the continued "full faith and credit" of the U.S. Government in order to exist.

D. Effect of OPIC on the U.S. Economy

13. The OPIC Advisory Council has suggested that OPIC emphasize its role in supporting U.S. balance-of-payments and employment problems. Any added emphasis, however, may not be necessary. OPIC already has substantial beneficial effects on both the balance of payments and the employment situation.

E. The OPIC Staff

14. The OPIC staff has a heavy ratio of supervisors to nonsupervisory personnel. While AID's Office of Private Resources, which carried on most of the same basic functions, had a ratio of 1 supervisor to 6 staff, OPIC's ratio as of December 1972 was 1 to 4. The OPIC staff at present consists of 68 professionals and 54 nonprofessionals. OPIC officials maintain that the professional group includes more finance, legal and administrative specialists than were required in the past.

F. OPIC Compared With Similar Programs in Other Countries

15. OPIC is more oriented toward economic development of poor countries than similar programs of most other developed countries. To this extent, OPIC is most like the British and German programs. OPIC's rates in both insurance and financial arrangements are higher than those of the programs of other nations.

16. Countries vary widely in the extent to which investors make use of political risk insurance. According to 1971 Development Assistance Committee statistics, 2.9 percent of all Dutch investment in LDC's is insured while 43.9 percent of all Japanese investment is insured. U.S. investors insured 31.4 percent of all investment in the developing world in that year, but substantially higher proportions in earlier years.

17. Two methods of supporting finance programs have proved successful in other countries and might be considered for OPIC. At least four countries allow equity investments to be made under their finance programs. Both the World Bank's International Finance Corporation (IFC) and Britain's Commonwealth Development Corporation (CDC) have borrowing authority.

18. In absolute terms the United States dominates private capital flows to LDC's. Its lead is not as great in relative terms, however. The average annual flow of direct investment of all countries to LDC's (excluding the Dutch investments) is 0.156 percent of the investing country's GNP. U.S. private capital flow to LDC's in 1971 was 0.21 percent of its GNP. The comparable figure for Japan was 0.10 percent.

CHAPTER I. LEGISLATIVE HISTORY [1]

A. Pre-OPIC Investment Program

Direct insurance programs for U.S. private investment began in 1948 with the Marshall Plan (Economic Cooperation Act), which included political risk insurance [2] for U.S. investments in Europe. In 1949, Marshall Plan legislation was broadened to include expansion and modernization in addition to new investment. In the 1950's coverage was extended to loss through expropriation or confiscation and the repatriation of royalties paid to an enterprise in a foreign country.

The Mutual Security Act of 1951, amended the Economic Cooperation Act to extend coverage to any geographic area receiving assistance.

The Mutual Security Act of 1953 extended the program to countries having agreements with the United States for the institution of a political risk insurance (then called guaranty) program.

With the shift from Europe to the less developed countries (LDC's), the Mutual Security Act was amended in 1959 to restrict the program to the LDC's. In 1961 the program was extended to cover loss due to war, revolution, and insurrection. Surveys of investments opportunities were provided for by title IV of the Foreign Assistance Act of 1961, under which not more than 50 percent of the total cost of each survey would be defrayed.

During the early 1960's, Congress urged that AID's investment guaranty program be expanded, and that it stress economic development. For example, the House Foreign Affairs Committee Report on the Foreign Assistance Act of 1962 stated:

> The committee is not satisfied with the rate of progress in issuing guaranties. The economic development of the countries eligible for investment guaranties will be retarded if private investment in such countries is delayed. The administrators of the program are urged to take whatever action may be necessary to speed up its operation.[3]

The Senate Foreign Relations Committee concurred:

> The committee has been an advocate of the investment guaranty program since its inception in 1948. The rate of development in a number of countries depends to a considerable extent on the rate of capital formation. Much of the capital that these societies will require in the years ahead will have to come from the private sector.[4]

---

[1] Prepared by Janet Bancroft and Hans Binnendijk, Aanalysts in International Relations.

[2] The term "political risk insurance" as used in this paper refers in general to risks of a non-business character, such as war, insurrection, expropriation, and inconvertibility.

[3] U.S. Congress. House. Committee on Foreign Affairs. Foreign Assistance Act of 1962; report . . . on H.R. 11921 to amend further the Foreign Assistance Act of 1961. Washington, U.S. Government Printing Office, 1962. p. 9. (87th Cong., 2d sess. House. Report No. 1788.)

[4] U.S. Congress. Senate. Committee on Foreign Relations. Foreign Assistance Act of 1962; report . . . on S. 2996 to amend further the Foreign Assistance Act of 1961. Washington, U.S. Government Printing Office, 1962. p. 18. (87th Cong., 2d sess. Senate. Report No. 1535.)

As the decade wore on, Congress continued to urge increased private capital flows to developing countries through the guaranty mechanism as a possible alternative to direct aid.[5] A study by the International Private Investment Advisory Council suggested that a public corporation with borrowing power and rights to equity investment might best induce further private investments.[6] The stage was set for the creation of OPIC.

B. OPIC Legislative History

Senator Javits' Proposal[7]

In 1968, Senator Jacob K. Javits proposed an amendment to the Foreign Assistance Act of 1968, calling for a reappraisal of foreign assistance programs by a National Foreign Assistance Review Committee. The committee was to make recommendations regarding specific proposals concerning the establishment of a government corporation designed to mobilize and facilitate the use of U.S. private capital and skills in less developed friendly countries and areas.

The committee was also to consider whether the corporation should: (a) Use Government guaranties as well as private funds; (b) develop and promote and underwrite new investment projects; (c) invest in the securities of development institutions and assist in the development of local capital markets.

The Javits amendment passed the Senate on July 31, 1968. The House foreign aid bill did not contain a comparable provision, but House conferees accepted a compromise in which the President was requested to make a comprehensive review of foreign aid and to consider proposals regarding the establishment of a federally chartered private corporation to stimulate the flow of U.S. private capital to LDC's. The House and Senate agreed to the conference report on September 19, 1968, and Public Law 90–554 was approved October 8, 1968.

President Nixon's Proposal

In the 1969 foreign aid message to Congress, the President recommended the establishment of the Overseas Private Investment Corporation for the purpose of enlisting greater private enterprise participation in the foreign aid effort. The bill requested by the President (S. 2347), provided for the creation of OPIC in order to "mobilize and facilitate the participation of U.S. private capital and skills in the economic and social progress of less developed friendly countries and areas." In the statement of purpose and policy OPIC was to:

> conduct investment financing on a financially self-sustaining basis;
> utilize private sources of financing as the principal means of encouraging investment;
> increase private participation by selling its direct investments to private investors;

---

[5] For example, see U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. The Involvement of U.S. Private Enterprise in Developing Countries; report . . . on the hearings . . . pursuant to H. Res. 179. Washington, U.S. Government Printing Office, 1968. p. 3. (90th Cong., 2d sess. House. Report No. 1271.)

[6] The International Private Investment Advisory Council (IPIAC). The Case for a U.S. Overseas Private Enterprise Development Corporation; proposal. [Distributed by U.S. Agency for International Development (AID), Washington] 1968. 22 pp. OPIC did not receive either borrowing power or rights to equity investment in the subsequent legislation.

[7] Secs. 501–2 of Foreign Assistance Act of 1968, as amended, to Foreign Assistance Act of 1961. In U.S. Congress. Senate. Committee on Foreign Relations. Legislation on Foreign Relations with explanatory notes. Washington, U.S. Government Printing Office, 1973. (93d Congress, 1st sess. Joint committee print) p. 133. (Hereafter cited as "Legislation on Foreign Relations.")

apply risk management principles in issuance of insurance;
utilize and encourage participation of small business in OPIC programs;
support investments in less developed "friendly" countries which contribute to their economic and social development;
take into account the receptivity of LDC governments to private enterprise;
encourage private initiative and competition and discourage monopolies;
consider the balance-of-payments effects of OPIC activities.

These goals were similar to those of AID's guaranty program except for the new emphasis on self-sufficiency and risk management.[8]

OPIC was to be governed by a board of 11 directors including the chairman of the board who was to be appointed from the public by the President with the advice and consent of the Senate. Four directors chosen from the public were also to be appointed by the President with the advice and consent of the Senate. The remaining directors were to be U.S. Government officials, appointed by the President. The administration requested 35 positions exempt from civil service laws and regulations, of which 15 could be supergrade.

The proposed corporation would be authorized to issue investment insurance against risks of convertibility, expropriation, and war, revolution, or insurrection. In addition, OPIC would give loan guaranties and make loans from a direct investment fund, for which the President had requested a capitalization of $100 million, $20 million in each of the succeeding 5 years.

House Hearings

In addition to the hearings by the House Foreign Affairs Committee on the administration's foreign aid bill (H.R. 11792) held August 5, 6, and 12, and September 16 and 18, 1969, the Subcommittee on Foreign Economic Policy of the Foreign Affairs Committee held hearings on the proposal for establishing OPIC.[9]

The committee report noted the importance of U.S. private investment in the economic progress of the less developed countries.[10] Concerning the specific proposal for establishing OPIC as a Government corporation, the committee expressed the view that one of the major advantages was the creation of a partnership of U.S private management and official policymakers which could conduct operations in a businesslike manner.

The committee made several changes in the provisions for establishment of OPIC. The request for $100 million capitalization was cut to $40 million, $20 million in each of 2 years. The committee specified that the chairman of the board should be the administrator of AID, serving ex officio, while the Administration's proposal had provided that the chairman should come from private life. The committee stipulated that of the six directors from private life, one should have had experience in small business, one in organized labor and one in cooperatives.

---

[8] Complications arising from these mandates are discussed in ch. V.

[9] U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy: Overseas Private Investment Corporation. Hearings, 91st Cong., 1st sess., on title II of H.R. 11792. Washington, U.S. Government Printing Office, 1969. 218 pp.

[10] U.S. Congress. House. Committee on Foreign Affairs. Foreign Assistance Act of 1969; report . . . on H.R. 11792. Washington, U.S. Government Printing Office, 1969. 194 pp. (91st Cong., 1st sess. House. Report No. 91-611).

Also added was a limitation on the issuance of insurance and guaranties: Not more than 10 percent of the total face amount of the investment insurance or guaranties could be issued to a single investor.

The committee added section 329(e) giving the Auditor General of AID the responsibility for conducting audits and investigations of the corporation's operations.

Also added to the bill was section 331, which provided for the agricultural credit and self-help community projects, a 3-year pilot program of community development loan guaranties for five countries in Latin America.

Perhaps the most important action of the committee was the prohibition which it added against use of loans from the Direct Investment Fund to finance the "mining or other extraction of any deposit of ore. oil, gas, or other mineral." [11] This significant policy decision, which was supported by the Senate, has prevented OPIC from becoming involved in an area of activity which, as the committee stated in its report, is one which often produces "political repercussions." [12]

Other Comments

Several members of the committee were critical of the proposal to establish OPIC. Representative Clement Zablocki noted three reasons for his reservations about OPIC. First, the new corporation would not do much more than was already being done by the AID Office of Private Resources. The only new program proposed was the Direct Investment Fund. Second, OPIC would operate at greater cost and less efficiency. (The bill provided for a highly paid top management for OPIC. The president would receive $40,000 annually, the executive vice president $38,000, and the three vice presidents $36,000 each. In addition, 15 supergrades and 20 positions exempted from Civil Service Rules were included in the provisions.) Third, with OPIC there would be decreased congressional control because of the elimination of the annual review by the respective committees. As OPIC would no longer need annual authorizations to operate its programs, it would have substantial funds available to disperse without congressional oversight.

Representatives John Culver, Benjamin Rosenthal, Edward Roybal, and Jonathan Bingham also noted reservations about the creation of OPIC. They expressed concern about taking away from AID an important tool of foreign aid and giving it to an organization which by statutory mandate was to be governed by business concerns. They noted that the "interests of U.S. business are not necessarily congruent with the needs of the developing countries or with U.S. interests * * *" They also expressed concern over additional problems arising out of increased identification of the U.S. Government with the interests of U.S. corporations, thus opening the United States to a charge of economic colonialism.

Representatives H.R. Gross, Edward Derwinski, and J. Herbert Burke criticized the costliness and highly paid management of OPIC.

---

[11] Public Law 91-175, sec. 234(e).

[12] U.S. Congress. House. Committee on Foreign Affairs. Foreign Assistance Act of 1969; report * * * on H.R. 14580. Washington, U.S. Government Printing Office, 1969. p. 33.

House Floor Debate [13]

Mr. Zablocki began the discussion of the foreign aid bill and noted particularly the changes designed to promote private investment in development, first of which was the creation of OPIC. Zablocki noted his personal reservations about the proposal, especially his concern that it would be topheavy with supergrades. The second change was the extension of the guaranty program to foreign capital invested in small community development projects in Latin America.

Representative Peter Frelinghuysen said that some individuals had expressed concern that OPIC did not have sufficient public control. He noted, however, that the chairman of OPIC's board of directors would be the AID Administrator. OPIC operations would be subject to the Inspector General for Foreign Assistance as well as the AID Auditor General, and the General Accounting Office would make annual audits.

Mr. Gross spoke critically of OPIC, asking why was there a need to create a corporation to run a program that had been running well for 20 years. He said that creating OPIC would mean adding another costly layer to the Federal bureaucracy.

Representative Leonard Farbstein, speaking in favor of OPIC, noted the advantages of having a "small specialized organization designed to meet both public and private business needs." [14] Better monitoring of project performance would result because of OPIC's reliance on businesslike methods.

Representative Lester L. Wolff offered an amendment which would have placed a limit of 10 percent of the total capital authorized to be paid into the corporation as to the maximum amount which OPIC could lend to a single firm. (The committee already had adopted amendments offered by Mr. Wolff which limited to 10 percent of the statutory authority the total amount of investment guaranties and investment insurance available to a single firm.) The amendment was rejected by a voice vote.

Mr. Gross offered an amendment which would have deleted the provisions for the creation of OPIC and would have reauthorized existing AID private investment programs. In support of his amendment, he said that the "AID people are attempting * * * to create yet another layer of bureaucratic blubber" in OPIC.[15]

Chairman Thomas E. Morgan of the Foreign Affairs Committee spoke in opposition to Gross' amendment, noting that the committee had written the original authorization for AID investment guaranties. He said that private enterprise had been contributing to the foreign aid program since the program's inception in 1948. He voiced regrets that the debate on OPIC centered on arguments about the creation of a new agency or bureaucracy. The purpose of the program was to stimulate more private funds into LDC's in order to relieve the U.S. taxpayer of some of the foreign aid burden. Mr. Gross' amendment was rejected 24 to 48. The House passed the foreign aid bill 176 to 163, on November 20, 1969.

Senate Foreign Relations Committee

The foreign aid bill reported by the Senate Foreign Relations Committee did not contain a provision for the establishment of OPIC.

---

[13] For House debate on H.R. 11792, see Congressional Record, vol. 115, Nov. 19, 1969: 34904–34939 and Nov. 20, 1969: 35183–35231.

[14] Farbstein, Leonard. Remarks in the House. Congressional Record, v. 115, Nov. 19, 1969: 34917.

[15] Gross, H. R. Remarks in the House. Congressional Record. vol. 115, Nov. 20, 1969: 35198.

The committee felt that in order to expedite Senate passage of the foreign aid measure, the bill should not contain any of the innovations of the House version. Existing programs were kept at approximately the same level as the previous year.

Senate Floor Action

During floor debate,[16] Senator Jacob Javits introduced an amendment to provide for the establishment of OPIC identical to the provision in the House bill, and cited the following benefits:

1. OPIC would stimulate additional companies to invest abroad. Ninety-five percent of U.S. businesses were not active either in foreign investment or exports.

2. OPIC's main asset was in corporate structure and in its right to sue and be sued, to have a corporate budget, and to have income (income would amount to $30 million a year and operating costs $4 million annually).

3. OPIC would be able to show greater initiative than a Government agency. It would develop propositions rather than just passively receive project proposals.

4. Other countries had successfully used a corporation to promote private investment in development: France, Germany, and Great Britain. The Netherlands had such an organization under consideration.

5. The corporation would make money and pay dividends to the U.S. Treasury. After the initial capital for setting up OPIC, operating expenses would come from income, thus requiring no further appropriations.

6. OPIC would do the same thing in the field of overseas private investment that the Export-Import Bank (Eximbank) did for the U.S. exporter.

Chairman J. William Fulbright of the Senate Foreign Relations Committee spoke in opposition to Javits' amendment. He noted that the committee had decided to limit the pending foreign aid bill to programs already authorized under existing law. Mr. Fulbright made the point that the proposal to establish OPIC should receive lengthy consideration by the committee. He felt that consideration of the proposal should wait until the President submitted his recommendations to Congress on the entire foreign aid program, which were expected in a few months.

Senator Fulbright also raised some policy questions:

1. As greater U.S. investment means greater control over the economies of LDC's, the question is what are the political consequences of the intrusion of vast amounts of capital from our private companies into their respective economies? Complaints have arisen in France and Canada regarding U.S. private investment.

2. Should the U.S. give 100-percent no-risk guaranties to American investors abroad when there was not a similar program for encouraging investment in the ghettos and poverty areas?

3. The proposal to establish OPIC was designed primarily to help American business in a foreign country and therefore should be in a separate bill. There was also a question whether a program to help big business was consistent with the idea of giving aid to a foreign country.

---

[16] For Senate debate on H.R. 11792, see Congressional Record, vol. 115, Dec. 11, 1969: 38461-38475 and Dec. 12, 1969: 38684-38731.

4. Members of the Committee on Foreign Relations had traditionally taken the position that the free enterprise system was subverted when the Government, in effect, underwrote foreign investment risks.

5. Because of changes in the U.S. international economic position in the last 20 years—in terms of the U.S. balance of payments and diminished gold reserves—it was no longer advantageous to follow the policies of the past.

The Javits amendment to establish OPIC and authorize $20 million to be appropriated in fiscal years 1970 and 1971 was agreed to by the Senate, 53 to 34. The Senate passed the Foreign Assistance Act of 1969 by a vote of 52 to 31 on December 12, 1969.

After a meeting of House and Senate conferees, the conference report was agreed to by the House and Senate on December 19, 1969. The Senate made no changes in the provisions for OPIC.[17]

The Creation of OPIC

Pending formal organization of OPIC, AID's Office of Private Resources was delegated authority to administer all OPIC programs. It did so during calendar year 1970 and until January 19, 1971, when Executive Order 11579 formally delegated corporate powers to OPIC and transferred to it all obligations, assets, and related rights and responsibilities arising out of, or related to, predecessor programs administered by AID.

C. Subsequent Legislative Action

In 1971, another important policy action was taken by the House Foreign Affairs Committee in its deliberations on H.R. 9910, the Foreign Assistance Act of 1971. After considering an amendment which would have permitted OPIC insurance, guaranty, and survey programs in Indochina, it deferred action pending subcommittee review of the matter, and in so doing it made this statement in reporting the bill:

> It was also the view of the committee that pending the resolution of this question, neither AID nor OPIC should engage in providing further insurance, guaranties, or survey grants in Vietnam, Laos, and Cambodia.[18]

On the basis of this directive OPIC has avoided such activities in Indochina.

The Senate Foreign Relations Committee recommended several changes in OPIC legislation as a part of the 1971 foreign assistance bill.[19] The first modified section 238(c) of the Foreign Assistance Act, in order to permit foreign corporations of which 95 percent of the subscribed share capital is held by U.S. investors to qualify as eligible investors for the purpose of participation in OPIC programs. Under current law, such corporations were eligible only if foreign law required 5 percent of the share capital to be held by other than the U.S. owners.

---

[17] U.S. Congress. House. Foreign Assistance Act of 1969: Conference report on H.R. 14580. Washington, U.S. Government Printing Office, 1969. p. 29. (91st Cong., 1st sess. H. Rept. 91-767.)

[18] U.S. Congress. House. Committee on Foreign Affairs. Foreign Assistance Act of 1971; report on H.R. 9910. Washington, U.S. Government Printing Office, 1971. p. 37. (92d Cong., 1st sess. H. Rept. 92-380.)

[19] U.S. Congress. Senate. Committee on Foreign Relations. Foreign Assistance Act of 1971; report together with supplemental views to accompany H.R. 9910. Washington, U.S. Government Printing Office, 1971. p. 25. (92d Cong., 1st sess. S. Rept. 92-404.)

A second modification amended section 239 of the act, adding a new subsection (g) which authorized the operation of programs by OPIC in any less-developed country if the President determined that the operations of the programs in that country were in the national interest. The committee report noted that the purpose of this provision was to allow OPIC to expand operations to Yugoslavia and Romania. The committee said it believed this was a desirable step toward improving relations with Communist countries. In the third change, the committee extended the agricultural credit and self-help community projects through June 30, 1973.

The House bill did not have comparable provisions. In conference, the exemption granted by the Senate bill to OPIC from prohibitions contained in the Foreign Assistance or other acts, provided the President determined that the OPIC program in the recipient country was important to the national interest, was modified to authorize OPIC activities in Yugoslavia and Romania only. The other Senate provisions were accepted by the House conferees.

The conference report on the Foreign Assistance Act of 1971 passed the Senate on December 17, 1971, and the House, January 25, 1972.[20]

In 1972, during House debate on the foreign assistance appropriations bill for fiscal year 1973 (H.R. 16705), Representative Sam M. Gibbons offered an amendment which would have prohibited the use of funds appropriated under the act for the discharge of future liabilities under insurance or guaranties issued by OPIC.[21]

Mr. Gibbons noted the changes in the world situation since the United States embarked on a deliberate policy to send capital overseas to rebuild the world after World War II. He was in favor of private investment abroad, but felt that the taxpayers' money should not be used to subsidize the sending of U.S. capital overseas.

Representative Otto E. Passman said that if the Congress did not wish to have an agency to guarantee overseas investments, then the appropriate action should be taken by the proper legislative committee.

Mr. Gibbons explained that the amendment did not abolish OPIC; it only stated that the taxpayers' money should not be used to insure private investment. Concern was expressed by other members about the export of jobs by U.S. companies, though it was noted that more U.S. investment was going to the developed countries rather than the less developed countries where OPIC operates.

Representative Culver said he was opposed to the Gibbons amendment, although he shared some of the misgivings expressed on the floor about OPIC. He said that the issues raised by the amendment required full examination and oversight review by the House Foreign Affairs Committee. He promised that he, as chairman of the Subcommittee on Foreign Economic Policy, would make every effort to see that the House had before it a body of recommendations by which they could legislate.

The Gibbons amendment was defeated 141 to 167.

---

[20] U.S. Congress. House. Foreign Assistance Act of 1971; conference report to accompany S. 2819. Washington, U.S. Government Printing Office, 1971. p. 34. (92d Cong., 1st sess. H. Rept. 92-761.)

[21] For House debate on H.R. 16705, see Congressional Record, vol. 118, No. 148. [Daily transcript] Sept. 21, 1972: H8641-H8678.

D. OPIC Proposals for 1973 Legislation

OPIC has made several requests of Congress in 1973.[22]

a. Appropriation of $72.5 million is requested to fill insurance reserves still threatened by Chilean expropriation and to move OPIC closer to self-sufficiency. OPIC argues that these funds are owed them because in 1969 Congress transferred $50 million from insurance reserves to the AID housing program. Interest on those funds plus interest lost on uninvested insurance reserves between 1948 and 1969 make up the remainder of the request. The total comes to nearly $85 million. Since the figures were initially calculated last year Congress has appropriated $12.5 million for OPIC under the AID continuing resolution. The $72.5 million represents the difference between $85 million and $12.5 million.

b. Under Section 231 of the Foreign Assistance Act (which lists OPIC's goals), the Administration would add two items. Section 231(d) would be amended to include sharing all cost of insurance programs with private users over the long term. This is in effect an attempt at self-sufficiency. Section 231(i) would be amended to include furthering U.S. employment as well as balance of payments goals.

c. A 2-year extension on termination of OPIC's authority to issue insurance and guaranties is requested. The date would be pushed ahead to June 30, 1976. OPIC argues that its 5-year trial period in reality began in January 1971 when the executive order was signed.

d. OPIC similarly requests a 2-year extension of its productive credit guaranty program. This used to be called the Community Credit Guaranty Program.

e. OPIC requests completion of the feasibility report required by the Foreign Assistance Act[23] on transferring part or all of OPIC's functions to the private sector be postposed from March 1, 1974, to February 1, 1975.

f. OPIC also requests broader congressional authority under section 239(d) to spread insurance risks by negotiating more coinsurance and reinsurance contracts, and by implementing multinational pooling arrangements.

g. OPIC wants to be able to take warrants in partial payment for its financing. At present it takes convertible debentures (notes of indebtedness), but according to OPIC officials convertible debentures are not understood or acceptable in some countries. Thus OPIC wants to have legal authority to accept warrants (options to buy stock) from companies it lends to. If the company's stock should rise, OPIC could sell these warrants to a third party who would then buy stock in the original company. The proposed legislation would not let OPIC purchase stock.

h. In a recent interview OPIC President Bradford Mills indicated a need for congressional policy guidance on two matters: (1) whether or not OPIC should plan on becoming a private corporation in the near future; and (2) what OPIC's policy should be on investment in sources of energy for the United States.

---

[22] Secs. 5(A) to 5(G) of H.R. 7484, the proposed Foreign Assistance Act of 1973.

[23] Sec. 240A(b) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," p. 27.

CHAPTER II. OPIC ORGANIZATION AND PROGRAMS

A. Organization of OPIC

OPIC's organization is predicated on diversity of representation and a mixing of public and private interests within a form, the public corporation, which it is presumed will facilitate greater freedom of action than if the organization were directed entirely by governmental personnel and dependent upon the customary annual appropriation budget. Thus, rather than being administered by a U.S. official, it is governed by an 11-person Board of Directors, a majority of whom (six) are required not to be employees of the Government. A large number (up to 20) of its staff also may be appointed outside the civil service system. In order to insure that there is high-level participation by relevant officials of the Government, however, it is provided that the Chairman of the Board of Directors shall be, ex officio, the Administrator of AID. At present, one of the members of the Board is the Assistant Secretary of State for Economic Affairs, one is the Under Secretary of the Treasury for Monetary Affairs, and one is the Under Secretary of Commerce. The President of the Corporation is also a member. Of the six non-Government members, who are appointed by the President with the advice and consent of the Senate, at least one must be experienced in small business, one in organized labor, and one in cooperatives. Members of the OPIC Board of Directors as of May 15, 1973,[1] were:

Dr. John A. Hannah, Chairman (Administrator, Agency for International Development).

Bradford Mills, President and Chief Executive Officer, OPIC.

Willis C. Armstrong, Assistant Secretary of State for Economic Affairs.

J. D. Stetson Coleman, small business representative.

Dr. Allie C. Felder, Jr., director, outreach division, Cooperative League of the United States.

Gustave M. Hauser, executive vice president, Western Union International.

Daniel Parker, chairman, Parker Pen Co.

James A. Suffridge, president emeritus, Retail Clerks International Association.

Paul Volcker, Under Secretary of the Treasury for Monetary Affairs.

The President and Executive Vice President of the Corporation are appointed by the President and confirmed by the Senate. The President of OPIC is Bradford Mills, who is leaving OPIC in the summer of 1973. Before joining OPIC, Mills was chairman of Specialized Services, Inc., and a senior vice president and director of the New York Securities Co., Inc., a company he founded in 1962 with six partners.

[1] As of May 1, 1973, there were two vacancies on the Board because of resignations in 1973. These include one Government member in a position customarily filled by a representative of the Department of Commerce, and one non-Government member who is an at-large representative.

The Executive Vice President, Herbert Salzman, had been appointed in 1966 by President Lyndon Johnson as head of AID's Office of Private Resources, which was OPIC's predecessor organization. He was previously president of Standard Bag Corp.

There is also an OPIC Advisory Council, consisting of citizens appointed by the Chairman of the Board, which is required by law to be consulted periodically by the President and the Board about OPIC affairs. The present council consists of 31 members. It met once when it was appointed in December 1971, and a second time in October 1972. The members of the Advisory Council are:

Jessie M. Calhoon, president, National Marine Engineers Beneficial Association.

T. J. Coolidge, Jr., chairman, Back Bay-Orient Enterprises, Inc.

G. A. Costanzo, executive vice president, First National City Bank.

Charles K. Cox, president, Insurance Company of North America.

Archie K. Davis, president, Chamber of Commerce of the United States.

Gordon Dore, president, Supreme Rice Mill, Inc.

Stanley Dreyer, president, the Cooperative League of the U.S.A.

W. C. Druehl, president, Del Monte International, Inc.

A. Wright Elliott, senior vice president, National Association of Manufacturers.

Orville L. Freeman, president, Business International.

Albert H. Gordon, chairman of the board, Kidder Peabody & Co., Inc.

V. V. Grant, vice president, Caterpillar Tractor.

John H. F. Haskell, Jr., Dillon Read & Co., Inc.

Donald W. Hoagland, Davis, Graham & Stubbs.

Donald E. Johnson, vice president for International Insurance, Nationwide Life Insurance Co.

Gustave L. Levy, Goldman, Sachs & Co.

William S. Lowe, president, U.S. Chamber of Commerce.

William L. Lurie, vice president for international strategic planning and review operation, General Electric Co.

Malcolm MacNaughton, president, Castle & Cooke.

F. Arthur Mayes, president, AFIA.

Robert McLellan, vice president, FMC Corp.

Raymond F. Mikesell, W. E. Miner, professor of economics, Department of Economics, University of Oregon.

Louis W. Niggeman, president, Fireman's Fund Insurance Co.

Robert M. Norris, president, National Foreign Trade Council, Inc.

William S. Ogden, executive vice president, Chase Manhattan Bank N.A.

Vernon E. Schneider, vice chairman, Advisory Committee on Overseas Development.

John C. Sevey, vice president, Securities, Massachusetts Mutual Life Insurance Co.

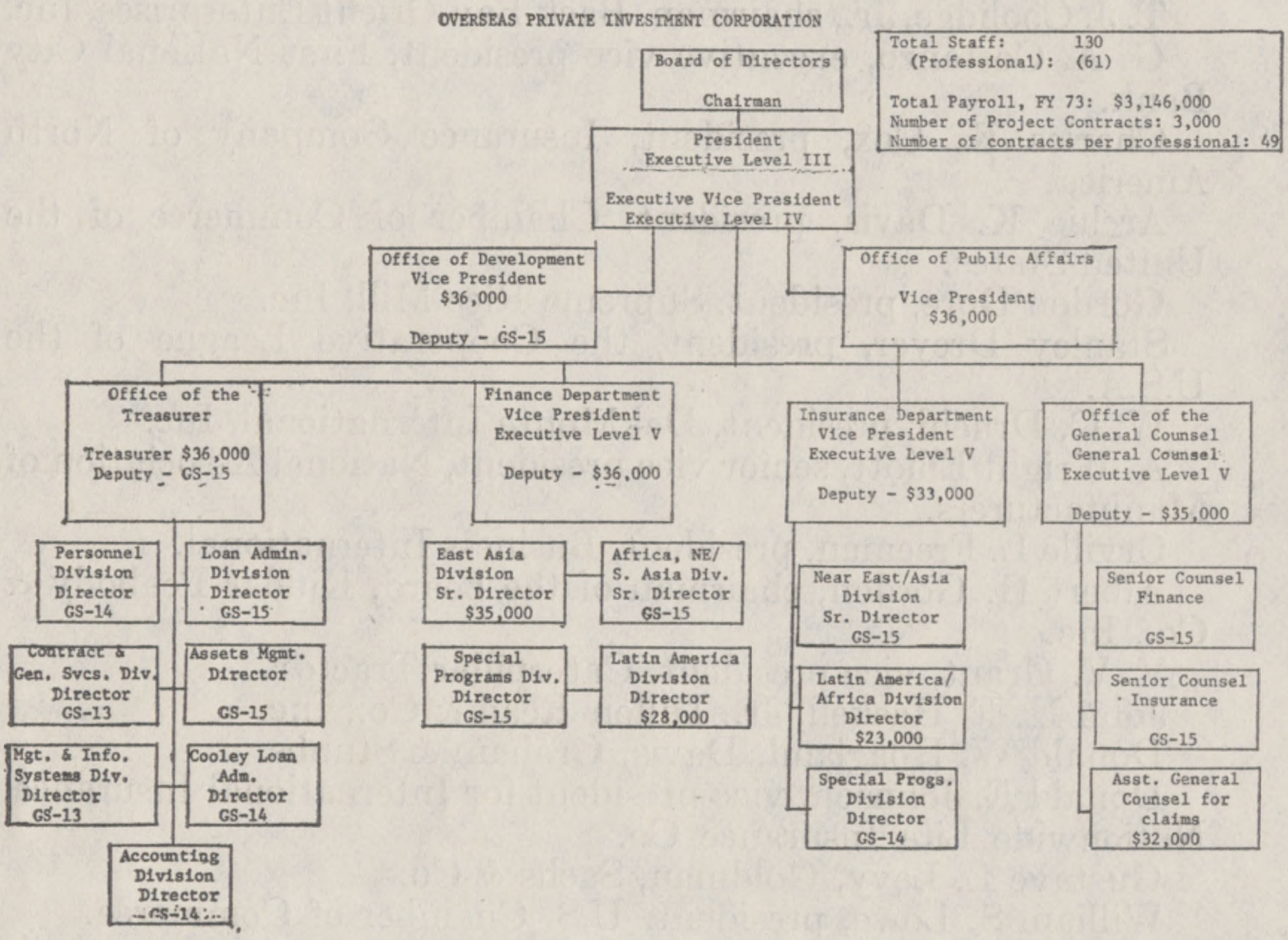
Rocco Siciliano, president, TI Corp. of California.

Robert Stobaugh, Graduate School of Business Administration, Harvard University.

Thomas A. Wood, president, TAW International Leasing, Inc.

George D. Woods, director, The First Boston Corp.

OPIC is divided into several departments and offices (see chart), the Office of Development, Office of Public Affairs, Office of the Treasurer, Finance Department, Insurance Department and Office of the General Counsel. The Insurance Department is broken down into two geographic areas, Latin America-Africa and Near East-Asia. In the Insurance Department there is also a special program officer to handle the insurance program for the construction industry.



The Finance Department is divided into the following geographic areas: East Asia, Latin America and Africa, Near East-South Asia. This Department operates the Investment Guaranty Program, the Direct Investment Fund, and the Productive Credit Guaranty Program.

As of March 30, 1973, there were 122 persons on the staff of OPIC During the establishment of OPIC, projections of the number of projects the corporation would handle in the coming years were made and on that basis a staff of about 150 was contemplated by 1973. The current insurance activity is approximately two-thirds of what was projected in 1969,[2] and consequently staff levels have not increased as planned.

The staff pattern was a point of debate during congressional consideration of OPIC legislation. Several Congressmen wondered why OPIC needed a larger and higher level staff to run the investment

[2] See discussion in ch. V, sec. A.

incentives program than did the AID Office of Private Resources.[3] The large percentage of highly paid professionals on the staff raised cries of "too many chiefs and not enough Indians." The chart below shows the trend in the ratio of supervisors to staff in OPIC.

STAFFING STATUS—OVERSEAS PRIVATE INVESTMENT CORPORATION

	Professional	Non-professional	Total
Positions occupied as of Dec. 31, 1970:			
Full-time permanent	52	58	110
Other	5	2	7
Total	57	60	117
Employment ceiling fiscal year 1971 (estimate), 130.			
Ratio of supervisors to staff, 1:6.			
Positions occupied as of Dec. 31, 1971:			
Full-time permanent	60	63	123
Other	8	4	12
Total	68	67	135
Employment ceiling fiscal year 1972, 155.			
Ratio of supervisors to staff, 1:5.			
Positions occupied as of Dec. 31, 1972:			
Full-time permanent	62	53	115
Other	6	1	7
Total	68	54	122
Employment ceiling fiscal year 1973, 143.			
Ratio of supervisors to staff, 1:4.			

The present ratio of "chiefs" to "Indians" in OPIC is about 1 to 4. The ratio at the Office of Private Resources was 1 to 6. When questioned about the high-level nature of the staff, OPIC officials responded that this was necessary in order to make contracts with high officials in banking institutions and corporations and to manage a large insurance portfolio, a new direct lending program, a new Latin American guaranty program, the former AID Cooley loan program, and increased insurance claims. A third justification given for the large high-level staff was the inherent difference between the previous AID program and that of OPIC. OPIC programs were to be made as capable of self-sufficiency as the staff could make them without impairing their usefulness. This required risk management which the OPIC officials did not believe the former governmental organization provided. OPIC officials say the staff must contain a large proportion of personnel with a previous business background. A check on the previous employment records of the professional staff at OPIC discloses that this concept is not fully applied.

B. Investment Insurance Program

OPIC offers three kinds of programs: investment insurance, financing, and investment information and promotion activities.

OPIC offers investment insurance against three forms of risk associated with foreign investment: (1) inconvertibility; (2) expropriation; and (3) war, revolution, or insurrection. The investment covered must be new investment, but it may be in the form of loans or equity In the past, OPIC has offered 100-percent coverage of the original equity, but on large and sensitive projects it presently will not always

[3] For example, see Zablocki, Clement J., supplemental views. In U.S. Congress. House. Committee on Foreign Affairs. Foreign Assistance Act of 1969; report . . . together with Minority, Supplemental and Additional Views on H.R. 14580. Washington, U.S. Government Printing Office, 1969. pp. 173–178. (91st Cong., 1st sess. H. Rept No. 91–611.)

insure the total amount of the investment. Policies are issued for a maximum of 20 years for equity investments and for the term of the loan for debt investments, except for a 12-year limit on large and sensitive projects.

The amount of active insurance outstanding is shown by the following chart:

ACTIVE INSURANCE CONTRACTS[1]

Coverage	As of June 30, 1971 (fiscal year 1971)	As of June 30, 1972 (fiscal year 1972)	As of Mar. 31, 1972 (portion of fiscal year 1973)
(A) (Inconvertibility)	$3,673,865,505	$3,378,432,515	$3,024,930,537
(B) (Expropriation)	1,497,064,554	1,666,698,784	1,656,629,078
(C) (War)	943,481,532	1,125,393,464	1,008,447,057
(D) (Combined)	2,235,747,611	1,872,038,165	1,731,649,368
Total[2]	8,350,159,202	8,042,562,928	7,421,656,040

[1] Information supplied by OPIC.
[2] OPIC officials regard this total as only a bookkeeping summation. They state that OPIC's insurance exposure is substantially less because it would almost never sustain losses on more than 1 of the 3 coverages of a single investment.

Inconvertibility coverage applies when the investor is unable to convert into dollars the local currency received as earnings on the original investment or capital eligible for repatriation. Prior to obtaining inconvertibility coverage, the investors must ascertain that the foreign government is willing to allow remittance of earnings and repatriation of capital. Inconvertibility insurance will not protect the investor from the effects of exchange fluctuations, exchange regulations, or restrictions which are applicable at the time of the issuance of the insurance contract.

When a claim is approved, the investor is required to submit a foreign currency draft to OPIC before payment of the claim is made. The investor receives from OPIC a sum in U.S. dollars equal to 99 percent of the local currency involved. The rate of exchange used is generally that recognized by the central bank of the host country.[4] Later OPIC sells this currency to the Treasury for payment of U.S. Embassy local expenses.

Expropriation coverage applies to the loss of the investment because of expropriation, nationalization, or confiscation by a foreign government. Expropriation is defined by the Foreign Assistance Act of 1961 as:

> including but is not limited to any abrogation, repudiation, or impairment by a foreign government of its own contract with an investor with respect to a project, where such abrogation, repudiation, or impairment is not caused by the investor's own fault or misconduct, and materially adversely affects the continued operation of the project.[5]

Under the insurance contract, OPIC agrees to pay the investor compensation for any "expropriatory action" which for a period of 1 year prevents the investor from:

(a) Receiving payment when due in the currency specified of amounts which the foreign enterprise owes the investor;

[4] Overseas Private Investment Corp. General terms and conditions which with special terms and conditions constitute a contract of insurance. Washington, D.C., n.d. p. 23. (Hereafter cited as Contract of Insurance.)
[5] Section 238(b) of Foreign Assistance Act of 1961 as amended by section 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations." p. 24.

(b) Exercising its fundamental rights regarding the foreign enterprise as a shareholder or creditor;

(c) Disposing of securities and repatriating or exercising effective control in the host country of investment earnings or return of capital.

As soon as an expropriatory action is taken against the investor, the company is required to notify OPIC in writing describing in detail the circumstances of the action which the investor feels is or may become an expropriatory action. The investor is required to pursue all reasonable and available remedies against the expropriating foreign government.

If these actions fail, the investor can claim payment from OPIC, which has the right, if it makes payment, to succeed to the investor's rights, title, and interest in the insured investment, so that OPIC may attempt to recover from the host government some compensation for the expropriated property.

War, revolution, and insurrection coverage protects the investor against damage [6] to tangible property as a result of war, revolution and insurrection. Lesser civil disturbances are not covered, nor is damage to intangible property or securities.

Among the factors considered in arriving at the amount of compensation due the investor are the amount of damage sustained, the original cost of the property adjusted for depreciation, earnings and losses of the investment, and the investor's proportionate interest in the net worth plus long-term liabilities of the enterprise on the date of the damage. Authorized agents of OPIC must visit the site to evaluate these factors as soon as conditions permit. If this is not possible, the amount of damage is taken to be 60 percent of the covered value of the property less depreciation. In addition, as with other types of insurance, when a claim is submitted, the investor must assign to OPIC any claims, or right to compensation for the property damages.

Combined coverage is expropriation and war risk in one policy. AID/OPIC ceased selling combined coverage in 1970.

The construction industry's special needs have recently been met by a special type of OPIC political risk insurance. Although the construction industry had benefited from previous insurance programs, it was felt that this industry needed a special program because other developed countries were offering more comprehensive insurance for construction, thus placing U.S. contractors at a competitive disadvantage. Without the promise of political insurance, construction companies must incorporate the cost of self-insurance into their bid for a contract. Under the new program, OPIC provides the construction firm with a binder letter obligating OPIC to insure the company if it receives the contract. As a result, U.S. firms can offer lower bids and gain more contracts in developing countries.

Because of the preaward binder arrangement, however, OPIC must negotiate with each host government for preaward agreements to assure that country's approval of the project in the event that a U.S. company is awarded the construction contract. Those negotiations have proceeded slowly. By late 1972 only 14 countries signed preaward agreements, and to date only 10 binder letters have been

---

[6] Damage according to OPIC guidelines means "injury to the physical condition, destruction, disappearance or seizure and retention of covered property directly caused by war (whether or not under formal declaration) and thus encompassing any hostile act by any national or international organized force." Hostile acts such as sabotage by organized revolutionary or insurgent forces are included. OPIC. Contract of Insurance, p. 3.

issued. Over 40 construction companies have been turned down because the countries in which they wish to operate have not signed preaward agreements.

The eligibility requirements for issuance of political insurance are spelled out in the Foreign Assistance Act of 1969.[7] First, there must be an agreement between the United States and the foreign government to institute such a program.[8] According to section 238(c) of Public Law 91–175, eligible investors are defined as:

(1) U.S. citizens;

(2) corporations, partnerships, or other associations including nonprofit associations created under the laws of the United States or any State or territory, and substantially beneficially owned by citizens; [9]

(3) foreign corporations, partnerships, or other associations wholly owned by one or more such U.S. citizens, corporations, partnerships or other associations.

In the case of a company incorporated abroad, it is considered to be wholly owned by U.S. investors and therefore eligible for insurance, even in cases where some of the foreign company's equity is held by others, provided foreign laws require such outside ownership and the aggregate amount is less than 5 percent of the total capital.

The investment criteria [10] used by OPIC include such factors as the developmental impact on the recipient country as well as the trade and balance of payments impact on the United States. In order to receive insurance, the investment must be in a new project; this can include expansion, modernization or development of an existing enterprise. The enterprise in which the investment is made need not be new, but the development project must be new.

Generally, it is expected that the investment will remain in the foreign enterprise for 3 years or more in order to be eligible for insurance. The investment may be in the form of equity, in all or a portion of the shares of the foreign enterprise; it may be in the form of a loan to a foreign enterprise, or it could be in the form of a guaranty of a third-party loan to the foreign enterprise if the actual loan is not eligible for insurance. Licensing of patents, processes or techniques, and technical and managerial assistance agreements may also be covered. The legal time limit on an insurance contract is 20 years.

In order to be eligible for OPIC support, the project must be deemed to make a useful contribution to the host country's economic development. In the formal application for insurance, the investor must describe the potential developmental impact of the project by supplying data on the effect on employment, local prices, foreign exchange earnings, and savings. Additional information on the developmental impact may be requested of the investor during the term of the contract. In addition to the information furnished by the investor, OPIC officials make an investigation to assess the developmental impact as well as the potential impact on U.S. exports and balance of payments, and the profit potential of the project.

---

[7] The eligibility requirements for OPIC financing are generally the same.

[8] A list of eligible countries is found in app. A.

[9] OPIC. Incentive Handbook—Investment Insurance, July 1971, p. 3. OPIC considers "substantially owned by U.S. citizens" to mean ownership either directly or beneficially by U.S. citizens of more than 50 percent of issued and outstanding stock.

[10] The investment criteria for OPIC financing programs are similar to those of the insurance program. The criteria will be discussed in greater detail in future chapters. A list of all OPIC policy resolutions and guidelines is provided in app. B.

The other requirement of the insurance program is that the foreign government must approve the proposed project and OPIC's insuring it. The investor is responsible for obtaining this approval from the appropriate agency of the foreign government; however, OPIC may assist the investor in getting host government approval for the project.

C. Financing Program

The financing side of OPIC's program consists of the investment guaranties, the Direct Investment fund, and the Productive Credit Guaranty Program. In addition, OPIC administers the Cooley Loan Program. The finance program represents the smaller part of OPIC's operations.

Under the Investment Guaranty Program, OPIC offers guaranties of loans against commercial risks, with a maximum for the program of $750 million. However, 25 percent of the amount of outstanding guaranties must be maintained in a reserve fund to meet claim.

As of December 31, 1972, the finance portfolio had serviced 27 projects. With $193,882,000 in guaranties outstanding and $75 million in reserves, OPIC could issue almost $100 million more in guaranties, but OPIC officials maintain that because of prior AID losses of $12,506,741, they have chosen a cautious policy.

According to the law, OPIC may not issue more than 10 percent of the total investment guaranties to a single investor.

The conditions under which guaranties are issued are similar to those under which the investment insurance is issued, except that in certain cases the conditions are somewhat more restrictive since commercial risks are covered.

Besides loan guaranties, there also may be guaranties of equity investment. Under this rarely used program, 50 percent of each equity investor's loss may be guaranteed in case the project fails and must be liquidated.

The eligibility requirements for investments and investors are generally the same as for the insurance program. The term of the equity guaranty, however, is usually for not more than 10 years.

OPIC's direct loan program is authorized to make direct dollar and foreign currency loans to privately owned or mixed public and privately owned firms. OPIC, however, is forbidden by the law to purchase stock in another corporation, although it may receive convertible notes as evidence of indebtedness, or acquire stock through the enforcement of a lien. The corporation is required to dispose of stock that it may acquire.

OPIC's direct investment program was authorized $40 million initial capital to invest in projects with considerable American small business participation or substantial developmental benefits, and prospects for improving the local investment climate. In order not to compete with private lenders, OPIC supposedly finances only higher-risk projects or those whose needs are not met by available private funds. As of January 31, 1973, the direct loan program had made loan agreements worth a total of $13.7 million for 11 projects.

Each project must show promise that it would be profitable, and the sponsor must have a proven record of success. Mining or extractive industries are proscribed by law from receiving loans.

In addition, OPIC considers other factors: [11]

(a) The priority of the project within the local government's development plans; (b) the degree of U.S. private sector participation through share ownership, management technology, etc; (c) the degree to which the United States is committed to facilitate the economic and social development of the local country; (d) the value of goods and services the project will acquire from United States and developing country sources; and (e) the extent to which project financing of the kind OPIC can provide will be an important ingredient of the project's success. As with other OPIC programs, the local government must approve the project.

Both the investment guaranties and direct loans support only a portion of a particular project. For every dollar of OPIC guaranty or direct loan to a project, others have, on the average, provided the following amounts: [12]

	Dollars
U.S. investors	1. 57
International financial institutions (Eximbank, AID, IFC, and others)	1. 02
Local investors	. 76
Investors of other developed countries	. 56

Thus, OPIC complements these other institutions and individuals by loaning or guaranteeing one dollar for every four that they loan or invest.

The Community Credit Guaranty Program (CCGP) is an experimental financing program directed at the small local borrower. OPIC guarantees 75 percent of approved loans (but not more than 25 percent of a lender's eligible portfolio) by local credit institutions to small businessmen considered marginal by existing credit systems. Individual loans have averaged about $750 and may not exceed $10,000 without OPIC's consent, and the entire program is limited during the experimental stage to $5 million. Since OPIC's liability is limited to 25 percent of its total program portfolio, its total liabilities would be $1.2 million.

The pilot program operated in Brazil, Guatemala, and Honduras, and by December 1972 had guaranteed 799 loans for a total of just over half a million dollars. More than 12,000 people directly benefited from the guaranties. The potential claims on OPIC were 75 percent of $14,718, or about a dollar for every individual assisted.[13]

The Latin American lenders who might participate in the program have been discouraged by high administrative costs, the lack of liquidity, and low profits.[14] Each $1 loaned has cost OPIC $0.67 because of high initial organizational and technical assistance costs in such an experimental program. Commercial banks in the countries involved generally felt that they had all the business they could handle and were not very interested in making small loans. Prime users have been credit unions and cooperatives, but they are handicapped by limited resources.

The program is scheduled to expire on June 30, 1973. OPIC has requested congressional approval of a 2-year extension to test a

---

[11] OPIC. Incentive Handbook—Investment Financing, p. 1.
[12] OPIC staff study completed for the Congressional Research Service, May 30, 1973.
[13] Overseas Private Investment Corp. Producing Credit Guaranty Program as of Dec. 31, 1972; memorandum for the Board of Directors of OPIC. Mar. 19, 1973.
[14] Poats, Rutherford. OPIC memorandum, Oct. 31, 1972.

revised program, the Productive Credit Guaranty Program, which will involve the central banks of the countries and will be supported administratively by the host governments. Problems in the CCGP might be eliminated by the PCGP. Guatemala, Colombia, and Honduras have accepted the new OPIC proposal. It is under review in Panama. Indications are that Brazil is not interested.

The Cooley loan program is administered by OPIC on a reimbursable basis for AID. Local currency loans are made to U.S. businessmen for overseas investment from funds obtained through Public Law 480 sales of agricultural commodities. Its purpose is to make loans to U.S. businessmen and their affiliates in less-developed countries for new investments or expansion of existing ones. Consideration must be given to expanded use and consumption of agricultural products. Most Cooley loans have been concentrated in South Asia.[15]

D. Preinvestment Surveys

In order to stimulate investment by U.S. private enterprise in developing countries, OPIC's investment survey program is designed to encourage U.S. investors to undertake surveys of investment opportunities which would then result in actual investments.

Authority for OPIC's operation of this program comes from section 234(d) of the Foreign Assistance Act of 1969 under investment encouragement in which OPIC is authorized to:

> Initiate and support through financial participation, incentive grant, or otherwise, and on such terms and conditions as the Corporation may determine, the identification, assessment, surveying and promotion of private investment opportunities, utilizing wherever feasible and effective the facilities of private organizations or private investors.[16]

The act proscribes the financing of surveys for mining or extractive operations.

Under the program, OPIC underwrites or invests in part of the costs of a survey, which involves identifying suitable investment opportunities and determining their feasibility and acceptability to the host government.

The program, which has been in operation since fiscal year 1962 and was initially administered by AID, has supported 346 surveys leading to 52 positive decisions by U.S. investors to invest a total of $105 million in developing countries. AID and OPIC have undertaken surveys in which a negative decision to invest amounted to a cost of about $1.5 million. Since fiscal year 1967 the number of new surveys has declined markedly.[17]

In addition to the regular investment survey program, OPIC has an agreement with the Agribusiness Council of New York whereby it shares the costs of preinvestment surveys for investment in certain types of agribusiness projects in developing nations.[18] OPIC's finance

---

[15] See statistics in ch. IV.

[16] Sec. 234(d) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," p. 40.

[17] See ch. IV for statistics.

[18] The Agribusiness Council is a nonprofit organization founded in 1967 by business, academic and foundation leaders concerned with improving marketing, processing, storage, and distribution of food products in less-developed countries.

program also has emphasized agribusiness; OPIC has shared in development of agribusiness investments amounting to more than $400 million.[19]

In 1972, OPIC began a new incentive program directed towards encouraging participation by U.S. small businesses in investment in developing countries. Under the program OPIC will make preinvestment assistance available to these companies on flexible loan terms. Before qualifying for such assistance, a company must demonstrate its capability to operate in the country and area of operation selected.

---

[19] OPIC. Annual Report, fiscal 1972, p. 12.

CHAPTER III. OPIC COMPARED TO OTHER PROGRAMS

A. Comparison of OPIC With Similar Programs in Other Countries [1]

The United States is not the only country which helps its nationals invest in developing countries. More than a dozen countries have political risk insurance programs modeled after OPIC. Most have direct loan programs substantially larger than OPIC's, but none has an investment guaranty program. The following section compares OPIC with the programs of other countries concentrating primarily on those in Japan, Germany, Britain, France, and Sweden.[2]

The orientation of the programs in these five countries differs markedly. Some countries seem more concerned about competition in economic development and have pledged themselves to reach the goal of 1 percent of GNP resource transfer to less developed countries set forth by the U.N. Conference on Trade and Development (UNCTAD).[3] They require developmental impact statements for any projects insured or financed by government programs and encourage joint ventures with local partners. The economic benefit of such assistance on their own economy is considered but is not the primary rationale in aiding projects.

In the United States, German and British programs, interest rates on government loans to their industries for such investments are not at a concessional rate. Business is aided but not substantially subsidized. These three are examples of countries with "development-oriented" programs.

Other countries seem more concerned about competition for markets. Decisions on project support are based primarily upon the impact upon business and the economy of the investing country. Extraction of raw materials from LDC's is fostered. Programs are not necessarily limited to developing countries, and development impact statements are not required for government support. Joint ventures with local participants are not necessarily encouraged. Investment support programs are not required to become self-sustaining. Business assistance apparently serves as an accepted rationale for government spending. As a result, insurance rates and especially finance rates are concessional. Examples of "business-oriented" programs are those of Japan and France.

The U.S. program shows all the characteristics of the "development-oriented" approach. The chart on the following page summarizes this conclusion. OPIC requires development impact statements, views project impact on the U.S. economy as important but not the primary rationale for support, strives for self-sufficiency, and charges relatively high rates for both insurance and financial aid.

---

[1] These programs cannot be compared in all relevant particulars because each has somewhat different goals and means of achieving those goals.

[2] See app. C for individual accounts of programs in these countries. These studies were written by Edward T. Lampson, Carlo La Porta, and Marjorie Niehaus, of the Foreign Affairs Division's regional section.

[3] First introduced by World Council of Churches in 1958. Adopted by the U.N. General Assembly in 1960 and U.N. Conference on Trade and Development (UNCTAD) in 1964. The Development Assistance Committee (DAC) also elaborated on and endorsed the 1-percent-of-GNP resource transfer goal in 1964. See Pearson, Lester B. Partners in Development. Washington, Praeger Publishers, 1970. 144 p. (Report of the Commission on International Development.)

PROGRAM COMPARISON

DEVELOPMENT-ORIENTED PROGRAMS [1]

Country	Development impact—(a) host country approval; (b) development impact statement; (c) limited to LDCs; (d) encourage local joint ventures		Self-sustaining		Rates charged businessmen (percent)		Impact on domestic economy [2]—(a) primary factor; (b) secondary factor; (c) encourage extractive industries
	Insurance	Finance	Insurance	Finance	Insurance	Finance	
United Kingdom	ECGD [3] (a)	CDC [3] (a), (b), (d)	No	Yes	1.0	7 to 9	(b) ECGD [3] is export-oriented.
Germany	DRT/AG [3]	DEG [3] (a), (b), (c), (d)	No	Yes	.5	8 to 9	(b).
United States	OPIC [3] (a), (b), (c)	OPIC [3] (a), (b), (c), (d)	No [4]	Yes	1.5	7 to 9 (direct loans); 9 to 10 (investment percentile)	(b)
Sweden	EKN [3] (a), (b), (c)	No program	No	N.A.	.7	([5])	(a).

BUSINESS-ORIENTED PROGRAMS

Japan	MITI [3] (a)	OECF [3] (a)(c)	No	No	.55	4 to 5.5	(a), (c).
France	CCCE [3] (a)	CCCE [3] (a)(c)	No	No	.8	3 to 6	(a), (c).

[1] Organization for Economic Co-operation and Development. Investing in Developing Countries. Facilities for the Promotion of Foreign Investment in Developing Countries. Parts, OECD Publications, (August 1972).

[2] Ibid. Programs in Australia, Belgium, Denmark, the Netherlands, and Switzerland are also linked with national exports.

[3] Definition of symbols (and date established):
ECGD—Export Credit Guarantee Department (1972).
CDC—Commonwealth Development Corporation (1948).
DRT/AG—Deutsch Revisions-und Treuhand AG (1960).
DEG—Deutsch Entwicklungsgesellschaft (1962).
OPIC—Overseas Private Investment Corporation (1948 (predecessor).)
MITI—Ministry of International Trade and Industry (1956).
OECF—Overseas Economic Cooperation Fund (1961).
CCCE—Caisse Centrale de Cooperation Economique (1971).
EKN—Export Credits Guarantee Board (1968).

[4] OPIC's finance program can now be considered self-sustaining. The insurance program is now aimed toward self-support.

[5] No program.

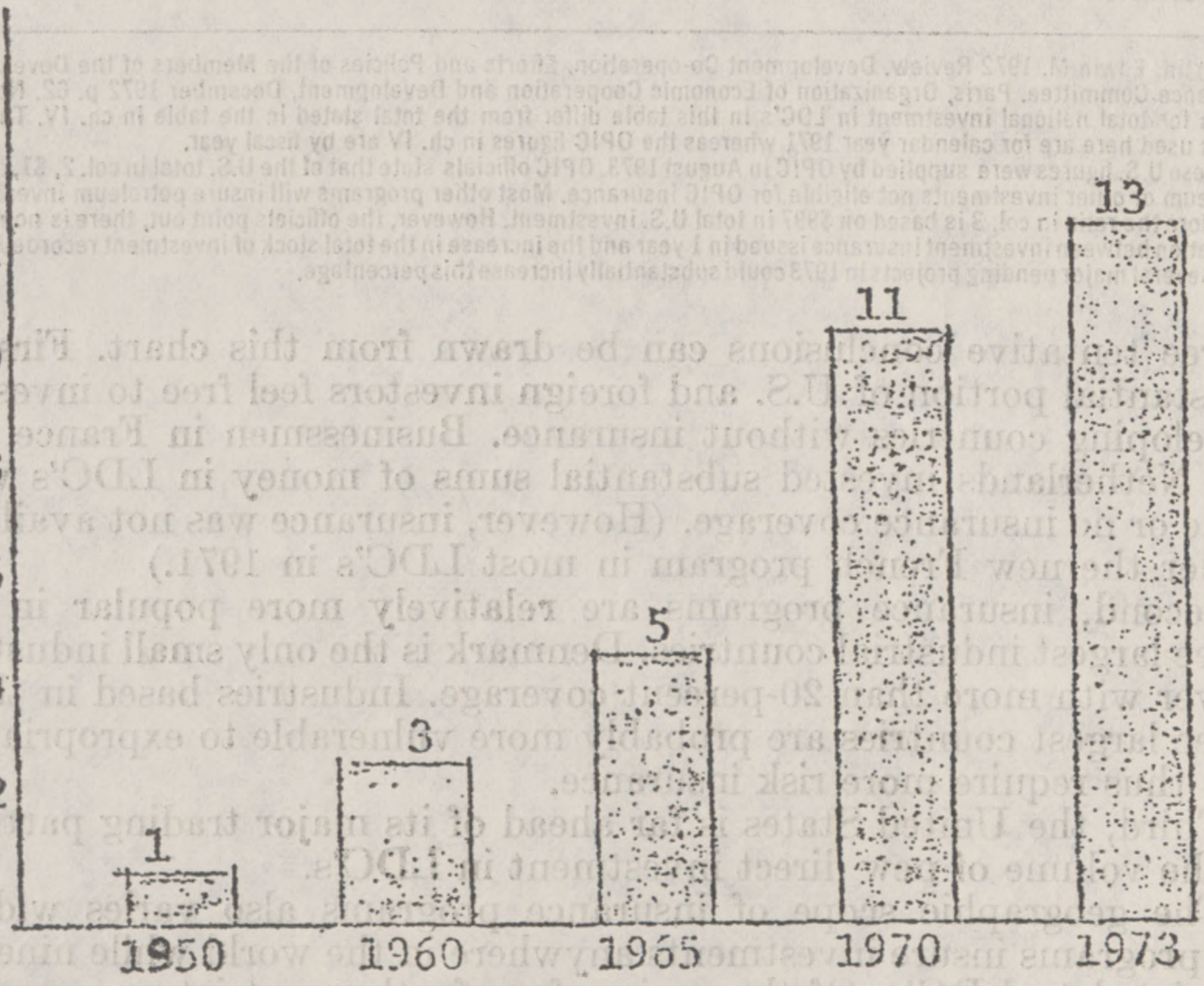
The chart, of course, is only a rough way of comparing Government support programs and cannot record subtle shifts in Government policy. For example, there is concern at OPIC about Japanese and German competition which might prompt a move by OPIC in the direction of the business-oriented programs. Such a move could also occur if OPIC decided to support investment in energy resources. If such a shift toward business took place in the United States, however, it is unlikely that insurance premiums and interest rates would drop to levels comparable with those of Japan and France.

This method of analysis also conceals certain inconsistencies within the development approach to investment assistance. Since development-oriented finance programs in Germany, Britain, and the United States apparently do not have the political clout to operate on anything but a self-sustaining basis, they must not only sacrifice low-interest rates, but must also be careful not to finance high-risk projects even though those projects might have a very favorable impact on the host country's economic development. (A later section will deal with German and British attempts to deal with their financing problems.)

Political Risk Insurance Programs

Political risk insurance originated with the Marshall Plan's currency inconvertibility coverage. Since then, most of the countries assisted by the Marshall Plan have developed programs of their own.

Countries With Investment Insurance Programs [4]



Virtually all programs now cover expropriation, war, and inconvertibility.[5]

Because of its early start and the size of the U.S. economy, OPIC has by far the largest insurance program. Total current liabilities in

[4] Adapted from unpublished OPIC staff paper entitled "In the Contest of the 1960's for Half the World's Markets." (Hereafter cited as "Contest of the 1970's.") The source shows 15 investment insurance programs in 1973 but only 13 programs have been verified by the Congressional Research Service.

[5] See app. D.

mid-1972 were $5.4 billion as compared with $341 million in the case of Germany, which has the next largest program.[6] OPIC's $7.5 billion insurance ceiling dwarfs Britain's ECGD ceiling by nearly $7 million (Japanese, German, and French programs have no ceilings.)

A closer analysis, however, shows that in 1971 the United States ranked third behind Japan and Denmark in the percentage of all LDC investment covered by political risk insurance. Germany ranks fourth; no statistics are available for Great Britain, which has just introduced investment insurance.

INVESTMENTS INSURED AND TOTAL INVESTMENT FLOWS TO DEVELOPING COUNTRIES IN 1971[1]

[In millions of dollars]

Country	Investments insured 1971 (1)	Total investment flows in 1971 (2)	1 as a percentage of 2 (3)
Australia	4.5	40.0	11.3
Belgium	----------	28.5	----------
Canada	3.6	76.0	4.7
Denmark	4.3	10.0	43.0
France	----------	170.4	----------
Germany	72.4	358.1	20.2
Japan	90.0	222.4	43.9
Netherlands	8.2	282.7	2.9
Norway	.3	10.6	2.8
Sweden	----------	40.1	----------
Switzerland	10.3	65.7	15.7
United States	227.6	[2]2,210.0	22.8

[1] Martin, Edwin M. 1972 Review. Development Co-operation. Efforts and Policies of the Members of the Development Assistance Committee. Paris, Organization of Economic Cooperation and Development, December 1972 p. 62. Note that figures for total national investment in LDC's in this table differ from the total stated in the table in ch. IV. The DAC figures used here are for calendar year 1971 whereas the OPIC figures in ch. IV are by fiscal year.

[2] These U.S. figures were supplied by OPIC in August 1973. OPIC officials state that of the U.S. total in col. 2, $1,213 was petroleum or other investments not eligible for OPIC insurance. Most other programs will insure petroleum investments. Therefore the ratio in col. 3 is based on $997 in total U.S. investment. However, the officials point out, there is no reliable correlation between investment insurance issued in 1 year and the increase in the total stock of investment recorded in that year. Several major pending projects in 1973 could substantially increase this percentage.

Three tentative conclusions can be drawn from this chart. First, a substantial portion of U.S. and foreign investors feel free to invest in developing countries without insurance. Businessmen in France and the Netherlands invested substantial sums of money in LDC's with little or no insurance coverage. (However, insurance was not available under the new French program in most LDC's in 1971.)

Second, insurance programs are relatively more popular in the three largest industrial countries. Denmark is the only small industrial power with more than 20-percent coverage. Industries based in these three largest countries are probably more vulnerable to expropriation and thus require more risk insurance.

Third, the United States is far ahead of its major trading partners in the volume of new direct investment in LDC's.

The geographic scope of insurance programs also varies widely. Six programs insure investments anywhere in the world while nine are restricted to LDC's. Of those nine, four further restrict programs to countries with bilateral agreements on foreign investment. France initially limited insurance to former colonies, but now only Portugal follows that practice.

[6] Investing in Developing Countries, op. cit., p. 13. While OPIC's total current liabilities were $5.4 billion, its actual exposure was about $2.5 billion since most companies purchased insurance against all three types of risk-war, expropriation, and inconvertibility.

SCOPE OF OPERATIONS OF INSURANCE PROGRAMS[1]

	All countries	LDC's only	LDC's with bilateral agreements	Colonies only
Australia	X			
Austria	X			
Belgium	X			
Japan	X			
Norway	X			
United Kingdom	X			
Canada		X		
Denmark		X		
Sweden		X		
Switzerland		X		
France			X	
Germany			X	
Netherlands			X	
United States			X	
Portugal				X

[1] Adopted from "Contest of the 1970's." Germany and the Netherlands have recently insured projects in countries with which they have no bilateral agreements.

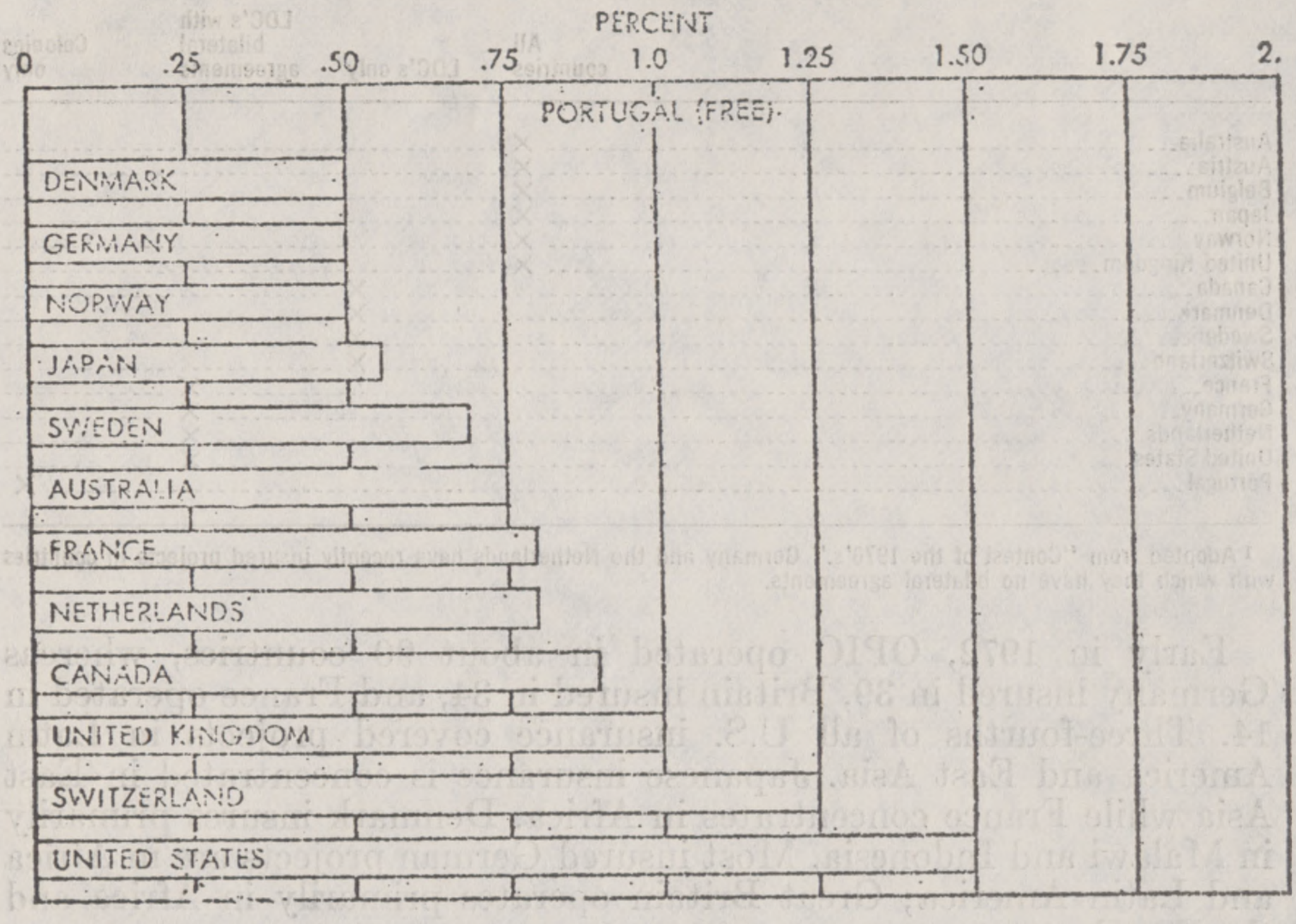
Early in 1972, OPIC operated in about 90 countries, whereas Germany insured in 39, Britain insured in 34, and France operated in 14. Three-fourths of all U.S. insurance covered projects in Latin America and East Asia. Japanese insurance is concentrated in East Asia while France concentrates in Africa. Denmark insures primarily in Malawi and Indonesia. Most insured German projects are in Africa and Latin America; Great Britain operates primarily in Africa and the Far East.

The benefits and types of coverage OPIC offers on other than "large or sensitive" projects equal or surpass those offered by other programs to their clients. Like all other programs, OPIC insures equity, loans, and advances. Only Belgium, France, Japan, Norway, and Sweden do not insure licenses and royalties. All programs insure 100 percent of an initial investment (except that OPIC insures declining portions in "large or sensitive" projects), but only Australia, Japan, the United Kingdom, and the United States insure up to 100 percent of all reinvested earnings. The United Kingdom and the United States do not insure annual profits except for inconvertibility of remittances. Several other programs cover profits against all political risks up to a fixed annual percentage of equity investment.

OPIC also covers a larger portion of a company's total loss than do other programs. Most pay between 80 and 90 percent of all losses on insured investments while OPIC still pays 100 percent. It has only been recently that OPIC has made an effort to involve companies in the loss of their own investments by introducing coinsurance.

OPIC charges fees higher than any other government insurance corporation (see chart on p. 30). The lower fees charged by other national programs reflect their lesser interest in building up reserves, due to their integration in large export credit insurance agencies, and the belief of some that their risks are low as compared with those of big U.S. investments. But because of high fees OPIC's insurance program has operated in the black, and now stands a reasonable chance of becoming self-sustaining.

Fees Charged by Developed Countries for Current Investment Insurance [7]



The European Economic Community recently proposed a scheme to fill gaps between investment insurance programs operated by member countries. Insurance would be limited to investment in developing countries. In the introduction to the proposal, the EEC Commission noted its significance:

> Since investment guaranties can favor the commercial growth of the Community, and since most of the competing industrial and commercial powers have broad recourse to this form of insurance, the introduction of a Community guaranty would place all of the member countries of the Community in a position equivalent to that of its principal competitors.[8]

The World Bank's International Investment Insurance Agency [9]

Considering the potential political problems involved in national insurance schemes, a multilateral approach may be preferable. The Commission on International Trade and Investment Policy in its 1971 report to the President, recommended that the United States continue to work toward the creation of a multilateral insurance agency which would include the less developed countries in its membership.[10]

---

[7] Overseas Private Investment Corp. Annual Report, fiscal year 1972. Washington, 1972 p. 4.

[8] As quoted by Bradford Mills, President of Overseas Private Investment Corp. In U.S. Congress. House. Appropriations Committee. Subcommittee on Foreign Operations. Budget of Overseas Private Investment Corp. for fiscal year 1974; hearings. [Daily transcript] Apr. 2, 1973. P. 13. From proposal of a regulation of the Council instituting a system of community guarantees of private investment in third countries (in French). Presented by the European Community Commission to the Council on Dec. 20, 1972. COM 72 1461. Final.

[9] Written with the assistance of Carole Petty and Jonathan Sanford, Foreign Affairs Analysts, Foreign Affairs Division.

[10] The President of the United States. The Commission on International Trade and Investment Policy. U.S. International Economic Policy in an Interdependent World; 3 vols. Washington, D.C., U.S. Government Printing Office, 1971. p. 250. (Hereafter cited as "William Commission Report.")

Three multilateral approaches to the settlement of investment disputes in LDC's also have been considered by the World Bank. The first, a forum for disputes between the investor and the host government, was created in the form of the International Center for the Settlement of Investment Disputes (ICSID). The second, a code of conduct, proposed in cooperation with the Organisation for Economic Cooperation and Development (OECD), has not been effectuated.

The third is the proposed International Investment Insurance Agency (IIIA), for providing multilateral insurance for external private investment in developing countries. In 1962, when the World Bank began studying the insurance scheme, only three countries had national programs: the United States, Germany, and Japan. By 1965, OECD had drafted articles for the Agency. No OECID members however, were committed to that draft. The financing of the scheme was to be borne by the developed countries; the developing nations would only be beneficiaries. No insurance would be given to projects which did not have the host country's prior approval.

The third draft of the articles for the Agency has recently been sent to the World Bank participating nations for preliminary approval. (At least 7 developed and 14 developing nations must accept membership before the Agency can be created.)

According to this third draft, membership in the Agency would be open to States which are members of the World Bank and any other State invited to sign the agreement. A Council with one delegate from each member country would be the representative assembly of the Agency. Each representative would have one vote. The Board of Directors would have a membership of 10, half representing capital exporting countries and half capital importing countries, but with the former group exercising 65 percent of the voting power and the latter 35 percent. Voting by the directors would be in proportion to the vote each received in his election. In the election of the directors, each member country would exercise a vote weighted in proportion to the size of the nation's contribution to the Common Fund or the investment made within its territory. The Board would appoint a managing director who would conduct the ordinary day-to-day business.[11]

The criteria for the eligibility of investments submitted to the Agency for risk insurance contain four main points. The investment must be: (1) Made by an investor of a nongovernmental nature and in a foreign state; (2) sponsored by a member country of the Agency; (3) made in a developing State's territory as the Agency defines developing; and (4) previously approved for the purpose of insurance by the sponsoring State.[12] The Agency's financing would come from several funds. Each country would pay a membership fee "equivalent to 3/4 of 1 per mil of its subscription to the capital of the Bank."[13] States not members of the Bank would pay an amount established by the Board in each individual case. This Common Fund would be used in the common account which would meet administrative costs in excess of the premium income. The common account would also

---

[11] The International Bank for Reconstruction and Development (IBRD). The Articles of Agreement of the International Investment Insurance Agency (revised draft). Washington, D.C., IBRD, 1972. Article I and II. p. 1–9. See app. E for document.

[12] Ibid., art. II.

[13] Ibid., art. IV, sec. 2.

contain the premium income. A sponsor's account would be set up for each member which sponsors insurance. Partial insurance claim payments on investments sponsored by a particular country would be made from these accounts. The actual loss-sharing formula would be roughly based on 25 percent payment by the sponsoring country and 75 percent by the other member States.

Cooperation between the Agency and the present national programs would be worked out individually.[14] The Agency could not take over portfolios of present programs since it would cover only new investments. It could, however, serve as a complete or partial substitute for national programs in the future. It could also act as a reinsuring agent for national programs and insure projects not eligible under those programs.

At the present time, prospects for favorable action on the IIIA proposal appear to be slight. World Bank vice president and general counsel Aron Broches has been quoted as telling a spring 1973 meeting of the Washington Foreign Law Society that the IIIA proposal is dead or at least moribund.[15] Bank President Robert McNamara wrote to all IBRD members regarding the proposal in early 1973, but national enthusiasm for the IIIA has been quite limited, Bank sources indicate.[16] There are three major issues holding up agreement on the World Bank proposal.

The first problem is the skepticism of several key developed countries, especially Germany and Japan, that a multilateral insurance agency can serve their investors as reliably or cheaply as their national agencies. Some are reluctant to pool risks with the United States.

The second major problem concerns compulsory arbitration of disputes and subrogation rights.[17] World Bank officials say they cannot operate without these rights.[18] Andean Pact countries, however, refuse to agree to these conditions, and many LDC's are reluctant to accept compulsory arbitration as a general principle.

A third issue is how the board of directors would be elected and how voting rights would be divided. The United States would like larger voting strength for the major industrial powers than the draft provides. Although this issue is frequently discussed, World Bank sources say they believe it is not a major problem and probably would not prevent approval.[19] Treasury Department sources are less positive in this regard.

The United States favors creation of an agency such as the IIIA, if one can be created which embodies acceptable provisions for weighted voting and shared costs. Treasury Department sources indicate that "multilateralizing OPIC" is viewed as a way to spread the risk of expropriation among many countries and to bring the judgment of many countries to bear in instances of expropriation.

National programs tend to involve governments (as subrogees) in direct disputes with governments of expropriating countries, the sources note, and this makes collection of debts more difficult because other issues become involved in the bilateral negotiations. A multilateral framework would facilitate clearer negotiations and would render the issues of expropriation and compensation more apolitical,

---

[14] Ibid., art. III, sec. 7, p. 15.
[15] Conversation with Richard M. Goodman, Office of the General Counsel, Department of the Treasury.
[16] Conversation with Dennis Koromzay, Legal Department, IBRD.
[17] See International Bank for Reconstruction and Development, op. cit., art. III, sec. 9 and art. VI.
[18] Interview with Shirley Boskey, International Relations Department, IBRD.
[19] Ibid.

they indicate. Creation of an agency similar to IIIA would be also desirable as a means for getting other developed and developing countries to join ICSID, something strongly favored by the United States, sources state. Prospects for the IIIA are not bright, they indicate, as the prospective developed countries differ among themselves on some points and there is considerable disagreement on major provisions of the charter between developed and developing states.[20]

Investment Financing Programs

Direct financial support of private investors in developing countries originated in 1946 with loans by France to businessmen in its colonial territories. Two years later the British developed a similar program for Commonwealth countries. In 1963 the United States began supporting investments in LDC's through investment guaranties and by 1971 initiated a direct loan program. Today, seven countries offer direct financing to private investors, but OPIC still has the only program which draws on private resources through investment guaranties. Most countries offer finance services through public corporations. Some, like the German DEG and the Dutch FMC, limit assistance to medium and small corporations.

British and French direct loan programs are by far the largest, each with approximately half a billion dollars in direct loans and equity investments. Japan ranks third with over $200 million and Germany trails with about $50 million. Since creation of the direct loan program in 1971, OPIC has lent about $17 million.[21]

As of January 1972, the direct loan situation looked like the following:

COMMITMENTS OF PUBLIC INVESTMENT CORPORATIONS AND OTHER DEVELOPMENT INSTITUTIONS FOR PRIVATE SECTOR INVESTMENT IN DEVELOPING COUNTRIES, 1960–71 [1]

[In millions of dollars]

	1960	1965	1969	1970	1971
CDC	30.0	38.0	31.6	45.2	75.5
DEG		2.9	7.5	13.2	4.6
IFU			0.2	2.5	2.5
FMO					2.8
OPIC					5.9
CCCE	(2)	16.2	17.1	17.6	16.4
OECF	13.9		11.8	26.3	43.7
IFC	6.2	26.0	92.9	111.8	101.4

CDC Commonwealth Development Corporation (UK). Figures include commitments to predominantly public local projects.
DEG Deutsche Entwicklungsgesellschaft (Germany).
IFU Industrialiseringsfonden for udviklingslandene (Denmark). The Industrialisation Fund for Developing Countries started making firm commitments in 1969; the breakdown between 1969 and 1970 is a Secretariat estimate.
FMO Financierings Maatschappij voor Ontwikkelingslanden (Netherlands). The Netherlands Finance Company for Developing Countries started making firm commitments in 1971.
OPIC Overseas Private Investment Corporation (USA). OPIC formally began operations in January 1971. It is responsible for handling the private investment incentive programs of the United States, in particular the insurance programs.
CCCE Caisse Centrale de Coopération Economique (France). The figures are estimates of the commitments representing the Caisse's assistance to the private sector only.
OECF The Overseas Economic Cooperation Fund (Japan) was set up in March 1961. The figures represent total investment commitments by the OECF to the private sector. A large part of these commitments appear to have been made to domestic Japanese companies investing in overseas projects.
IFC International Finance Corporation (World Bank Group). Figures include standby and underwriting commitments.

[1] Martin, op. cit., p. 63.
[2] Not available.

[20] Based on material derived from conversations with John Lange, multilateral programs office, Department of Treasury, and other Treasury sources.
[21] OPIC's guaranty program is not included in the chart. OPIC's total finance portfolio is worth $203 million.

The World Bank Group's IFC dominates the field.[22] Both British and Japanese program have grown rapidly, whereas German and French programs show no clear signs of constant growth. Since British and German programs have self-sufficiency mandates, there appears to be no obvious correlation between self-sufficiency and program expansion.

Most programs undertake both debt and equity investments, but OPIC is limited to loans and convertible debenture participation:

FORM OF INVESTMENT OFFERED [1]

	Debt and equity	Debt only	Debt and guaranty
Denmark	X		
Germany	X		
IFC	X		
Netherlands	X		
United Kindgom	X		
France		X	
Japan		X	
United States			X

[1] "Contest of the 1970s," op. cit.

OPIC estimates that programs with equity investments normally increase their effective yield in a project by 10 percent or more through dividends and/or subsequent sale of their equity interest. OPIC's request for congressional approval to take warrants (options to buy equity) is a step in this direction. OPIC would buy warrants to support an investment and then sell the warrant to a third party if stock prices increased. In this way OPIC would become involved in the host country's equity market. Thus there are some international precedents for OPIC's warrant request.

Because of its self-sufficiency mandate, OPIC's finance program constantly searches for new means such as warrants to acquire added funds. The following chart shows how some of the other finance programs acquire funds.

SOURCE OF FUNDS FOR DIRECT FINANCING PROGRAMS

Country	*Source of funds*
United Kingdom (CDC)	Borrowing authority up to $585 million.
Germany (DEG)	Still under initial capital of $53.5 million appropriated by the government.
France (CCCE)	Periodic government appropriations.
IFC (World Bank)	Borrowing from World Bank.
Japan (OECF)	Periodic government appropriations.
Netherlands (FMO)	Owned half by private industry and half by the government.
United States (OPIC)	Direct investment program has initial capital of $40 million, through Government appropriation. Guaranty program makes use of public funds and accumulates reserves through appropriations and earnings from finance and insurance programs.

[22] Since the IFC is not a government backed public corporation, it will receive only cursory attention in this study.

Both Japan and France support their low-interest-rate business-oriented programs through periodic appropriations. The German and Dutch programs are still too young to serve as examples. The British program, however, might provide some insights. The CDC is financed entirely by capital borrowed from the British Government at interest rates near 6.5 percent. CDC must then relend to its customers at sufficiently high rates so that it can cover operating expenses and provide reserves for losses. CDC's approach has proved quite successful, and might serve as an example for OPIC's direct lending program. Borrowing authority might also be extended to the investment guaranty program, but to a certain extent that program is already borrowing from the public by guaranteeing institutional loans. Funds might be borrowed from the Government for the guaranty reserves, but those reserves now need to be replenished only when they are inadequate to meet claims.

To insure its self-sufficiency, the British CDC uses two other means that OPIC does not have available. CDC is decentralized and has several regional offices to keep close track of the project it supports. CDC also directly manages several of its projects. Through regional offices and direct management, CDC cuts its losses and assures its own self-sufficiency. These CDC activities are somewhat similar to AID operations.

Privately owned regional investment firms such as ADELA (Atlantic Development Group for Latin America), PICA (Private Investment Corporation for Asia) and IBEC (International Basic Economy Corporation) supplement those national finance programs. OPIC's direct loan program has lent $5 million to ADELA and PICA. Both loans were promptly reloaned. The Williams Commission's July 1971 report to the President on trade and investment stated that the commissioners "endorsed" OPIC's policy of supporting these privately owned investment firms.[23]

Preinvestment Information Programs

Virtually all countries and multilateral institutions offering major investment insurance or finance arrangements also provide preinvestment survey or information programs. The extent of commercial advice varies greatly. Japan has perhaps one of the most advanced investment information programs, with four different offices providing commercial and economic analysis. Sweden, on the other extreme, offers only general market information. British, French, and U.S. programs provide preinvestment surveys and charge customers varying shares of the cost. In all three countries, the customer agrees to pay full preinvestment survey costs if the investment is eventually made.

Competition for Markets

The net direct investment in LDC's by most developed countries has grown more rapidly than the growth of U.S. direct investment. The Germans, Japanese, Dutch, British, and Italians all showed spectacular growth during the last 4 years for which data are available (see chart). Only the French have shown a net decrease.

[23] Williams Commission Report. p. 250.

NET DIRECT INVESTMENT IN LDC's (NEW AND REINVESTED)

[In millions of U.S. dollars][1]

Country	Calendar 1968	Calendar 1969	Calendar 1970	Calendar 1971
United States	1,624.0	1,257.0	1,742.0	2,210.0
Germany	192.0	233.6	317.5	358.1
United Kingdom	216.0	353.5	321.6	357.0
Netherlands	89.3	165.9	211.7	282.7
Japan	90.8	144.1	261.5	222.4
Italy	118.4	125.4	123.4	213.7
France	349.2	268.4	235.1	170.4

[1] Martin, Edward. Development Assistance; 1970, 1971, and 1972 reviews of the efforts and policies of the members of the Development Assistance Committee. Paris, Organisation For Economic Co-operation and Development, 1970, 1971, 1972. p. 176–177; p. 170–171; p. 220–221 (respectively).

Countries with development-oriented investment support programs, such as Germany and the United Kingdom, showed rapid investment growth as did the Japanese with business-oriented investment support programs. The Netherlands with virtually no program registered the fastest growth. There seems to be no obvious correlation between types of investment support programs and investment growth.

Despite the strong position of U.S. private investment in developing countries, many U.S. businessmen and some OPIC officials view with alarm what they regard as competition from other countries and the rapid growth rates of direct investments by these countries. Most of this rapid growth of investment, however, stems from the fact that direct investment by the most developed nations was proportionally low in the base year.

One way to bring this rapid growth of direct investment by other developed nations and the seemingly large U.S. portion of the total direct investment into perspective is to calculate the proportion of each country's GNP that is invested in the LDC's.

NET DIRECT INVESTMENT AS A PROPORTION OF GNP IN 1971

Country	GNP (in billions)	Direct investment (in billions)	Proportion (percent)
United States	1,050	2.21	0.21
Germany	236	.36	.15
United Kingdom	144	.36	.25
Netherlands	39	.28	.72
Japan	227	.22	.10
Italy	108	.21	.19
France	197	.17	.09

Several conclusions might be drawn from this chart. First the U.S. portion of investment in the LDC's is not out of proportion to its large GNP. If the Dutch statistics are deleted, the average proportion of GNP invested in LDC's by the other five countries was 0.156 percent compared to 0.21 by the United States.

Second, the increase on the part of Japanese investors, which has many American investors worried, is at present probably no more than an attempt to catch up with other developed countries.

Third, the decrease in French investment in LDC's has placed her below the level of most other developed nations. France has been active primarily in her former colonies.

Fourth, the only country at present investing a comparatively large portion of its GNP in developing countries is the Netherlands.

Thus, one might conclude that, at present, there is no cause to be overly concerned about other countries taking a disproportionately large percentage of the LDC markets. It should also be noted that, consistent with its view of the benefits of foreign investment for development, the United States could be expected to support such investments by other developed countries.

B. Comparison of OPIC With Other U.S. Government Programs

Insurance Programs

The U.S. Government offers dozens of programs through which private citizens can either insure against some type of loss or receive Federal credit aids for projects deemed worthy of assistance. OPIC represents only a very small portion of the dollar volume of these programs.

The Government has increasingly opted for insurance protection in cases where private insurance coverage is inadequate, where disasters have national implications, and where tax-funded relief programs are inadequate. OPIC fits into the first and possibly the second category, which includes more than 20 major Federal programs such as social security, medicare, student loan insurance, and flood insurance.

Seven institutions and programs with features closely analogous to those of OPIC which also provide insurance against specialized risks are: (1) Export-Import Bank (Eximbank), (2) the Federal riot reinsurance program, (3) the Federal crime insurance program, (4) the Merchant Marine war insurance program, (5) the Federal Aviation war risk insurance program, (6) the Federal Housing Administration, and (7) the Veterans Administration guaranty program.[24] The combined total maximum liability of these seven programs is $535 billion, of which OPIC represents only $3 billion or 0.6 percent. If the three programs concerned with international political risk (Eximbank, the Maritime Commission, and the Federal Aviation War Risk Insurance) were combined with OPIC, these maximum liabilities would total $107 billion, of which OPIC would represent only 3 percent.[25]

The Eximbank's political risk insurance program is perhaps most like OPIC's.[26] Eximbank insures the credit of foreign buyers of U.S. exports and exported U.S. equipment used by U.S. contractors. If contractor equipment is destroyed or confiscated for one of several political reasons, Eximbank will pay 75 percent of the depreciated value. Eximbank requires a written host government assurance that it will allow the importation, use, and subsequent removal of the U.S. contractor's equipment.

Finance Programs

Other Federal programs provide credit assistance through direct loans, guaranties of private loans, and interest subsidies. In 1971, OPIC represented about 0.02 percent of the total net commitments

[24] See app. F for short description of these programs.
[25] Statistics from OPIC memo by Carl Middleton dated Mar. 19, 1973.
[26] For further analysis also see the statement and testimony of Don Bostwick, executive vice president of Eximbank, in U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Daily transcript] June 7, 1973, pp. 306–334.

for Federal credit programs while Eximbank represented 12 percent.[27] The trend among all Federal credit support programs is in the direction of guaranties rather than direct loans.

The two credit programs most like OPIC are operated by AID and Eximbank. In addition to political risk insurance, Eximbank provides direct loans and loan guaranties. All loans and guaranties are tied directly to the export of U.S. goods and services. Eximbank's only economic development criterion is that the U.S. exports are not harmful to the foreign country's economy. To this extent, Eximbank is quite different from OPIC. A merger of the two programs would seriously alter the nature of OPIC, and is apparently not favored by either organization.[28]

Eximbank finances foreign importers on terms not suitable for commercial banks. Direct loans cost the foreign importer 6 percent while loan guaranties cost 0.5 percent in addition to the commercial interest rate.

Eximbank also provides "supplier credits" to U.S. exporters, which in effect guarantees a commercial bank loan to the exporter so that he need not wait several years for the foreign importer to pay for exported goods or services. Eximbank loans range from 6 months to 20 years, with 5 to 7 years as the average time span.

The Agency for International Development now gives grants or lends directly to foreign governments in most of its development projects. They are primarily involved in the development of risk enterprises and institutions. The two programs in which it still deals primarily with the private sector are the housing guaranty program and grants to voluntary agencies.

Other U.S. Government overseas commercial incentive programs are the Domestic International Sales Corporation (DISC) and the Commodity Credit Corporation (CCC). DISC defers Federal income tax for firms engaged in export activities while the Department of Agriculture's CCC encourages and supports the export sale of agricultural commodities.

---

[27] The President of the United States. Special Analyses Budget of the U.S. Government, Fiscal Year 1974. Washington, U.S. Government Printing Office, 1973. p. 73.

[28] See Bostwick's statement for implicit rejection of this idea of an OPIC-Eximbank merger.

CHAPTER IV. OPIC OPERATIONS: AN EVALUATION

During its short history, OPIC has faced at least three major problems. First, it is required by law to "undertake to conduct financing operations on a self-sustaining basis" and to "undertake to conduct its insurance operations with due regard to principles of risk management." [1] These requirements for eventual financial autonomy, coupled with threats of appropriation cuts, have made OPIC officials extremely risk conscious. Their cautious attitude to a certain extent conflicts with mandates to encourage economic development and small business investment in LDC's.

Second, OPIC is required to support only those projects consistent with the balance-of-payments objectives of the United States.[2] The U.S. balance-of-payments deficit has magnified this problem. (OPIC has administratively expanded this restriction to include the protection of U.S. employment.) This mandate reduces the number of suitable economic development programs which OPIC might support.

Third, and perhaps most important, economic nationalism throughout the developing world has created a relatively unfavorable investment climate at a time when OPIC cannot afford the risk. Expropriations threaten OPIC's reserves and in some cases tie the U.S. Government directly to investment disputes, a fact which in turn raises questions about the possible adverse effects of OPIC on U.S. foreign policy.

The primary reason for OPIC's creation, according to Senator Jacob Javits, who sponsored the legislation in the Senate, was that the corporation would be better able than a conventional Government agency to attract and apply U.S. private capital and technology to the kinds of productive projects which can most benefit the host country, that is, the developing country, socially as well as economically.[3] The following chapter shows, however, that because of the limits placed on OPIC by the three problems mentioned above, OPIC has not attracted as much private capital as its predecessor program under AID and it has not been guided to the same extent by social and economic development considerations.

A. Decline in Operations

OPIC officials reject any criticism that their mandates conflict; they say they can live with self-sustenance, risk management, and balance-of-payments mandates and still "mobilize and facilitate" U.S. private capital for "economic and social progress" in developing countries.

---

[1] Sec. 231 (a) and (b) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," p. 17.

[2] Sec. 231(i) of Foreign Assistance Act of 1961 as amended by section 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," p. 18.

[3] Testimony of Senator Jacob Javits, In U.S. Congress House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; hearings, Washington, U.S. Government Printing Office, 1969, Aug. 12, 1969, p. 73.

They argue that programs are a series of individual projects which must be pursued case by case, and that with "selectivity" they can produce a balanced portfolio which satisfies all congressional mandates.

OPIC provides the following list of action taken on individual projects to show how they have implemented the policy mandates: [4]

Approved insurance of U.S. investments in a copper/nickel mining project in Botswana, the key project in the country's development program. Supported also by the World Bank, the project is expected to generate over $2 million annually in foreign exchange dividends, plus foreign exchange payments of taxes rising to $11 million annually, plus income from infrastructure rental rising to a net $5.6 million annually, and provide employment and training for 2,000 Botswanans. Before approval, OPIC required analysis of the fairness of the project to Botswana by an OPIC-employed private mining consultant.

Rejected insurance of a proposed investment in a paper mill in Ethiopia, despite its approval by the host government and by the IFC, because the project depended for its financial viability on open-ended, indefinite tariff protection.

Rejected an application for insurance of U.S. investment in a group of movie theaters in the Dominican Republic which had been approved by the host government because the investment would not generate foreign exchange earnings sufficient to cover its cost in a country with a serious external debt problem.

Approved insurance of U.S. investment in a private financial institution in Israel which will make working capital loans to smaller local industrial companies. The indirect contributions of the assisted industries to Israel's foreign exchange position could not be estimated accurately, but on the basis of prevailing ratios of capital to employment and tax payments, the investment should indirectly contribute an average of $8 million to local tax receipts and increase employment by at least 1,000.

Rejected inquiry of a U.S. electronics firm planning to ship an already closed-down plant to Yugoslavia to manufacture circuitry for European and probably also U.S. markets.

Rejected inquiry by a U.S. manufacturer planning to to produce children's clothing in several Central and South American countries, partially to serve the U.S. market.

Approved insurance of a U.S. investment in pharmaceutical production in Indonesia for domestic and nearby export markets, which would lower the cost of medical supplies on the local market, and save and earn foreign exchange. The plant will employ 220 persons, all but three of them Indo-

[4] Statement by Bradford Mills, president of Overseas Private Investment Corporation. In U.S. Congress. House; Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Daily transcript] June 19, 1973. pp. 442–531.

nesian. Its establishment and prospective expansion will mobilize increasing amounts of local private capital for long-term investment.

But in the process they have rejected 38 projects in 18 months. (See chart.) Only nine were rejected because they were not developmental and 10 because host government approval was not given (possibly for development-related reasons). Thus the remaining 19 projects—or half of its total number of projects—were rejected for other than development-connected reasons. As noted earlier, OPIC's principal goal is economic development. But other criteria clearly govern the selection of many of its projects.

Reasons for OPIC rejection of insurance applications [1]

(Fiscal year 1972 through first half fiscal year 1973)

	Number
Investment harmful to the United States	6
Overseas processing for export to the United States	4
Runaway industry	1
Competition with U.S. exports	1
Investment not developmental (purchasing of existing business, real estate speculation, international shipping, and other)	9
Foreign government approval denied	10
Investment did not meet other OPIC eligibility or risk management criteria	13
No bilateral agreement or investment committed before registration	5
Country policy (Mozambique)	1
Country exposure problem (Korea)	1
Investment was capitalization of fees or working capital	2
Other ineligible types of investment (had buyer's credit for purchase of U.S. goods; 2-year loan application; company not majority-owned by U.S. citizens; coverage of required holdings of host government bonds)	4
Total	38

[1] Provided by OPIC.

This selectivity is perhaps necessary, but when it is coupled with the effects of economic nationalism, which further limit OPIC's activity, the result appears to be a serious decline in its operations. This decline appears to be not just in the insurance program, but in virtually all OPIC programs.

Political Risk Insurance Declines

The amount of insurance issued by OPIC recently has declined while the flow of U.S. private capital funds to LDC's has continued to increase.

OPIC POLITICAL RISK INSURANCE ISSUED IN THE LAST 7 FISCAL YEARS

[In millions of dollars]

Fiscal year	Expropriation	Convertibility	War	Total[1]	U.S. private capital funds to LDC's[2]
1966	369	446	240	1,055	1,505
1967	448	453	272	1,173	2,090
1968	297	1,077	1,126	2,500	2,487
1969	575	594	409	1,578	1,565
1970	653	675	626	1,954	2,438
1971	323	357	389	1,069	2,764
1972	213	213	210	636	2,883

[1] Statistics provided by OPIC.

[2] OPIC submission to OECD review of U.S. assistance, April 1973. Note that these figures for total U.S private investment in LDC's do not agree with DAC data on total 1971 U.S. investments in LDC's presented in ch. III. The DAC data are by calendar year, whereas the data given here are by fiscal year.

Note: Any combined coverages issued in these years are folded into both expropriation and war risks columns, in accord with present method of reporting.

There has been a 75 percent decrease in insurance issued since 1968. The average amount of insurance issued during the AID years (1966–70) was $1,672 million, while the average during the OPIC years was $852 million. The decrease between these averages is 49 percent. The same basic trend appears if the annual change in the net book value of U.S. direct investments in LDC's is compared with the amount of original investment insured by OPIC.

[In millions of dollars]

	Annual change in net book value of direct investments[1] (excluding petroleum)	Original investment covered by insurance
Calendar year:		
1967	588	----------
1968	923	864.2
1969	735	539.6
1970	796	784.0
1971	997	227.6
1972	----------	222.8
5-year average	807.8	527.6

[1] See OPIC document entitled "Insured Investment in LDC's," dated April 19, 1973. Commerce Department data includes changes in net book value resulting from use of third-country borrowings, a portion of which are not insured by OPIC. Statistics are for net investment, but Commerce Department advises that data for gross investment would not be significantly larger. Data do not include Mexico or Peru.

The decrease in original investments insured since 1968 is 74 percent, while net investments increased slightly during the period. These figures cannot be compared exactly inasmuch as insurance on an investment might be issued in a different year from that of the initial investment. The trend, however, is clear. In 1968, the amount of original investment covered by OPIC was 93 percent of the annual change in net book value of U.S. direct investments in LDC's. The corresponding figure for 1971 was 23 percent.

In a statement before the House Subcommittee on Foreign Economic Policy, OPIC President Bradford Mills explained this decline of coverage in two ways: (1) The U.S. economic recession of 1970 altered U.S.

company investment plans and this change was reflected in the decline of OPIC insurance the succeeding years; and (2) the corporation has underwritten fewer big mining ventures, and has sharply limited the extent of coverage offered.[5]

The 1970 recession, however, did not substantially affect U.S. private flows to developing countries. Mining insurance dropped from 24.7 percent of AID's portfolio (in dollar volume) to 2.2 percent of OPIC's portfolio.[6] This 22.5 percent decrease explains only part of the 49 percent decrease in insurance issued in 1968 and 1972. In addition, mining insurance was curtailed because economic nationalism makes mining investments highly risky. The limited geographic scope of OPIC's activities has also reduced total sales, primarily because of the risk involved in investing in many Latin American countries and OPIC regulations prohibiting investment insurance in Andean Pact countries.[7] Thus, while OPIC's insurance volume has decreased, in part (at least) because of cautious policies prescribed by law and the board of directors, private industry continues to move its capital to developing countries.

Businessmen continue to invest in developing countries at an increasing rate because of rising profits on their investments. The following graph depicts substantial profits to be made in developing countries.[8]

---

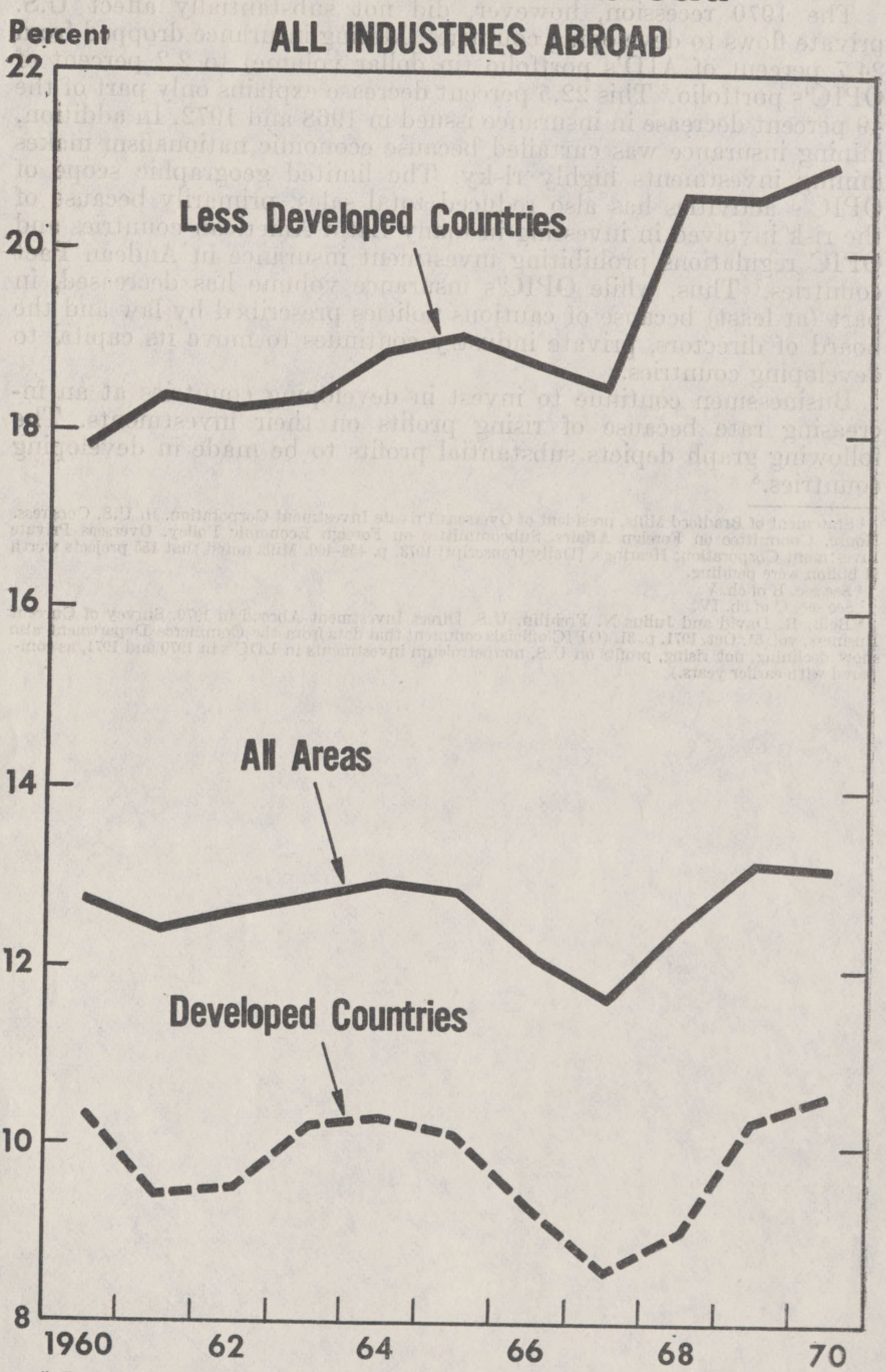
[5] Statement of Bradford Mills, president of Overseas Private Investment Corporation. In U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Daily transcript] 1973. p. 458–460. Mills noted that 155 projects worth $1 billion were pending.

[6] See sec. B of ch. V.

[7] See sec. C of ch. IV.

[8] Belli, R. David and Julius N. Freidlin. U.S. Direct Investment Abroad in 1970. Survey of Current Business, vol. 51. Oct. 1971. p. 31. (OPIC officials comment that data from the Commerce Department also show declining, not rising, profits on U.S. nonpetroleum investments in LDC's in 1970 and 1971, as compared with earlier years.)

Rates of Return* on U.S. Direct Investments Abroad



* Return on direct investments represents earnings plus interest (on inter-company accounts) applied to book value at beginning of year.

In addition, it is clear that OPIC officials did not expect this severe decline. When OPIC's $7.5 billion insurance limit was authorized in 1969, insurance growth was projected at $1.5 billion annually. In December 1970, a revised OPIC projection was made which was then considered "conservative." Following is a comparison of these projections with actual figures.

ACTUAL AND PROJECTED OPIC INSURANCE OUTSTANDING[1]

[In millions of dollars]

	Convertibility	Expropriation[2]	War[2]	Total
Sept. 30, 1970: actual	3,615	3,748	3,047	10,410
June 31, 1971:				
Actual	3,674	3,733	3,179	10,586
Projection	3,925	4,213	3,701	11,826
June 20, 1972:				
Actual	3,378	3,539	2,997	9,914
Projection	4,338	4,965	4,472	13,775
Mar. 31, 1973:				
Actual	3,025	3,388	2,740	9,153
Projection	4,648	5,529	5,125	15,302
June 30, 1973: Projection	4,751	5,717	5,343	15,811

[1] OPIC projections made in December 1970 by the OPIC staff.
[2] Combined coverage has been added to both expropriation and war.

Since September 1970, there has been a net decrease of $1.257 billion in insurance outstanding. The resulting amount of $9.153 billion is $6.149 billion less than initially estimated by OPIC officials.

This decline of coverage has made an impact on fees collected from insurance policies, OPIC's prime source of income. Revenues continue to increase, but at a much reduced rate in 1972.

Insurance fees collected during fiscal years 1961 through 1972 were:[10]

[Thousands omitted]

Fiscal year	Fees collected	Change by fiscal year
1961	$1,672	----------
1962	2,413	741
1963	2,976	513
1964	4,675	1,749
1965	7,768	3,093
1966	9,868	2,100
1967	9,178	−690
1968	14,546	5,368
1969	19,722	5,176
1970	21,663	1,941
1971	27,695	6,032
1972	27,843	148

The impact of this phenomenon on OPIC's chances for financial self-sufficiency will be discussed in a later chapter.

Continued Need for OPIC Insurance?

The 75 percent decline in insurance sales since 1968 and increasingly high corporate profits in LDC's raises the question of to what extent do U.S. investors still need OPIC insurance. The United States already pays up to 52.0 percent of any losses of foreign investors through corporate income tax deductions. When asked by Business International, 45.8 percent of all OPIC customers said that political risk

[10] Statistics provided by OPIC.

insurance would be necessary for any future investments that they might make.[11] An OPIC staff study shows that of 30 unsuccessful insurance applicants who had to decide whether or not to invest without insurance, only 12 invested.[12] Ten decided not to invest primarily because they were denied insurance, while the rest decided not to invest for commercial and insurance reasons. Thus, in those 22 decisions where insurance played a major role (discounting 8 decisions in which investors chose not to invest for a variety of reasons), about 45 percent of the investors decided that they would not invest because insurance was denied. The dollar volume of the 10 abandoned projects, however, was disproportionately high; $442 million (or 97 percent of the dollar volume of the 22 projects) went uninvested, whereas only $14 million was eventually invested. OPIC insurance is evidently considered more important on larger projects.

These two studies are only partially helpful in analyzing what portion of investments insured by OPIC would not have been made if OPIC did not exist. In 1971, for example, OPIC insured $227.6 million of investment for LDC's. Depending on how many large projects would not have been undertaken without OPIC support, the amount not invested if OPIC had not existed in 1971 could range from $102.4 million (45 percent) to $220 million (97 percent). These figures represent a range of between 10 and 20 percent of all U.S. private investment in the LDC's.

Guaranties and Direct Investment Loans

The decline in OPIC's activity due to economic nationalism and OPIC's conservative operational practices is also reflected in the decline of new projects in the investment guaranty program. In addition, this program is plagued with possible commercial failures. Finance Department Vice President William Pistell noted the vulnerable portfolio left to his department by AID saying "you could not sell this portfolio to anyone." [13]

As a result, OPIC has attempted to balance its guaranty portfolio with lower-risk projects and by undertaking a smaller share of the financing of higher-risk or larger projects. The decline of its business volume is noted below: [14]

THE GUARANTY PROGRAM

[In millions of U.S. dollars]

Year	Dollar volume	Number of projects guaranteed
1963	8,325	1
1964	0	0
1965	730	2
1966	9,075	2
1967	31,726	4
1968	26,445	5
1969	12,834	7
1970	104,225	5
1971	20,000	2
1972	1,531	2
1973 (April)	5,250	1

[11] Business International Corporation. Corporate Policy on Investment Insurance. New York, 1971. (Research Study conducted at OPIC's request.)

[12] Middelton, Carl. Analysis of OPIC Insurance Rejections; staff report. Washington, Overseas Private Insurance Corporation, May 11, 1972.

[13] Interview with William Pistell, vice-president for finance, Overseas Private Insurance Corporation, May 1973.

[14] Statistics provided by OPIC.

The guaranty program's $75 million in reserves could finance a portfolio of up to $300 million under the 25 percent reserve requirement, but the current loan guaranty portfolio is only $193.9 million. If any of the program's existing projects fail, its ability to expand is decreased by a factor of four. Fast expansion today might mean requests for more appropriations tomorrow.

At least part of this slack in the guaranty program's volume has been taken up by OPIC's direct loan program. Through January 31, 1973, $13.7 million has been lent to 11 projects, and OPIC is arranging private bank participation in part of this portfolio.

Productivity Credit Guaranty Program

The experimental community credit guaranty program proved unsuccessful for reasons given earlier, but like the phoenix may rise from its own ashes in the form of the newly proposed productivity credit guaranty program. The most recent data available, however, show the decline of the CCGP.[15]

THE COMMUNITY CREDIT GUARANTY PROGRAM

	July–September 1972	October–December 1972
Number of loans made	399	98
Number of persons benefited	6,384	1,568
Equivalent amount loaned (dollars)	172,578	66,434
Equivalent potential claims (dollars)	10,103	14,718

Preinvestment Survey Program

OPIC has also deemphasized its own preinvestment survey program to such an extent that for practical purposes it no longer exists. The chart below details this decline. In the peak year of 1967, AID committed $1.3 million of appropriated funds on 72 agreements of which only 8 resulted in investments, amounting to approximately $15,155,000. In 1971, two surveys involving $20,000 in OPIC funds were committed and apparently led to no investment.

OPIC's major preinvestment efforts recently have been in conjunction with the nonprofit Agribusiness Council. These projects focus on food processing and marketing. As of December 1972, nine projects involving $53.4 million of investment have been proved feasible. Eleven were rejected at a cost of $23,000 and 18 are pending with OPIC involvement of $525,000.[16]

Charles Kindleberger's contention that "there is little basis today for the view that the U.S. Government has more information than businesses do"[17] appears to be correct, with the possible exception of agribusiness.

[15] Overseas Private Insurance Corporation. The productivity credit guaranty program; memorandum prepared for the Board of Directors of OPIC. Mar. 19, 1973.

[16] See app. G for chart.

[17] Kindleberger, Charles. U.S. Policy Toward Direct Investment with Special Reference to the Less Developed Countries. In Williams Commission Report. vol. III. p. 347.

SUMMARY OF THE INVESTMENT SURVEY PROGRAM (FROM INCEPTION THROUGH FEB. 29, 1972)

	Number of signed agreements	Amount paid for negative decisions by year paid	Positive decisions [1]	Resultant executed or planned investment (thousands) [2]
Fiscal year:				
1962	1			
1963	29		2	$28,781
1964	58	$61,364.71	6	16,788
1965	58	97,721.86	14	8,044
1966	59	298,917.01	12	19,858
1967	72	259,327.85	7	15,155
1968	33	87,769.49	7	10,680
1969	23	140,814.06	4	5,898
1970	11	196,062.93	1	1,000
1971	2	352,619.82		
1972 (8 months)	3	18,741.84		
Cumulative total	349	[3] 1,513,339.57	53	106,204

[1] Listed by year of agreement—not by notification date.
[2] Dollar amounts change from time to time due to change in investor's plans.
[3] Number of negative decisions reimbursed: 144.

The Cooley Loan Program [18]

The Cooley Loan program has dried up almost completely because foreign currencies collected through Public Law 480 sales have been greatly reduced (see chart on following page). Only four loans were made in 1972. Many countries now pay for agricultural goods in dollars. In addition, Cooley Loans do not operate on a revolving fund; once the loan is repaid, funds revert to the U.S. Treasury.

[18] For a brief description of this program, see Chapter II.

THE COOLEY LOAN PROGRAM [1]

	1958		1962		1964		1967		1970		1972	
	Number of projects	Dollar volume	Number of projects	Dollar volume	Number of projects	Dollar volume	Number of projects	Dollar volume	Number of projects	Dollar volume	Number of projects	Dollar volume
Latin America	15	[2] 5.42	6	0.27	7	2.77	2	0.78	0	0	0	0
Far East	0	0	7	1.13	6	3.65	5	1.77	8	7.14	1	.30
Middle East and South Asia	2	1.86	26	29.15	36	64.19	14	20.16	8	9.84	3	.92
Africa	0	0	0	0	1	.45	3	1.41	1	.95	0	0
Europe	0	0	3	1.92	0	0	0	0	0	0	0	0
Total	17	7.28	42	32.47	50	71.06	24	24.12	17	17.93	4	1.22

[1] Statistics provided by OPIC.

[2] Equivalent to millions of U.S. dollars.

B. Development Assistance Gives Way to Risk Management

Constrained by the mandate of self-sufficiency, and faced with increasing economic nationalism in many developing countries, the Corporation's officials have not only written fewer insurance and loan agreements, but those they have written have tended to be relatively low-risk, and apparently to have had a smaller development impact, as compared with projects undertaken by AID. OPIC President Bradford Mills in effect recently admitted this tendency by noting that risk management and economic development mandates had to be balanced by including projects of each type in a diversified portfolio.[19] The following analysis of AID programs and OPIC programs shows that both the insurance and finance portfolios have shifted their focus away from high-risk projects toward lower risk projects. (OPIC officials contend, however, that lower-risk projects may be as high in developmental benefits as higher risk projects.)

Political Risk Insurance

In order to judge the extent of any shift in the insurance program from highly developmental to low-risk projects, Lawrence Potter, an insurance department official for AID and OPIC, was asked to rate projects under each program. Since this method of analysis is somewhat subjective, only the relative changes in each program are important. Potter rated 33 individual projects insured by AID in the first quarter of fiscal year 1968; he maintained that the sample was representative of AID-insured projects. Then Potter rated 106 projects insured by OPIC in fiscal year 1972. The results are found below:

Comparison of AID insurance projects with OPIC projects [1]

AID program, July to September 1967 (control) (33 new projects): [2]	
Development rating: [3]	
High	26
Medium	5
Low	2
Ratio high to medium plus low	3.7:1
Risk management rating: [3]	
Low	19
Medium	11
High	3
Ratio low to medium plus high	1.4:1
OPIC program, fiscal year 1972 (106 new projects): [2]	
Development rating:	
High	75
Medium	21
Low	10
Ratio high to medium, plus low	2.4:1
Risk management rating:	
Low	85
Medium	19
High	2
Ratio low to medium, plus high	4:1

[1] Rated by Lawrence Potter, formerly of OPIC's insurance staff and now an OPIC consultant.
[2] This is the total number of new projects insured during the period in question.
[3] Rating as considered at the time insurance policy was issued.

According to this rating system, AID had 3.7 highly developmental projects for every one rated medium or low, while OPIC had 2.4:1.

[19] Interview with Bradford Mills, president of Overseas Private Insurance Corporation, April 1973.

Although Potter's rating system shows that most OPIC-insured projects are highly developmental, it also shows a shift away from highly developmental projects. The shift toward low-risk projects is more marked. While AID during those 3 months insured 1.4 low-risk projects for every one considered medium- or high-risk, OPIC during fiscal year 1972 insured four low-risk projects to every one considered medium- or high-risk.

Loan Guaranty Program

A similar analysis of OPIC's loan guaranty program was made with the help of Finance Department Vice President William Pistell and three of his senior assistants. The results are even more striking:

Comparison of AID guaranty projects with OPIC projects [1]

AID guaranty projects (22 projects): [2]	
Development Rating: [3]	
High	15
Medium	7
Low	0
Ratio of high to medium plus low	2.1:1
Risk Management Rating: [3]	
Low	5
Medium	6
High	11
Ratio of low to medium plus high	1:3.4
OPIC guaranty projects (5 projects):	
Development Rating:	
High	2
Medium	2
Low	1
Ratio of high to medium plus low	1:1.5
Risk Management Rating:	
Low	3
Medium	1
High	1
Ratio of low to medium plus high	1.5:1

[1] Rated by Financial Department vice president, William Pistell, and 3 senior assistants.
[2] Guaranty agreements signed before January 1971.
[3] Rating as considered at the time guaranty agreement signed. Risk of commercial failure is included in loans and guaranty projects but not in insurance projects.

During 8 years of AID administration, 2.1 highly developmental projects were guaranteed for every one rated medium or low, but OPIC has guaranteed only one highly developmental project for every 1.5 rated medium or low. This constitutes a pronounced shift away from projects considered by finance officials themselves to be "highly developmental." At the same time, an equally pronounced shift occurred in the commercial and political risks OPIC officials were willing to take. AID officials guaranteed one low-risk project for every 3.4 considered medium- or high-risk. OPIC reversed this trend by issuing more low-risk guaranties than medium- or high-risk guaranties.

It is evident that, in order to protect what they have considered a high-risk portfolio inherited from AID, and working under a mandate to become self-sufficient, OPIC officials have guaranteed primarily medium- and low-risk projects. In part as a result of this emphasis, guaranties for highly developmental projects have suffered.

Direct Loans

A rating of direct-loan agreements, all signed after January 1971, reveals the same trend shown above:

OPIC direct investment project ratings (12 projects) [1]

Development rating:[2]	
High	4
Medium	5
Low	3
Risk management rating:[2]	
Low	6
Medium	3
High	3
Ratio of high to medium plus low	1:2
Ratio of low to medium plus high	1:1

[1] Rated by William Pistell and three senior assistants.
[2] Rated as considered at the time loan agreement was signed.

Only one highly developmental loan was issued for every two considered medium or low on the developmental rating scale. The ratio of low-risk loans to medium- and high-risk loans was 1:1. Once again highly developmental projects suffered because of the requirements of risk management and self-sustenance.

OPIC's Development Policy

OPIC officials, however, do not feel that self-sufficiency, risk-management, and balance-of-payments objectives have "significantly weakened OPIC's developmental thrust." Their statement in a briefing paper for Congressman John Culver's recent study trip to Latin America stated:

> OPIC's insurance business interest in risk-management leads OPIC to select and seek to influence projects so as to make U.S. private investment in developing countries more compatible with their development policies and economic interests. Otherwise, the risk of expropriation will be increased. OPIC's participation through insurance often enhances the developmental quality of an investment project, by permitting the investor to plan a slower rate of return on capital and reinvestment of earnings in the enterprise, or by causing other changes in the design of the project.
>
> Similarly, an OPIC finance program committed to self-support must select and influence projects with a view to their financial and economic viability and their political security. This is consistent with a developmental objective; a project that fails or depends on subsidies for its survival makes no contribution to either development or to the financial soundness of OPIC's portfolio. The self-support objective has not caused the OPIC finance program to shun innovative and therefore risky development projects. On the contrary, this is a fair description of most of the projects and the great bulk of the total loan amounts outstanding in the OPIC finance portfolio.

Their basic argument is that a successful low-risk project with a small developmental impact is better than unsuccessful highly developmental project. Their contention that the "self-support objective has not caused the OPIC finance program to shun innovative and, therefore, risky developmental projects" conflicts with the ratings provided by the OPIC Finance Department.

It should be noted that while the trend is in the direction of low-risk projects, both the insurance and finance programs still do have substantial developmental impact. OPIC officials are required to submit detailed developmental effects statements with every insurance or finance project involving $1 million or more of OPIC's money. These statements, which are obtained from the applicant and other sources, include the following categories: Foreign exchange, domestic revenue, tariff protection on products, local capital mobilization, local market prices of the products, effect on existing local producers of the products, effect on local suppliers and/or downstream industries, and employment and skill creation.[20] All projects require host government approval, which includes an assessment by the host government of the project's economic impact. From January 1971 to May 1973, eight projects worth $3.1 million were rejected by OPIC because they lacked proper development effects for the host country. Thirteen worth $5.6 million were rejected because they lacked host country approval.[21]

Discussion

The drift away from highly developmental projects would seem to be in large part due to the requirement of self-sufficiency. If Congress intends that OPIC become a private corporation in the near future, then this drift is appropriate. If not, Congress may want to consider whether there is a conflict between the two mandates.

C. Geographical Distribution of OPIC Assistance

While the total volume of OPIC's business declines and projects become less developmental, OPIC's geographic scope is contracting. For various reasons OPIC has insured companies in less than half the number of countries insured by AID. (OPIC officials explain that there would naturally be a broader spread of countries in a 22-year-old AID portfolio than in a 2-year-old OPIC portfolio.)

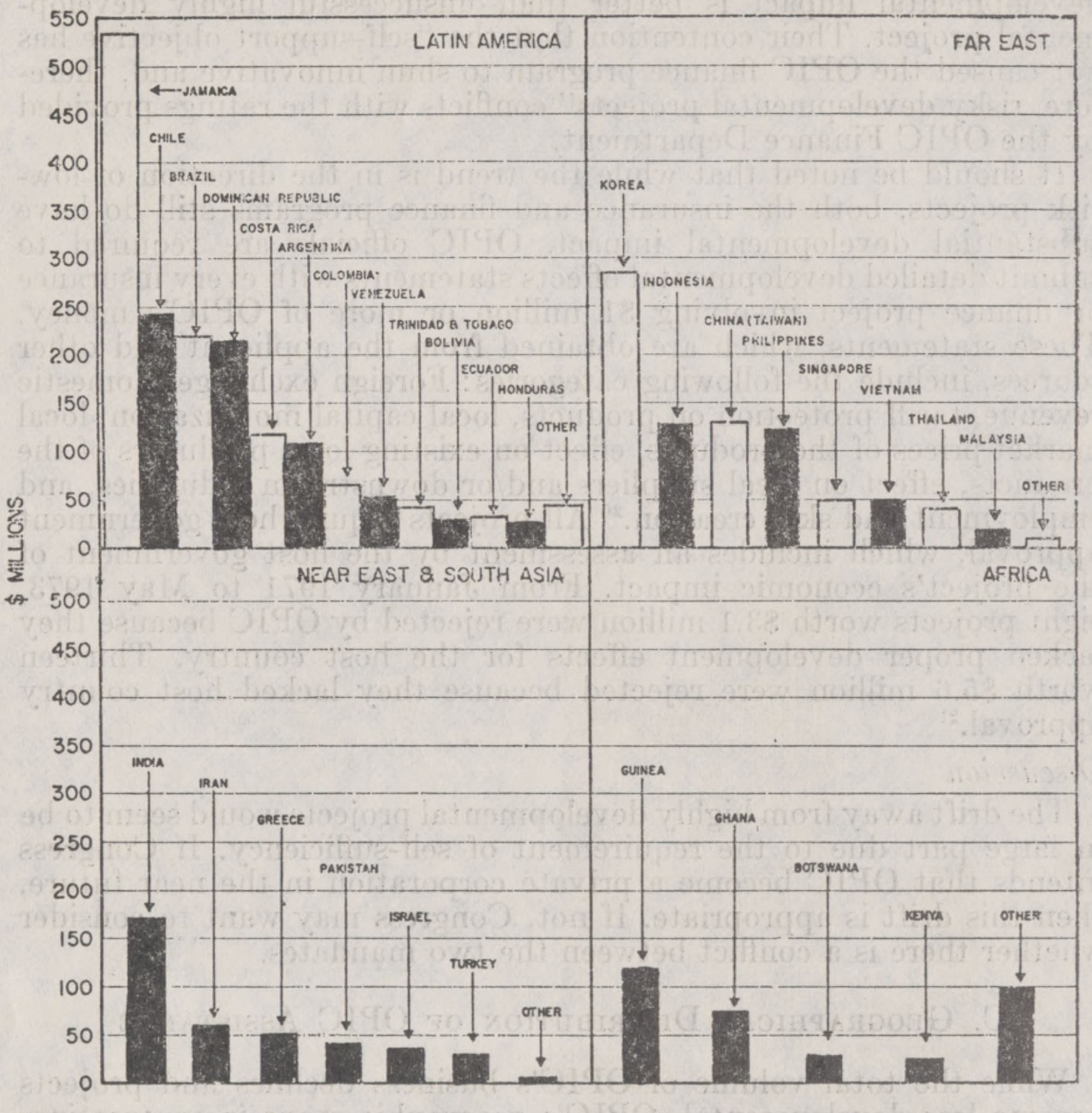
Present Insurance Exposure

The following graph [22] shows OPIC's exposure to potential expropriation claims. Heavy concentrations in Jamaica, Korea, Chile, Brazil, and the Dominican Republic were inherited from AID.

---

[20] See app. H for OPIC's guideline for analysis of developmental effects of projects.
[21] Middleton, op. cit.
[22] Graph supplied by OPIC.

OPIC Expropriation Coverage Exposure



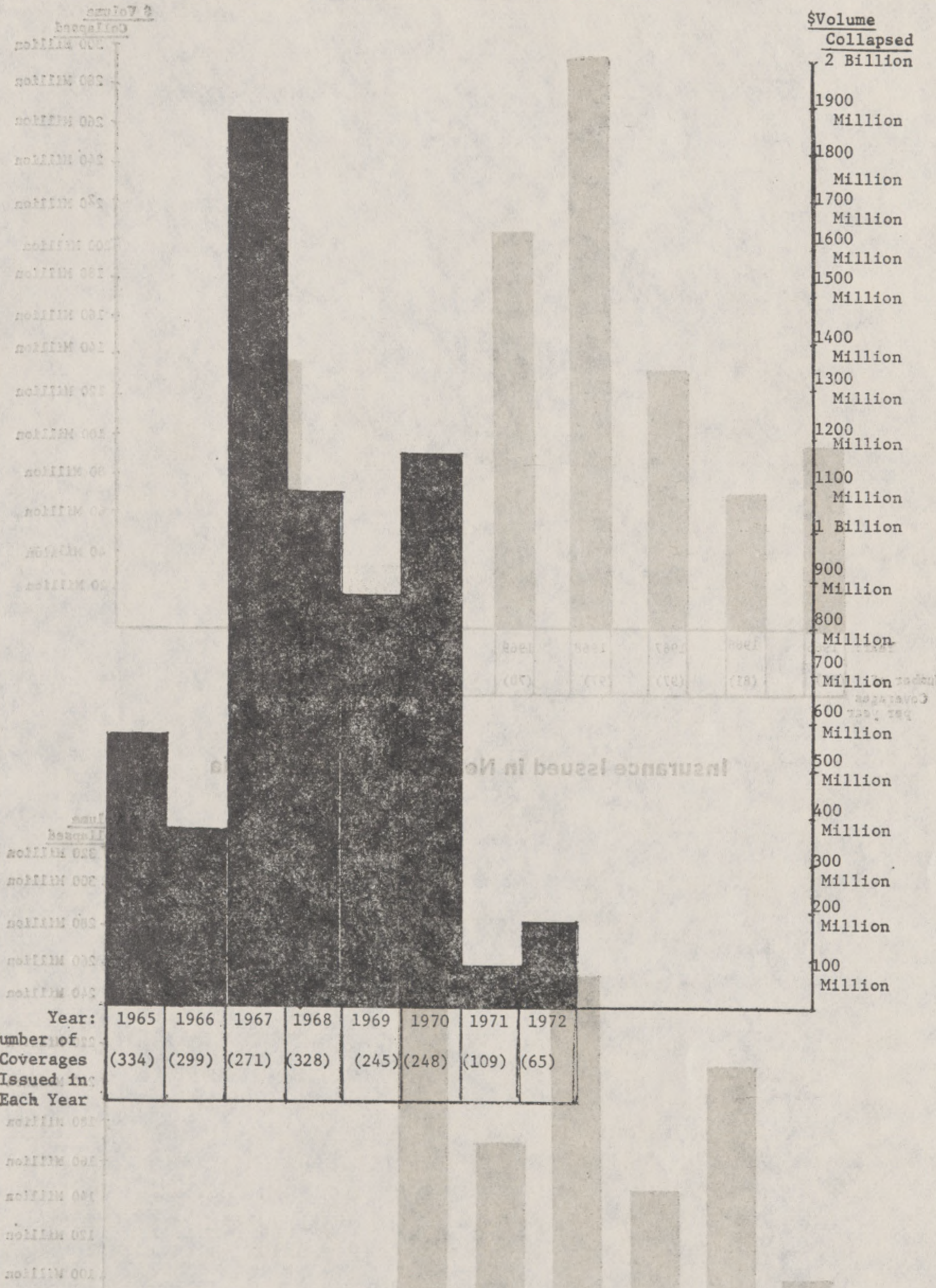
Area Analysis of the Insurance Program

This section consists primarily of eight graphs. The first four show the amount of insurance written in each regional area during the last 8 years. The last four graphs show the commitment made by OPIC to selected countries in each region and compare that commitment to the commitment made by AID. The next two sections contain detailed analysis of geographic diversity and country concentration.

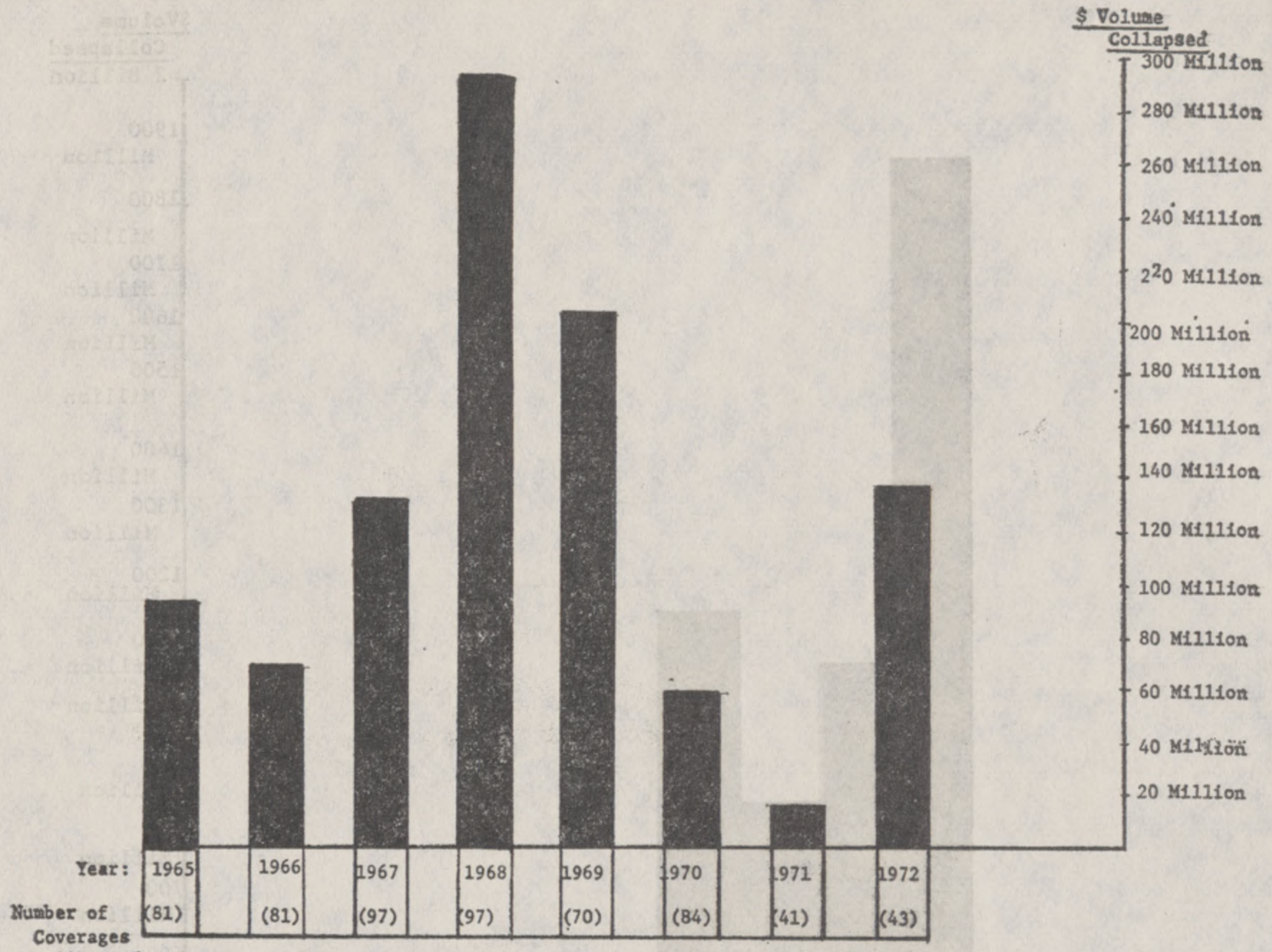
The first four graphs show declines in all areas but Africa. The most marked decline took place in Latin America after Dr. Allende's election in Chile and the recurrence of expressions of economic nationalism in other countries.

The last four graphs show proportionately large OPIC support for Israel, Singapore, Formosa, Korea, the Philippines, Indonesia, Brazil, Botswana, and Zaire. Relative to AID, small OPIC support was given to Pakistan, Vietnam, Argentina, Chile, the Dominican Republic, Peru, Venezuela, Zambia, Niger, and Ethiopia.

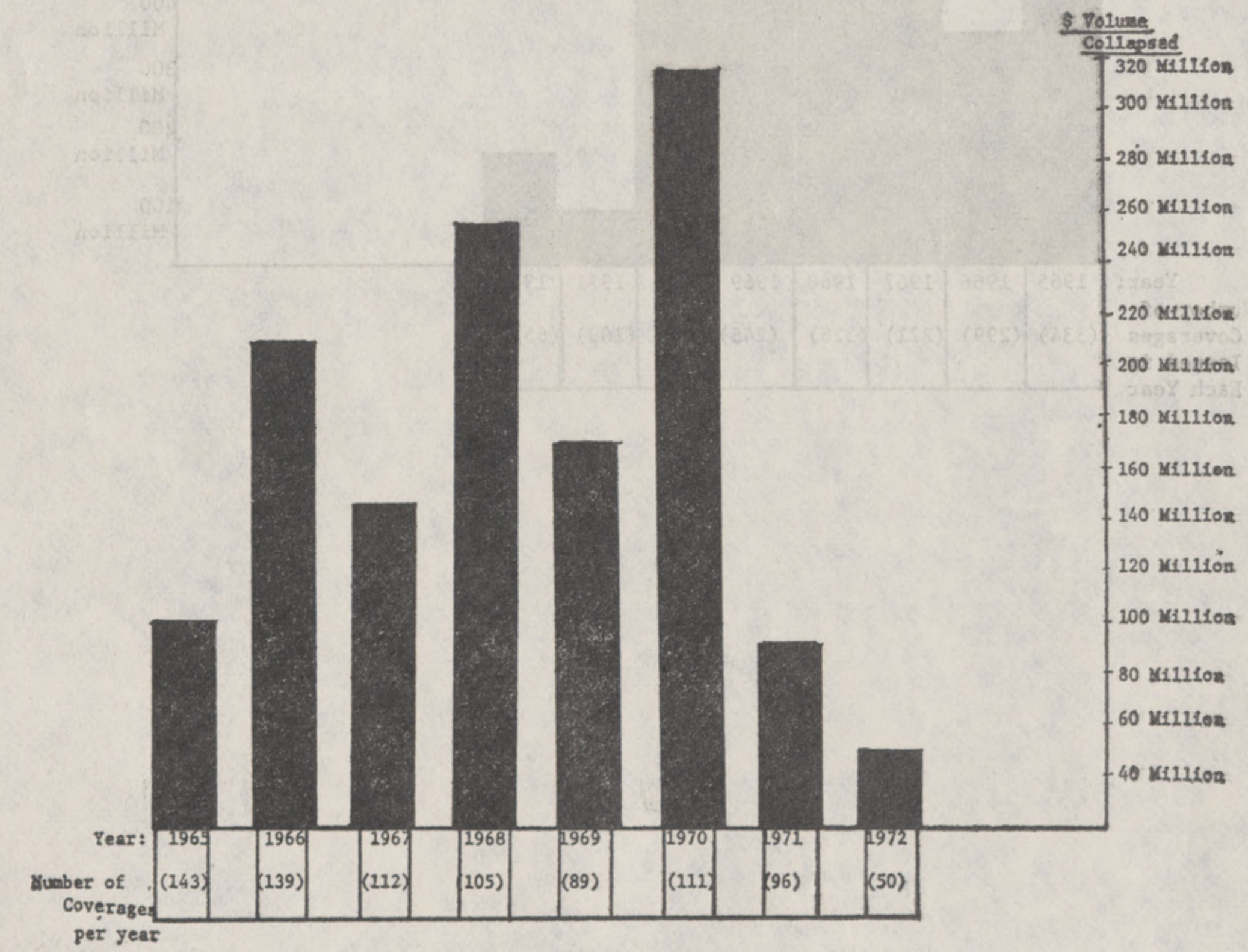
Insurance Issued in Latin America



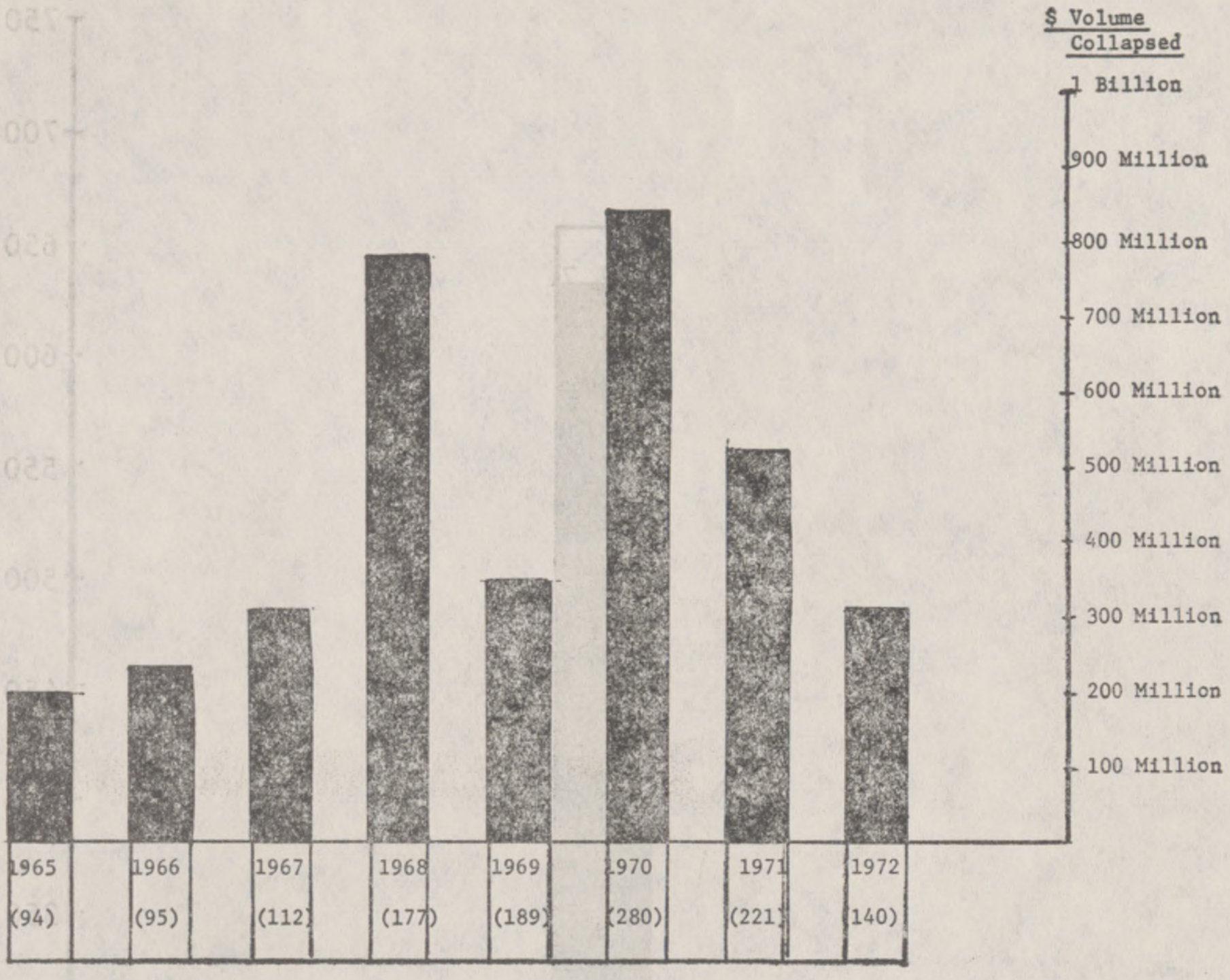
Insurance Issued in East Asia



Insurance Issued in Near East and South Asia

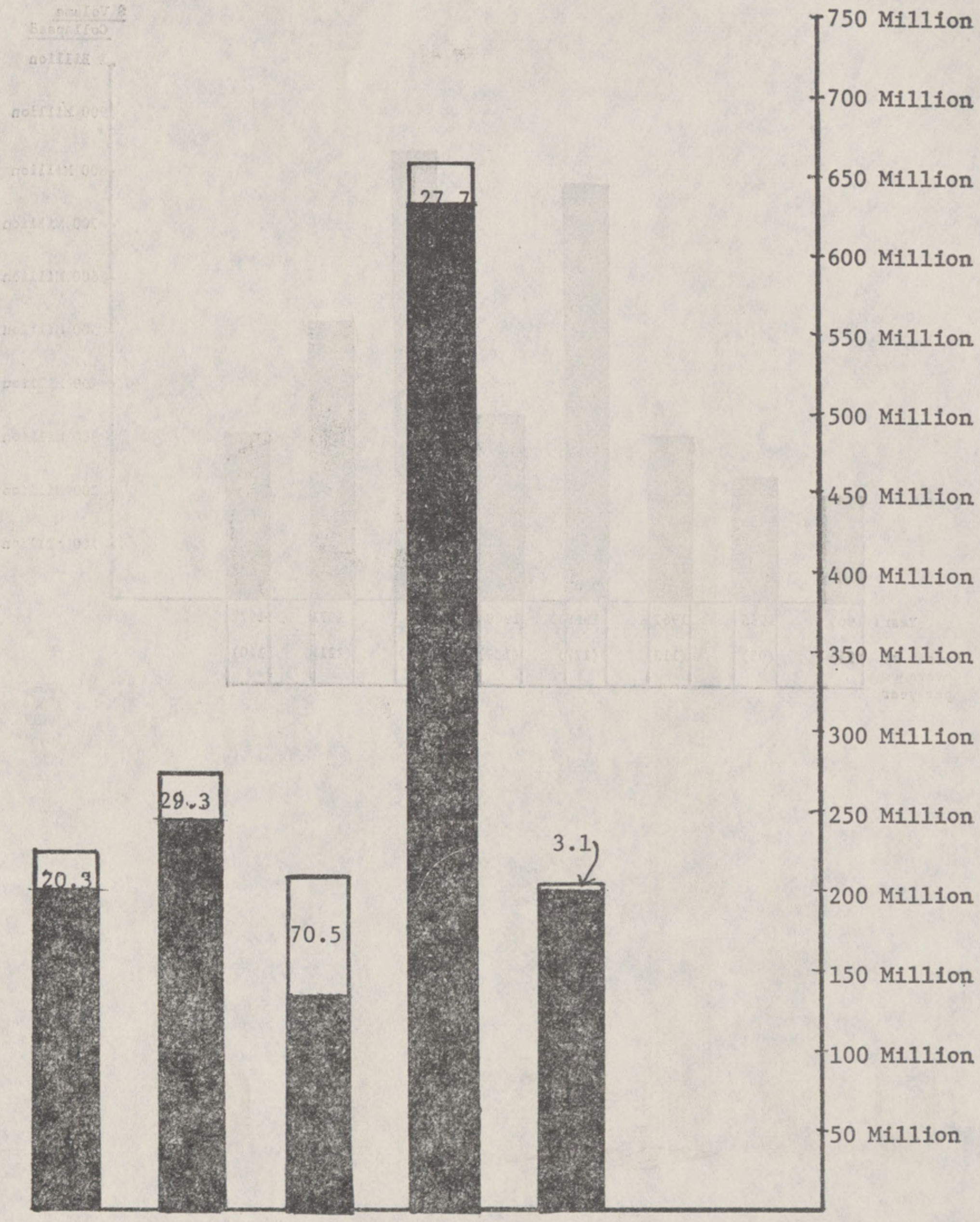


Insurance Issued in Africa



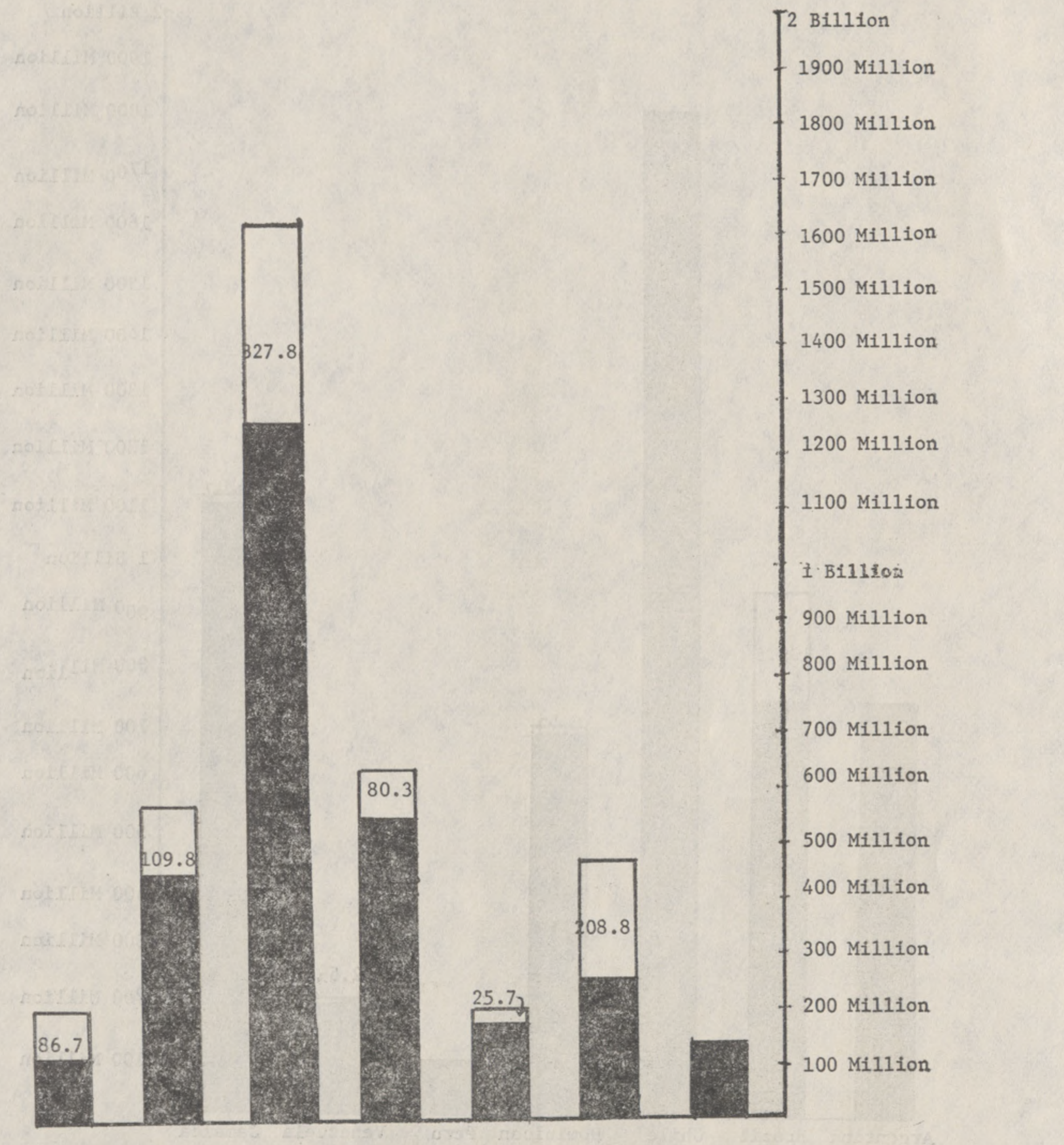
Year:	1965	1966	1967	1968	1969	1970	1971	1972
Number of Coverages per year	(94)	(95)	(112)	(177)	(189)	(280)	(221)	140)

Region I: Select Countries



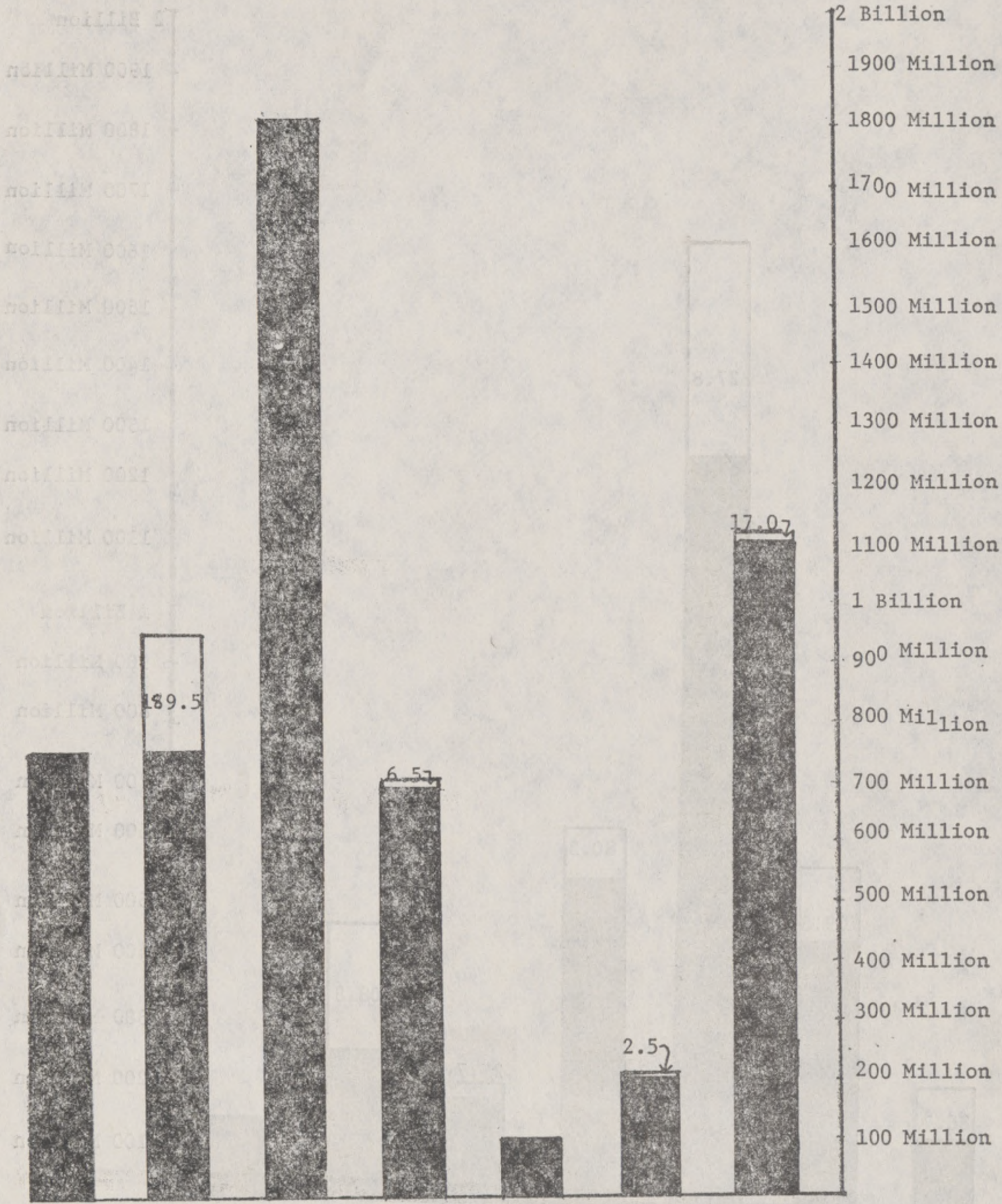
Shaded areas represent portions issued under AID

Region II: Select Countries



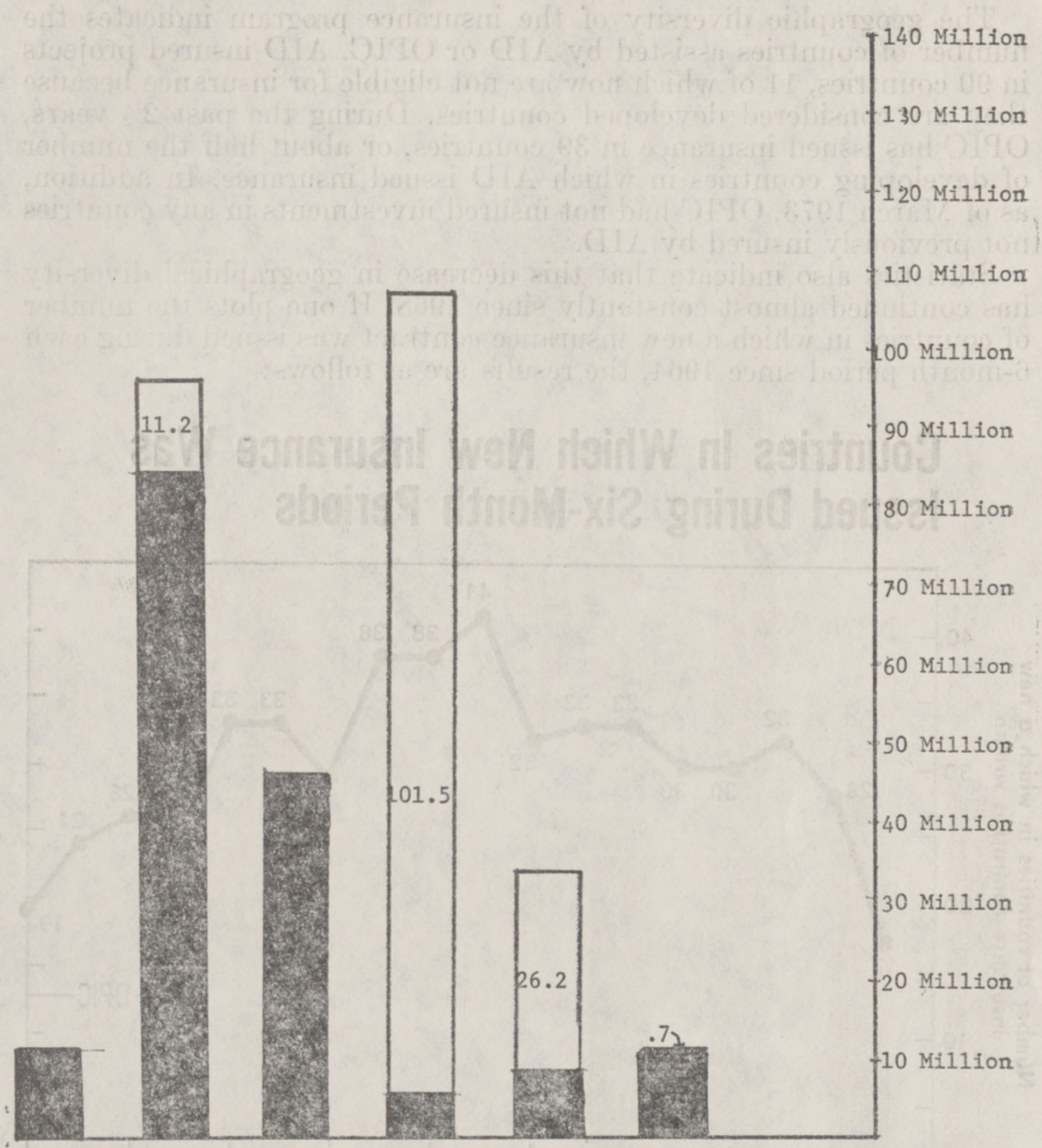
Shaded areas represent portions issued under AID.

Region III: Select Countries



Shaded areas represent portions issued under AID.

Region IV: Select Countries



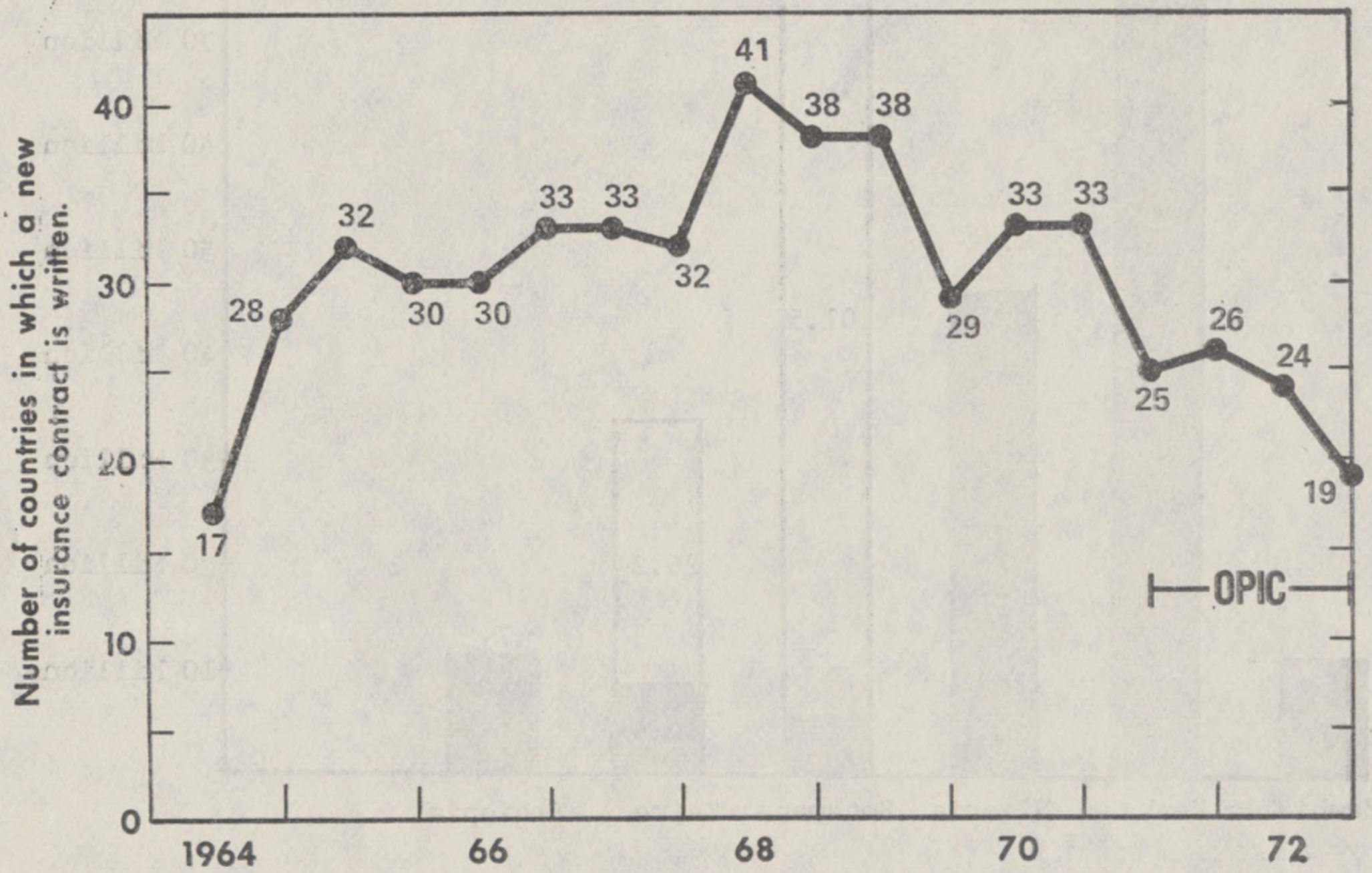
Shaded areas represent portions issued under AID.

Geographic Diversity of the Insurance Program [23]

The geographic diversity of the insurance program indicates the number of countries assisted by AID or OPIC. AID insured projects in 90 countries, 11 of which now are not eligible for insurance because they are considered developed countries. During the past 2½ years, OPIC has issued insurance in 39 countries, or about half the number of developing countries in which AID issued insurance. In addition, as of March 1973, OPIC had not insured investments in any countries not previously insured by AID.

Statistics also indicate that this decrease in geographical diversity has continued almost constantly since 1968. If one plots the number of countries in which a new insurance contract was issued during each 6-month period since 1964, the results are as follows:

Countries In Which New Insurance Was Issued During Six-Month Periods



During the first 6 months of 1968, AID issued new insurance in 41 countries. During the last 6 months of 1972, OPIC issued new insurance in 19 countries. Various reasons stemming from economic nationalism and U.S. diplomatic relations account for much of this decline. OPIC provides the following list of 16 countries or areas eligible for insurance during the 1960's but now ineligible for the stated reasons:

[23] Compiled with the aid of OPIC officials.

Country:	Reason for Ineligibility:
Hong Kong Somali Republic	Section 620(n) [North Vietnam Shipping] of Foreign Assistance Act of 1961, as amended
Egypt Sudan	Section 620(t) [Break in diplomatic relations]
Bangladesh	Section 237(a) [No bilateral agreement]
Chile Colombia Ecuador Peru	Section 237(b) [Availability of "Suitable Arrangements"] (Subrogation and Arbitration questionable in view of Andean Code)
Chile Peru	Uncompensated expropriation
Portugal Fr. Polynesia (Tahiti)	Program terminated (country considered to be developed)
Vietnam	Congressional Request
Nigeria	Interpretation of Bilateral Understandings in Dispute
Uganda	Treatment of foreign investment uncertain (political turbulence)
People's Republic of Congo	No diplomatic representation

Country Concentration in the Insurance Program

The AID insurance program has been accused of having been especially concentrated in a few countries. Exposure was especially high in Chile, Jamaica, and Korea, but if the top 8 countries (10 percent of developing countries insured by AID) are analyzed, statistics show that OPIC's program is concentrated in fewer countries than the AID program.

Fifty seven percent of the AID-issued original maximum collapsed volume of political risk insurance was concentrated in eight countries: [24]

Country:	*Original collapsed maximum (In thousands of dollars)*
Chile	1, 826, 347
Korea	1, 294, 626
Jamaica	1, 099, 956
Brazil	764, 587
Argentina	754, 919
Dominican Republic	698, 953
India	660, 839
Philippines	560, 538
Total for eight	7, 660, 765
Total for AID	13, 365, 921

All eight as percentage of total AID-issued insurance: 57 percent.

[24] Statistics from OPIC computer printout as requested by Congressional Research Service. When insurance issued under "combined coverage" is counted twice—once for expropriation and once for war—it is considered collapsed.

Statistics show that OPIC has concentrated 83 percent of its insurance issued since January 1971 in eight countries:

Country:	*Original collapsed maximum*[1] *(In thousands of U.S. dollars)*
Korea	*327, 837
Indonesia	*208, 791
Brazil	*189, 455
China, Republic of	*109, 796
Botswana	101, 500
Singapore	86, 730
Philippines	*80, 254
Israel	70, 452
Total for eight	1, 174, 815
Total for OPIC	1, 409, 186

All eight as percentage of total OPIC-issued insurance: 83 percent.

[1] Statistics provided by OPIC.
* Indicates that the country had greater than average concentration during AID's administration of the nsurance program.

Since five of the eight showed heavier than average concentration in the AID portfolio, this concentration in eight countries cannot be completely explained as an attempt to diversify the portfolio inherited from AID. It should be noted that of the eight countries, five are run by military or are under martial law (Taiwan, Korea, the Philippines, Brazil, and Indonesia), and that three countries (Israel, Singapore, and Brazil) have attained or are approaching a level of development at which they might be considered self-supporting.

OPIC also has issued a large volume of insurance in five other countries:

Country:	*Original collapsed maximum (In thousands of U.S. dollars)*
Iran	29,331
India	27,706
Zaire	26,184
Thailand	25,659
Greece	20,290
Total for five	129,170
Total for eight (from previous table)	1,174,815
Total for 13 (93 percent of the OPIC-issued portfolio)	1,303,985

At least 10 of the 13 governments (i.e., all of them, though with the possible exceptions of the governments of India, Zaire, and Botswana could be considered as receiving extensive support from the United States. OPIC insurance might be seen as a means of reinforcing U.S. policy towards those countries by providing economic support through private investment. OPIC is required by law to act in "consonance" with the State Department and support only friendly LDC's.[25]

Virtually all of the 13 countries were at the time considered politically "safe" for foreign investments. A State Department study shows that between 1960 and 1971, 34 countries expropriated or negotiated purchase of U.S.- or other foreign-owned companies. Only 5 of the 13 countries in which OPIC concentrates 93 percent of its newly issued

[25] Section 231 (f) and (j) of Foreign Assistance Act of 1961 as amended by section 105 of Foreign Assistance Act of 1969. In Legislation on Foreign Relations. pp. 17–18.

insurance is on that State Department list, and in 4 of the 5 cases there are overwhelming reasons for OPIC to believe that the country is now safe for investment. Only India might still be considered vulnerable to expropriation because of massive nationalizations of insurance companies in 1971. The other four countries on the State Department list are Indonesia, Brazil, Israel, and Zaire. The first two countries have had drastic political changes since the expropriations of the early 1960s and might now be considered reasonably safe for private investment. Israel confiscated the private property of several U.S. citizens because that property had been in Arab territory before the June 1967 war, but such confiscation was not a manifestation of the new wave of economic nationalism. Zaire nationalized Belgian property after independence in 1960 but has not nationalized property since.

Geographic Distribution of Major Finance Programs

The chart on the following page details the geographic distribution of OPIC's investment guaranty and direct loan programs. Once again projects are concentrated in a few major countries. Sixty percent of all finance programs by dollar volume are located in Indonesia, Korea, and Brazil; these are also the three countries which have the largest amounts of OPIC-issued investment insurance. Again, this concentration would appear to be directly related to the support of U.S. foreign policy objectives.

GEOGRAPHIC DISTRIBUTION OF OPIC GUARANTY AND LOAN PROGRAMS

[Amounts cited are in thousands of dollars]

Area	Guaranty			Direct loans	Grand total
	AID	OPIC	Total	(OPIC)	
Latin America	34,445	1,531	35,976	9,415	45,391
Argentina	8,325	0	8,325	0	8,325
Brazil	17,751	1,250	19,001	6,000	25,001
Columbia	619	0	619	0	619
Dominican Republic	5,025	0	5,025	0	5,025
Haiti	0	281	281	415	696
Honduras	850	0	850	0	850
Nicaragua	1,875	0	1,875	0	1,875
Peru (development finance corporation)	0	0	0	3,000	3,000
Middle East/South Asia: India	23,975	0	23,975	0	23,975
Africa	16,188	0	16,188	700	16,888
Congo	562	0	562	0	562
Ghana	8,790	0	8,790	0	8,790
Kenya	225	0	225	700	925
Somalia	111	0	111	0	111
Several countries in Africa	6,500	0	6,500	0	6,500
Far East	112,196	25,250	137,446	8,500	145,946
Indonesia	54,195	5,250	59,445	5,600	65,045
Japan (development finance corporation)	0	0	0	2,000	2,000
Korea	46,426	3,000	49,426	700	50,126
Philippines	0	17,000	17,000	0	17,000
Taiwan	0	0	0	200	200
Thailand	11,575	0	11,575	0	11,575
Total	186,804	28,031	214,835	18,615	233,450

There has been very little redistribution by OPIC of the geographical imbalance in the finance program inherited from AID. The only major projects financed since 1971 in countries not previously heavily supported by AID were in the Philippines, and two regional development banks in Latin America and Asia. There have been few OPIC projects in Africa, the Middle East, or South Asia. With one relatively minor exception, finance projects initiated by OPIC in Latin America have been limited to Brazil.

Because they have what they consider to be a risky portfolio, and because they have a specific congressional mandate to become self-sufficient, OPIC finance officials now tend to choose primarily low risk projects in countries which they consider to be politically "safe." True, OPIC can operate only in countries in which private corporations are willing to invest. But especially in the finance program, where OPIC provides commercial guaranties or direct loans, it would be possible for OPIC to effect more equitable distribution of its resources.

CHAPTER V. SELF-SUFFICIENCY, RISK MANAGEMENT, AND PRIVATE SECTOR PARTICIPATION[1]

This section of the study analyzes the financial situation of OPIC's programs and their chances for attaining self-sufficiency as currently managed, and explores the possibilities that part or all of OPIC be absorbed by the private sector. OPIC investment activities have two aspects, financial guaranties and investment risk insurance, and this section considers each separately. OPIC's programs have a fair chance of becoming self-sustaining under certain conditions. The probable price, however, is reduced scope of operations and less emphasis on development objectives. It would also appear that neither program can operate without the full faith and credit of the U.S. Government.

A. Finance Programs

OPIC operates under a legislative mandate to strive for self-sufficiency in its financial operations. The law creating the corporation requires it:

> to conduct financing operations on a self-sustaining basis, taking into account the economic and financial soundness of projects and the availability of financing from other sources on appropriate terms [2]

In attempting to carry out this requirement, OPIC operates with serious, though not insurmountable, difficulties. The major problem is the fact that OPIC inherited from its AID predecessor a portfolio of high development potential and high-risk investment guaranties. In order to protect its financial soundness, the corporation has had to compensate for the inherited AID portfolio by emphasizing caution and the guaranty primarily of low-risk investment.

The financial guaranty program which OPIC inherited from AID had a relatively high proportion of liabilities to reserves, a weakness OPIC moved to remedy. By law, OPIC must maintain at least a 25 percent reserve for its guaranty portfolio. The portfolio inherited from AID contained, in January 1971, $169.7 million in guaranties backed by a $40.8 million reserve. OPIC raised the level of guaranties somewhat, to $203.6 million by the end of December 1972, while nearly doubling the reserve by increasing it to $75 million. The chart on the next page shows changes in OPIC's portfolio and reserves since 1971.

The major problem OPIC inherited in its guaranty portfolio was not the proportion of reserves behind the guaranties, but rather the contents of the portfolio itself. The AID guaranty program emphasized investments with a high developmental potential, and many of those activities were of substantial risk. In the Calabrian project in Thailand, for example, AID made a 100-percent guaranty on a project with substantial development potential demonstrating the profitability of

---

[1] Written by Jonathan Sanford and Hans Binnendijk, Analysts in International Relations.
[2] Sec. 231(a) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations." p. 17.

modern agricultural technology and business approaches in a rural Thai setting. The project was undercapitalized by its original investor and failed, costing OPIC $6.7 million, including interest. The GAO concluded that:

> We seriously doubt that AID was justified in supporting the Calabrian project primarily because . . . was unable to make a meaningful investment in the project. . . .
>
> AID apparently believed that it was justified in assisting the Calabrian project to a greater extent than it normally supported comparable projects because the Calabrian project was intended to achieve important development objectives in Thailand. . . . .
>
> . . . . We believe that AID would have been justified in supporting the Calabrian project if Calco had been prepared to assume a meaningful portion of the risk of loss but that the opportunity to accomplish development objectives when the amount of private capital truly at risk was not significant did not justify the issuance of guaranties.[3]

OPIC FINANCIAL STATUS [1]

	Inherited	Fiscal year 1971	Fiscal year 1972	Fiscal year 1973 to present	Remarks
INSURANCE					
Total current expropriation insurance liability.[2]	[3] $2,336,000,000	$2,470,000,000	$2,540,000,000	[4 5] $2,527,000,000	
Total insurance claims paid in fiscal year.	[3] 319,576	949,539	13,537,543	[6] 4,940,977	Claims approximately $390,000,000.[7]
Amount recovered by OPIC.	323,898	905,699	583,008	----------	
Status of insurance reserve at end of fiscal year.	54,490,484	70,000,000	114,357,323	[8] 142,560,000	Needed to be self-sustaining; $200,000,000 to $300,000,000 in reserves.[10]
FINANCE					
Finance portfolio	[9] 169,700,000	169,400,000	201,988,471	[4] 203,571,500	
Total net guaranty claims paid.	----------	----------	[11] 12,506,741	----------	No claims pending (April 1973).
Status of guaranty reserves at end of fiscal year.	40,871,000	70,000,000	75,000,000	75,000,000	$75,000,000 to $100,000,000.
Total net income	21,000,000	25,990,183	28,900,910	[4] 16,207,144	
Total congressional appropriations.	37,500,000	18,750,000	12,500,000	[12] 12,500,000	Request for fiscal year 1974, $72,500,000.

[1] Statistics from (a) Overseas Private Investment Corporation Annual Report, fiscal 1971 and 1972, (b) OPIC internal memos and financial statements.
[2] OPIC offers 3 types of political insurance, but in order to calculate the maximum liability exposure for OPIC over this period, it is best to take the case of expropriation insurance.
[3] Fiscal year 1970.
[4] Dec. 31, 1972.
[5] This figure is reduced to $2,100,000,000 if $400,000,000 of private reinsurance is considered.
[6] Mar. 15, 1973.
[7] Figure includes $154,000,000 for Anaconda and $92,500,000 for ITT denied by OPIC but facing arbitration. ITT also includes $67,000,000 guaranteed by OPIC as a result of expropriation plus $23,000,000 in pending claims.
[8] June 30, 1973.
[9] January 1971.
[10] These self-sufficiency figures were cited by several OPIC officials. OPIC is required by statute to keep 25 percent of its guaranty portfolio in reserves. It would allow substantial growth of the present program.
[11] Accumulated total as of Sept. 30, 1972.
[12] $42,500,000 approved by House-Senate Conference Committee but only $12,500,000 granted in the continuing resolution.

[3] The Comptroller General of the United States. Questionable Support of a Private Venture in Thailand Under the Investment Guaranty Program; Report to the Committee on Foreign Relations, Senate, U.S. Congress. Washington, U.S. Government Printing Office, 1971. p. 31. (General Accounting Office, Report No. B-166077.)

Losses totaling $12.7 million have been sustained by OPIC owing to the commercial failure of AID-guaranteed investments, though there have been no losses on guaranties financed by OPIC itself, and the finance program must expect substantial losses to occur from time to time, if AID's earlier experience with its portfolio is any indicator. (AID had a higher risk portfolio, however.) As of December 1970, the investment guaranty program under AID had collected $3.85 million in fees and paid out $12.25 million in claims, for a loss of $8.40 million. Since assumption by OPIC, only $0.48 million has been paid out in claims and $4 million more has been earned in fees, yet on the whole the investment guaranty program under both AID and OPIC remains at an aggregate loss of $4.87 million. OPIC could now write $100 million more in investment guaranties, given the need only for 25 percent reserves, but because each dollar of loss to its reserves reduces OPIC's guaranty ceiling by $4, OPIC is using some of this uncommitted balance as a buffer as it waits to see the effects of the inherited AID guaranties. As noted earlier (chapter IV), this caution tends to retard OPIC's guaranty program.

The level of future claims against OPIC's reserves cannot, of course, be easily predicted. Testimony by OPIC President Mills indicates that 4 projects under the guaranty program are only in the formative stages, while 4 of those completed are operating at a loss and 12 of those completed are making a profit.[4] Should the trend for operative projects continue as those in formative stages come into production, the future potential claim against OPIC reserves could be substantial.

The OPIC direct loan program by the end of 1972 had committed nearly $20 million of its $40 million authority in loans for firms in developing areas, and had sold $4.56 million in participations in those loans to American banks. There is no indication at this time that the program is not functioning properly; OPIC records indicate that no payments are overdue. Some $2.6 million of these loans have been made to two firms also covered under the investment guaranty program, and OPIC personnel indicate that periodically they use such direct loans to facilitate operations by guaranteed firms. Should these firms fail, and should they be unable to repay the loans made to them by OPIC under the direct loan program, OPIC will suffer a double loss, as the investment guaranties will also be subject to claim. OPIC personnel suggest that successful use of direct loans to guaranteed investors can likewise facilitate the success of an investor and thereby avoid a potential claim under the guaranty program.

OPIC can expect to make its investment guaranty program self-sustaining only if its reserves are not drained by claims generated by pre-OPIC guaranties and by losses incurred in the direct loan program. OPIC officials suggest that a very cautious policy can probably make the finance program self-sufficient. In a recent staff study, OPIC analysts conclude that "under certain assumptions the OPIC financing programs can operate and grow on a self-sustaining basis." [5] Providing that losses average less than $5 million a year and do not total more than $50 million within the next 8 years, and providing that all earnings from the program are channeled into the guaranty

---

[4] Testimony by Bradford Mills, President of Overseas Private Investment Corporation. In U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Daily transcript] June 19, 1973, pp. 442–531.

[5] Overseas Private Insurance Corporation. Staff study; prepared for the Congressional Research Service. Apr. 18, 1973. p. 1. See app. I for text of study.

reserve, OPIC analysts predict that the finance program can operate and grow on a self-sustaining basis without further appropriations.

This projection assumes a growth in new OPIC guaranties of between $30 million and $40 million annually during the next 8 years. The study notes that "losses substantially in excess of those projected would either constrain future growth of the guaranty program or cut deeply into general corporate earnings allocable to the insurance reserve or, in the extreme case, require congressional replenishment of the guaranty reserve." [6] Though the study suggests the ability of OPIC to become self-sustaining, it cautions that this is not to be interpreted to mean that the program can do without the full faith and credit of the U.S. Government. This backing, OPIC says, is needed in order to raise long-term loan funds from institutional lenders.

It is probable that, in pursuing a cautious and low-risk policy in the new guaranties it accepts, OPIC will find it difficult both to find $30 million in new business annually and to concentrate on developmentally important projects. Without some congressional effort to reduce the impact of the previous AID guaranties on the overall reserves situation of the Corporation, it is probable that OPIC will gradually move further away from its economic development mandate in order to satisfy the self-sufficiency mandate. Should the Congress wish to reduce the apparent tension between these two mandates and eliminate much of the reason for OPIC's aversion to risk-prone development-oriented projects, it might consider transferring the less secure portions of the pre-OPIC portfolio to another agency of the U.S. Government for liquidation, with any income from those funds transferred to OPIC and any losses absorbed either in the foreign assistance budget or the general fund of the U.S. Treasury. Alternatively Congress might wish to consider isolating the risky AID-issued portion of the portfolio within OPIC and dropping the self-sustaining mandate for that portion of OPIC's finance program.

OPIC's legislative mandate requires it to report to the Congress by March 1, 1974, on "the possibilities of transferring all or part of its activities to private U.S. citizens, corporations, or other associations." [7] An evaluation of the prospects for so transferring the insurance portion of OPIC operations will be provided later. The question now is whether the financial program of the Corporation is susceptible to such a transfer. The conclusion is that, while OPIC has moved in the direction of making itself self-sufficient, it is not yet in a position to become a private enterprise. First, OPIC officials contend that the Corporation would continue to need the guaranty of the full faith and credit of the U.S. Government for institutional and other investors to participate in its guaranty program. Second, creation of a private entity would require sale of OPIC assets and portfolio to private purchasers; however much of the pre-OPIC portfolio would be unattractive to private investors. Third, sale to the private sector would probably result in a further movement away from the development objectives mandated for OPIC in the existing legislation. At present, the financial program of the Corporation in-

---

[6] Ibid.

[7] Sec. 240A of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations." p. 27.

volves private capital in the development process, since its investment guaranty program underwrites private capital investments and sales of participations in direct loans involve private loan capital in that program.

B. Insurance Program

The second major portion of OPIC operations is the investment insurance program. The only intrinsic link between it and the guaranty program is the fact that income from insurance premiums would be needed to cover major losses under the guaranty program. Whereas by law the guaranty program is required to achieve self-sufficiency, the insurance program is required by law only to adhere to sound principles of risk management in the insurance it sells. The legislation states that the Corporation shall:

> conduct its insurance operations with due regard to principles of risk management including, when appropriate, efforts to share its insurance risks.[8]

OPIC currently is proposing language for an amendment

> to strengthen OPIC's existing mandates to conduct its insurance operations with due regard to risk management and to share its insurance risks by confirming that OPIC's risk-sharing may be with other insurers, public or private, and by committing OPIC to seek in future insurance underwritings to assure that the costs of the program will be fully covered over the long term by the private users of the program.[9]

This phrase can be interpreted as meaning that OPIC should move its insurance as well as its guaranty program in the direction of self-sufficiency. OPIC has also suggested that the required report on prospects for going private be postponed for a year, to February 1975.[10]

OPIC has followed the legislative mandate and currently exercises risk management in its insurance operations, as previously noted. To a degree, risk management itself involves some attributes of private insurance operations. In its own appraisal process, OPIC has found it necessary to emulate operating principles of the private sector. Basic philosophical and organizational changes came to the insurance program when it was converted from an AID to an OPIC format:

> In converting the AID investment guaranty program into the OPIC insurance program, a fundamental change in operating philosophy has been accomplished. For the first time, principles of risk management, long employed by the private insurance sector, have been applied to what in effect has become the investment insurance business. The goal of OPIC's management in the operation of the insurance program has been to establish a pool, consisting basically of funds paid in as premiums by the users of the program, which can be built up over time through wise management and investment policies to bear the ordinary kinds of claims

---

[8] Sec. 231(d) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations." p. 17.

[9] The Executive Branch. Section-by-section analysis of the proposed Foreign Assistance Act; H.R. 7484 to amend the Foreign Assistance Act of 1961, and for other purposes. Washington, U.S. Government Printing Office, 1973. Sec. 5(a), p. 4. (93d Cong., 1st sess., committee print.)

[10] Ibid., sec. 5(g), p. 8.

> losses which the program will inevitably suffer. In this way the users of the program, by sharing their risks through participation in the insurance pool, will be primarily responsible for paying the costs of the program.[11]

In reducing its susceptibility to risk, OPIC has reinsured with Lloyd's of London 50 percent of its expropriation insurance covering 80 percent of the countries where expropriation insurance is written, at terms quite favorable to the corporation. By the end of 1973, total reinsurance is expected to exceed $400 million, a substantial involvement by the private market in this sort of investment insurance. Also to reduce its risks, OPIC has instituted forms of coinsurance and deductable policies, so that in some sensitive or very large projects the insured carries a portion (usually about 10 percent) of the burden as well. Perhaps the most significant change in OPIC insurance operations has been the increased selectivity in choice of investments OPIC will insure. Investments and host countries are carefully screened to reduce potential claimants on OPIC, and no claims have been made against OPIC-approved projects. Insurance written under AID management of the program was riskier, but in volume, at least, more developmental in content. The negative results of the present selection process have already been discussed in chapter IV.

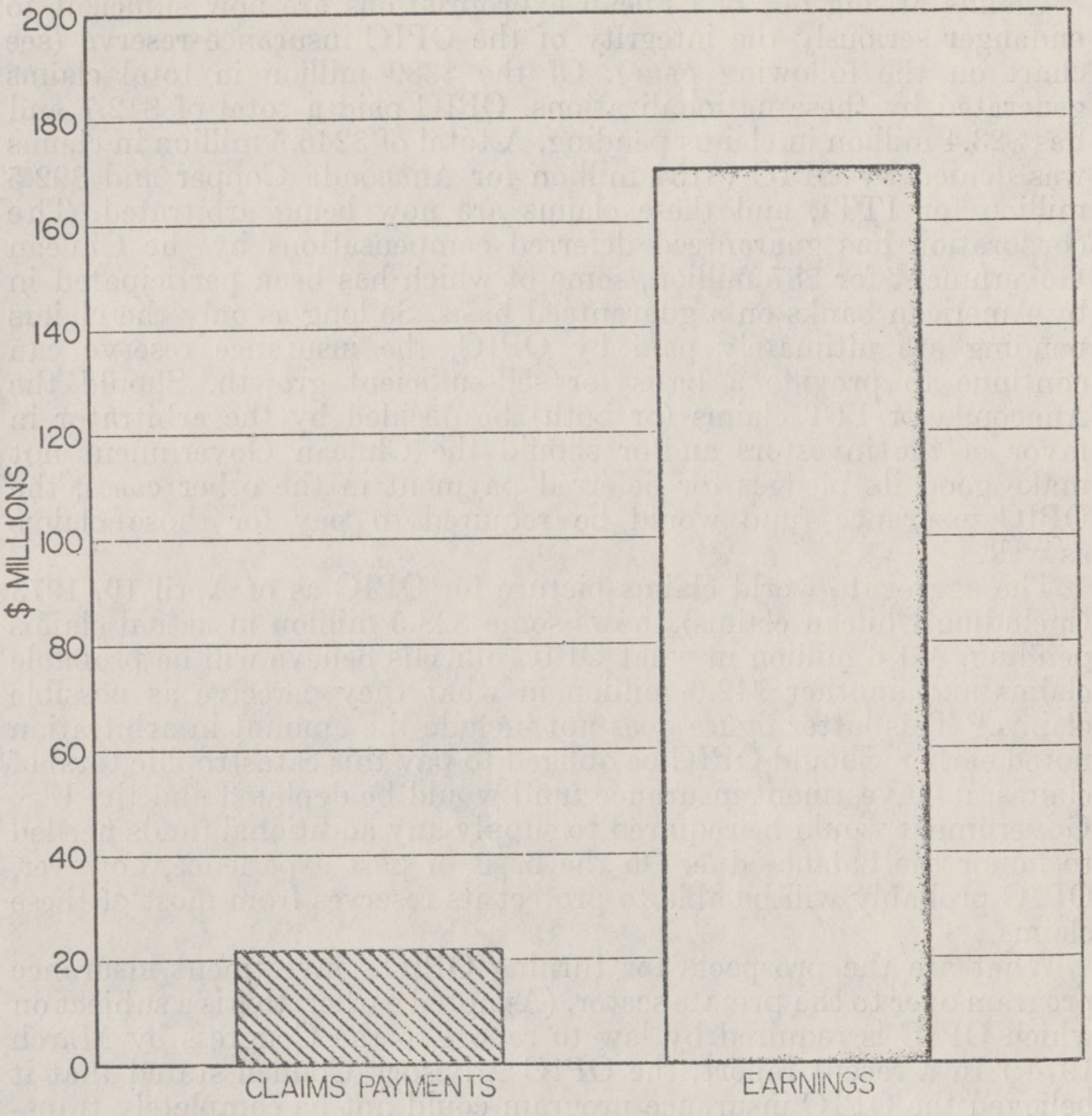
Ignoring for the moment potential claims arising out of the Chilean situation, the overall financial situation of the OPIC insurance program is favorable. As noted earlier (chapter IV), OPIC's income from insurance fees has grown substantially almost every year since it and its predecessor in AID was founded, and total earnings since the program was established total over $180 million while claims payments by OPIC total only slightly over $20 million. (See the graph on the following page). At present, the corporation has a current expropriation insurance liability of about $2.5 billion, backed by an insurance reserve of $142.6 million, and on that basis it is not self-sustaining. In order to become self-sustaining, OPIC officials estimate that the insurance reserve must be increased to at least $200 million. The $72.5 million appropriation currently requested by OPIC should make the insurance program self-sufficient (as defined by OPIC officials), if the existing reserves are not depleted by pending and arbitrated claims. Should Congress decide that it wishes to make OPIC's insurance program self-sustaining, it might consider appropriating the $72.5 million requested, with the provision that thereafter the corporation would not receive regular additions to or replenishments of its reserve funds. OPIC expects that even on a "self-sustaining basis" the corporation will still need to come to the U.S. Government for assistance in cases of extraordinary, catastrophic loss.

While the investment insurance program has sustained a substantial surplus in income over claims since 1948, recent trends in income and payments are moving in the opposite direction. Income appears to be leveling off while claims appear to be increasing, as noted in chapter IV. Because of the decrease in amounts of new insurance issued during the past few years, OPIC's future income may soon decline, and as a result

---

[11] Price, Joseph, Vice President for Insurance, Overseas Private Investment Corporation. Implementation of risk management measures; memorandum to Bradford Mills, President of Overseas Private Investment Corporation, Jan. 4, 1973.

Insurance Earnings vs. Claims Payments Since 1948



the corporation may experience some difficulty in becoming self-sufficient even with a full $200 million reserve. Since some portion of the decrease in new insurance results from OPIC's cautious policy, that caution itself might endanger self-sufficiency. The alternative is to write more insurance, collect more fees, and increase the danger of more potential claims. If OPIC substantially changes course and moves toward giving priority to its primary mandate of economic development without high selectivity regarding the projects insured, the corporation may have some difficulty in finding reinsurers willing to back a portfolio containing a substantial proportion of risky development investments.

The major danger to OPIC's prospective self-sufficiency comes on the claims side of the ledger. The contemporary growth of economic nationalism in LDC's and the trend toward increased expropriation and nationalization of foreign investment (chapter VII) would appear to suggest an increase in future claims against OPIC on account of its expropriation insurance. If the experience of American investors in Chile is any sort of a preview of future conditions, OPIC could have

serious troubles in sustaining enough of an insurance reserve to become self-sufficient or even, possibly, to avoid disaster.

Claims arising out of Chilean expropriations are now sufficient to endanger seriously the integrity of the OPIC insurance reserve (see chart on the following page). Of the $389 million in total claims generated by these nationalizations, OPIC paid a total of $12.7 and has $23.4 million in claims pending. A total of $246.5 million in claims was denied by OPIC ($154 million for Anaconda Copper and $92.5 million for ITT), and these claims are now being arbitrated. The corporation has guaranteed deferred compensations by the Chilean Government for $87 million, some of which has been participated in by American banks on a guaranteed basis. So long as only the claims pending are ultimately paid by OPIC, the insurance reserve can continue to provide a basis for self-sufficient growth. Should the Anaconda or ITT claims (or both) be decided by the arbitrator in favor of the investors and/or should the Chilean Government not make good its pledges for deferred payment in the other cases, the OPIC insurance fund would be required to pay for those claims as well.

The aggregate world claims picture for OPIC as of April 10, 1973 (including Chilean claims) shows some $28.5 million in actual claims pending, $51.6 million in what OPIC officials believe will be probable claims and another $42.6 million in what they perceive as possible claims.[12] This latter figure does not include the amount in arbitration noted earlier. Should OPIC be obliged to pay this catastrophic total of claims, its investment insurance fund would be depleted and the U.S. Government would be required to supply any additional funds needed to honor the balance due. On the basis of past experience, however, OPIC probably will be able to protect its reserves from most of these claims.

What are the prospects for turning OPIC's investment insurance program over to the private sector. (As noted earlier, this is a subject on which OPIC is required by law to report to the Congress by March 1974.) In a recent report, the OPIC Advisory Council stated that it believed the OPIC insurance program could not be completely transferred to the private sector. Three basic objectives of the program were noted—support for U.S. foreign economic policy, development assistance, and improvement in international economic relations and the international political atmosphere—and it was suggested that "continued U.S. Government participation will be required to insure that U.S. foreign economic policy is implemented and also to insure that local developmental objectives are still sought to be obtained."[13] Continued U.S. Government participation in the risk insurance program was both necessary and desirable, the Advisory Panel indicated.

In his June 13, 1973, testimony before the House Foreign Affairs Committee Subcommittee on Foreign Economic Policy, Ronald K. Shelp of the Association of American Chambers of Commerce in Latin America stated his conviction that "completely transferring investment insurance to the private sector is disadvantageous—even if

---

[12] From OPIC staff documents.

[13] OPIC Advisory Council. Panel I. Possible Private Sector Participation in OPIC Insurance Operations; report. n.d. Referred to In Overseas Private Investment Corporation. Topics, vol. 2, no. 1. Jan. 1973; pp. 1, 3.

CHILE EXPROPRIATIONS INVOLVING OPIC INSURANCE

Company	Amount of investment by company: Loan	Equity	Other	Amount of claim	Amount of defaulted EXIM loans	Final action by OPIC
Anaconda (El Salvador and Chuquicamata).	----------[1] $200,000,000		----------[2]	$154,000,000	$30,000,000	Claim denied.
Anaconda (Exotica)	[3] $12,000,000	11,890,000	----------	11,890,000	17,000,000	Claim paid in full.
Bethlehem Steel Co		20,000,000	----------	17,300,000	None	Claim settled by OPIC guaranteeing $17,300,000 of deferred compensation agreed by Chile in negotiated takeover.
Kennecott Copper (Braden).	92,900,000	[4] 176,000,000	----------	84,600,000	77,000,000	Claim settled by OPIC guaranteeing $67,000,000 of participations in the notes previously insured.
Serro Corp	24,000,000	15,000,000	----------	14,200,000	56,000,000	Claim pending.
First National City Bank		3,400,000	----------	140,000	None	Investor received $3,000,000 from Government of Chile. OPIC paid $66,500 on claim.
Ford Motor Co		8,000,000	----------	276,000	None	Claim pending.
ITT Corp	38,000,000	115,700,000	----------	92,500,000	None	Claim denied.
NIBCO		450,000	----------	450,000	None	Investor received $300,000 from Government of Chile. OPIC paid $110,000 on claim.
Parsons & Whittemore		4,300,000	----------	4,300,000	None	Claim settled by OPIC guaranteeing $3,400,000 of deferred compensation agreed by Chile in negotiated takeover.
Ralston Purina	1,000,000	614,000	$117,000	822,000	None	Claim paid in full. OPIC has recovered $594,236.
Dow Chemical		9,600,000	([5])	8,900,000	None	Claim pending.

[1] Amounts in millions are approximations.
[2] Anaconda asserts that a portion of its investment was insured. OPIC denies this.
[3] Loan guaranty.
[4] Company figure.
[5] Royalties.

Total claims of Eximbank	[1] $180,000,000
Aggregate amount of claims filed with OPIC (equity and loans)	[2] 389,122,000
Total compensation paid by OPIC	24,912,000
Total claims denied by OPIC (in arbitration)	246,500,000
Outstanding principa lamount of new guaranties by OPIC on deferred compensation	78,100,000
Claims pending	24,396,000

[1] Department of State and OPIC statistics.
[2] This figure includes $154,000,000 which Anaconda claims but OPIC denies.

it is possible." [14] He also indicated doubt that this was in fact possible Historically, the Government has been the underwriter of war risk insurance, he said, and private firms generally avoid this coverage. Private firms might write insurance for political risks—expropriation and exchange inconvertibility—if requested to do so by the Government, but the industry could hardly be expected to take the initiative on its own, he indicated. The difficulties in calculating risk probabilities

[14] Statement by Ronald K. Shelp, executive secretary, Association of American Chambers of Commerce in Latin America (AACCLA). In U.S. Congress. House Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Supplementary memo] June 13, 1973, p. 20.

for these events is simply beyond the bounds of normal insurance operations, he said. In any case, OPIC would be required to reinsure policies, if not actually sharing in most of the private insurance written, and the full faith and credit of the Government would be required for any private firms to undertake such insurance even under those conditions. Shelp suggested he could not see how OPIC could be expected to stand as the ultimate underwriter in this area without the ability itself to participate in claims negotiations and the actual process of soliciting and writing policies themselves. Finally, he indicated, "Due to the uniqueness of these kinds of risks and the principle of sound business management, this clearly means two things—the risks to be insured of necessity will be: (1) immensely selective and (2) cost a high premium." [15] The consequence would be a substantial decline in investment in LDC's and a lessening of the developmental emphasis of the insurance program.

OPIC President Bradford Mills has a five-point plan which would eventually redistribute OPIC's insurance risk by including more private sector involvement and multinational participation.

Step 1: The co-insurance program which requires the company to bear a portion of the risk could be expanded.

Step 2: OPIC could form a private subsidiary similar to the Export-Import Bank's Foreign Credit Insurance Agency (FCIA). This private "Overseas Investment Insurers Syndicate" would insure some portion of each OPIC policy. This would enable OPIC to act through the syndicate's private agent in cases where nongovernmental status would be beneficial.

Step 3: The syndicate and OPIC could jointly underwrite political insurance and OPIC could reinsure those policies against catastrophic loss.

Step 4: Continued reinsurance of OPIC by private companies.

Step 5: A multinational group of government insurance agencies would reinsure each other's policies. This kind of coverage should reduce the chances of expropriation.

These proposals, if adopted, would spread OPIC's risk, but they also raise at least two questions: (*a*) If OPIC reinsured policies initially underwritten by private insurance companies the Government might lose control over policy issuance and claims decisions while at the same time retaining political and financial liability for the private insurance firms' decisions. (*b*) If OPIC became directly involved with insurance agencies of other countries, the United States might become involved in claims disputes between LDC's and other developed countries. It is not clear that these difficulties were fully considered in the drafting of the Mills plan.

On the basis of the above discussion of difficulties in selection of policyholders, problems in retaining a development orientation in the investment insurance program, and the necessity in any case of continued assurance of the full faith and credit for the U.S. Government, prospects do not appear favorable that OPIC can have most of its insurance functions transferred to the private sector within the foreseeable future.

---

[15] Ibid., p. 12.

CHAPTER VI. OPIC AND THE AMERICAN ECONOMY[1]

Section 231(i) of the Foreign Assistance Act of 1961, as amended, requires OPIC to "further to the greatest degree possible, in a manner consistent with its goals, the balance-of-payments objectives of the United States." Legislation proposed in 1973 by the administration would add to this mandate a consideration of the effect of OPIC actions on U.S. employment.[2]

A. OPIC Policies

In order to meet the balance-of-payments requirement by sorting out and analyzing the trade and capital effects of a given project on the U.S. balance of payments, OPIC has required all prospective applicants for insurance and investment guaranties to submit certain data outlining this information for the project in question. OPIC's guidelines first concern the possible alternatives to U.S. investment to determine the likelihood of a non-U.S. investor's making a similar investment to serve the same foreign market. Also considered is the possibility that present U.S. exports may be displaced by the output from the proposed investment, or that the investment may be deemed essential for the entry or retention of U.S. participation in local or other foreign markets.

Secondly, the U.S. export and import effects of the project are analyzed to assess the short-term impact on the balance of payments. The investor must estimate the magnitude of direct and indirect exports of U.S. capital goods and production inputs which the project would generate over the first 5 years of the operation. On the import side, product sales generated to the United States over the same period must also be indicated.

Finally, an estimate of cumulative financial flows resulting from the OPIC supported investment must also be given in the application. The total of capital investment by U.S. investors for the initial 5-year period is weighed against the probable returns to the same investor in the form of interest, dividends, and profits. (This calculation may lead OPIC to support primarily high-profit corporations).

OPIC denies investment support to any project not meeting all three balance-of-payments criteria. During the period fiscal year 1972 through the first half of fiscal year 1973, OPIC rejected six applications because the proposed investment in each case was believed to be harmful to the U.S. economy.

In its application screening process, OPIC is particularly anxious not to grant insurance to certain types of investments which could be harmful to the U.S. domestic industrial structure. Projects which require high amounts of third-country procurement, or which may

---

[1] Written by Brian Mohler, Congressional Research Service, Economics Division, in collaboration with Hans Binnendijk.

[2] Section 5(B) of H.R. 7484 (Foreign Assistance Act of 1973).

help encourage so-called runaway plants whose output is likely to be exported to the United States in substantial competition with present U.S. production (causing possible domestic employment displacement as well), are closely scrutinized.

The most troublesome cases in terms of the possibility of "runaway plants" seem to be investments in electronics and textiles. For example, OPIC rejected an application from a U.S. electronics firm planning to ship the components of an already closed down plant to Yugoslavia to manufacture electronic circuitry for Europeans and probably American markets. OPIC also denied insurance to a proposed project which would have assembled ladies handbags in the Dominican Republic for sale substantially to the United States.

On the other hand, OPIC guaranteed a $15 million loan to an American textile concern seeking to invest in an Indonesian project which would produce textiles exclusively for that foreign market (for which U.S. textile exports had not been competitive). This action was approved only after the company promised it would not attempt to export to the United States. Further, OPIC approval was given to a $200,000 loan to a U.S. investor to revive a U.S. motorcycle company which had been previously forced out of business by imports, by setting up a plant in Taiwan for the production of lightweight motorcycles for the American market. The application was approved because there was no present U.S. production of lightweight motorcycles and no possibility of competitively producing them at home. The company's U.S. sales would thus be entirely in competition with those of Japan, the primary exporter of this product to the United States, and thus there would be no domestic employment or production displacement. In addition, the United States would benefit from the dividends and other remitted earnings of the foreign investment.

Most OPIC manufacturing projects, then, tend to be largely noncompetitive with the United States, since they are designed to produce primarily for a local market, or concern a product in the case of which—because of tariff, transportation or other considerations (e.g., the output of a cement plant is best produced near its place of utilization because of shipping costs)—supply from a U.S. production base would be impractical. Moreover, in the case of certain extractive industries, the United States cannot export the product because it is a poor source of supply. And local service industries, like hotels and banks, offer little competition to the United States.

Some projects, however, may receive OPIC assistance even though they were designed to export primarily to the United States or to third countries. Twenty-seven such projects have been identified and are included in table I. Each project, however, was judged by OPIC officials to be consistent with U.S. balance-of-payments objectives.

B. The Effects of OPIC Policies

OPIC President Bradford Mills recently told Congress that $6 billion in private U.S. overseas investment in LDC manufacturing industries created 120,000 jobs in the United States and contributed $800 million to the U.S. balance of payments.[3] These figures are based

[3] See statement of Bradford Mills, president of Overseas Private Investment Corporation. In U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economic Policy. Overseas Private Investment Corporation; Hearings. [Daily transcript] June 19, 1973. pp. 442–531.

TABLE I.—OPIC INSURED PROJECTS EXPORTING PRIMARILY TO THE UNITED STATES IN FISCAL YEAR 1972

Company	Country	Product	Maximum amount insured (U.S. dollars) [1]	Type of insurance [2]
Clinton Electronics Corp	Formosa	TV tubes	1,110,265	3
Corning Glass Works	do	do	2,822,000	A
General Instrument Corp	do	Electronic components	1,000,000	3
RCA Corp	do	TV tubes	800,000	A
RCA International Ltd	do	do	2,250,000	3
Sprague Electric Co	do	Electronic components	1,800,000	3
Upland Industries	do	Hand tools, precision-casted products.	500,000	3
Honey Creek Farms International	Dominican Republic	High grade hogs	729,000	3
The Tenna Corp	do	Automobile antenna cables.	249,500	3
Jade Beer & Son, Inc	Haiti	Cores for baseballs	188,000	3
Alberti Foods, Inc	Honduras	Cattle ranch	650,000	3
United Coconut Corp	Indonesia	Coconut plant	300,000	3
Gentrex, Inc	do	do	249,700	3
Patapsco Ag	Iran	Licorice extract	795,000	3

OPIC INSURED PROJECTS EXPORTING TO THIRD COUNTRIES IN FISCAL YEAR 1972

American Metal Climax, Inc	Botswana	Copper and nickel mining.	17,500,000	3
Orchard Corp. of America	Formosa	Printing of rigid and overlay papers.	800,000	3
Rain Bird National Sales Corp	Greece	Sprinkler equipment	130,000	3
St. Regis Paper Co	do	Corrugated containers	100,000	A
Goodyear Tire & Rubber	Indonesia	Rubber plantation	2,220,000	3
Chemstrand Overseas, S.A	Israel	Synthetic fibers	2,745,000	C
Clinton Watch Co	do	Watches	47,905	3
The Gerber Scientific Instrument Co	do	Medical electronic equipment.	45,000	3
GTE International, Inc	do	Electronic communication and consumer equipment.	6,828,955	3
Donald Levitt	do	Butane lighters	306,000	A, C
Harry Winston, Inc	Ivory Coast	Diamond exploration and mining.	885,000	3
Fonville Enterprises, Inc	Kenya	Cattle ranch	237,090	3
Cargill, Inc	Thailand	Cattle feed	600,000	3

[1] Maximum amount insured in any 1 of the 3 categories.
[2] A. Convertability; B. Expropriation; C. War risk; 3. All 3.

upon a Harvard Business School study financed by OPIC.[4] OPIC insured a major portion of those investments and presently concentrates 82.2 percent of its newly issued insurance in the manufacturing sector.

In order to present a general, although inexact, picture of the direct results of OPIC supported foreign investment, a survey contained in table II analyzes the balance of payments and employment effects of 10 of the largest issues of risk insurance approved by OPIC in fiscal year 1972. Together these 10 companies making investments in nine different countries accounted for two-thirds of all OPIC risk insurance issued in that year. This sample may be considered fairly representative since it represented investments in various types of manufacture, mineral extraction, and service industries. Using the formula devised by OPIC and discussed above, these 10 investments should, over a 5-year period, result in a combined positive trade and capital flows effect for the U.S. balance of payments of nearly $127 million and create over 3,100 domestic jobs, as well as significantly helping to develop resources and to improve economic conditions within the host

[4] Stobaugh, Robert, Harvard Business School. U.S.-Owned Manufacturing Facilities in Less Developed Countries and the U.S. Economy, (unpublished study).

TABLE II.—*U.S. Effects of 10 of the largest foreign investment insured by OPIC*[1]

1. U.S. trade effects:	
Original U.S. procurement	+$73,115,000
Exports of production inputs	+42,850,000
Over 5 years	+116,965,000
Exports to United States	−5,600,000
U.S. exports displaced	−400,000
Total	−6,000,000
Total positive trade effects over 5 years (equals 2,455 man-years)	+110,965,000
2. U.S. financial flows:	
Return capital flows over 5 years	+50,835,000
Original U.S. investment	−34,095,000
Total positive capital flows over 5 years (equals 662 man-years)	+16,740,000
3. Total positive balance-of-payment effects (3,117 man-years)	+126,705,000

[1] Figures compiled from OPIC files made available to the Congressional Research Service.

country. It must be noted, too, that these figures probably underestimate the total effect, since they do not take account of possible U.S. indirect exports resulting, or of capital earnings returning to other U.S. investors besides the one insured by OPIC.

Another survey of the effects of OPIC-insured investments on the balance of payments was commissioned by OPIC in 1972. It was done by Harbridge House, a private consulting firm in Boston.[5] This study is concerned with "mature" projects which have functioned for some time and thus helps illustrate the possible long-range effects of an OPIC-assisted enterprise.

In table III, which summarizes the results of the 20 projects studied, it is noteworthy that the majority of the projects had overall positive effects on the U.S. balance of payments. It must be borne in mind that these projects were initially started under the old AID investment guaranty program and thus were not as thoroughly scrutinized in the area of payments and domestic employment effects as they would now be.

[5] Harbridge House, Inc. A Study of the Economic Effects of 20 Selected Private Investments on Developing Countries and on the U.S. Balance of Payments; prepared at the request of OPIC. July 1972.

Table III.—*Summary of Results of the Harbridge House Survey on 20 OPIC Projects, 1972*

Trade-related flows:	
Clear-cut positive effect: U.S. exports of raw materials and components to the venture exceeded former U.S. exports of finished products to the market served by the venture or did not reduce U.S. finished goods exports	5
Positive effects due to well-established import policies: Import substitution policies in the product manufactured by the venture were so clearly established in the host country that U.S. exports had already been curtailed or were certain to be curtailed. If the U.S. investor had not launched the venture, someone else would have. Therefore, in these cases the exports of U.S. raw materials and components to the venture need not be discounted by any national loss of finished goods exports	4
No effect: All raw materials are of local origin and production does not displace any U.S. exports	3
Negative effects dictated by commercial pressures: A net reduction in U.S. exports has resulted from the venture but, had the individual U.S. company making the investment not done so, it would probably have lost its export market share either to another U.S. firm or to a firm from a third country	5
Clear-cut negative effect: Displacement on balance of U.S. exports without any extenuating circumstances	1
Unusual or unclassifiable	2
Capital-related flows:	
Clear-cut positive effect: Capital inflows to the United States have clearly exceeded outflows	8
Temporarily negative effect due to reinvestment: High proportions of profits have been reinvested to finance growth	4
Negative effect due to relative newness of venture: Profits have been used to reduce initial heavy dependence upon debt or have not been repatriated for a sufficiently long period of time to offset outflows	2
Negative effect due to initial operating losses and later reinvestment policy: Initial losses depleted capital and subsequent growth in demand forced reinvestment in production facilities	1
Clear-cut negative effect: Due primarily to operating losses	5
Overall effects:	
Overwhelmingly positive: Both trade-related and capital-related flows have been clearly positive	1
Overall positive: Capital-related flows are negative but are outweighted by positive trade-related flows	3
Positive with special circumstances: Capital-related flows are positive and trade-related flows are also positive if extenuating national import substitution policies and commercial pressures are considered	3
Negative largely due to newness: There are no trade-related flows and capital-related flows that are negative due to high rate of new investment in larger facilities	1
Entirely negative: Both trade-related and capital-related flows are negative on balance	3
Unusual or unclassifiable	2

NOTE.—Only 15 projects are considered in the overall effects section. The other 5 were not included since it was felt they had not yet been in operation long enough for adequate overall evaluation.

CHAPTER VII. OPIC AND THE CHANGING INVESTMENT CLIMATE

A. Changing Attitudes Towards Private Investment in Developing Countries

In a recent article, Charles Kindleberger noted two extreme views of direct foreign investment in developing countries:

> At one limit is the view that such investment is highly effective in contributing to economic development and should be encouraged and stimulated * * *. At the other extreme, direct investment is regarded as highly exploitative, a form of neo-colonialism or neo-imperialism, or at a minimum, a cause of political dispute between DC's and LDC's, and that it is best to reduce and ultimately to eliminate it through policies of divestment.[1]

The first view was held by both the World Bank's Commission on International Development (the Pearson Commission), and the U.S. Government's Task Force on International Development (the Peterson Task Force). The Pearson Commission concluded:

> There can be no doubt about the contribution which private capital can render to economic development. Indeed, dollar for dollar, it may be more effective than official aid both because it is more closely linked to the management and technology which industrial ventures require, and because those who risk their own money may be expected to be particularly interested in its efficient use.[2]

The Peterson Task Force recommended elimination of current restraints on U.S. direct investment and strongly supported the creation of OPIC.[3] Willard L. Thorp supported the views of these two commissions in his recent book, "The Reality of Foreign Aid." Thorp states:

> * * * There can be no question that private flows make a substantial contribution to economic development. To be sure, the greater part of this flow represents foreign investment inspired by the prospect of profit. But the less-developed countries also profit from it.[4]

The other view mentioned by Kindleberger, which regards private investment as neo-colonialism, has recently gained many converts within the developing world. A result in developing countries has been increased economic nationalism and a deteriorating investment climate. This has created particular problems for OPIC which merit examination.

Arguments opposing continued foreign investment in LDC's might be placed into two categories: those arguments which recognize economic benefits in private investment but conclude that

---

[1] Kindleberger, op. cit., p. 329.

[2] Pearson, Lester B. (Commission chairman). Partners in Development; Report of the Commission on International Development. Washington, Praeger Publishers. 1969. p. 122.

[3] The President of the United States. The Task Force on International Development. U.S. Foreign Assistance in the 1970's: A New Approach; report to the President. Washington, U.S. Government Printing Office, March 4, 1970. p. 21.

[4] Thorp, Willard L. The Reality of Foreign Aid. New York, Praeger Publishers, 1971, p. 177. (Published for the Council of Foreign Relations.)

they are outweighed by political considerations, and those which say there are definite negative economic effects of direct foreign private investment that outweigh any positive economic effects.

The political threat of foreign investment by large multinational corporations boils down to a matter of control. In a recent article, Peter Gabriel wrote that. "Few nations today are immune to anxiety over the perceived or potential threats to national autonomy posed by foreign ownership of local industry."[5]

This statement of course, is especially true of the developing countries. Stephen Hymer of Yale University discussed the unequal bargaining power of multinational corporations and governments of developing countries:

> The corporations are large and modern and have international horizons. The governments are typically administratively weak and have very limited information outside their narrow confiens. In any particular negotiation between one country and one company, power in the form of flexibility, knowledge, and liquidity is usually greatei on the private side than on the public side of the table.[6]

Others cite economic arguments for opposing direct foreign investment. Nearly half of U.S. private investment in the LDC's is involved in extractive industries. In 1971, for example, the United States invested a total of $853 million in the LDC's for petroleum alone. These industries provide capital and jobs but do not provide technological transfers that can readily be used in other industries. Above all, they remove natural resources, often with only limited control by the host country.

The dominance of foreign corporations in the local economy can also cause severe dislocations which may overshadow beneficial effects of private investment. An article by Peter Evans entitled "National Autonomy and Economic Development" details some of these economic effects. Evans argues that multinational firms (1) encourage unproductive "consumptive emulation" by using massive advertising budgets; (2) misallocate productive resources because decisions are made in "New York rather than Dar es Salaam"; and (3) force small local entrepeneurs out of business.[7] Stephen Hymer points out that domestic monetary and fiscal policies of LDC's can easily be subverted by international capital flows controlled by multinational corporations.[8]

Economic nationalism as reflected in these contemporary attitudes has manifested itself in many ways throughout the developing world. Many nations now place a higher priority on borrowing in the private capital market than on seeking direct private investment.

Others have developed investment codes. The most notable of these is the Andean Investment Code, adopted on July 1, 1971, by Bolivia, Chile, Colombia, Ecuador, and Peru. The Andean Investment Code stresses that members still need and seek overseas private investment, and that they support the principle of free enterprise. But it requires new foreign investors to agree to transfer majority control of their investments in regional enterprises to local interests

---

[5] Gabriel, Peter. The Multinational Corp. and Economic Development in Development Today: A New Look at U.S. Relations with the Poor Countries, ed. by Robert Hunter and John Reilly. New York, Praeger Publishers, 1972. p. 182.

[6] Stephen Hymer. The Efficiency (Contradictions) of Multinational Corporations. The American Economic Review, vol. IX, no. 2. May 1970, p. 446.

[7] Peter B. Evans. National Autonomy and Economic Development: Critical Perspectives on Multinational Corporations in Poor Countries. International Organization, vol. XXV [Summer 1971]. pp. 675–692.

[8] Hymer. op. cit. p. 447.

after 15 years in Chile, Colombia, and Peru,[9] and after 20 years in Bolivia and Ecuador. In addition, existing companies will have to decide in 3 years to "fade out" majority foreign control of their investments or lose the advantage of regional integration.

Article 51 of the code prohibits investment agreements from having clauses which "remove possible conflicts or controversies from the jurisdiction and competence of the authorities of the receiving country." A second provision can be interpreted as denying subrogation rights by other governments in expropriation procedures. Both provisions clash with OPIC requirements. The first of the two provisions runs directly counter to efforts being made by several developed countries, led by the United States, to establish a mechanism for compulsory international arbitration in the event of failure to reach a satisfactory settlement in expropriation cases.

Ultimately economic nationalism can lead to investment disputes and expropriation, as indicated by a recent State Department Intelligence and Research (INR) study listing 124 cases during 1972–73 in which U.S. firms have been involved in investment disputes in developing countries.[10] Fifty-five were in Latin America. Only 35 of the 124 cases are listed as settled. By comparison, a 1971 INR study listed only 70 investment disputes between 1960 and 1971.[11]

The remainder of this chapter analyzes various ways in which OPIC has tried or might consider trying to reduce the possibilities of expropriation. They include (1) special policies for large or sensitive projects, (2) less emphasis on support for large multinational corporations, (3) greater emphasis on joint ventures with local investors, (4) greater assistance to investment loans rather than equity investments, (5) a code of conduct for investors, and (6) less emphasis on OPIC insurance as a means of bolstering a few friendly governments.

B. Large and Sensitive Industries

The 1971 State Department study on expropriation concludes that the most conspicuous nationalization moves of recent years have involved large extractive industries because developing countries believe that their valuable natural resources have been exploited much more for the benefit of the foreign firm than for their own people.[12] Statistics provided by that study confirm the vulnerability of extractive industries.

U.S. investors in mineral resource projects are aware of this propensity of host governments to expropriate. In 1971, 68.8 percent of the responding OPIC customers in mineral resources said that OPIC insurance was necessary for future investments in developing countries. Although a high percentage of banking and insurance industries were nationalized, only 39.1 percent of the OPIC customers in these fields responding to the survey felt insurance was a prerequisite for future investments.[13]

---

[9] Venezuela has signed the agreement but has not yet ratified it.

[10] The Department of State. Bureau of Intelligence and Research. Foreign Investment Dispute Involving U.S. capital; study prepared for Congressional Research Service. June 18, 1973. 9 p. See appendix J for study.

[11] The Department of State. Bureau of Intelligence and Research. Nationalization, Expropriation, and Other Takings of United States and Certain Foreign Property Since 1960; research study. November 30, 1971. 62 p. (Hereafter cited Nationalization Since 1960.)

[12] Nationalization Since 1960. p. iii.

[13] Business International Corporation, op. cit., Question 2.

NATIONALIZATIONS BY AREA AND INDUSTRY[1]

Nationalizations/resource or expropriations	Resource-related	Public utilities	Banking and insurance	Other
Latin America	10			5
Africa	2		5	3
Near East	5		1	2
Asia	1		7	3
Negotiated sales or contract disputes:				
Latin America	3	3	2	
Africa	5		10	2
Near East	1			
Asia				
Total	27	3	25	15

[1] Nationalization since 1960. p. 9.

OPIC Policy

OPIC officials also recognized the trend in expropriations of large and sensitive projects Congressional mandates requiring risk management and receptivity by the host country prompted OPIC to set special guidelines for insuring large and sensitive industries. (OPIC already had policies barring assistance to projects involving gambling, real estate, manufacture of military goods or alcoholic beverages, and production of surplus agricultural commodities.) OPIC is precluded by law from making direct loans to mining or other extractive industries.

OPIC's large or sensitive industry guidelines include projects involving a total U.S. investment of over $25 million in utilities and other public facilities, protracted industries, and natural resources. Initial guidelines issued March 8, 1971, limited equity insurance to 12 years, but debt insurance could be extended beyond 12 years. The amount covered would decrease as profits were repatriated.[14]

OPIC also issued specific policy guidelines regarding petroleum exploration: [15]

> Unless otherwise specifically authorized by the Board of Directors of the Overseas Private Investment Corporation, the Corporation shall not insure or guaranty any part of an investment in a petroleum exploration project attributable to such project's intangible costs, concession costs or fixed assets, and shall insure or guaranty only that part of such investment attributable to such project's tangible and removable assets and to any proceeds of the disposition thereof.

OPIC since has adopted an alternative insurance coverage for large or sensitive industries. The alternative coverage provides an option to insure a large or sensitive industry for up to 8 years beyond the initial 12 year coverage. Other alterations were made in the term of debt insurance. Declining coverage is calculated on a straight line basis rather than on repatriated profits.[16] Many nationalistic developing countries would, however, prefer to consider repatriated profits as a means of calculating the worth of a company's equity investment.

[14] See appendix K for Policy Guideline 5.03.
[15] General Policy and Guidelines (PG 5.06), March 8, 1971.
[16] PG 5.03 alternative, December 6, 1971.

OPIC has also instituted variable insurance premium rates for large or sensitive industries to cover its added risk and discourage investments which might be expropriated. A December 11, 1972, memorandum for the Board of Directors of OPIC proposed the following changes in the normal 1.5 percent insurance rate:

[In percent] [1]

	Expropriation		Inconvertibility and war (no change)	New total
	Existing	Proposed		
Large and/or sensitive projects:				
Debt	0.6	0.6	.9	1.5
Equity	.6	.8	9	1.7
Other projects:				
Debt	.6	.4	.9	1.3
Equity	.6	.6	.9	1.5

[1] Overseas Private Investment Corp. Insurance premium rates; memorandum prepared for the board of directors of OPIC. December 11, 1972.

Rates on equity insurance for large and sensitive projects increase while rates on normal debt insurance decrease. OPIC studies show that debt insurance is lower risk than equity insurance. This multiple rate schedule is thus be an incentive for U.S. businessmen to loan funds to projects rather than investing in equity. In addition, the memorandum recommended that rates on expropriation coverage be increased or reduced by an additional 0.2 percent as OPIC officials see fit. Rates thus could vary from 1.1 percent for low risk projects to 1.9 percent for high risk projects. These variable rates have been implemented but have been used thus far on only two projects.[17]

Results of "Large or Sensitive" Projects: Sector Analysis

OPIC officials cite 10 cases in which insurance applications for large or sensitive projects have been rejected. Their list appears below:

Partial list of large or sensitive projects rejected for insurance by OPIC in whole or in part since January 19, 1971

	Year of OPIC action
1. Proposed investment of approximately $50 million in nickel mining and smelting project. No insurance issued on the ground that investor per capita income rendered the island a "developed" area	1971
2. Proposed investment of approximately $300 million in trans-Andean oil pipeline. No insurance issued on grounds (1) project did not quite qualify under difficult coverage criteria for petroleum production projects of exceptional developmental importance, and (2) Ecuadoran adherence to Andean Pact thereafter, seizures of U.S. fishing boats, and other problems have delayed resolving issues concerning the continued operation of OPIC's investment insurance program in Ecuador	1971
3. Request for insurance on proposed investment of approximately $70 million in oil refinery and petrochemical project, including substantial costs of acquisition. Coverage of acquisition costs denied. Requests in other respects subsequently withdrawn	1971

[17] Telephone interview with Edward Wright of OPIC's Insurance Department.

	Year of OPIC action
4. Requests for commitments of additional insurance on approximately $60 million of investment to expand present alumina refining facilities. Requests have been discouraged to date on various grounds, including existing OPIC portfolio concentration on a worldwide basis in alumina refinery and related projects	1971–73
5. Requests for commitments of insurance on approximately $60 million of investment to expand present copper mining facilities nationalized 51 percent by Zambia in 1969. Requests have been discouraged to date on various grounds, including insufficient period since nationalization to evaluate the risks in issuing investment insurance	1971–73
6. Proposed investment of approximately $4 million in production facilities for communications equipment. Insurance issued on investment relating to civilian end-use items. Insurance excluded on investment related to military end-use items	1971
7. Copper and nickel mining and smelting project. Insurance issued on approximately $35 million of equity investment. Insurance declined on approximately $60 million of completion guaranties and debt arrangements and investors required to secure political risk coverage through the West German investment insurance program	1971–72
8. Proposed investment of approximately $370,000 in game lodge and other tourist facilities. Project withdrawn and insurance declined simultaneously when confiscatory property law adopted by Tanzania rendered continuation of the project excessively risky	1972
9. Two separate projects involving manufacture of tires. Insurance declined on various grounds including inability to separate potential end use of products as between civilian and military purposes	1972–73
10. Request for commitment of additional insurance on approximately $7 million investment to expand bauxite mining facilities. Request discouraged on ground of existing OPIC portfolio concentration both on a worldwide basis and in the proposed host country in bauxite and related projects	1972–73

OPIC's policies have resulted in a decrease in the number of new large and extractive projects insured by the corporation:

COMPARISON OF NEWLY INSURED LARGE OR EXTRACTIVE INDUSTRIES[1]

Year	Number of projects under $10,000,000 of insurance issued	Number of projects with $10,000,000 or over in OPIC insurance	Number of extractive projects[2]	Number of nonextractive projects
July–December 1967	72	19	12	79
Fiscal year 1972	92	14	5	101

[1] From OPIC insurance documents and conversations with Lawrence Potter, OPIC insurance program consultant.
[2] Only nonreplaceable minerals mined for export are here considered extractive.

The number of projects insured for $10 billion or more dropped from 19 during the last 6 months of 1967 to 14 for all of fiscal year 1972. The number of insured projects in extractive industries dropped from 12 in the first half of fiscal year 1967 to 5 in all of fiscal year 1972. Three of the five are cement plants, one is a diamond mining operation in the Ivory Coast, and one is a copper/nickel mining project in Botswana. The last 6 months of 1967 included major extractive projects in Chile, such as Anaconda's mine improvements, Bethlehem's iron mining project, the Chile Copper Co.'s "Exotica mine," and Continental Copper & Steel's mining and milling operations.

Many of those projects have since been nationalized. OPIC officials contend that these ill-fated projects would now not be insured on the same terms by the corporation. The statistics seem to substantiate their contentions.

A detailed sector analysis of AID-issued and OPIC-issued insurance coverages shows that OPIC's move away from mining projects has been in favor of manufacturing projects.

AID CONTRACTS (1948–70)

	Coverage count	Total collapsed dollar volume	Percentage of total
Agriculture	153	$121,420,718.00	1.5
Mining	120	1,955,727,781.90	24.7
Construction	47	66,831,319.26	.8
Manufacturing	2,372	1,922,845,783.02	62.2
Utilities	68	297,911,880.76	3.7
Wholesale or retail trade	32	33,151,043.98	4
Finance, insurance, real estate	188	300,245,493.00	3.7
Services	129	138,922,753.76	1.7
Total		7,913,837,702.68	98.7

OPIC CONTRACTS (1971—PRESENT)

	Coverage count	Total collapsed dollar volume	Percentage of total
Agriculture	49	$29,391,372.00	2.4
Mining	18	27,909,139.00	2.2
Construction	15	18,170,000.00	1.4
Manufacturing	536	999,896,981.00	82.2
Utilities	24	40,994,006.00	3.4
Wholesale or retail trade	5	1,954,810.00	.2
Finance insurance real estate	50	44,184,164.57	4.2
Services	34	51,524,828.00	4.2
Total		1,215,327,337.52	99.6

The 22 percent drop in mining corresponds to a 20 percent relative increase in the manufacturing sector. Relative increases in service industries make up the other 2 percent. Manufacturing activities can contribute substantially to economic development through transfer of technological and management skills. A question remaining is: do investors in the manufacturing sector need OPIC insurance as much as those in mining? While 68.8 percent of the mining industry companies responding told Business International they needed OPIC insurance for future investments, only 42.7 percent in manufacturing felt they needed OPIC insurance. Thus one might tentatively conclude from these figures that OPIC issues relatively more insurance in sectors where it is more beneficial to economic development but less needed by U.S. investors.

C. Analysis of Corporations Assisted by OPIC

Large multinational corporations can pose political problems for the host countries in which they invest. Every company in the Fortune top 50 industrial firms, for example, has a greater sales volume than Zaire's GNP. Their size and direct involvement in the commercial life of the developing country can make these large corpora-

tions relatively vulnerable to expropriation. OPIC experience, however, indicates that it is not the size of the company which is important, but rather the industry field of the project, and the project's size relative to the local economy as a whole. The State Department study on nationalization shows that there were 24 expropriation cases between 1960 and 1971 involving U.S. industrial firms holding majority control of the expropriated property.[18] Of the 24 cases, 14 concerned companies which appeared on the Fortune top 50 list; 17 concerned companies which appeared in the top 150.

The AID and OPIC political risk insurance programs, respectively, issued insurance to corporations of various sizes in the following proportions.

AID AND OPIC POLITICAL RISK INSURANCE PROGRAMS[1]

	Number of coverage	Percent of total	Dollar volume (in millions) (collapsed)	Percent of total
AID-issued political risk insurance:				
Largest corporations and banks[2]	2,213	42	8,414.8	63
Large and medium sized corporations and banks[3]	863	17	2,041.5	15
Total for Fortune list	3,076	59	10,456.3	78
Smaller corporations[4]	2,136	41	2,907.6	22
Grand total	5,212	100	13,365.9	100
OPIC-issued political risk insurance:				
Largest corporations and banks[2]	312	40	856.1	61
Large to medium corporations and banks[3]	122	15	258.8	18
Total on Fortune list	434	55	1,111.9	79
Smaller corporations[4]	355	45	294.3	21
Grand total	789	100	1,409.2	100

[1] Statistics provided by OPIC's office of the Treasurer.
[2] Corporations listed in the Fortune top 150 corporations and top 25 commercial banks.
[3] Corporations listed from 151 to 500 on the Fortune list plus commercial banks listed 26 to 50 plus a few major insurance companies.
[4] Corporations not on the Fortune list.

The statistics for the insurance program under AID and OPIC are quite similar. Both concentrated their insurance in large multinational corporations.

According to these statistics, 79 percent of the current collapsed dollar volume of insurance issued by OPIC goes to institutions on the Fortune lists of top 500 companies and top 50 commercial banks. The major portion of this 61 percent of OPIC's total volume is issued to institutions on the Fortune lists of top 150 companies and 25 commercial banks. A surprisingly small volume was issued to medium sized corporations. OPIC issued only 21 percent of its dollar volume business to corporations not on the Fortune lists. OPIC did, however, issue 45 percent of its contracts to small businesses, an increase of 4 percent over AID. Smaller businesses obviously require contracts for a smaller dollar volume than the major multinationals.

[18] Nationalization Since 1960. p. 11-12.

The rationale for lending government funds to, or guaranteeing loans for, projects in which major U.S. multinationals have an interest appears even weaker than for the insurance program. In many cases, corporations with assets of several billion dollars own large amounts of equity in projects which accept million dollar loans from the U.S. Government. Statistics below analyze the types of major U.S. investors involved in OPIC financed projects and other types of financial participation in these projects.[19]

FINANCIAL PARTICIPATION BY OTHER INSTITUTIONS IN OPIC PROJECTS

[Dollar amounts in millions]

	OPIC	IFC	AID	Exim-bank	ADELA PICA	Private United States	Local capital	Europe-Japan	Total
Major U.S. investors:									
Fortune 150 companies	$112.2	32.2	69.3	10.0	----	251.8	89.5	0.1	565.4
Fortune 151–500 companies	10.0	6.0	----	----	----	4.8	2.0	.1	22.9
Smaller companies	96.1	15.0	2.6	90.1	0.5	82.3	76.0	121.6	484.0
Total	218.3	53.5	71.9	100.1	.5	338.9	167.5	121.8	1,072.3
Percent of total	20	5	7	9	----	32	16	11	100

According to OPIC officials,, a significant conclusion to be drawn from this chart is that OPIC funds have mobilized $4 of additional investment for every $1 of OPIC participation. Moreover, they have pointed out that the chart shows that at OPIC projects have been significantly multinationalized.

The breakdown by U.S. investors in the 30 projects OPIC has participated in is as follows.

FORTUNE BREAKDOWN OF U.S. INVESTORS IN OPIC PROJECTS[1]

Fortune 150 companies	17
Fortune 151–500 companies	3
Smaller firms	16
Other (banks, insurance companies, CUNA)	5
Total investors	41

[1] Statistics provided by OPIC's finance staff.

OPIC's finance program has concentrated a majority of its dollar volume in projects owned by corporations on the Fortune top 150 list. Support for small business is now being strengthened. Board Resolution (72) 33 requires Board approval for finance projects involving any of the top 150 companies. At least 10 of the 16 small business investors have been assisted during the past 2½ years. As in the insurance program, however, a very small percentage of the medium sized corporations received financial support. These statistics are indicative of a fact of life, especially in the developing countries where OPIC operates. Small companies often do not have the financial

[19] Statistics provided by OPIC Finance Program Staff.

capability, the managerial depth, or the interest to establish a new business venture in a developing country.

OPIC is required by law to "utilize . . . the resources and skills of small business." [20] While OPIC's finance program seems to be moving in the direction of support for smaller business, OPIC's insurance program shows only weak signs of such a trend. Both programs could provide greater assistance for middle sized corporations. Both could shift the majority of their portfolios away from assistance to the major multinational corporations and international banks. They might be able to do so through economic incentives. Multiple premium rates might charge institutions in the Fortune top 150 corporations and 25 commercial banks higher rates for expropriation coverage. Smaller firms could be charged less.

D. Joint Ventures and Minority Ownership

Joint ventures with host country investors may be low political risk operations with high development effects. However, the 1971 State Department Study shows that of 44 different cases of nationalization or expropriation involving U.S. firms, a fourth [21] of the expropriated U.S. companies held a minority ownership position in which host country firms were involved.

U.S. businessmen are aware of the beneficial risk reducing effects of joint ventures. A Business International survey revealed that 63.7 percent of OPIC's customers consider joint ownership with local nationals and local governments to be risk-reducing.[22] The figure was 75 percent for mining companies.

The impact of joint ventures on economic development was stressed by Joseph Grunwald, director of Economic and Social Development Studies at the Brookings Institution, in testimony before the House Foreign Affairs Subcommittee on Foreign Economic Policy. Grunwald said, "this mechanism (joint ventures) holds out great promise for the development of local entrepreneurship, managerial capacity, and the transfer of technology. It certainly merits complete consideration in any new effort to promote development through private foreign investment." [23] Grunwald further stressed the importance of "fade-out" or divestiture provisions in LDC investments:

> Carrying the concept of local participation further implies the sale of U.S. private foreign interests to host-country businessmen (or government) after a certain period of time. This role of foreign investment has been explored at length in a round table discussion held on the occasion of the 1968 meeting of the Board of Governors of the Inter-American Development Bank. In summarizing the discussions it was stated that "direct foreign investment could be thought of as a revolving fund which would supplement temporarily, during periods of varying lengths depending on the nature of

---

[20] Sec. 231(e) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," p. 17.

[21] Nationalization Since 1960. p. 11–12.

[22] Business International Survey, op cit. Question 4.

[23] Testimony of Joseph Grunwald, International Economist. U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Foreign Economy Policy. An Overseas Private Investment Corporation? Prepared testimony for Hearings on Overseas Private Investment Corporation. [Original] p. 5.

the investment, the scarce technical and financial resources of local enterprise." According to this view, "the foreign investor should always be prepared to transfer majority interest in the firm to local investors and be ready to seek other investment opportunities in those activities where technological contributions continue to be of fundamental importance."

Although this approach may not find ready acceptance by the U.S. business community, it may be appropriate within the context of modern nationalism and development goals of the low income countries.

OPIC, however, has not stressed types of investments involving joint ventures fade-out provision and minority ownership. OPIC's "Preliminary Guidelines for Analysis of Developmental Effects of Projects" states that projects are acceptable if "there is any local capital investment in the project." [24] No mention is made of fadeout provisions. OPIC policy on large and sensitive projects provides incentives for joint ventures by decreasing premium rates, but according to OPIC officials local participation is not required. Private U.S. investment in public corporations owned by host-country governments is insured, but only when the management is in private hands or the public corporation has the other attributes of a private enterprise—as in the Yugoslavian worker-owned companies.

OPIC keeps no records of the number of joint ventures insured (OPIC insures only the U.S. partner). This fact in itself shows the low priority placed on joint ventures. A Harbridge House study prepared for OPIC investigated various aspects of 20 ventures in India, Thailand, Venezuela, and Colombia. The study found that 6 of the 20 ventures were wholly or nearly wholly owned by U.S. investors, 8 had U.S. majority control, and only 6 had majority control in local hands.

An interview with OPIC finance officials has disclosed that the trend in the finance program is away from joint ventures. The following data emerged from the interview:

NUMBER OF FINANCE PROGRAM PROJECTS THAT ARE JOINT VENTURES [1]

	Joint ownership	Percent of total with joint ownership	U.S. firm sole ownership	Total number of projects
(a) Guaranty program under AID	16	72	6	22
(b) Guaranty program under OPIC	3	60	2	5
(c) Direct loan program (under OPIC)	6	50	6	12
(d) Total under OPIC	9	53	8	17

[1] Interview with William Pistell (vice president of the finance program) and several of his senior staff. May 1973.

Joint ventures as a percentage of total new ventures supported by the finance program have declined from 72 percent under AID to 53 percent under OPIC. Perhaps the commercial risks taken by

[24] See Overseas Private Investment Corporation. "Preliminary Guideline for Analysis of Developmental Effects of Projects"; in-house document for OPIC staff. n.d. sec. D, p. 3. Document is contained in the appendix.

involving local investors in projects outweigh the political dangers of existing as a wholly owned U.S. project.[25] If this is so, OPIC's self-sustenance mandate for the finance program probably accounts for the switch away from joint ventures.

Joint ventures with "fade-out" provisions are not considered a panacea by U.S. investors, who fear the commercial consequences. If such measures were required by OPIC, foreign investment insured by OPIC would probably be further reduced. But a case can be made that insurance and finance incentives for U.S. investors to include local partners, and eventually to sell majority ownership to those partners, would assist OPIC to better meet both its risk management mandate (i.e., by reducing the risk of expropriation) and its economic development mandate. (However, the major expropriations in this decade have been against joint ventures with the host government, i.e. in Chile.)

E. New Approaches to Investments

Several authors have suggested that joint ventures alone are not enough to deter expropriation, and that entirely new approaches to overseas investment are necessary. Peter Gabriel in his article "The Multinational Corporation and Economic Development" writes:

> No country objects to the inflow of private capital as such. Even less does it object to the inflow of new technologies, management know-how, and other corporate capabilities. The point at issue is the host country's need to dissociate the boon of the resources that accompany direct investment from the bane of foreign ownership inherent in such investment. One might generalize that, while the foreign corporation is no longer wanted in the poor countries as a direct investor, it will continue to be welcome as a supplier of services.
>
> Such a shift will involve a major change in the very concept of corporate investment. Whereas traditionally the capital element was held to be primary, alternative arrangements of committing corporate resources will have to assign first place to the so-called intangibles—managerial, administrative, and technological capabilities, as well as all the other institutional resources mentioned earlier as characteristic of large-scale enterprise. Accordingly, under such new arrangements, management of the overseas venture will no longer be a right vested in ownership of theoretically indefinite duration, but rather an obligation assumed by agreement for a specified period of time. And the managing firm's reward will no longer be an entrepreneurial one for risks taken, but a managerial one for services rendered.[26]

This is essentially the model used by many Japanese investors. There the investor typically makes loans, supplies machinery and managerial skills, takes little or no equity, and contracts to buy the project's output for a long term during which the loan is paid off.

---

[25] See Kindleberger, op. cit. for a discussion of the commercial problems involved in joint ventures.
[26] Gabriel, op. cit., p. 188.

The 1971 State Department study on nationalization referred to Japanese overseas investment techniques as a possible model for future investment.[27] Recently, however, the Japanese have reported increased equity investment, rising to 54.4 percent of their total overseas investment in 1971.

OPIC has already begun to encourage this nonequity form of investment. In recent hearings, OPIC President Bradford Mills stated that a $30 million project of this type was now being insured in the Philippines. OPIC will insure the investor's risk for about 10 years, when he is expected to begin making a profit. This type of insurance might be encouraged by Congress and accelerated by OPIC.

F. Code of Conduct

A code of conduct detailing the political and commercial responsibilities of multinational corporations might further avoid expropriation by reducing anxieties on the part of the host country. Such a code would ease the fears created by incidents like ITT's alleged political activities in Chile.

The OECD attempted unsuccessfully to institute a code of conduct during the 1960's. Investors apparently were not yet ready to accept restrictions on their activities. But with the trend toward economic nationalism, investors might now be more receptive to proposals which would help to insure against expropriation.

The use of a code of conduct would have to be approved by host countries and would preferably be drafted by them on an individual basis. If the code should be cited in the OPIC contract any major violations could lead to nonpayment of claims. In effect, the code would be an extension of OPIC's present clause stating that if a corporation provokes expropriation, the claim will not be paid. It would also answer critics who contend that OPIC insurance is a license to misbehave because of the guaranty against loss due to expropriation. (OPIC officials contend that a code of conduct should bind the host government as well as the foreign investor. A contractual code of conduct enforced by OPIC could not bind a foreign government.)

G. OPIC as a Means of Supporting Friendly Governments

OPIC is required by law to assist only "friendly" developing countries and to act "under the policy guidance of the Secretary of State." [28] As such, OPIC is an instrument of U.S. foreign policy which potentially can be used to bolster economic conditions in a developing country deemed by the State Department to be important to U.S. interests. However, use of this is controlled by a Board of Directors in which other government agencies and private citizens can block programs advocated by State or OPIC's management.

A certain degree of stability in the third world is favorable to U.S. interests. With two-thirds of the world's population and a sizable portion of its natural resources located in developing countries, amicable political and economic relations with these nations are of vital importance to the United States.[29] But determined opposition by

---

[27] Nationalization Since 1960. p. 5.

[28] Sec. 231 (f) and (j) of Foreign Assistance Act of 1961 as amended by sec. 105 of Foreign Assistance Act of 1969. In "Legislation on Foreign Relations," pp. 17–18.

[29] Bergsten, Fred: "The Threat From the Third World," Foreign Policy, No. 11, Summer 1973, pp. 102–124.

the United States to possible internal change in developing countries can also seriously affect its foreign relations.

During the middle and late 1960's, OPIC's predecessor elements in AID issued a total of $1.8 billion in political risk insurance in Chile as part of U.S. policy to help support the government of Eduardo Frei's Christian Democratic Party, although no ratified bilateral agreement existed between the two governments. From October to December 1967, AID issued insurance worth $0.9 billion in Chile. According to one AID official, during the last 3 months of 1967 "everyone was pushing us to issue as much insurance in Chile as we could." [30] One of the companies insured during this 3-month period was ITT.

When Salvador Allende was elected President of Chile in October 1970, he began to expropriate whole sections, including wholly Chilean private enterprises and joint ventures with majority Chilean ownership, as well as predominantly foreign-owned companies. In July 1971 Chile passed a constitutional amendment which permitted the nationalization of the majority of Chilean government-owned joint ventures with copper companies. In March 1972 columnist Jack Anderson released the first in a series of documents implicating ITT in the attempt to prevent Allende's election. A month later, Allende said he would exporpriate ITT's majority holdings, and in May a constitutional amendment allowing him to do so was passed. The results of copper expropriations and the ITT incident, according to an article in Foreign Policy by James Petras and Robert LaPorte, "will have repercussions for U.S.-Latin American relations during the rest of the decade." [31] Similar situations could arise in the future if OPIC should insure in particular countries primarily to support the local government.

---

[30] Interview with Lawrence Potter, insurance consultant, Overseas Private Investment Corporation. May 1973.

[31] Petras, James F. and Robert LaPorte, Jr.: Can We Do Business With Radical Nationalists? (2)—Chile: No. Foreign Policy, No. 7, Summer 1972, p. 133.

CHAPTER VIII. OPIC, INVESTMENT DISPUTES, AND THE NEGOTIATION PROCESS

When a developing country becomes involved in an investment dispute with a U.S. corporation, the U.S. Government itself is likely to become involved in the dispute. U.S. official involvement can of course occur regardless of whether or not the investment is insured by OPIC. On the other hand, OPIC sponsorship inescapably carries an official implication. Although OPIC is a Government corporation rather than a Government agency per se, this distinction does not change the fact that, to developing countries as well as to U.S. business, OPIC represents the Government of the United States. Not only are its insurance programs backed by the "full faith and credit" of the Government, it also is administered in close cooperation with major agencies and departments of the Government as represented by those officials of AID, the State Department, and the Treasury Department who sit on its board.

OPIC has successfully settled 12 of the 18 disputes over expropriations of investments which it has insured in the period since 1971. For all types of claims, including war and inconvertibility, it has successfully settled 25 of the 40 major investment disputes in which it has been involved.[1] Although OPIC closely monitors the negotiations and often expedites a solution, it has never negotiated directly with a foreign government over subrogated assets owned by the U.S. Government.

A. Deterrence for Expropriation

OPIC officials argue that OPIC insurance serves as a deterrent to expropriation. In a recent speech, OPIC's general counsel Marshall Mays said:

> The existence of OPIC's expropriation insurance is undoubtedly a deterrent to nationalization without compensation. In several cases in the last year and a half, governments have failed to follow through on announced plans to nationalize OPIC-insured investment because we were able to bring to the attention of the governments concerned the fact of OPIC's involvement. We also pointed out that OPIC would be subrogated to the rights of an expropriated investor. We further noted the economic problems of operating the enterprises on a profitable basis, and the difficulties of providing prompt and adequate compensation. Unfortunately, we are unable to discuss these particular cases publicly.[2]

But the positive effects in the countries referred to by Mays could in the future be cancelled out by negative effect in countries looking for political targets for nationalistic policies.

[1] Statistics provided by OPIC staff. The number of unsuccessful negotiations cannot be calculated because many are still in progress. OPIC has denied seven insurance claims since 1971.
[2] Mays, Marshall: "Expropriation Claims Management," an address, n.d.

The 1971 State Department study on nationalization concludes:

> In some countries nationalization actions probably have been based more on political motivations than on an assessment of the economic gains or losses, although the latter may have been taken into account.[3]

According to the study, these "political motivations" based on "resentment of foreign control and fear of exploitation by foreign interests" are in part a response to popular sentiment.[4] As a result, any private American company associated in the public mind with such interests is likely to be increasingly vulnerable to expropriation in countries governed by radical nationalists.

B. A Channel for Expropriated Businesses

OPIC offers expropriated businesses a channel through which the U.S. Government can help them gain prompt and adequate compensation. Under the present policies the U.S. Government would likely become involved in expropriation controversies regardless of OPIC's existence.

OPIC officials argue that the involvement of their specialized staff in investment disputes has a constructive effect on U.S. businessmen. OPIC president Bradford Mills stated:

> Compare the likely differences between an insured investor and an uninsured investor in responding to an expropriation. The uninsured investor usually has no prescribed and orderly procedure to follow in attempting to resolve his problems. Therefore, he is much more likely to go to the local U.S. Embassy, the State Department, and Congress demanding that someone take action.[5]

The State Department might also help negotiate settlements, but it does not have the specialized staff or the financial resources of OPIC. In addition, a public corporation can maintain a low profile, while State Department management of the problem elevates it to the diplomatic level.

OPIC helps corporations cut through red tape in the host country bureaucracy. "Without OPIC many expropriated companies would get the runaround," OPIC claims director George Cooper said.[6] One example which OPIC privides to illustrate this service is IMPC, a small business expropriated by Bolivia. With OPIC assistance this firm was able to "cut red tape in the GOB bureaucracy" and obtained a cash settlement from Bolivia within a year after nationalization.[7]

OPIC on occasion enables the expropriated corporation to reestablish lines of communications with the host country government. Two examples are listed below:

(1) After revocation of the investor's concession rights in Somalia, the investor's partners were thrown into jail and the investor's representatives became persona non grata. The situation was further

---

[3] "Nationalization Since 1960," p. 2.
[4] Ibid., p. 1.
[5] Statement of Mills, op. cit., June 19, 1973, p. 34.
[6] Interview with George Cooper at OPIC in April 1973.
[7] Cooper, George. Beneficial Efforts Effects of OPIC Involvement in Recent Claim Cases; internal memorandum, Apr. 26, 1973, p. 3.

complicated by restrictions imposed on Embassy personnel by the Government of Somalia (GDSR). However, the OPIC representative was able to enter the country and to meet with GDSR officials, opening the way to compensation negotiations which otherwise would probably be stalled.

(2) After intervention by the Government of Chile (GOC), relations between the investor and the GOC became embittered, leading to accusations and counteraccusations with the danger that no compensation would be paid. OPIC encouraged the minority partner in the project to assume a mediation role which ultimately produced a cash payment by the GOC to the investor.[8]

OPIC also mediates disputes between U.S. corporations and local partners. One example is Ralston Purina's dispute with its Chilean partner over management policies, and the partner's right of first refusal in securities sales. OPIC medication resulted in a compromise solution.

C. A Means of Controlling Multinational Corporations

OPIC's contractual ties to expropriated multinational corporation's provides the U.S. Government with a means to influence actions of corporations in expropriations situations.

In the initial insurance contract, OPIC gains the right to audit the local operations of an expropriated corporation. In at least three cases the OPIC audit has resulted in downward adjustments of the book value of lost assets. Two cases occurred in Chile, while one occurred as a result of a war claim in Bangladesh. Without the OPIC audit, the local government would have to negotiate with a company that had inflated the value of its assets. The OPIC audit in these cases assisted the local government, and avoided an added investment dispute.

Under the OPIC contract (Sections 1.15 and 2.12) corporations are required to attempt to negotiate a settlement in good faith with the host country as a condition to payment thereunder. OPIC rejected ITT's $92.5 million Chilean expropriation claim in part under Section 2.12 because "the Investor failed to comply with its obligations to disclose material information to OPIC, and increased OPIC's risk of loss by failing to preserve administrative remedies and by failing to protect OPIC's interest as potential successor to the investor's rights."[9]

In at least four cases OPIC persuaded a U.S. corporation to negotiate after the corporation had apparently decided to discontinue further negotiations and seek an OPIC claim. Two of these cases occurred in Chile, while the others occurred in Ecuador and Bolivia. In most cases, OPIC persuaded top-level corporate officials to go personally to the host country to negotiate the claims. Three of the four cases have since been settled. Without OPIC these problems probably would have gone unsettled, with potentially harmful results for U.S. foreign policy.

---

[8] Both examples are quoted almost directly from Cooper, op. cit.

[9] Mills, Bradford, president of Overseas Private Investment Corporation: Letter addressed to J. W. Guilfoyle, president of ITT Corp. Sud America, Apr. 9, 1973.

D. OPIC Assistance in Claim Settlement

Perhaps OPIC's greatest asset is its ability to assist the developing country and the multinational corporation in the final settlement of investment disputes by translating the investment dispute into a new mutually acceptable business arrangement. OPIC lists three general types of business arrangements used in settling expropriation cases: [10]

(a) *Negotiated Sales With OPIC Guaranties.* An example of this type of settlement was the nationalization of an iron mine in Chile. AID had insured approximately $18 million of the U.S. investment. In close cooperation with OPIC, the U.S. investor negotiated a sale of its properties to the Chilean State Steel Agency, for approximately $22 million, on deferred-payment terms extending over a 16-year period. Because OPIC was willing to guarantee the payment of up to $18 million of the purchase price, the U.S. company was willing to accept the deferred payment terms of the negotiated sale. Chile has honored this contract.

(b) *Negotiated Sale Without OPIC Guaranties.* An example of this type of settlement was Chile's expropriation of a poultry business, 80 percent owned by a U.S. company. During the 1-year period in which an expropriatory action must continue for OPIC to be liable, the investor negotiated with the Chilean Government for payment. After the year elapsed, OPIC paid the investor's claim, but asked that the company continue negotiations in its own name for the benefit of OPIC. Chile finally paid about two-thirds of the amount of the OPIC settlement.

(c) *Cash Payment to Investor Utilizing OPIC's Guaranty.* Another significant category of settlements has been achieved through the use of OPIC's guaranty which enabled the investor to receive a cash payment and permitted the financing to be accomplished on terms far better than the expropriating government could have arranged without OPIC's assistance. The best illustration of this mode of settlement was the *Mina Matilde* case in Bolivia. This mine, owned by two U.S. companies, was nationalized in 1971. A settlement was reached with the assistance of OPIC financing. The sale price of $13.4 million was financed by an $8 million, 10-year loan by two U.S. commercial banks, guaranteed by OPIC, and an unguaranteed $5.4 million short-term loan.

In the first and third cases OPIC guarantees long-term payments by the expropriating country to either the multinational corporation or to a financial institution, which in turn pays the corporation in a lump sum. The second case enables OPIC to avoid pursuing settlement as subrogee of the insured.

OPIC also facilitates claims settlements by occasionally allowing the host country to pay compensation in local currencies. As in

---

[10] Examples from Mills, op. cit., June 19, 1973, pp. 37–38.

inconvertibility cases, funds are eventually transferred to the State Department for Embassy use. The Ralston Purina settlement with the Government of Chile resulted from local currency payments converted to dollars by OPIC.

E. OPIC Pressure on Host Countries

OPIC contact with local governments is kept at a minimum because of its 1-year "cooling-off period," which requires the expropriated investor to do all negotiating for that period. OPIC officials state that they do all they can to "keep the company up front" during the negotiations.

Earlier it was pointed out that in at least four cases OPIC pressure on host country governments avoided expropriations. OPIC officials feel that this pressure was justified, since expropriation could have soured relations with those countries.

In at least two other cases OPIC refused to consent to a settlement after expropriation when the host government offered compensation at less than book value. According to an OPIC memorandum in at least one of the two cases the corporation involved was willing to settle for a lower price, while OPIC held out for more. The insured investor at one point in its negotiations with the Government of Chile was willing to accept the GOC's offer of 60 percent of book value, but OPIC refused to consent. OPIC also refused the Chilean Government's offer of less than book value on an insured investor's "because of the implications of the negotiations on pending copper nationalization legislation."[11] If the entire amount had not been paid by the Chilean Government, OPIC would have had to pay the difference and deplete its insufficient reserves. It is difficult to know if any harm might have been done to U.S.—Chilean relations because a U.S. Government organization refused an offer accepted by the multinational corporation in question. Eventually both cases ended with full book value payment to the insureds.

F. Subrogated Assets and Government-to-Government Conflict

The major detrimental effect of OPIC involvement in investment disputes is the threat of direct government-to-government conflict over subrogated assets. This applies to the process of securing the bilateral agreements required to pursue subrogation rights, as well as to conflict over assets after an uncompensated expropriation. MIT economics professor Charles Kindleberger criticized the process, stating:

> The difficulty is that it requires the building up of government-to-government relationships—in the negotiation of the agreements which must precede the entry of the scheme into effect in a given country, and in pressing claims when these arise under it—which can awkwardly involve the United States in helping a powerful company against a small country.[12]

---

[11] Cooper, op. cit., p. 4.
[12] Kindleberger, op. cit., p. 347.

The negotiation of bilateral agreements has had a checkered history. In 1964, the Congress directed the executive branch to terminate aid to any country which would not sign bilateral agreements instituting the insurance program.[13] More recently, bilateral agreements requiring international arbitration of investment disputes and recognition of U.S. Government subrogation rights have prevented OPIC from insuring against expropriation in Andean Pact countries.

To date OPIC has not pressed its subrogation rights. Currently the corporation holds $17 million in assets of four expropriated companies: [14]

Amount (in thousands of dollars)	Country	Company
$11,890	Chile	Anaconda.
$4,830	do	Kennecott.
$222	Sudan	Walsh Construction.
$62	Haiti	Valentine Petroleum.

These rights can be pursued by OPIC at any time.

If it is decided in arbitration that either ITT or Anaconda claims must be paid by OPIC, OPIC will take those claims to the Chilean Government. After the board of directors rejected the ITT claim, OPIC President Bradford Mills stated, "If OPIC is ultimately required to pay any compensation to ITT, OPIC will then succeed to an appropriate portion of ITT's rights of recovery from the Government of Chile, and OPIC will pursue those rights vigorously."[15] Yet if OPIC does not press Chile for payment, it might have to absorb a $92.5 million claim that would reduce insurance reserves by three-fourths. The result could once again increase tensions between the United States and Chile.

Two approaches might be taken by Congress to avoid the undesirable effects of subrogation rights. First, it could release the OPIC board of directors from any sense of obligation imparted by the legislative history that subrogation rights are required before expropriation insurance can be issued. (OPIC is not obligated by law to require a ratified bilateral agreement.) Such action could allow OPIC to issue insurance in Andean Pact countries.

Second, Congress could abolish any and all subrogation rights held by OPIC. Loss of these rights, however, could require OPIC to request added funds if claims payments become substantial. Most insurance programs run by other governments have no similar rights. The debate regarding the need for these rights continues both in OPIC and the State Department.

OPIC's official position is that "suitable arrangements" must exist, including subrogation rights and international arbitration, which allow OPIC to regain funds lost to political risk claims. Unofficially, however, OPIC officials would favor the flexibility provided by option one above.[16] Some State Department officials also favor flexibility in

---

[13] Public Law 88-633, sec. 620(L). The effect of this provision was later modified in Public Law 89-171 and Public Law 89-583.

[14] Statistics supplied by the OPIC staff. Due to an inconvertibility claim, OPIC holds $81,000 in assets of the Bank of Monrovia.

[15] OPIC news release (TS/217) dated Apr. 9, 1973, p. 2.

[16] Testimony of Mills, op. cit., June 19, 1973, pp. 3-5.

dealing with subrogation rights and bilateral treaties. Both agencies feel, however, that agreements already negotiated with LDC's should not be discarded.

Abolishing subrogation rights, on the other hand, does not insure that the U.S. Government will remain neutral in cases of uncompensated expropriation. For example, the United States became deeply involved in Peru's expropriation of the International Petroleum Corp. (IPC) despite the fact that the corporation never purchased political risk insurance. Differences in U.S. policy toward expropriations by Peru and Chile stem from the size and intent of expropriation and not OPIC insurance. State Department and OPIC officials both say that during the Chilean expropriations the fact that the U.S. Government might lose money because OPIC had insured expropriated companies was seldom if ever mentioned in U.S. diplomatic cables.

U.S. involvement would stem from traditional U.S. protection of business and a series of laws which dictate U.S. behavior in expropriation cases. Foreign Service officer Samuel F. Hart recently wrote:

> Although gunboat diplomacy is currently out of vogue in most circles and arguments over whether business follows the flag or vice versa are no longer heard, the protection of U.S. business interests abroad remains an important foreign policy objective of the U.S. Government.[17]

President Nixon reiterated this traditional governmental concern in a January 19, 1972, policy statement, and threatened termination of bilaterial aid to certain expropriating countries.

> When a country expropriates a significant U.S. interest without making reasonable provision for such compensation to U.S. citizens, we will presume that the United States will not extend new bilateral economic benefits to the expropriating country unless and until it is determined that the country is taking reasonable steps to provide adequate compensation or that there are major factors affecting U.S. interests which require continuance of all or part of these benefits.[18]

Economic aid to Chile has been halted, but military assistance continues. Whether or not this traditional policy of governmental retaliation is sound is another question. The point is that OPIC insurance does not determine the policy.

American policy of retaliating for inadequately compensated expropriation has a firm foundation in U.S. law. None of the laws, however, refer to Government insurance. The Hickenlooper amendment requires the President to suspend assistance to countries expropriating property owned primarily by U.S. citizens, repudiating or nullifying existing contracts with U.S. citizens or corporations, and imposing discriminatory taxes on U.S.-owned property.[19] The host government has 6 months to satisfy the United States that appropriate

---

[17] Samuel F. Hart. American Overseas Investment. Foreign Service Journal, vol. 48, No. 8. Aug. 1971. p. 14.

[18] White House press release. President Nixon's policy statement on Economic Assistance and Investment Security in Developing Nations. Jan. 19, 1972. p. 3.

[19] Section 620(e) of Foreign Assistance Act of 1961 as added by sec. 301(d)(3) of Foreign Assistance Act of 1962 and amended by sec. 301(e)(2) of Foreign Assistance Act of 1963 and by sec. 301(d) (1) and (2) of Foreign Assistance Act of 1964. In "Legislation on Foreign Relations," p. 64.

steps are being taken to compensate U.S. interests. Retaliation does not always occur since the law permits considerable discretion.[20]

U.S. retaliation in international lending organizations is mandatory under the Gonzalez amendments of March 1972. According to these amendments, U.S. representatives to the Inter-American Bank, the Asian Development Bank, and the World Bank are required to vote against loans to any country which has expropriated U.S. interests without prompt, adequate, and effective compensation.[21] President Nixon also stressed this policy in his January 1972 statement.

The proposed Trade Reform Act of 1973 provides a system of generalized tariff preferences to developing countries. But if a country has expropriated the property of U.S. nationals in violation of international law, the President is advised not to extend the preferences.[22]

Thus to avoid government-to-government conflict because of improperly compensated expropriation of U.S. nations, the Congress would have to reverse traditional U.S. policy and amend several laws. OPIC insurance plays at most a very minor role in the U.S. decision to retaliate against failure to provide adequate compensation for expropriation.

---

[20] The Hickenlooper amendment was implemented in Ceylon in the early 1960's. It was not invoked in the IPC case because the President decided that the Peruvian Government had taken "appropriate steps" to compensate U.S. interests.

[21] Public Law 92-245, Public Law 92-246, and Public Law 92-247 apply to the Asian Development Bank, the Inter-American Development Bank, and the World Bank Group respectively. The United States has voted against International Bank loans for Peru and Iraq, but not under the Gonzalez amendment.

[22] Title VI, sec. 604(a)(5). Trade Reform Act of 1973; an administration proposal. Transmitted to Congres on Apr. 10, 1973.

CHAPTER IX. FUTURE DIRECTIONS

During the next few years, to judge from present indications OPIC will likely concentrate its efforts in four directions: (1) stress risk management and self-sustenance, (2) emphasize U.S. foreign economic policy, (3) change its policy toward insuring extractive industries, and (4) insure investment in Vietnam and Eastern Europe. Evidence is lacking that OPIC is likely to stress its economic development mandate any more vigorously than it has during the last 2½ years.

A. Risk Management and Self-Sustenance

OPIC is required by law to practice risk management for the insurance program and become self-sustaining in the finance program. A report to Congress on the possibility of turning over part or all of its functions to the private sector will be due at the latest by February 1, 1975.

B. Foreign Economic Policy

In its October 1972 meeting, a panel of OPIC's Advisory Council listed the following three basic objectives for which they felt the corporation was designed:

1. Support U.S. foreign economic trade and investment policy;
2. Assist in the economic development of the developing countries; and
3. Improve the long-term chances for peace and stability in the world by strengthening and expanding the friendly economic relations between countries.

In their report they stated that "the first objective of supporting U.S. foreign economic policy should be emphasized more by OPIC." [1] In particular, the Council's Panel I felt that "in the future OPIC should stress its role in (1) assisting U.S. balance of payments from earnings and interest abroad, (2) assisting in the creation and preservation of U.S. jobs, and (3) assisting in the promotion of U.S. exports." With respect to the second objective of economic development, the Panel felt that OPIC should continue to stress that its insurance was not a "giveaway" program.[2]

C. Large and Sensitive Industries

As part of its new emphasis on foreign economic policy, OPIC appears to be on the verge of a shift in policy toward large and sensitive projects in light of energy problems and predictions of future

---

[1] OPIC Advisory Council. Panel I. Report. Oct. 31, 1972.
[2] Ibid.

shortages in bauxite, manganese, and other materials. In his April 2, statement to the Foreign Operations Subcommittee, OPIC President Mills stated:

> The Japanese and the French have announced special programs to encourage their investing companies to seek out and develop foreign sources of needed raw materials. The Japanese program includes preinvestment assistance and long-term, low-interest loans to help finance the mining ventures.
>
> Supplementing insurance and export credit programs, the Japanese have two public corporations to promote overseas exploration and development of mines and oil/gas fields. The French are developing a program to diversify sources of supply for a number of basic raw materials through intensified worldwide exploration by their nationals, and the government has indicated that it will use its political insurance facility as part of this plan. We should learn from their experience in order to be better equipped for the challenges of the next decade.

Mills appears, in effect, to be advising Congress of what other countries are doing and raising the question of what OPIC's response should be. The result might mean more raw materials for the United States and more insurance volume for OPIC, but it could also increase OPIC's vulnerability to expropriation. The proposal would also tend to shift OPIC priorities away from economic development and host country receptiveness in favor of U.S. economic interests, thus blurring the mission of OPIC. (OPIC officials contend that support for raw material development in the LDC's is fully consistent with OPIC's developmental mission.) Yet, if a period of competition for critical resources is in prospect, U.S. Government instrumentalities might likely be utilized. A question is whether or not, or to what extent, OPIC is well suited to this task.

D. Geographical Expansion of OPIC Operations

OPIC has made some efforts to expand into new areas, notably Eastern Europe. It also seeks authority to operate in Indochina at such time as the OPIC Board of Directors considers appropriate. Expansion into both areas purportedly supports U.S. foreign policy.

Large amounts of capital will be required to rebuild the war-ravaged economy of both North and South Vietnam. Official government aid may not be sufficient to fill the need for capital; therefore, private investment no doubt will have a role to play in this effort, at least in South Vietnam.

There has already been substantial interest in South Vietnam by American investors. Ford, General Motors, and American motors are reported to be planning joint ventures with local entrepreneurs. Several oil companies have been interested in explorations and concessions off the Vietnamese coast. Should U.S. companies need an inducement to investment in the area, OPIC could play an important role in channeling investment into the area where it will be most useful to the developmental effort. The Direct Investment Fund could be used to finance investments in higher risk projects which a private company might not want to undertake. Political risk insurance, how-

ever, might further involve the United States in domestic Vietnamese politics.

The investment climate in North Vietnam may not be favorable. It has been reported that North Vietnamese officials say that they will not permit anyone to infringe upon their sovereignty, and that they, and not any foreign nation or group will decide what is to be built in their country.[3]

OPIC also plans to expand operations to Eastern Europe, pursuant to a provision (section 239(g) of the Foreign Assistance Act of 1971 (Public Law 92–226)):

> Except for the provisions of this title, no other provision of this or any other law shall be construed to prohibit the operation in Yugoslavia or Romania of the programs authorized by this title, if the President determines that the operation of such program is important to the national interest.

The Senate version of this provision as reported by the Senate Foreign Relations Committee contained an amendment which provided that OPIC programs could be extended to any less-developed country which the President determined was in the national interest. This proposal (changed in conference to limit approval to Yugoslavia and Romania) was advanced by Senator Javits with the support of the administration.[4] The committee report noted that the purpose of the provision was to authorize OPIC guaranties for investments by U.S. investors in Yugoslavia and that this would serve the overall foreign policy goal of improving relations with Eastern European countries.

For several years now, U.S. political and commercial relations with Yugoslavia and Romania have been improving. In 1970, Yugoslavia modified its investment law to allow investors to own 49 percent equity. Negotiations are presently underway with Romania to produce a similar agreement on the initiation of OPIC activities in that country.

The Senate proposal to permit extension of the program to any country would have meant that OPIC operations could have been extended to other Eastern European nations determined by the President to be eligible. While this might be implemented easily in regard to other less developed countries in Eastern Europe, extending the program to developed countries such as the U.S.S.R. and Czechoslovakia could pose legal as well as political problems. The Foreign Assistance Act of 1969, specifically limits the program to less developed friendly countries and areas, and thus to extend the program to some of the developed areas of Eastern Europe and the U.S.S.R. would require some modification in the language of the law.

Section 321(g) of the Foreign Assistance Act of 1969, states that OPIC should consider in its operations the extent to which less developed governments are receptive to private enterprise, domestic and foreign. This language might also need to be modified if the program is to operate in countries which may not meet this criterion.

---

[3] Marder, Murrey. Hanoi Wants Aid, but no Interference. Washington Post, Feb. 1, 1973: A1.

[4] President Acts to Encourage Investments by U.S. Business in Rumania, Yugoslavia. Wall Street Journal, March 22, 1972 : D5.

Among the aspects of investment law that would be of concern to foreign investors are the policymaking and management of joint ventures, the ownership and repatriation of capital and profits, and the question of taxes and other contributions which the government might impose on the foreign investor.

Other potential problems in extending programs to Communist countries could arise in connection with the provisions of the Johnson Act of 1934, as amended. The Johnson Act makes it a crime for any individual, partnership, or private corporation or association to extend any loan to, or purchase or sell [5] securities of, a foreign government which is in default in the payment of its obligations to the United States. The act as presently constituted would include the Soviet Union, Czechoslovakia, Hungary, and Poland. While the act exempts public corporations especially created by Congress it would still have to be repealed in order to stimulate meaningful joint ventures.[6]

In addition to the legal problems involved in expanding OPIC operations to Eastern Europe, there are, of course, political problems which are outside the scope of this paper.

---

[5] 48 Stat. 574 (1934) as amended, 18 U.S.C., sec. 955 (1965):

[6] It has been proposed that the Johnson Act be repealed as part of the 1973 trade bill.

APPENDIX

Appendix A.—OPIC Country List—Investment Insurance and Finance Program

The OPIC Investment Insurance and Finance Programs are available, as of June 1, 1973, or may become available again, in the following listed less-developed countries and semi-independent states, as noted.

OPIC COUNTRY LIST—INVESTMENT INSURANCE AND FINANCE PROGRAM

1. Investment insurance			2. Finance
Convertibility	Expropriation	War, revolution, and insurrection	Extended risk
Afghanistan	Afghanistan	Afghanistan (war only)	
Antigua	Antigua	Antigua	Antigua
Argentina			
Barbados	Barbados	Barbados	Barbados
Bolivia	Bolivia	Bolivia	Bolivia
Botswana	Botswana	Botswana	Botswana
Brazil	Brazil	Brazil	Brazil
British Honduras	British Honduras	British Honduras	British Honduras
Burundi	Burundi	Burundi	Burundi
Cameroon	Cameroon	Cameroon	Cameroon
Central African Republic	Central African Republic	Central African Republic	Central African Republic
Ceylon	Ceylon	Ceylon	Ceylon
Chad	Chad	Chad	Chad
China (Taiwan)	China (Taiwan)	China (Taiwan)	China (Taiwan)
Colombia [2]	Colombia [2]	Colombia [2]	Colombia [2]
Costa Rica	Costa Rica	Costa Rica	Costa Rica
Cyprus [2]	Cyprus [2]	Cyprus [2]	Cyprus [2]
Dahomey	Dahomey	Dahomey	Dahomey
Dominica	Dominica	Dominica	Dominica
Dominican Republic	Dominican Republic	Dominican Republic	Dominican Republic
Ecuador [1]	Ecuador [1]	Ecuador [1]	Ecuador [1]
Egypt [2]	Egypt [2]	Egypt [2]	Egypt [2]
El Salvador	El Salvador		
Ethiopia	Ethiopia	Ethiopia	Ethiopia
Gabon	Gabon	Gabon	Gabon
Gambia	Gambia	Gambia	Gambia
Ghana	Ghana	Ghana	Ghana
Greece	Greece	Greece	Greece
Grenada	Grenada	Grenada	Grenada
Guatemala	Guatemala		
Guinea	Guinea	Guinea	Guinea
Guyana	Guyana	Guyana	Guyana
Haiti	Haiti	Haiti	Haiti
Honduras	Honduras	Honduras	Honduras
India	India	India	India
Indonesia	Indonesia	Indonesia	Indonesia
Iran	Iran	Iran	Iran
Israel	Israel	Israel	Israel
Ivory Coast	Ivory Coast	Ivory Coast	Ivory Coast
Jamaica	Jamaica	Jamaica	Jamaica
Jordan	Jordan	Jordan	Jordan
Kenya	Kenya	Kenya	Kenya
Korea	Korea	Korea	Korea
Laos	Laos	Laos	Laos
Lesotho	Lesotho	Lesotho	Lesotho
Liberia	Liberia	Liberia	Liberia
Malagasy	Malagasy	Malagasy	Malagasy
Malawi	Malawi	Malawi	Malawi
Malaysia	Malaysia	Malaysia	Malaysia
Mali	Mali	Mali	Mali
Malta	Malta	Malta	Malta
Mauritania	Mauritania	Mauritania	Mauritania

See footnotes at end of table.

APPENDIX

Appendix A.—OPIC Country List—Investment Insurance and Finance Program

The OPIC Investment Insurance and Finance Programs are available, as of June 1, 1973, or may become available again, in the following listed less-developed countries and semi-independent states, as noted.

OPIC COUNTRY LIST—INVESTMENT INSURANCE AND FINANCE PROGRAM

1. Investment insurance			2. Finance
Convertibility	Expropriation	War, revolution, and insurrection	Extended risk
Afghanistan	Afghanistan	Afghanistan (war only)	
Antigua	Antigua	Antigua	Antigua
Argentina			
Barbados	Barbados	Barbados	Barbados
Bolivia	Bolivia	Bolivia	Bolivia
Botswana	Botswana	Botswana	Botswana
Brazil	Brazil	Brazil	Brazil
British Honduras	British Honduras	British Honduras	British Honduras
Burundi	Burundi	Burundi	Burundi
Cameroon	Cameroon	Cameroon	Cameroon
Central African Republic	Central African Republic	Central African Republic	Central African Republic
Ceylon	Ceylon	Ceylon	Ceylon
Chad	Chad	Chad	Chad
China (Taiwan)	China (Taiwan)	China (Taiwan)	China (Taiwan)
Colombia [2]	Colombia [2]	Colombia [2]	Colombia [2]
Costa Rica	Costa Rica	Costa Rica	Costa Rica
Cyprus [2]	Cyprus [2]	Cyprus [2]	Cyprus [2]
Dahomey	Dahomey	Dahomey	Dahomey
Dominica	Dominica	Dominica	Dominica
Dominican Republic	Dominican Republic	Dominican Republic	Dominican Republic
Ecuador [1]	Ecuador [1]	Ecuador [1]	Ecuador [1]
Egypt [2]	Egypt [2]	Egypt [2]	Egypt [2]
El Salvador	El Salvador		
Ethiopia	Ethiopia	Ethiopia	Ethiopia
Gabon	Gabon	Gabon	Gabon
Gambia	Gambia	Gambia	Gambia
Ghana	Ghana	Ghana	Ghana
Greece	Greece	Greece	Greece
Grenada	Grenada	Grenada	Grenada
Guatemala	Guatemala		
Guinea	Guinea	Guinea	Guinea
Guyana	Guyana	Guyana	Guyana
Haiti	Haiti	Haiti	Haiti
Honduras	Honduras	Honduras	Honduras
India	India	India	India
Indonesia	Indonesia	Indonesia	Indonesia
Iran	Iran	Iran	Iran
Israel	Israel	Israel	Israel
Ivory Coast	Ivory Coast	Ivory Coast	Ivory Coast
Jamaica	Jamaica	Jamaica	Jamaica
Jordan	Jordan	Jordan	Jordan
Kenya	Kenya	Kenya	Kenya
Korea	Korea	Korea	Korea
Laos	Laos	Laos	Laos
Lesotho	Lesotho	Lesotho	Lesotho
Liberia	Liberia	Liberia	Liberia
Malagasy	Malagasy	Malagasy	Malagasy
Malawi	Malawi	Malawi	Malawi
Malaysia	Malaysia	Malaysia	Malaysia
Mali	Mali	Mali	Mali
Malta	Malta	Malta	Malta
Mauritania	Mauritania	Mauritania	Mauritania

See footnotes at end of table.

OPIC COUNTRY LIST—INVESTMENT INSURANCE AND FINANCE PROGRAM—Continued

1. Investment insurance			2. Finance
Convertibility	Expropriation	War, revolution, and insurrection	Extended risk
Mauritius	Mauritius	Mauritius	Mauritius
Morocco	Morocco	Morocco	Morocco
Nepal	Nepal	Nepal	Nepal
Nicaragua	Nicaragua	Nicaragua	Nicaragua
Niger	Niger	Niger	Niger
Nigeria [1]	Nigeria [1]		
Pakistan	Pakistan	Pakistan	Pakistan
Panama	Panama	Panama (war only)	
Paraguay	Paraguay	Paraguay	Paraguay
Philippines	Philippines	Philippines	Philippines
Romania	Romania	Romania	Romania
Rwanda	Rwanda	Rwanda	Rwanda
St. Christ.-Nevis-Ang.	St. Christ.-Nevis-Ang.	St. Christ.-Nevis:Ang.	St. Christ.-Nevis-Ang.
St. Lucia	St. Lucia	St. Lucia	St. Lucia
St. Vincent	St. Vincent	St. Vincent	St. Vincent
Senegal	Senegal	Senegal	Senegal
Sierra Leone	Sierra Leone	Sierra Leone	Sierra Leone
Singapore	Singapore	Singapore	Singapore
Somali Republic [2]	Somali Republic [2]	Somali Republic [2]	Somali Republic [2]
Sudan [1]	Sudan [1]	Sudan [1]	Sudan [1]
Swaziland	Swaziland	Swaziland	Swaziland
Tanzania (excluding Zanzibar)	Tanzania (excluding Zanzibar)	Tanzania (excluding Zanzibar)	Tanzania (excluding Zanzibar)
Thailand	Thailand	Thailand	Thailand
Togo	Togo	Togo	Togo
Trinidad-Tobago	Trinidad-Tobago	Trinidad-Tobago	Trinidad-Tobago
Tunisia	Tunisia	Tunisia	Tunisia
Turkey	Turkey	Turkey	Turkey
Uganda [1]	Uganda [1]	Uganda [1]	Uganda [1]
Upper Volta	Upper Volta	Upper Volta	Upper Volta
Venezuela [2]	Venezuela [2]	Venezuela [2]	Venezuela [2]
Vietnam [1]	Vietnam [1]	Vietnam [1]	Vietnam [1]
Western Samoa	Western Samoa	Western Samoa	Western Samoa
Yemen (Sanaa)	Yemen (Sanaa)	Yemen (Sanaa)	Yemen (Sanaa)
Yugoslavia	Yugoslavia	Yugoslavia	Yugoslavia
Zaire	Zaire	Zaire	Zaire
Zambia	Zambia	Zambia	Zambia

[1] Contracts not being issued at this time.
[2] Programs currently inoperative for legal or administrative reasons.

Note: Economically developed countries are excluded from the OPIC Investment Incentive programs. Investment insurance against inconvertibility and expropriation is available for some of the underdeveloped dependencies of France, the Netherlands, Portugal, and the United Kingdom not listed above.

Appendix B.—OPIC Resolutions of the Board of Directors
As of May 21, 1973

	Number of resolution
Administration:	
(*a*) Audit:	
Audit procedures; establishment	BDR(71)32
Audit procedures and related activities (annex)	BDR(71)52
(*b*) Budget:	
Cancelled: superseded by BDR(71)64 (limited official use)	BDR(71)60
Budget for fiscal year 1973	BDR(71)61
Appropriation Request for fiscal year 1973; amendment (confidential)	BDR(71)64
Appropriation request for fiscal year 1974	BDR(72)37
Budget for fiscal year 1974	BDR(72)44
(*c*) Legislation: Legislative plans calendar year 1973	BDR(72)48
(*d*) Capital:	
Paid in capital: acceptance by OPIC	BDR(71)2
Paid in capital; call for	BDR(71)33
Claims:	
Anaconda (Chile) settlement	BDR(72)38
Kennecott (Chile) settlement	BDR(72)45
Delegation of authority	BDR(72)49
Kennecott (Chile) settlement	BDR(72)50
I.T.T. (Chile) settlement	BDR(73)9
Community credit guaranty program:	
Criteria for loan eligibility	BDR(71)9
Country implementation: Ecuador	BDR(71)19
Country implementation: Guyana	BDR(71)20
Ltd. Off. Use:	
Country implementation: selection of countries	BDR(71)31
Country implementation: Paraguay	BDR(71)70
Finance (includes policy-guidelines):	
Criteria for finance-guaranty projects to be approved by Board of Directors	BDR(71)6
Criteria for finance-dollar loans projects to be approved by Board of Directors	BDR(71)7
Criteria for finance-foreign currency loans projects to be approved by Board of Directors	BDRJ(71)8
Flexible pricing of guaranteed loans	BDR(71)30
Purposes/eligibility-finance/guaranty of loans (annex)	BDR(71)39
Purposes/eligibility-finance/guaranty of equity (annex)	BDR(71)40
Purposes/eligibility-finance/direct investment fund (annex)	BDR(71)41
Purposes/eligibility-finance/excess currency loan (annex)	BDR(71)59
Promotion of investment in Botswana, Lesotho and Swaziland	BDR(71)68
Delegation of finance authority DIF and guaranty projects	BDR(72)32
Delegation of finance authority DIF and guaranty projects	BDR(72)33
Insurance (includes policy-guidelines):	
Criteria for insurance projects to be approved by the Board of Directors	BDR(71)5
Country concentration criteria for calender year—1971	BDR(71)17
Large or sensitive projects (annex)	BDR(71)18
Fees for investment insurance	BDR(71)23
Acquisition of existing shares of a foreign enterprise	BDR(71)27

	Number of resolution
Insurance (includes policy-guidelines)—Continued	
Israel: war risks (limited official use)	BDR(71)28
Alternative large or sensitive projects (annex)	BDR(71)67
Reinsurance	BDR(71)69
Cancelled: superseded by BDR(72)19	BDR(72)4
Cancelled: superseded by BDR(72)20	BDR(72)11
Reinsurance status report	BDR(72)12
Construction project insurance	BDR(72)19
Country concentration criteria for calender year 1972 (annex) (limited official use)	BDR(72)20
Fees: restoration	BDR(72)27
Loan investment: new form	BDR(72)40
Insurance premium rates (multiple)	BDR(72)47
International association of investment insurers: establishment approved	BDR(73)4
Reinsurance	BDR(73)6
Country concentration criteria for calender year 1973 (annex)	BDR(73)15
Policy-guidelines (applicable to all programs of OPIC, including insurance and finance):	
Petroleum exploration	BDR(71)15
Vietnam: program implementation (limited official use)	BDR(71)16
Vietnam: (deferral) (limited official use)	BDR(71)44
Definition of term "policy-guidelines"	BDR(71)26
Procurement requirements (balance of payments) (annex)	BDR(71)29
Runaway industries (annex)	BDR(71)37
Textiles (annex)	BDR(71)38
Developmental criteria and implementation	BDR(71)42
Agriculture (annex)	BDR(71)51
Projects involving military sales (annex)	BDR(71)58
Environmental considerations (annex)	BDR(71)66
Vietnam/Laos: program implementation (limited official use)	BDR(73)5
Projects—finance:	
Korea Nylon Co., Limited (Korea)	BRD(71)14
Intercontinental Hotels Corp. (Brazil)	BDR(71)25
ADELA (Latin America)	BDR(71)35
PICA (Asia)	BDR(71)36
Korea Capital Corp. (Korea)	BDR(71)47
Marinduque Mining and Industrial Corp. (Philippines)	BDR(71)48
P. T United Coconut (Indonesia)	BDR(71)49
Owens-Corning Fiberglas (Brazil)	BDR(71)50
P. T. Daralon Synthetic Fiber Manufacturing Corp. (Indonesia)	BDR(71)71
Tagum Agricultural Development Co. United Fruit Co. (Philippines)	BDR(71)72
Indian Motorcycle Co. (Taiwan)	BDR(72)3
Seaboard Overseas Ltd. (Africa)	BDR(72)8
Cancelled: Superseded by DBR(72)18	BDR(72)9
Habitation Leclerc Ltd—(Haiti)	BDR(72)13
Shin Han Valve Industrial Co., Limited (Korea)	BDR(72)14
Companhia Atlantic de Petroleo (CAPSA) (Brazil)	BDR(72)15
P. T. Dresser Magcobar Indonesia (Indonesia)	BDR(72)16
P. T. Kayan River Timber Products (Indonesia)	BDR(72)17
Cargill Agricola, S.A. (Brazil)	BDR(72)18
Olinkraft Celulose E. Papel Ltda. (Olin Ltda.) (Brazil)	BDR(72)22
Companhia de Papeis (COPA) (Brazil)	BDR(72)23
TAW International Leasing Corp. (Africa) Phase II	BDR(72)24
Korea Tuna Industries, Inc. (Korea)	BDR(72)28
Sunbeam Do Brasil Electrometalurgica, Ltda. (Brazil)	BDR(72)29
Cupuava Carbonos Industriais, Ltda. S.A. (Brazil)	BDR(72)30
TAW International Leasing Phase III (Africa)	BDR(72)41
Ghana Tuna Fishing Development Co., Ltd. (Ghana)	BDR(73)7

	Number of resolution
Projects—Insurance:	
Gulf Oil/Korea Lubricants Co. (Korea)	BDR(71)12
Gulf Oil/Korea Oil Corp. (Korea)	BDR(71)13
American Metal Climax (Botswana)	BDR(71)34
General Telephone and Electronics Int. (Israel) (limited official use)	BDR(71)46
General Telephone and Electronics (Israel); Amendment	BDR(71)57
First Pennsylvania Bank (Israel)	BDR(71)65
Commercial Credit Int. Inc. (Israel)	BDR(72)10
Chrysler Corporation (Brazil)	BDR(72)25
Unoco Ltda. (Korea)	BDR(72)31
General Telephone and Electronics (Israel)	BDR(72)34
Weyerhaeuser (Far East) Ltd (Indonesia)	BDR(72)35
Page Communication Engineers, Inc. (Indonesia)	BDR(72)36
Mobil Oil Corp.—(Singapore)	BDR(72)42
Philippine Geothermal Inc. (Philippines)	BDR(73)18
Reserves:	
Reserves to guaranty and insurance: allocation	BDR(71)10
Reserves to insurance: allocation	BDR(71)56
Reserves to guaranty and insurance: allocation	BDR(72)7
Reserves to insurance: allocation	BDR(72)43
Reserves to guaranty and insurance: allocation	BDR(73)16
Claims related assets: allocation	BDR(73)17
Miscellaneous:	
(a) Board Meetings:	
Meetings—adoption—dates (February, March, April)	BDR(71)1
Meetings—adoption—changes in date (April)	BDR(71)11
Meetings—adoption—dates (May, June, July)	BDR(71)24
Meetings—adoption—dates (September, October, December)	BDR(71)45
(b) Delegation: transfer and assumption of AID obligations, rules and regulations:	
Transfer of obligations under title IV from AID to OPIC and acceptance by OPIC thereof	BDR(71)3
Assumption by OPIC of AID general policies and AID administrative rules and regulations	BDR(71)4
(c) Management:	
Corporate seal: approval (annex)	BDR(72)39
Bylaws: amended	BDR(73)14

Appendix C.—OPIC-Type Programs in Germany, France, Japan, Sweden, and the United Kingdom

The Federal Republic of Germany[1,2]

I. BACKGROUND

Since 1955 the German Government has been engaging extensively in multilateral and bilateral aid programs, systematically encouraging private investment in less-developed countries, and taking a number of special steps to overcome obstacles to the outflow of private investment which had existed in the early postwar years, when German energies were concentrated on reconstruction and the winning of markets in industrialized countries. By 1970 the German Federal Republic was devoting 0.88 percent of its GNP to the net outflow of official and private German resources to developing countries.[3]

As part of this program the German Government, by the end of 1971, has signed bilateral agreements with 39 developing countries for the protection and promotion of German direct investment. These agreements assured German investors of equitable and nondiscriminatory treatment and promised protection against expropriation without compensation. The treaties illustrate the efforts which the German Government has devoted to the encouragement of private investment abroad. In addition the Government established one of the earliest schemes for insurance against political risks for private firms investing in less-developed countries and provided government financing for approved development enterprises.

II. STRUCTURE OF GERMAN OPIC-TYPE PROGRAMS

A. Insurance Guaranties

1. Administrative organization

The German private investment insurance scheme was established in 1960 and further expanded by the budget laws of 1963 and 1964. A private body acting as a Government agent, the Deutsche Revisions-und Treuhand AG, administers the program.

2. Eligibility

The Deutsche Revisions-und Treuhand AG accepts applications for insurance from all German firms; final approval by an Interministerial Committee under the chairmanship of the Ministry of Economics is required. Although projects in any part of the world are eligible, in practice insurance is almost entirely limited to investments in developing countries with which Germany has concluded an investment protection agreement. Projects are judged on the basis of the effect of the investment upon the development of the host country as well as upon the German economy.

3. Coverage

The scheme covers three types of direct investment: equity investments, loans, and advances to subsidiaries. Trade credits and financial loans are excluded. The maximum coverage is 95 percent (90 percent until February 1970) of the value of the capital investment in the cases of losses incurred through expropriation, war, and restrictions on remittances. The normal life of a guaranty is 15 years,

---

[1] Prepared by Edward T. Lampson, analyst in European affairs.

[2] This section is based chiefly on the comprehensive study of OECD members' plans for encouraging and protecting investment in less-developed countries: OECD. Investing in Developing Countries, Paris, Organisation for Economic Cooperation and Development [August 1972] pp. 9-23, 51-58. The German Embassy contributed some additional material.

[3] Martin, Edward, Development Assistance; 1972 review of the efforts. and policies of the members of the Development Assistance Committee. Paris, Organisation for Economic Co-operation and Development, 1972. p. 225.

but it may be extended up to 20 years in exceptional cases. Principal and reinvested earnings up to 150 percent of the original investment are included. Coverage of remitted earnings is offered to the extent of 8 percent of capital invested per annum for up to 3 years.

4. Premiums and fees

Both an initial inscription fee and an annual guaranty fee are charged. The initial fee amounts to 0.1 percent for amounts up to DM 10 million and 0.05 percent for amounts exceeding DM 10 million but only up to a maximum fee of DM 20,000. The annual fee has been reduced to the current rate of 0.5 percent of the current maximum guaranty amount.

B. Financing Programs (Including Commercial Risk Guaranties)

The Deutsche Revisions-und Treuhand AG does not administer a direct investment fund as does OPIC. This function is carried on by other agencies. In 1962 the German Government created the German Development Co. (Deutsche Entwicklungsgesellschaft—DEG) to stimulate private investment in developing countries. It is a nonprofit organization operating as a commercial company. The Government provides the initial capital and is represented on the DEG board of directors but does not take part in the selection of individual projects. European Recovery Program counterpart funds are also used by the Government to assist small- and middle-sized German firms who wish to invest abroad in developing projects.

The DEG prefers partnership arrangements involving a German partner, a partner of the developing country, and partners from other industrial countries belonging to the European Economic Community with the German partner undertaking substantial managerial and technical responsibilities. The DEG usually contributes its financing in the form of equity participation or loans with equity features. Funds are not tied to the procurement of goods or services in Germany.

Private untied financial credits approved for special purposes by the German Government can receive Government guaranties up to 90 percent of the credit against both political and commercial risks under a separate German guaranty scheme. These credits must also be judged "worthy of promotion" (förderungswürdig). The annual cost of the insurance is 0.75 percent of the outstanding credit covered.

C. Investment Information and Promotion Activities

The German Government has also encouraged the establishment of a number of investment advisory services to help small- and medium-sized firms to open branches in developing countries. The most important of these agencies are the Federal Agency for Foreign Trade Information and the German Foundation for Developing Countries. In addition there are a number of private bodies which disseminate information on investment possibilities. The German budget also makes provision for the financing of preinvestment surveys.

III. IMPLEMENTATION

A. Relationship to the German Government's Foreign Assistance Program

The programs under discussion are closely related to the German Government's general program for promoting the development of less-developed countries. Thus applications for insurance guaranties are all reviewed by an Interministerial, Committee under the chairmanship of the Ministry of Economics. The German Government is represented on the board of directors of the DEG.

B. Private Investment Activity Abroad

1. Insurance of private investment

"As of 31 December 1971, 1,489 applications totaling about DM 3,017 million (covering capital and revenue risk) had been submitted. Out of these 905 applications amounting to DM 1,509 million had been approved and 254 applications amounting to DM 698 million had been withdrawn. 312 applications amounting to DM 631 million were still under review. Only 18 applications amounting to DM 118 million had been rejected."[4]

---

[4] Investing in Developing Countries, op. cit., p. 53.

The geographic breakdown of outstanding guaranties as of 31, December 1971, is as follows:

	Percent		*Percent*
Africa	41. 9	Asia	17. 3
Latin America	31. 6	Europe	9. 2

(This distribution differs sharply from the pattern of total German direct private investment abroad of which Latin America received 53 percent, Africa 18 percent, Europe 21 percent, and Asia 9 percent.)[5]

2. Financing[6]

The DEG has concentrated its activities on the establishment or expansion of small- and medium-sized enterprises in the form of joint ventures in the industrial, agricultural, and tourism sectors. It does not normally provide more than half the total financing required. Projects must be self-liquidating and must benefit the economic development of the host country. Special emphasis is placed on private investment in the form of joint ventures, transfers of managerial and technological know-how, processing of local raw materials, improvement of balance of payments and creation of permanent jobs.

The authorized capital of the DEG is DM 175 million. By the end of the first quarter of 1972, DM 138.5 million had been paid up. At the end of 1971, the total commitments made by the DEG had reached DM 169 million. These commitments are spread over 115 projects representing a total investment of more than DM 950 million. Present commitments range between DM 80,000 and DM 16 million.

IV. EVALUATION

The OECD report on investing in developing countries reported in August 1972 that the German programs "are growing rapidly."[7] However, statistics supplied by the German Embassy indicate that, despite such progress, official and private German contributions to developing countries and multinational agencies dropped from the 1969 high of DM 7,951 million to DM 6,308 million in 1971. Of these amounts the private sector accounted for DM 5,883 in 1969 and DM 3,172 in 1971.[8]

France[9]

I. BACKGROUND

Historic French colonial ties and remnants of a mercantilist economic tradition have led France to seek maintenance of close relations with the former French colonies and territories. As a result, substantial amounts of funds have continued to flow in the form of official foreign aid and private investment to these areas. French official development assistance in 1970 totaled $951 million, and French private capital flow to developing countries amounted to $827 million. The private capital figure includes $523.4 million in private investment and lending, net, and $303.6 million in private export credits, net.[10] For 1970, official assistance was 0.68 percent of GNP, and private investment 0.47 percent.

The private investment support and official aid programs are largely the result of executive initiative and are strongly influenced by politico-economic considerations.

In the 1960's France felt constrained to curtail its aid program, make it more selective, and use it to augment French export interests, but no coherent foreign private investment policy emerged.[11] Exacerbated by the Algerian experience, a debate over aid policy ran from 1961 to 1965. One view was expressed in an official commission study (the 1963 Rapport Jeanneney), which disfavored capital exports and saw private overseas investment chiefly as a means of escaping domestic restrictions and regulations. An opposing view was reflected in administrative and fiscal policy, which facilitated investment in the franc area. Against

---

[5] Ibid. p. 54.
[6] This section is based on Ibid., pp. 57–58.
[7] Ibid., p. 11.
[8] Statistisches Bundesamt. Bevölkerung und Wirtschaft, 1872–1972. Verlag W. Kohlhammer [October 1972] p. 270.
[9] Prepared by Carlo La Porta, analyst in international relations.
[10] Martin, Edwin M. Development Assistance; 1971 review of the efforts and policies of members of the development assistance committee. Paris, Organisation for Economic Cooperation and Development, 1971. pp. 1964–171.
[11] Durand-Reville, Luc. Les Investissements Privés au Service du Tiers Monde. Paris, France-Empire [1970] p. 68.

stubborn opposition within the Government, a guaranty arrangement was announced in 1967, and other steps followed. But only in 1971 did the Government allow practically free investment inside and outside the franc area.

II. STRUCTURE

A. Insurance Guaranties

1. Administration

The French guaranty schemes are not organized under one agency and offer varied types of investment coverage. Of two major programs, one is administered by COFACE (Compagnie Francaise de l'Assurance pour le Commerce Exterieur) and one by CCCE (Caisse Centrale de Coopération Economique).

2. Coverage

COFACE since 1958 has guaranteed income for shareholders of semi-public companies, such as La Société de Developement des Regions Sahariennes, which invest in developing financing. Pursuant to a decree of April 12, 1967, COFACE also insures against political and transfer risk those French private overseas loans or credits that promote French exports. In 1970 COFACE was authorized to cover commercial investment calculated to expand French exports. These provisions were available for 14 countries only, and were effectively limited to the franc area until 1971.[12]

In January 1971 a new program began when the Caisse Centrale de Cooperation Economique, the official aid agency, made available a more general risk insurance against expropriation, war, and revolution, for investment in developing countries. The CCCE administers the program with the participation and supervision of the Treasury and of the Economics and Finance Ministry.

3. Eligibility

The program was at first limited to the 14 African countries (including Malagasy) but has since been expanded to other countries which have signed bilateral agreements with France. Investment in oil, agriculture and real estate is excluded, as is portfolio investment. A project must be judged to aid the development of the French economy as well as to be of high priority for the recipient state's development.

4. Terms and fees

The amount covered is expressed in francs only and guaranteed up to 75 percent if there is spending in the local economy, or official French aid participation. In other cases, 90 percent of the investment is insured. These restrictions are similar to those of the COFACE policies described above. The CCCE coverage is for 15 years, with the amount covered reduced 20 percent in each of the last 5 years. The fee is 0.8 percent.

B. Financing Programs

French aid to private investment is linked with official French aid to developing countries through the Caisse Centrale, which offers loans to private investors. Funded by the national treasury, CCCE from 1946 to 1970 had contributed $273 million to private investors; and the 1970 figure alone was $10 million, so that by 1970 official disbursements were being nearly matched by private investment. The majority of the funds went into mining and manufacturing.

CCCE arrangements for private overseas investment are made often through local banks or development banks for a period of 6–10 years at 6-percent interest. The CCCE will also hold equity in development banks, but to a limited degree only.

Other sources of credits for investors are available from the Government. Regular Crédit National long-term loans are made for 10 to 15 years at 7.25 percent interest.[13] Also, UFINEX (Union pour le Financement de l'Expansion du Commerce International) can provide 40 to 75 percent of private investment funds needed for projects with long-term loan requirements. SETELIX (Société d'Etude de d'Investissement pour L'Exportation) also provides funds for export-connected overseas investment. It provides up to 50 percent of the capital but it must be a guaranteed insured loan. Medium-term loans are also available from the Crédit National. They may cover up to 75 percent of an investment program, run from 2 to 7 years, and are granted at a rate of 8.5 to 9.15 percent.

---

[12] The 14 are: Cameroon, Central Africa, Chad, Congo-Brazzaville, Dahomey, Gabon, Ivory Coast, Malagasy Republic, Mali Mauritania, Niger, Senegal, Togo, Upper Volta. Corbett, Edward M. The French Presence in Black Africa. Washington, D.C., Black Orpheus Press, Inc. [1972] p. 126.

[13] Durand-Reville, op. cit., p. 37.

The FAC (Fonds d'Aide et de Coopération) is yet another agency involved in development assistance. It approves participation of and gives financial aid to public and semipublic organizations which participate in private companies investing in developing countries. It also has a direct role in investment by offering soft loans for long-term investment in infrastructure-building projects. These loans are at 3.5 percent and are not repayable until all other loans are repaid by the investing company.

C. Investment Information and Promotion

As part of its investment promotion program, the FAC also finances investment research studies and helps promote investment in this manner. It can pay for 50 percent of market research studies in the African and Malagasy states. A separate body, the Secretariat of State for Cooperation, has a consultative committee that examines the prospects for investment projects. This agency brings together the public and private sectors to decide what should be promoted in the franc zone states.

III. IMPLEMENTATION AND EVALUATION

In the late 1960's more than 59 percent of French private overseas investment went to LDC's, chiefly to the 14 Afro-Malagasy states, and to the overseas departments and territories of France. French private investment is very attuned to political stability and high rentability. The Government's approach is based on perception of France's economic development requirements. Often, development projects require construction of basic infrastructure, except for some in the more rapidly developing states such as the Ivory Coast, where commercial investment is more significant. This infrastructure investment orientation is reflected in the fact that French heavy construction firms did $200 million in business in 1968.[14] Private investment will be forced into these kinds of projects as long as there is a critical shortage of technologically skilled African manpower, and African concern over the strong French influence in their countries.

In sum, the level of French private overseas investment cannot be discounted in its importance to the recipient states, but it is the opinion of some observers that the whole aid program is rather stagnant. The guaranty problem has evolved only after much hesitation and there remains a basic Government suspicion about capital flows. The private overseas investment programs are tightly tied to French political and economic interests, and the character of the French aid program is mostly bilateral and political, reflecting its domination by the Foreign Affairs Ministry.

JAPAN [15]

I. BACKGROUND

Japan's foreign private investments, which are closely related to its foreign trade and economic assistance programs, are growing in the LDC's at an average annual rate of 25 percent compared to the annual growth rate of U.S. private investment in LDC's of 5 to 7 percent. Japan has pledged to move from its present business-oriented overseas economic cooperation program to one which takes into greater consideration the developmental aspects of the investments for the recipient countries.

Although investment insurance programs were created as early as 1956 (Overseas Investment Principal Insurance) and 1957 (Overseas Investment Profits Insurance), very limited overseas investments were made by the Japanese until after the business boom (1966 through 1970) and until after the Government provided incentives for private investments. Government subsidies, until 1970, concentrated on export financing.

II. STRUCTURE OF JAPANESE OPIC-TYPE PROGRAM [16]

A. Insurance Guaranties

1. Administration

In May 1970, the Japanese Government created the Overseas Investment Scheme administered by the Ministry of Trade and Industry—MITI, which merged the two former programs and provided easier terms for overseas invest-

---

[14] Corbett, op. cit., p. 95.

[15] Prepared by Marjorie Niehaus, analyst in international relations.

[16] Unless otherwise noted, the information in this section is based on the following source: OECD. Investing in Developing Countries. Paris, Organization for Economic Co-operation and Development [1972] p. 61-65.

ments. Japan's outstanding investments in foreign countries grew by $913 million for fiscal year 1970, and by more than $1,000 million in ficsal year 1971, the same year the ceiling for overseas direct investments was removed. According to the estimate by the Industrial Structure Council, Japan's outstanding investments in foreign countries will reach $25,779 million in 1980, or just about one-third of the book value of U.S. foreign investment today.[17]

2. Eligibility

Any Japanese company or individual is eligible for investment insurance. The investments must be new (the term "new" includes expansion programs), and they must benefit Japan's international economic relations. Insurance is offered for investments anywhere in the world if the approval of the host country is acquired. The effect of the investment on the host country's development is to be considered before insurance is extended.

3. Coverage

The Overseas Investment Insurance Scheme offers coverage for expropriation, war, and transfer. The types of direct investments covered are equity and loans of 5 years or more. Coverage also applies to portfolio investments in the form of long-term loans to a non-Japanese enterprise when the financing is for the development of mineral resources which are to be imported by Japan. In the case of mineral resources, the "credit risk" is also extended.

The geographical distribution of investments at the end of 1971 were as follows: Asia 93.7 percent, Oceania 2.7 percent, Africa 1.8 percent, Latin America 1.8 percent. The breakdown according to sector investment showed 53.2 percent in manufacturing, 39.3 percent in mining, 6.5 percent in agriculture and fishery, and 1 percent in others.

The Scheme covers the principal (100 percent) and the interest up to 10 percent per annum of the principal. Although the duration of coverage is usually 15 years, the terms are relative to each case. The percentage of loss payable is 90 percent of the original investment amount, or 80 percent in the case of a "credit risk." (The percentage of loss payable is based on the estimated worth at the time of loss if that figure is smaller.) The annual premium rates are .55 percent for the three political risks, which are normally provided for collectively, and .70 percent when the policy also covers the "credit risk."

B. Fiscal Incentives and Financing Programs

1. Tax deferrals

Any Japanese company investing capital in developing countries between April 1, 1964, and March 31, 1974, can transfer to a loss reserve for 5 years an amount equal to half the total amount of a new investment. The company can also deduct this same amount when determining its taxable income.

2. International agreements

(a) Double taxation agreements and agreements to extend tax credits have been concluded by Japan with various countries: India and Pakistan (1960), Thailand (1963), Brazil and Ceylon (1967), Republic of Korea and Malaysia (revised) (1970), Zambia and Singapore (revised) (1971).

(b) In 1967, Japan ratified the IBRD Convention on the Settlement of Investment Disputes.

3. Export-Import Bank of Japan

The extension of buyer's credit for the export of Japanese capital equipment is the main object of the Japanese Eximbank, a government financing institution which was established in 1950. The bank also provides long-term loans for the establishment of businesses abroad either by Japanese alone or in cooperation with nationals of the host country.

4. The Overseas Economic Cooperation Fund (OECF) [18]

The OECF is a Government financing institution which was established in March 1961, for the purpose of providing loans and investments to developing countries. Since its foundation, the scope of OECF has been broadened in two ways: (a) On June 22, 1965, the OECF, which had provided loans only to Japanese enterprises in developing countries, was given the authority to provide loans directly to the governments and the governmental agencies of the developing countries. Today direct loans to the governments of the LDC's is the main

---

[17] Japan's Overseas Investments. Oriental Economist, vol. 40, June 1972: 14-21.

[18] OECF. The Overseas Economic Cooperation Fund: Its Role and Activities. Tokyo, The Overseas Economic Cooperation Fund. [1972] 40 p.

business of the OECF. (b) In May 1968, the OECF, which had been limited to the administration of development loans, was given the authority to provide loans for the importation of Japanese products.

In order to be financed by the OECF, projects must be such as to facilitate trade between Japan and the developing country. To determine the feasibility and value of a particular potential project, the OECF also finances research investigations (general surveys, country studies, and investment opportunity studies).

OECF capital at the end of June 1972, was made up of $445.6 million from Government contributions and $255.7 million which was borrowed from the Trust Fund Bureau (postal savings and post office insurances). The interest rate for direct loans to foreign governments ranges from 3 to 4.5 percent and the period of repayment is generally 20 years; for loans to Japanese enterprises the interest rate ranges from 4 to 5.5 percent and the period of repayment is approximately 10 years. Since 1965, the OECF has concluded loan agreements with the governments and governmental agencies of the Republic of China, Indonesia, Singapore, Philippines, Turkey, Vietnam, Thailand, Afghanistan, Burma, the Khmer Republic, and Malaysia.

5. The Japan Petroleum Development Corp. (JPDC)

This government corporation provides risk capital to Japanese corporations or Japanese participants in joint exploration ventures. JPDC guarantees long-term investment loans by Japanes financial institutions for the development and operation of oil fields. Geological surveys are also financed by JPDC.

6. The Metallic Minerals Exploration Agency of Japan

This government corporation makes loans covering 60 to 70 percent of the cost of exploration by Japanese mining companies. The Agency also guarantees loans for the development and operation of mines outside Japan and subsidizes geological surveys.

7. The Overseas Mineral Resources Development Company

This private company was originally established in September 1962, by the Japanese nonferrous metal companies. However, the OECF has invested in the company because of the organization's difficulty in securing sufficient capital among the Japanese private companies themselves.[19]

8. The Japan Overseas Development Corporation

A semi-public corporation which finances the development of primary products.

9. The Japanese Government also subsidizes various private technical assistance activities which indirectly encourage investments in developing countries.

C. Investment Information and Promotion Activities

Through their overseas investment consulting offices, both the Export-Import Bank and the Overseas Economic Cooperation Fund offer investment information and consulting services. The Japan External Trade Organization (JETRO), a semiofficial body which exists for the promotion of Japanese foreign trade, provides general information on the investment climate. Another semiofficial body, the Institute of Developing Economies, conducts economic analyses of the developing countries, and also offers a reference service on the subject of overseas investments.

III. IMPLEMENTATION

Japan's foreign investment assistance program consists of providing loans to foreign governments for the purchase of Japanese products, and in providing investment incentives (insurance, tax credits) to Japanese enterprises for the acceleration of Japanese international trade. To maintain a prosperous economy, Japan makes use of foreign natural resources and low-cost foreign labor. A growing antipollution attitude within Japan is another motive for the establishment of foreign refining plants by Japanese companies. Japan's overseas assistance, until now, therefore, has focused on quantitative expansion to the detriment of a qualitative consideration for the interests of the aid-receiving countries.

---

[19] Ibid., p. 37.

The Japanese program has not gone unnoticed by the recipient countries. The Oriental Economist reported recently that these countries view Japan's economic cooperation as a camouflaged form of export promotion.[20] For this reason the Japanese are attempting to change their exploitative image. Kiyohisa Mikanagi, director of the Economic Cooperation Bureau, announced in November 1972, that emphasis in the future will be shifted to the projects contributing to the economic development of recipient countries. The new policy proposes such measures as the abolition of tied assistance and the availability of easier assistance terms. In early December 1972, the Ministry of International Trade and Industry announed that tied loans in bilateral assistance would be abolished in principle.[21]

Premier Tanaka, in an interview with Time Magazine in May 1973,[22] pledged "more untied aid through the World Bank, the IDA, the Asian Development Bank, and the Vietnam Reconstruction Conference."

IV. EVALUATION

The overseas investment insurance programs of Japan have been successful in accelerating Japan's economic growth. However, these programs have been less successful in contributing to the growth of the economies of the recipient nations. The Japanese Government realizes that it must work to evolve a more balanced foreign assistance program—one which takes into greater consideration the developmental aspects of the investments for less developed nations.

Sweden [23]

I. BACKGROUND

As a noncolonial state, Sweden historically has not had substantial overseas private investments in less developed areas; Swedish interests have remained principally within Europe's boundaries. Sweden's neutrality and Nordic foreign policy orientation until after World War II reinforced this tendency. Consequently, Swedish "overseas" investment was confined largely to Europe, except for some large companies operating in Latin America and Africa whose product lines were matches, bearings, arms, and telephone equipment.[24]

After World War II, Sweden began to show more interest in granting aid and in investing outside Europe, and in the 1960's the flow of official aid to developing countries began to increase markedly. From 1963 to 1967 Swedish aid doubled to $59.19 million. Nearly half of that total was multilateral aid, in keeping with Sweden's neutral orientation and its perception of recipients' desires. In the late 1960's the Government pledged itself to the goal of 1 percent of GNP for foreign aid and has set fiscal 1974–75 as the target date for this achievement.[25]

As part of this emphasis on aid for developing countries, the Swedish Parliament passed legislation in 1968 providing for an investment guaranty arrangement; this was part of the foreign aid bill. The Exports Credits Guaranty Board (EKN) was given responsibility for this program, although the Swedish International Development Authority (SIDA) is the official aid program administrative arm.

II. STRUCTURE OF SWEDISH OPIC-TYPE PROGRAM

A. Insurance Guaranties

1. Administrative organization

The EKN, independent of the Foreign Office and the Swedish International Development Authority, is most closely associated with the Department of Commerce. It is actually a joint board comprised of representatives from several agencies.[26]

2. Eligibility

The EKN can insure investments to a maximum total amount of 400 million kroner (nearly $80 million). Only persons and corporations active in Sweden are

---

[20] Japan's Overseas Assistance. Oriental Economist, vol. 40, December 1972: 3.
[21] Ibid.
[22] Donovan, Hedley. Kakuei Tanaka: "The U.S. Comes First." Time, vol. 101, May 7, 1973: 35.
[23] Prepared by Carlo LaPorta, Analyst in International Relations.
[24] Runblom, Harald. Swenska Foretag I Latinamerica. Uppsala, Almquist and Wiksells [1971] p. 298
[25] Swedish International Development Authority. Swedish Development Aid. Stockholm, SIDA [Mar. 15, 1968] p. 5.
[26] This account of the EKN is based on information received from the Embassy of Sweden in Washington

eligible, and investments can only be insured in countries with which Sweden has investment agreements: Botswana, Ethiopia, India, Kenya, Lesotho, Pakistan, Sudan, Swaziland, Tanzania, Tunisia, and Zambia. Most of these countries receive official bilateral Swedish aid in addition to aid received from Sweden indirectly through multilateral aid programs. For an investment proposal to be approved for coverage, it must show that it is going to contribute to development of the host country, while the foreign company that receives the investment must conform to specified provisions concerning its labor policy.

Only direct investment or very similar transactions are eligible; portfolio investment cannot be guaranteed. The investment must be new, and can be either transfer of funds, patents, industrial property, or machinery. Furthermore, there must be a clear connection "between the investment and Swedish production, export or other corresponding Swedish interests." Considerable weight is given to the amount of control in the administration of the foreign company which the Swedish investor will exercise.

3. Coverage

The types of risk covered are the standard ones of expropriation, calamity, and transfer. Commercial loss such as business risk losses or loss through the negligence of the investor is not covered. The EKN is final judge for what risks will be covered, and can modify standard coverage provisions to fit special cases. The EKN will also include in the contract the right of inspection, as well as reporting requirements for the investor concerning operations and conditions of the foreign enterprise.

The time period for coverage is limited to 15 years, with exceptional cases allowed an extension to 20 years. The capital covered is assigned a maximum value equal to the original value at the point the investment is completed. It may then be reduced as the loan is amortized, or earnings repatriated. It may also be phased out according to terms of the guaranty contract. Distribution earnings may also be covered, but there is a maximum percentage allowed.

Total compensation, which is based on the maximum amount agreed upon for coverage and the value of the investment as determined at the time of loss, may not exceed 90 percent of the loss. Compensation already paid the investor for expropriation is deducted. In any case, the investor may not transfer his claim to the EKN unless he has already applied for remedy through local means.

4. Premiums and fees

The premium for all types of risk of 0.7 percent per year. It is calculated on the maximum amount of coverage as determined at the beginning of each year. There is a one-time payment of 0.7 percent of the initial maximum amount if distributed earnings are to be covered too. The premium may be less in cases of lessened or limited risks.

B. Financing Programs

Other Swedish incentives for private investment exist, but most are oriented towards developed countries. The EKN extends loans and credits to stimulate exports. At the end of 1971, guaranties outstanding amounted to 3 billion kroner ($670 million, current rate) in exports credits. Of that figure 35 percent was for exports to industrial countries, 25 percent for exports to the Eastern bloc, and 38 percent for those to developing countries. Risk insurance is available for these guaranties, and the commercial coverage has been increased just recently from 70 to 75 percent. Political risk compensation coverage is 90 percent.[27] (The desire to increase Swedish exports has also led to consideration of export subsidies for developing countries and consideration of instituting an OPIC-like agency similar to that in the United States.) In addition to EKN assistance, various Swedish companies qualify for government assistance in foreign investment by virtue of their membership on the Swedish Export Council.

C. Investment Information and Promotion Activities

Swedish information aids for private investors exist, although they are not grouped under one corporation-like structure such as OPIC. Over the last 10 years the foreign office has made a concerted effort to increase economic and commercial reporting from its missions to aid Swedish business concerns. In addition, trade commissioners from the Department of Commerce are placed overseas to make market investigations upon the request of potential investors. This service and similar services provided by the Department of Industry and the Academy of Science, are usually available only in developed countries. However, in the Swedish

---

[27] Ankarcrona, Klaus. Swedish-American Chamber of Commerce, New York City. Phone conversation, May 1, 1973.

diplomatic mission to the United States, there is a specific service which monitors World Bank LDC development projects and provides Swedish business concerns with information on what is available for bidding and investment.

III. IMPLEMENTATION

Until now, no application has been made for the investment insurance program.

IV. EVALUATION

It is the general impression among those most familiar with the Swedish economy that there is little interest among Swedish corporations in LDC investment, particularly in manufacturing. Public works and building construction is the most common form of Swedish aid; the Swedish-American Chamber of Commerce cannot recall any request for a Swedish company to invest in manufacturing in a developing area. Swedish corporations appear cautious when it comes to investing in risk areas and, in any case, there is seemingly little knowledge that the guaranty program even exists.[28]

Still, Swedish private overseas investment has been increasing at a large tear so that from 1962 to 1969, over $1 billion was exported from Sweden, and in 1969 alone, $300 million was invested abroad. It is clear that this investment is going to developed countries. Of Sweden's 1,806 foreign subsidiaries in 1969, 75 percent were in the EEC, Scandinavian, of EFTA countries, with the remaining 25 percent in other developed and the developing countries. In Africa, for example, there were only 32 Swedish subsidiaries, half of them in South Africa, and in Latin America there were about a dozen.[29] The attractiveness of Swedish products to more advanced economies helps explain this. Thus, in general, Swedish private investors are disinclined to invest in LDC's, and the Swedish guaranty program has failed to overcome this reluctance.

The United Kingdom [30]

I. BACKGROUND

Historically, British investment overseas, both private and governmental, provided a substantial part of the total world flow of capital to the developing world. In 1948 the governmental contribution to British overseas investment was centralized in the Commonwealth Development Corp. (CDC), established by act of Parliament "to assist in the economic development of dependent territories of the Commonwealth." [31] In 1969 the CDC was authorized "to engage in operations outside the Commonwealth." [32] One year later the British Prime Minister "pledged that Britain would do its best by 1975 to reach the UNCTAD 1 percent target for financial flows to the developing countries." [33] Private investment was counted on to provide a substantial part of these flows. In 1971 the net flow of British official and private financial resources to less developed countries amounted to 1.15 percent of the British GNP and private outflows totaled $980.1 million.[34] In that year the Government introduced "a scheme for insuring overseas investment against the noncommercial risks of war, expropriation, and restrictions on remittances." [35] The scheme came into operation in July 1972.

II. STRUCTURE OF BRITISH OPIC-TYPE PROGRAMS [36]

A. Insurance Guarantees

1. Administrative organization

A 1972 act of Parliament authorized the British Export Credits Guarantee Department (ECGD), a Government corporation which had been insuring British exporters against risks not covered by commercial insurance companies, to undertake a new program of insuring private overseas investors against noncommercial risks in approved cases.

---

[28] Ibid.
[29] Sweden Now, vol. 4, November 1970: 28.
[30] Prepared by Edward T. Lampson, analyst in European affairs.
[31] Commonwealth Development Corp. Annual Report and Statement of Accounts, Year Ended Dec. 31, 1971. P. 2.
[32] Ibid., p. 2.
[33] Foreign and Commonwealth Office and Department of Trade and Industry, British Private Investment in Developing Countries. London, Her Majesty's Stationary Office (Cmmnd 4656), April 1971, p. 3.
[34] Martin, Edwin W. Development Cooperation; 1972 review of the efforts and policies of members of the Development Assistance Committee. Paris, Organisation for Economic Cooperation and Development, December 1972. P. 225.
[35] British Command Paper 4656, op. cit., p. 5.
[36] This section is based on: OECD. Investing in Developing Countries. Paris, Organisation for Economic Cooperation and Development, August 1972, pp. 88–89.

2. Eligibility

ECGD accepts applications from all companies conducting business in Great Britain, though special conditions apply to foreign-owned firms. Investments in all overseas countries are eligible, provided the following conditions are met: (1) Investments meet British exchange control requirements (currently investment involving developing countries is not restricted); (2) the probable effect of a project on the economy of the host company is considered to justify the risks involved. (3) the investment is acceptable to the host government. (Local participation is considered a favorable factor.)

3. Coverage

The scheme covers equity investment in an overseas enterprise and loans or guaranty of loans to such an enterprise, provided the investor intends to keep his investment in the enterprise for 3 years. Substantial portfolio investment is also eligible "provided the portfolio investment comprises at least 10 percent of the total capital associated with the project and is not less than £50,000 amount." Coverage includes the initial investment contribution, remitted earnings, and retained earnings (but the total capital exceed 200 percent of the initial contribution). Loss from expropriation including "creeping expropriation," war, and restrictions of remittances are covered up to 90 percent of the insured amount of loss. An investor must pay the rate for full coverage in all cases. The maximum period of coverage is 15 years. The ECGD is initially able to assume investment insurance liabilities of up to £250 million, with provisions to increase these liabilities to £750 million.

4. Premiums and Fees

"The annual premium of an insured investment is 1 percent of the amount actually at risk during the year plus a commitment fee of 0.5 percent on any additional amount which ECDG is committed to insure in future years." [37]

B. Financing Programs (Including Commercial Risk Guaranties)

The financing function parallel to that of the OPIC is performed in the United Kingdom by the Commonwealth Development Corporation (CDC). The CDC "is empowered to undertake, either alone or in association with others, projects for the promotion and expansion of a wide range of economic enterprises, including agriculture, forestry, fisheries, mining, factories, electricity and water undertaking, transport, housing, hotels, building, and engineering." [38] The Corporation "operates on commercial lines and has a statutory obligation to pay its own way, taking 1 year with another." It is authorized by the Overseas Resources Development Act of 1969 to operate outside the Commonwealth with the approval of the Minister of Overseas Development.[39]

C. Investment Information and Promotion Activities

The Overseas Development Administration (ODA)[40] is authorized to contribute up to 50 percent of the cost of preinvestment studies but not more than £25,000 to any one study. If an investor decides to invest, he must take over the full cost of the study. The Government also takes steps to inform potential investors of the possibility of ODA financing of "basic infrastructure projects" closely associated with particular private projects which "the private investor could not himself be expected to finance." [41]

III. IMPLEMENTATION

A. Insurance

Since July 1971 the ECGD has been in close touch with investors in connection with 91 applications for coverage of new investments overseas worth 25 million. It has approved 17 out of a total of 33 firm proposals from investors. The registration fee initially required has been abolished. The first agreement under the insurance scheme involving a new investment overseas of ½ million in the food and drink industry was announced in March 1973.[42]

The breakdown of application received by ECGD is as follows:[43]

---

[37] Ibid., p. 88.
[38] Commonwealth Development Corp. Report, op. cit., p. 2.
[39] Ibid., p. 7.
[40] The ODA under the Minister of Overseas Development is charged with the development work of the Foreign and Commonwealth Office.
[41] Investing in Developing Countries, op. cit., p. 89.
[42] Trade and Industry, vol. 10, Mar. 1, 1973: 441.
[43] Ibid., p. 441.

Africa	42
Angola	2
Gabon	1
Ghana	2
Kenya	7
Mauritius	2
Malawi	1
Morocco	1
Nigeria	14
South West Africa	1
Tanzania	1
Zaire	1
Zambia	9
Asia	33
Middle East	7
Dubai	1
Iran	1
Jordan	1
Kuwait	1
Oman	2
Saudi Arabia	1
Far East	26
Hong Kong	1
India	1
Indonesia	8
Korea (South)	1
Malaysia	5
Pakistan	1
Singapore	3
Thailand	6
Oceania: Fiji	1
Europe: Yugoslavia	1
Americas	14
Barbados	1
Brazil	6
British Honduras	1
Jamaica	4
Mexico	1
Trinidad	1

B. Financing Programs

The Commonwealth Development Corp. in 1971 concentrated on the following areas in the following amounts in pounds:

The Carribbean	45, 984, 000
East Africa and Pacific Islands, Malaysia, Fiji, Hong Kong, Singapore, British Solomon Islands, Indonesia	
East Africa	40, 257, 000
Kenya, Mauritius, Seychelles, Tanzania, Uganda	
Central Africa	26, 560, 000
Malawi and Zambia	
Southern Africa	24, 775, 000
Botswana, Lesotho, Swaziland, Rhodesia	
West Africa	15, 371, 000
Ghana, Nigeria, Sierra Leone, The Gambia, Cameroon	
Other Areas	1, 547, 000
Cyprus and Gibraltar	

Of the amount invested in 1971, 52 percent was allocated to basic development (power and water, housing finance, transport), 17.8 percent to primary production (agriculture and ranching, forestry, and minerals), and 30.2 percent to commerce and industry (factories, industrial and property development companies, and hotels).[44]

Under the new authority granted in 1969, the Minister of Overseas Development authorized the CDC to operate in Cameroon, Ethiopia, Indonesia, and Thailand but no programs were reported in the 1971 report.

IV EVALUATION

A. Insurance

The ECGD investment insurance program is just getting under way. It is administered by an experienced government insurance agency with wide experience in overseas risks. It has been able to draw on the examples of the many other countries which had already set up such insurance plans. It is too early, however, to make any evaluation of its performance in view of the fact that its first policy was concluded only in March 1973.

B. Financing

The Commonwealth Development Corp. has a long and successful career as a government corporation operating upon commercial principles. It has succeeded in being a leader in overseas development programs, has pioneered numerous types of investment and has paid its own way. As stated in the CDC annual report for 1971, Mr. Robert S. McNamara "assessed CDC as 'a unique organization which has shown the way to the rest of us.' " [45]

---

[44] Summarized from Commonwealth Development Corp., Reports and Accounts, op. cit., pp. 13–18.
[45] Ibid., p. 8.

Appendix D.—Guarantee Schemes for Overseas Investment (Tabular Summary)

TABLE.—SUMMARY OF GUARANTY SCHEMES FOR OVERSEAS DIRECT INVESTMENT[1]

DAC countries,[2] name of executive agency or department	Types of risks insured: (a) expropriation risks, (b) war risks, (c) transfer risks (I)	Geographic coverage: (a) worldwide, (b) developing countries only, (c) countries having signed bilateral agreement only (II)	Type of investment covered:[3] (a) equity, (b) loans and advances, (c) licenses and royalties, (d) other (III)	Legal eligibility requirements: (a) development effect, (b) link with national export, (c) global ceiling (IV)	Coverage of principal and earnings:[4] (a) initial investment, (b) reinvested earnings, (c) remitted earnings (percent of original investment) (V)	Coverage in case of loss—basis for evaluation (VI)
Australia: Export Payments Insurance Corp. (EPIC).	(a), (b), (c)	(a)	(a), (b), (c)	(b), (c) $122,000,000	(a) 100 percent, (b) 100 percent, (c).	Financial statements.
Belgium: Office National du Ducroire	(a), (b), (c) and catastrophic risks in some cases.	(a), (c)	(a), (b)	(a), (b), (c) $18,800,000	(a), (b), (c)	Phasing out on a case-to-case basis.
Canada: Export Development Corp. (EDC).	(a), (b), (c)	(b)	(a), (b), (c)	(a) and (b), (c) $150,000,000.	(a) 100 percent, (b) 50 percent, (c) 150 percent (total cover limit: 200 percent).	Do.
Denmark: Danish International Development Agency (DANIDA).	(a), (b), (c)	(b)	(a), (b), (c)	(a), (b), (c) $70,000,000	(a) 100 percent, (b), (c) 8 percent per annum for up to 3 years.	Financial statements.
France: Caisse Centrale de Cooperation Economique.	(a), (b), (c) for capital only.	(b) But presently applicable to 14 countries only, (c) for countries other than the above.	(a) Only, in principle, (b) exceptionally long-term loans from shareholders.	(a), (b)	(a) Only	Schedule of amortization: 20 percent of the original nominal amount per year over the last 5 years of coverage.
Germany: Deutsche Revisions—und—Treuhand AG and Interministerial Board.	(a), (b), (c)	(b), (c) in principle (39 countries).	(a), (b), (c)	(a)	(a) 100 percent, (b) 50 percent, (c) 8 percent per annum for up to 3 years.	"Going concern" value not exceeding capital brought in.

Japan: [5] Ministry of International Trade and Industry (MITI).	(a), (b), (c) and credit risks in some cases.	(a)	(a), (b), (c)	(a)	(a) 100 percent, (b) 100 percent, (c) 10 percent per annum and up to 100 percent over the contract life.	Financial statements.
Netherlands: Netherlands Credit Insurance Company.	(a), (b), (c)	(b), (c) in principle	(a), (b), (c)	(a), (b)	(a) 100 percent, (b) 50 percent, (c) 8 percent per annum.	Limited amortization during last 5 years of coverage.
Norway: Institute for Export Credits Guarantees.	(a), (b), (c)	(a)	(a) or (a) and (b) together.	(a), (c) $90,000,000 (covering both export credits and investments).	(a) 100 percent, (b), (c) 7 percent per annum up to 3 years.	Fixed schedule of amortization—starts normally after 3 years.
Sweden: Swedish Export Credits Guarantee Board (EKN).	(a), (b), (c)	(b) 11 countries only	(a), (b)	(a), (c) $80,000,000	(a) 100 percent, (b), (c) 8 percent per annum of maximum coverage not exceeding 24 percent of initial amount invested.	Phasing out on a case-by-case basis.
Switzerland	(a), (b), (c) in addition insolvability or refusal to pay by local public entities.	(b) in principle	(a), (b), (c)	(a), (b), in some cases, (c) $130,000,000.	(a) 100 percent, (b), (c) up to 24 percent of principal.	For equity, in principle regular amortization (around 5 percent per year).
United Kingdom: [2] Export Credit Guarantee Department (ECGD).	(a), (b), (c)	(a)	(a), (b), (c)	(c) $650,000,000	(a) 100 percent, (b) 100 percent, (c) 200 percent (total cover limit: 200 percent).	Financial statements.
United States: [6] Overseas Private Investment Corporation (OPIC).	(a), (b), (c)	(b), (c) (to date some 92 countries).	(a), (b), (c), (d)	(a), (c) 1970–74 authority for $7,500,000,000 new insurance.	(a) 100 percent, (b) 100 percent, (c) 200 percent (total cover limit: 200 percent).	Financial statements phasing out for large and sensitive projects.

See footnotes at end of table.

TABLE.—SUMMARY OF GUARANTEE SCHEMES FOR OVERSEAS DIRECT INVESTMENT[1]—Continued

DAC countries,[2] name of executive agency or department	Coverage in case of loss payable (VII)	Annual premium rates, percent of current amounts except if otherwise shown (VIII)	Duration of coverage (IX)	Date of effective establishment (X)	Total guarantee outstanding (in U.S. dollars approximate equivalent) (XI)	Current volume of new guaranty extended (XII)
Australia: Export payments Insurance Corp. (EPIC).	Up to 90 percent	0.75 percent on current amount (0.25 percent per risk) plus half the above on standby amount.	Normally=minimum 5 years; maximum 15 years.	1966	Year-end 1971: $49,000,000.	1971: $25,800,000.
Belgium: Office National du Ducroire	do		Up to 15 years	February 1971	[7]	[7].
Canada: Export Development Corp. (EDC).	Up to 85 percent	0.30 percent for each of the 3 risks, plus ⅛ of 1 percent on standby amount.	do	1969	Year-end 1971: $3,600,000.	1971: $3,600,000.
Denmark: Danish International Development Agency (DANIDA).	Up to 85 percent or 90 percent.	0.5 percent for the 3 risks together.	do	1966	Year-end 1971: $11,700,000.	1971: $4,500,000.
France: Caisse Centrale de Cooperation Economique.	75 percent normally, up to 90 percent in some cases.	0.8 percent per year	do	January 1971	[7]	[7].
Germany: Deutsche Revisions—und—Treuhand AG and Interministerial Board.	Up to 95 percent	0.5 percent of current amount for the 3 risks together.	Normally=up to 15 years, exceptionally=up to 20 years.	1960	Year-end 1971: $341,000,000.	1971: $78,100,000.
Japan:[5] Ministry of International Trade and Industry (MITI).	Up to 90 percent, up to 80 percent for credit risks.	0.55 percent for the 3 risks together and 0.70 percent when credit risks are added.	Normally up to 15 years	Capital 1956, profits 1957, merger 1970.	Year-end 1971: $171,000,000.	1971: $103,000,000.
Netherlands: Netherlands Credit Insurance Co.	Up to 90 percent	0.8 percent for the 3 risks together.	Up to 15 years following completion of the investment.	1969	Year-end 1971: $17,000,000.	1971: $13,000,000.

Norway: Institute for Export Credits Guarantees	----do----------	0.5 percent of maximum amount for the 3 risks together.	Up to 20 years----------	1964-65----------	Year-end 1971: $16,600,000.	(8).
Sweden: Swedish Export Credits Guarantee Board (EKN).	Up to 80–90 percent-----	0.7 percent for the 3 risks together.	Normally up to 15 years, exceptionally up to 20 years.	1968----------	(7)----------	(7).
Switzerland----------	Up to 70 percent--------	Normal rates: Principal: 1.25 percent, profits: 4 percent of expected profits.	15 years in principle-----	1970----------	Mar. 31, 1972: $11,000,000.	(7).
United Kingdom:[2] Export Credit Guarantee Department (ECGD).	Up to 90 percent--------	1 percent for the 3 risks together plus ½ percent on standby amount.	Up to 15 years----------	1972----------	(7)----------	(7).
United States: [6] Overseas Private Investment Corporation (OPIC).	Up to 100 percent, 50 percent for large and sensitive projects.	(a) 0.30 percent (convertibility), (b) 0.60 percent (expropriation), (c) 0.60 percent (war) plus 0.25 percent on standby amount.	Equity=maximum 20 years,[9] loan=duration of the loan up to 20 years.	1948----------	June 30, 1972 maximum liability $9,900,000,000 current liability $5,400,000,000.	12months to June 30, 1972, $635,000,000 (maximum liability).

[1] Direct investment here includes minority equity participation and also "portfolio participation" to the extent they reflect a substantial interest in the project (e.g. in the management or the profits of the company, through purchase of output, etc.). Provisions of individual schemes may in some cases not correspond exactly to the common classification adopted in the table. Details of the various schemes, however, are provided in individual country chapters below. Financial amounts are expressed in U.S. dollar equivalent, at the IMF exchange rates as of the end of 1971.

[2] To date (August 1972, 3 member countries have no comprehensive schemes (Austria, Italy, Portugal). Portugal has a guaranty scheme for loans to firms in the Provinces made by Portuguese or foreign investors. As regards Austria, there is a scheme which relate only to a limited category of investments connected with export operations.

[3] The coverage can apply to equity and loan participations, and to fees and royalties. The investment can be made in various forms: cash, machinery, goods, know-how and services, etc. (d) Above covers specific situations such as production-sharing agreements.

[4] This column shows the coverage of principal and earnings for equity investments only. As regards loan investments, schemes usually wholly cover outstanding principal and interest, or interest up to 100 percent of principal (United Kingdom).

[5] The table takes into account the revisions made on the Japanese scheme as of January 1972, and following the merger in April–May 1970 of the two existing schemes for capital and profits respectively.

[6] Tne table gives a presentation of the U.S. political risk investment insurance program only. The loan guaranty program has not been inserted in the table.

[7] Nil or not applicable.

[8] Not available.

[9] Except expropriation for large or sensitive projects, for which the duration of coverage is limited to 12 years.

Appendix E.—Draft of Articles of Agreement, International Investment Insurance Agency (IIIA)

Article I

ESTABLISHMENT AND MEMBERSHIP

Section 1. Establishment

There is hereby established the International Investment Insurance Agency (the "Agency").

Section 2. Membership

Membership in the Agency shall be open to States members of the International Bank for Reconstruction and Development (the "Bank") and to any other state which has been invited to sign this agreement pursuant to article IX.

Section 3. Definitions

For purposes of this Agreement:

(a) A "member" means a state for which this Agreement shall have entered into force in accordance with Article IX, Section 2.

(b) A "sponsoring country" means a member which sponsors an investment for insurance pursuant to the terms of Article III, Section 3 and a State which has ceased to be a member but remains liable under Article VII, Section 3 for obligations undertaken by it as a sponsoring country.

(c) A "host country" means a member in whose territories an insured investment has been made.

(d) A "developing country" means a member of the Agency which is a member of the International Development Association on the terms and conditions prescribed in the Articles of Agreement of the Association for countries whose names are listed in Part II of Schedule A to those Articles, and any other member of the Agency which the Council, by a vote of two-thirds of its members agrees, at that country's request, to regard as a developing country for purposes of this Agreement.

Article II

ORGANIZATION AND MANAGEMENT

Section 1. Structure of the Agency

(a) The Agency shall have a Council, a Board of Directors and a Managing Director.

(b) The Council shall be the plenary assembly of the Agency. It shall exercise such powers as are granted to it by this Agreement, including the power:

(i) to agree that a member is to be regarded as a developing country for purposes of this Agreement pursuant to Article I, Section 3(d);

(ii) to extend the period during which Directors shall be elected annually pursuant to Article II, Section 3(e);

(iii) to decide that the Managing Director shall be Chairman of the Board of Directors pursuant to Article II, Section 3(n);

(iv) to determine compensation of Directors and alternates pursuant to Article II, Section 3(p);

(v) to decide that part of the territories of a member is to be treated as a developing country pursuant to Article III, Section 2(c);

(vi) to decide to cease operations and to liquidate the Agency pursuant to Article VII, Section 4(b);

(vii) to decide to distribute assets to members upon liquidation pursuant to Article VII, Section 4(c);

(viii) to amend the Articles of Agreement pursuant to Article VIII(a); and

(ix) to invite States which are not members of the Bank to sign the Articles of Agreement pursuant to Article IX, Section 1.

It shall have the power to address recommendations on all matters related to the operations of the Agency to the Board of Directors and to the members of the Agency.

(c) The Board of Directors shall be responsible for the general operations of the Agency and shall have power to take any action required or permitted under this Agreement, except as otherwise provided.

(d) The Managing Director under the direction of the Board of Directors shall conduct the ordinary business of the Agency and under the general control of the Board of Directors shall be responsible for the organization, appointment and dismissal of the staff.

Section 2. The Council

(a) The Council shall be composed of one Representative of each member. An alternate may act as Representative in case of his principal's absence or inability to act.

(b) In the absence of a contrary designation, each Governor and alternate Governor of the Bank appointed by a member shall be *ex officio* that member's Representative and alternate, respectively. A member which is not a member of the Bank shall appoint a Representative and an alternate in such manner and for such period as it may determine. The Chairman of the Board of Governors of the Bank shall be *ex officio* Chairman of the Council, except that if the Chairman of the Board of Governors of the Bank represents a State which is not a member, the Council shall select one of the Representatives as Chairman of the Council. Any Representative or alternate shall cease to hold such position if the State by which he was appointed ceases to be a member.

(c) Representatives and their alternates shall serve as such without compensation from the Agency.

(d) The Council may appoint such committees as it considers advisable.

(e) The Council shall hold an annual meeting and such other meetings as may be determined by the Council or called by the Board of Directors.

(f) The annual meeting of the Council (including its inaugural meeting) shall be held in conjunction with the annual meeting of the Board of Governors of the Bank; provided, however, that if this Agreement shall enter into force more than four months prior to the annual meeting of the Board of Governors of the Bank next following, the President of the Bank may convene the inaugural meeting of the Council at such time and place as he shall determine.

(g) A quorum for any meeting of the Council shall be a majority of the Representatives.

(h) Representatives shall each have one vote in the Council. Except as otherwise provided by this Agreement, all matters before the Council shall be decided by a majority of the votes cast.

(i) The Council may by regulation establish a procedure whereby the Board of Directors may obtain a vote of the Council on a specific question without calling a meeting of the Council.

(j) The Chairman of the Board of Directors may participate in meetings of the Council but shall not vote at such meetings.[1]

(k) Any member of the Bank shall be entitled to send an observer to any meeting of the Council. Observers may participate in meetings, at the invitation of the Chairman of the Council, but shall not be entitled to vote.

Section 3. The Board of Directors

(a) The Board of Directors shall consist of ten Directors who shall be elected as provided in paragraphs (b), (c) and (d) of this Section 3 and in accordance with Schedule A.

(b) Five Directors shall be elected by the Representatives of those members which are developing countries as defined in Section 3(d) of Article I. In such an election, each Representative shall have:

(i) forty-five basis votes; plus

(ii) one additional vote for the equivalent of each $1,000 contributed by the member appointing him to the Common Fund referred to in Section 2(a) of Article IV; plus

(iii) one additional vote for the equivalent of each $1 million of insurance in force covering investments made within the territories of the member appointing him, determined as of a date fixed by the Board of Directors.

---

[1] It is contemplated that the by-laws of the Agency will deal with the Managing Director's participation in meetings of the Council.

(c) The other Directors shall be elected by the Representatives of the other members of the Agency. In such an election, each Representative shall have:

(i) forty-five basis votes; plus

(ii) one additional vote for the equivalent of each $1,000 contributed by the member appointing him to the Common Fund referred to in Section 2(a) of Article IV; plus

(iii) one additional vote for the equivalent of each $100,000 of the aggregate of insurance sponsored by the member appointing him, determined as of a date fixed by the Board of Directors.

(d) Any member which is a developing country, as that term is defined in Section 3(d) of Article I, but which, at the time of election of Directors, has sponsored, pursuant to Article III, Section 3, an aggregate of insurance greater than the equivalent of $1 million, may, at its option, participate in the election of Directors pursuant to paragraph (c), instead of paragraph (b), of this Section 3.

(e) At the time of the inaugral meeting of the Council, the first Board of Directors shall be elected. If the inaugural meeting is not held in conjunction with the annual meeting of the Board of Governors of the Bank, the Board of Directors shall hold office until the first annual meeting of the Council. During the period of five years from the date of the first annual meeting of the Council, Directors shall be elected annually. This period may be extended by a concurrent decision of the Board of Directors and the Council, taken by a vote of two-thirds of the total voting power of each. Thereafter, Directors shall be elected every two years.

(f) Each Director shall appoint an alternate with full power to act for him when he is not present.

(g) Directors shall continue in office until their successors are elected. If the office of a Director becomes vacant more than 90 days before the end of his term, another Director shall be elected for the remainder of the term by the Representatives who elected the former Director. A majority of the votes cast shall be required for election. While the office of Director remains vacant, the alternate of the former Director shall exercise his powers, except that of appointing an alternate, other than a temporary alternate.

(h) The Board of Directors shall meet at the call of the Chairman. The Chairman shall call a meeting when requested to do so by not less than four directors.

(i) A quorum for any meeting of the Board of Directors shall be a majority of the Directors having a majority of the total voting power.

(j) The voting power within the Board of Directors shall be divided 35 percent among the Directors elected pursuant to Section 3(b) and 65 percent among the Directors elected pursuant to Section 3(c). The voting power of each Director elected pursuant to Section 3(b) shall be equal to that proportion of 35 percent which the number of votes by which he was elected bears to the total number of votes cast for all Directors elected pursuant to that Section. The voting power of each director elected pursuant to Section 3(c) shall be equal to that proportion of 65 percent which the number of votes by which he was elected bears to the total number of votes cast for all Directors elected pursuant to that Section. The voting power of any Director need not be exercised as a unit. Except as otherwise specifically provided by this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power exercised.

(k) The Board of Directors may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Agency.

(l) The Board of Directors may appoint such committees as it deems advisable.

(m) Until otherwise decided pursuant to subsection (n) of this Section, the President of the Bank shall be *ex officio* Chairman of the Board of Directors of the Agency. During the absence or inability to act of the President of the Bank and during any vacancy in the office of President of the Bank, the Managing Director of the Agency shall act as Chairman of its Board of Directors.

(n) The Council, upon the recommendation of the Board of Directors, by a vote of two-thirds of the total voting power of each, may decide that the Managing Director shall be Chairman of the Board of Directors of the Agency. Upon such a decision the second sentence of subsection (b) of Section 4 of this Article shall be deemed deleted.

(o) The Chairman of the Board of Directors shall have no vote.

(p) The Directors and alternates may receive such compensation as may be determined by the Council acting by vote of a majority of Representatives representing developing countries and a majority of Representatives representing other members of the Agency.

Section 4. Managing Director and Staff

(a) A Managing Director of the Agency shall be appointed by the Board of Directors, which shall determine the terms of his service, including compensation. As long as the President of the Bank remains *ex officio* Chairman of the Board of Directors, the Managing Director of the Agency shall be appointed by the Board of Directors upon the recommendation of the Chairman of the Board of Directors.

(b) The Managing Director shall be chief of the operating staff of the Agency. He may participate in meetings of the Board of Directors but shall not vote at such meetings.

(c) The Managing Director and staff of the Agency, in the discharge of their offices, owe their duty entirely to the Agency and to no other authority. Each member of the Agency shall respect the international character of this duty and shall refrain from all attempts to influence the Managing Director or the staff in the discharge of their duties.

(d) In appointing the staff, the Managing Director shall, subject to the paramount importance of assuring the highest standards of efficiency and to technical competence, pay due regard to the importance of recruiting personnel on a wide geographical basis.

Section 5. Relations With Other International Organizations

The Agency, within the terms of this Agreement, shall cooperate with the United Nations and with public international organizations having specialized responsibilities in related fields.

Section 6. Political Activity Prohibited

The Agency and its staff shall not interfere in the political affairs of any member.

Section 7. Location of Principal Office

The principal office of the Agency shall be in the same locality as the principal office of the Bank unless the Board of Directors by a vote of two-thirds of the total voting power otherwise decides.

Section 8. Depositories

Each member shall designate its central bank as a depository in which the Agency may keep holdings of such member's currency or other assets of the Agency or, if it has no central bank, it shall designate for the purpose such other institution as may be acceptable to the Agency. In the absence of an express designation, the depository designated for the Bank shall be the depository for the Agency.

Section 9. Channel of Communication

Each member shall designate an appropriate authority with which the Agency may communicate in connection with any matter arising under this agreement. The Agency may rely on statements of such authority as being statements of the member.

Section 10. Publication of Reports and Provision of Information

The Agency shall publish an annual report on its operations and may publish such other reports as it deems desirable. Copies of all reports, statements, and publications made under this section shall be distributed to members.

Article III

INSURANCE OPERATIONS

Section 1. Risks

(a) Subject to the provisions of subsection (b) below, the Agency may insure eligible investments, as defined in Section 2 of this Article, against all or part of a loss resulting from one or more of the following types of risks:

(i) expropriation, confiscation, or equivalent governmental action or inaction which deprives the insured investor of effective control over, or the benefits of, his investment;

(ii) governmental restrictions on conversion and transfer from the currency of the member in whose territories the investment is to be made into another appropriate currency;

(iii) armed conflict or civil unrest; and

(iv) with the approval of the board of directors by a vote of 60 percent of the total voting power, other non-commercial risks which discourage international investment, but in no case including the risks of devaluation or depreciation of currency.

For purposes of this subsection, reference to a government shall include political subdivisions, governmental agencies, and monetary authorities.

(b) The Agency shall not insure risks if it is satisfied that they can be insured through commercial channels at reasonable rates.

(c) The Board of Directors shall by a vote of not less than 60 percent of the total voting power (i) determine the proportion of any loss and (ii) define the specific risks within the categories set out in subsection (a) above, that the Agency will insure.

Section 2. Eligible Investments

(a) For purposes of Section 1 of this Article, an eligible investment is one which, as determined by the Agency, meets the following tests:

(i) the investment is a foreign investment made by an investor of a nongovernmental character;

(ii) the investment has been sponsored for insurance by a member, pursuant to the provisions of Section 3 of this Article;

(iii) the investment is made in the territories of a developing country which is not the sponsoring country;

(iv) the investment has been approved for the purpose of insurance by the developing country in which it is made;

(v) the investment is one of the following:

(1) a new investment, including investment for expansion, modernization, or development of an existing enterprise, which will contribute to the economic development of the country in which it is to be made;

(2) an investment made to refinance an existing obligation or to acquire an existing investment which at the time of such refinancing or acquisition was insured by the Agency; or

(3) an investment in securities representing an investment originally made by a public developing financing institution, national or international, upon sale thereof by such institution; and

(vi) such other tests as the Agency may prescribe by a vote of not less than 60 percent of the total power of the Board of Directors.

(b) For purposes of this Section, the term "investment" includes the contribution of assets in either monetary or non-monetary form and the reinvestment of earnings.

(c) For purposes of this Section and Section 5 of this Article, an investment shall be deemed to be a new investment if it is committed to be made (i) after the date of the contract of insurance written for such investment of (ii) after the date when the Agency (or for purposes of Sec. 5, the national insurance agency of the member) shall have declared its willingness to consider insuring such investment. The Agency may also regard as new investment appraisal and planning costs incurred prior to either of those dates in connection with an investment otherwise eligible for insurance.

(d) The Council may decide by a vote of two-thirds of its members that a territory for whose international relations a member which is not a developing country is responsible shall, at the request of such member, be treated as a developing country for purposes of subsections (a) (iii) and (iv) of this Section. A member which makes such a request may not sponsor investments in such a territory.

(e) Notwithstanding the provisions of subsection (a) of this Section, the following investments shall not be eligible for insurance:

(i) investments evidenced by direct obligations of governments or political subdivisions thereof; and

(ii) investments which, as determined by the Agency, are in the form of suppliers' credits, unless the Agency determines that they would have the characteristics of developmental finance.

Section 3. Sponsorship

(a) A member may sponsor for insurance an investment, or any part thereof, made or to be made by an investor of any nationality, provided that another member does not object on the ground that the investor is its national. The Agency shall notify members of any proposed sponsorship.

(b) A member or members may sponsor insurance covering an investment made by investors of more than one nationality on such basis as is acceptable to the Agency.

(c) Before the Agency issues a contract of insurance it shall be satisfied that each sponsoring country has taken whatever action is necessary under its laws to meet its loss-sharing obligations under this Agreement.

Section 4. Transfer of Insured Investment

Contracts of insurance may provide that the insurance shall remain in force notwithstanding a transfer of the insured investment, provided that:

(i) neither the host country nor the sponsoring country objects to the transfer;

(ii) no other member objects on grounds that the transferee is its national; and

(iii) the investment after transfer will remain a foreign investment owned by an investor of a non-governmental character.

The Agency shall notify members of any proposed transfer. Paragraphs (i) and (ii) of the foregoing proviso shall not apply to involuntary transfers by operation of law (including interstate succession), transfers by will or general assignments for the benefit of creditors.

Section 5. Reinsurance

(a) The Agency may issue reinsurance against all or part of the loss resulting from one or more of the risks covered by investment insurance or investment guaranties issued by a member (including an agency of such member); provided that (i) such risk or risks are within the types of risks referred to in Section 1 of this Article, (ii) the investment was new at the time the insurance or guaranty was granted and (iii) the investment, in all other respects, meets the tests of eligibility established in Section 2 of this article. Application for reinsurance shall be made within such period after issuance of the original insurance or guaranty as the Agency shall determine. Reinsurance issued by the Agency shall be deemed to be insurance for all purposes of this Agreement.

(b) As a condition of issuing reinsurance, the Agency may require that the sponsoring country agree to sponsor reinsurance of such proportion of its total portfolio of risks eligible for reinsurance pursuant to subsection (a) above and over such a period of time, as the Agency shall determine.

(c) The Agency may reinsure with commercial insurers risks insured by it.

Section 6. Charges

Premiums shall be charged for each type of risk or combination of types or risk insured at such rate or rates as may be determined from time to time by the Agency. In setting the level of premiums the Agency shall be guided to the extent feasible by the objective of earning sufficient income to meet administrative expenses and provide for reserves to cover losses. The Agency may prescribe such other fees and charges in connection with its operations as it shall determine.

Section 7. Cooperation with National Agencies

In evaluating proposals for the issuance of insurance, the Agency shall to the extent practicable draw upon the services of and cooperate with the investment insurance or investment guaranty agency of the sponsoring country.

Section 8. Issuance and Implementation of Insurance and Reinsurance; Payment of Claims

Except as otherwise provided in this Agreement, all decisions regarding the issuance of insurance and reinsurance and the terms thereof, and regarding the payment of claims, shall be taken by the Board of Directors. The authority to take such decisions may be delegated to the Managing Director by a vote of not less than 60 percent of the total voting power.

Section 9. Subrogation

(a) To the extent provided in any contract of insurance made pursuant to this Agreement the Agency upon payment made or provided for in accordance with the terms of such contract shall be subrogated and shall succeed to all the rights and assets of the insured investor with respect to or arising out of the insured investment and the loss suffered, and subject to the provisions of subsection (b) below, members shall recognize such subrogation and succession.

(b) Notwithstanding the provisions of subsection (a) a host country need not recognize the subrogation or succession of the Agency to the rights or claims of an insured investor in relation to a payment made or provided for, if such pay-

ment related to a matter in dispute between the host country and the insured investor that the host country has consented to submit to the jurisdiction of the International Centre for Settlement of Investment Disputes (the "Centre") for settlement by arbitration under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "Convention"), unless (i) the Secretary-General of the Centre or an arbitral tribunal constituted by it decides that that dispute is not within the jurisdiction of the Centre (for some reason other than the failure of such insured investor to consent to such jurisdiction) or (ii) the host country should fail to abide by or to comply with any award rendered by such tribunal.

ARTICLE IV

FINANCING THE AGENCY

Section 1. Agency Acting for Account of Members

The agency shall conduct its operations pursuant to these Articles as the agent of and for the account of its members as hereinafter provided.

Section 2. Common Working Capital fund

(a) By way of a membership fee, each member shall, upon accepting membership, contribute to a Common Working Capital Fund (the Common Fund). The amount to be contributed by each member shall be equivalent to three-fourths of 1 per mil of its subscription to the capital of the Bank. In the case of a member which is not a member of the bank, the amount of its contribution shall be determined by the Council, upon the recommendation of the Board of Directors, by a vote of two-thirds of the total voting power of each.

(b) Except as hereinafter otherwise provided for developing country members, payment shall be made in full in freely convertible currency within 90 days after either the date on which this agreement shall enter into force pursuant to Article IX, Section 2(b), or the date on which the said member becomes a member, whichever shall be later.

(c) The assets of the Common Fund shall be used to meet any excess of the Agency's administrative expenses over its premium income and may be used on such terms as the agency shall determine, to make temporary advances to members in connection with the discharge of their obligations under Section 8 of this Article. The assets of the Common Fund may be invested in such manner as the Agency shall determine.

(d) Any amounts used to meet an excess of administrative expenses over premium income shall be returned to the Common Fund as soon as possible thereafter out of any excess of premium income over administrative expenses.

(e) Any excess of the value of the assets of the Common Fund in freely convertible currency over the contributions made to it in such currency may be distributed by the Agency to the members, in proportion to such contributions made by them, when and to such extent as the agency shall determine such distribution to be consistent with the maintenance by it of a sound financial position.

(f) A developing country member may substitute for 90 percent of its contribution determined pursuant to subsection (a) above non-negotiable, non-interest-bearing notes or similar obligations payable in the currency of such member on demand to the account of the Agency.

(g) The proceeds of the notes or other obligations referred to in subsection (f) above may be used by the Agency in accordance with subsection (c) above to meet administrative expenses incurred in the currency of the member. Such proceeds may be exchanged for freely convertible currency only with the consent of the member concerned and upon such exchange shall be treated as payment made by the member in freely convertible currency.

Section 3. Common Account

(a) The agency shall establish an account (the Common Account) in which shall be entered all premium income and all administrative expenses.

(b) Any excess of administrative expenses over premium income shall first be met out of the Common Fund and to the extent that it cannot be so met, it shall be met by sponsoring countries on the basis set forth in Section 5 of this Article.

(c) Any excess of premium income over administrative expenses shall be used first to return to the Common Fund any amounts made available out of that Fund

pursuant to paragraph (b) of this Section and any balance remaining shall be credited to the Sponsors' account at annual intervals on the basis set forth in Section 5 of this Article.

Section 4. Sponsors' Accounts

(a) The Agency shall establish an account on its books for each member which sponsors insurance (Sponsors' Account).

(b) Each account shall be credited from time to time with amounts representing the following, as appropriate:

(i) payments made by the member in response to a call under Section 8 of this Article as the share of the member in any loss;

(ii) such proportion of moneys acquired by the Agency as successor or subrogee of an insured investor as shall correspond to the member's share in any payment made or to be made by the Agency to such investor or such proportion of payments made to the Agency by a defaulting sponsoring country as shall correspond to the member's share in the payment in respect of the defaulted amount; and

(iii) amounts due by the Agency to the member as its share, determined pursuant to Section 5 of this Article, of any excess of premium income over administrative expenses of the Agency pursuant to Section 3(c) of this Article.

(c) Each such account shall be debited from time-to-time in amounts representing the following, as appropriate:

(i) the member's share in any payment for loss made by the Agency;

(ii) amounts paid to the member by the Agency under the provisions of Section 8(d) and Section 10 of this Article; and

(iii) amounts due by the member to the Agency as its share, determined pursuant to Section 5 of this Article, of any excess of administrative expenses of the Agency over premium income pursuant to Section 3(b) of this Article.

Section 5. Basis for Sharing of Administrative Expenses and Premium Income

Whenever any excess of administrative expenses over premium income is to be met by sponsoring countries pursuant to section 3(b) of this Article or any excess of premium income over administrative expenses is to be credited to Sponsors' Accounts pursuant to Section 3(c) of this Article, such excess shall be shared among sponsoring countries in proportion to the amount of premium income received by the Agency on account of insurance sponsored by the respective sponsoring countries during such accounting periods as the Agency shall determine.

Section 6. Basis for Loss-Sharing

(a) Losses incurred under insurance issued by the agency shall be shared by sponsoring countries on the following basis:

(i) twenty-five percent shall be borne by the sponsoring country which shall have sponsored the insurance in respect of which the loss has occurred; and

(ii) the other 75 percent shall be shared by all sponsoring countries, each in the proportion which the amount of insurance which that sponsoring country is deemed to have sponsored for purposes of this subparagraph (ii) bears to the total of such amounts of insurance deemed to have been sponsored by all sponsoring countries.

(b) For purposes of subparagraph (a)(ii) of this Section, a sponsoring country shall be deemed, at any given time, to have sponsored an amount equal to (i) three-fourths of the total of the amount of insurance then in effect for each risk insured under an outstanding insurance contract sponsored by that sponsoring country; *plus* (ii) any payments made or due to be made by the agency for losses previously incurred under insurance sponsored by that sponsoring country, and *minus* (iii) any amounts representing the share of that sponsoring country in any payments made or due to be made by the agency for prior losses.

(c) If, on the date on which the loss occurred, different rates of premium are in effect for different types or combinations of insurance, then for purposes of subsection (b) of this section, the total of the amount of insurance then in effect for each risk insured shall be adjusted to reflect such different rates, in such manner as the Agency shall determine.

(d) For the purposes of this Agreement, "the amount of insurance then in effect for each risk insured" shall be the actual amount of insurance coverage which is in force for that risk under an insurance contract at any specified time.

(e) The share of each sponsoring country shall be assessed as of the date on which the loss occurred, as determined by the Agency.

Section 7. Special Agreements for Loss-Sharing

The Agency may enter into a special agreement with a developing country or group of developing countries under which such member or members undertake to share in losses, to the extent and on the basis specified in the agreement. Any payments received by the agency pursuant to such an agreement shall reduce correspondingly the amount to be shared by sponsoring countries under Section 6 of this article. The existence of such an agreement shall not, however, relieve any sponsoring country of its obligation to share in liability for a loss as provided by this agreement if any developing country fails to comply with the terms of the agreement.

Section 8. Payments for Losses; Refunds

(a) If any amount has been paid or is payable by the Agency on account of a loss on insurance, the Agency shall debit the account of each sponsoring country with its share of such amount, and shall call upon such sponsoring country to pay its share of such amount (determined in accordance with Section 6 of this Article and, to the extent applicable, Section 7 of this Article and subsection (c) of this Section) less the amount by which the credit balance in such account after such debit exceeds the minimum credit balance determined pursuant to Section 10 of this Article.

(b) No member shall be liable to pay any amount on a call pursuant to the provisions of this Section if such payment would cause total payments by that member on calls pursuant to this Section (net of any refunds pursuant to the provisions of subsection (d) of this Section) to exceed (i) the total maximum liability of the agency under all insurance contracts sponsored by that member and outstanding at the time the loss for which the call is made shall have occurred, *plus* (ii) any payments made or due to be made by the Agency for losses previously incurred under insurance sponsored by that member. Each contract of insurance issued by the Agency shall specify a maximum liability for purposes of this subsection which shall be the highest amount which the agency could be required to pay for losses under such contract.

(c) If any sponsoring country shall not be liable for an amount of a call pursuant to the provisions of this Section because of the limitation contained in subsection (b) above, or if any sponsoring country shall default in payment of an amount due in response to any such call and the amount of such default cannot be met by a debit to the defaulter's account, the liability for the payment of such amount shall be shared by the other sponsoring countries, each in the proportion which the aggregate of insurance of that sponsoring country bears to the total of the aggregates of insurance of all such other sponsoring countries. Liability of members pursuant to this subsection shall be subject to the limitation set forth in subsection (b) above.

(d) The Agency shall as soon as practicable refund any amounts paid on a call if (i) the call shall have been made in respect of a loss and thereafter the Agency acquires moneys as successor to or subrogee of the investor insured in respect of that loss, or (ii) the call shall have been made because of a default in payment by a sponsoring country and such country thereafter makes good such default in whole or in part. Such refund need not be made in the currency originally received by the Agency.

Section 9. Aggregate of Insurance

For purposes of this Agreement, the "aggregate of insurance" of any sponsoring country shall be the amount which that country is deemed to have sponsored as provided in Section 6 (b) and (c) of this Article, except that, for purposes of determining this aggregate, the words "three-fourths of" in Section 6(b)(i) shall be deleted. The Agency's "aggregate of insurance" shall be the total of the aggregate of insurance of all sponsoring countries.

Section 10. Return of Amounts to Members

The Agency shall periodically return to a sponsoring country at its request any amount in its account in excess of a minimum credit balance equal to a percentage, to be determined by the Agency uniformly for all such accounts, of the aggregate of insurance of such sponsoring country from time to time.

90-341—73——10

Section 11. Payment Provisions

(a) Except as otherwise provided or as the Agency may otherwise agree, all payments made by members under this Article shall be made in freely convertible currency.

(b) For purposes of this Agreement, the Agency shall regard as "freely convertible currency"

(i) currency of a member which the Agency determines, after consultation with the International Monetary Fund, is adequately convertible into other currencies for the purposes of the Agency's operations; or

(ii) currency of a member which such member agrees, on terms satisfactory to the Agency, to exchange for other currencies for purposes of the Agency's operations.

Section 12. Valuation of Currencies

Whenever it shall be necessary for the purposes of this Agreement to determine the value of one currency in terms of another, such value shall be as determined by the Agency.

Section 13. Consequences of Default

If a member shall default in payment of any amount due in response to a call or otherwise payable under this Agreement, the Agency shall not, until such default shall have been cured, proceed with or pay any claim for loss, whether pending at the time of the default or subsequently presented, under insurance sponsored by that member, nor shall the Agency issue any new insurance sponsored by that member.

Section 14. Administration by Agency

All payments made to the Agency shall be held and administered by the Agency as fiduciary and shall be used only in accordance with the provisions of this Agreement. No member shall have any right to any funds paid to the Agency, whether or not such funds have been credited to an account in the name of such member, except in accordance with the provisions of this Agreement.

Section 15. Use of Assets

All funds or other assets of or administered by the Agency shall be held in such form as the Agency shall determine and, subject to the provisions of this Agreement, shall be available to make payments authorized by this Agreement.

Section 16. Approval of Budget

The Managing Director shall prepare an annual budget of revenues and expenditures of the Agency for approval by the Board of Directors. For any fiscal year of the Agency in which it is expected that administrative expenses will be greater than income from premiums, the budget of the Agency shall be approved by the Board of Directors by a vote of two-thirds of the total voting power.

Article V

STATUS, IMMUNITIES AND PRIVILEGES

Section 1. Status of the Agency

The Agency shall have full international legal personality. The legal capacity of the Agency shall include the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property; and

(c) to institute legal proceedings.

Section 2. Immunities and Privileges of the Agency within the Territories of Members

To enable the Agency to fulfill its functions, it shall enjoy in the territories of each member the immunities and privileges set forth in this Article.

Section 3. Position of the Agency with regard to Legal Processes

The Agency, its property and assets shall enjoy immunity from all legal process except when the Agency waives this immunity. For purposes of this Agreement the term "assets" shall include assets administered by the Agency.

Section 4. Immunity of Assets from Seizure

The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.

Section 5. Immunity of Archives, Privileges for Communications

(a) The Archives of the Agency shall be inviolable, wherever they may be.

(b) With regard to its official communications, the Agency shall be accorded by each member treatment not less favorable than that accorded to other international organizations.

Section 6. Freedom of Assets from Restrictions

To the extent necessary to carry out the operations provided for in this Agreement, and subject to the provisions of this Agreement, all property and assets of the Agency shall be free from restrictions, regulations, controls, and moratoria of any nature; provided, however, that property and assets acquired by the Agency as successor to, or transferee of, an insured investor shall not be free, solely by reason of any provision of this Agreement from generally applicable foreign exchange restrictions, regulations, and controls in force in the territories of that member.

Section 7. Immunities and Privileges of Representatives, Directors, Managing Directors and Staff

Representatives, Directors alternates, the Managing Director and staff of the Agency:

(i) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their official functions, except when the Agency waives this immunity:

(ii) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by members to the officials and employees of comparable rank of other members.

Section 8. Immunities from Taxation

(a) The Agency, its assets, property and income, and its operations and transactions authorized by this Agreement, shall be exempt from all taxation and customs duties. The Agency shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to the Chairman of the Board of Directors or to representatives and alternates, or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to Directors, alternates, the Managing Director or staff of the Agency.

Article VI

SETTLEMENT OF DISPUTES

Section 1. Disputes Involving Members

(a) Subject to the provisions of subsection (b), any dispute among members or between the Agency and a member or members with respect to the interpretation or application of this Agreement shall, if possible, be settled by negotiation. Failing settlement by negotiation and unless the parties agree to another method of settlement, any such dispute shall be settled by arbitration in accordance with the provisions of Schedule B to this Agreement. The award of the arbitral tribunal shall be final and binding on the parties to the dispute and each party shall abide by and comply therewith.

(b) Any dispute between a host country and the Agency as subrogee of an insured investor pursuant to Section 9(a) of Article III shall, if possible, be settled by nogetiation. Failing settlement by negotiation and unless the parties agree to another method of settlement, and subject to the provisions of subsections (c) and (d) below, any such dispute shall be settled by arbitration in accordance with the provisions of Schedule B to this Agreement. The award of the arbitral tribunal shall be final and binding on the parties to the dispute and each party shall abide by and comply therewith.

(c) Notwithstanding the provisions of subsection (b), the Agency shall not have the right to seek the final determination by arbitration of any dispute referred to in subsection (b) if:

(i) the host country need not recognize the succession of the Agency to the rights of an insured investor in accordance with the provisions of Section 9(b) of Article III; and

(ii) the host country shall waive any objection to a claim asserted against it by an insured investor as contemplated by Section 9(b) of Article III upon the ground that the insured investor has been paid by the Agency.

(d) Any decision by the Agency as subrogee of an insured investor to seek a binding determination of any dispute with a host country pursuant to subsection (b) above shall require the affirmative vote of not less than 60 percent of the total voting power of the Board of Directors.

(e) In any proceeding for the final determination by arbitration of a dispute between the Agency as subrogee of an insured investor and a host country, the arbitral tribunal shall be bound by the determination of any issue regarding an investment insured by the Agency and on account of which it is subrogated pursuant to Section 9(a) of Article III, by an award rendered in an arbitration proceeding between the investor and the host country under the Convention.

(f) For purposes of this Section and Section 9 of Article III, the term "member" shall include a State which has ceased to be a member.

Section 2. Disputes Involving Insured Investors

Any dispute arising under a contract of insurance between the parties thereto made pursuant to this Agreement shall be settled by arbitration in accordance with such rules as the Agency shall establish. Unless the parties shall otherwise agree, the arbitration rules applicable to any such contract shall be those in effect on the date of such contract.

Article VII

Withdrawal; suspension of membership; cessation of operations

Section 1. Withdrawal

Any member may withdraw from the Agency at any time by giving a notice in writing to the Agency at its principal office. The Agency shall notify the Bank, as depositary of this Agreement, of the receipt of such notice. Withdrawal shall become effective on the date such notice is received by the Agency.

Section 2. Suspension of Membership

(a) If a member fails to fulfill any of its obligations under this Agreement, the Agency may suspend its membership by a decision of two-thirds of the total voting power of the Board of Directors.

(b) While under suspension a member shall have no rights under this Agreement, except as otherwise provided in this Article and Article VI, but shall remain subject to all its obligations.

(c) The suspended member shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same voting power to extend the period of suspension or to restore the member to good standing.

Section 3. Rights and Duties of States Ceasing to be Members

(a) If a State ceases to be a member, the State and the Agency shall enter into an agreement as soon as practicable providing for a final settlement of accounts, including the making of arrangements as to outstanding insurance sponsored by that State. Any such agreement must be approved by a vote of two-thirds of the total voting power of the Board of Directors.

(b) Pending the making of an agreement pursuant to the provisions of subsection (a) of this Section, the following provisions shall govern the rights and duties of a state ceasing to be a member:

(i) it shall have no rights under this Agreement, except as otherwise provided in this Article and in Article VI, but it shall promptly pay all amounts then due to the Agency and shall remain liable for all obligations undertaken by it as a sponsoring country;

(ii) the Agency shall continue to maintain the Sponsor's Account of the State, as provided in Article IV, Section 4 until such account shall have been liquidated as provided in paragraph (iii) below;

(iii) the Agency shall pay to the State such part of (a) the State's contribution to the Common Fund pursuant to Article IV, Section 2 and (b) the amount, if any, standing to its credit in its Sponsor's Account as the Agency shall determine to be appropriate, taking into account the financial position of the Agency and the liabilities of the State to the Agency. Such payment shall be made in such form, in such installments and at such time or times as the Agency shall determine.

Section 4. Temporary Suspension and Cessation of Operations; Liquidation of the Agency

(a) In an emergency, the Board of Directors may temporarily suspend all or part of the Agency's operations for the longer of a period of six months or the duration of the emergency.

(b) The Council, upon the recommendation of the Board of Directors, by a vote of two-thirds of the total voting power of each, may decide to cease operations and to liquidate. Thereupon the Agency shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of assets and settlement of obligations. Until final settlement and distribution of assets, the Agency shall remain in existence and all rights and obligations of members under this agreement shall continue unimpaired.

(c) No distribution shall be made to members until all liabilities to insured investors shall have been discharged or provided for and until the Council, upon the recommendation of the Board of Directors, shall have decided to make such distribution.

(d) Subject to the foregoing, the Agency shall distribute to members the amount in the common fund, in proportion to the amounts contributed by them under Article IV, Section 2 and shall distribute its remaining assets to members *pro rata* in accordance with their interests as reflected in their Sponsors' Accounts. Such payments shall be made at such times and in such currencies or other assets as the Agency shall deem fair and equitable. Payments to the several members need not be uniform in respect of the type of assets distributed or of the currencies in which they are expressed.

Article VIII

AMENDMENTS

(a) This Agreement may be amended by the Council, upon the recommendation of the Board of Directors, by two-thirds of the total voting power of each: provided, however, that:

(i) in the case of any amendment modifying the right to withdraw from the Agency provided in Article VII, Section 1, the affirmative vote of all Representatives on the Council shall be required; and

(ii) in the case of any amendment modifying the loss-sharing arrangements provided in Article IV which will result in an increase in any member's liability thereunder, the affirmative vote of the Representative of each such member on the Council shall be required.

(b) Any proposal to amend this Agreement, whether emanating from a member, a Representative or a Director, shall be communicated to the Chairman of the Board of Directors, who shall bring the proposal before the Board of Directors. If the proposed amendment is recommended by the Board of Directors, it shall be submitted to the Council for approval in accordance with paragraph (a) above. When an amendment has been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members three months after the date of the formal communication unless the Council shall specify a different period.

Article IX

FINAL PROVISIONS

Section 1. Signature

This Agreement shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a member of the United Nations or a party to the Statute of the International Court of Justice and which shall have been invited to sign this Agreement by the Council, upon the recommendation of the Board of Directors, by a vote of two-thirds of the total voting power of each.

Section 2. Entry into Force

(a) This agreement shall be subject to ratification, acceptance or approval by the signatory States in accordance with their constitutional procedures.

(b) This Agreement shall enter into force on the date when not less than 14 instruments of ratification, acceptance or approval shall have been deposited on behalf of signatory States which are developing countries, as that term is defined in Article I, Section 3, of this Agreement, and not less than seven such instruments have been deposited by other signatory States, which aggregate membership fees equal to not less than the equivalent of U.S. $12 million. If this agreement shall not have entered into force by ——. 19—, it shall be null and void unless the Executive Directors of the Bank shall have extended that date.

(c) For each State which deposits its instruments of ratification, acceptance or approval after this agreement has entered into force, this Agreement shall enter into force on the date of such deposit.

Section 3. Effectiveness of Agreement

Each member shall take such legislative or other measures as may be necessary for making the provisions of this Agreement effective in its territories.

Section 4. Territorial Application

This agreement shall apply to all territories for whose international relations a member is responsible, except those which are excluded by such member by written notice to the depositary of this Agreement either at the time of ratification, acceptance or approval or subsequently.

Section 5. Bank as Depositary

Instruments of ratification, acceptance or approval of this Agreement and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Agreement. The depositary shall transmit certified copies of this Agreement to States members, to the Bank and to any other State invited to sign this Agreement.

Section 6. Registration

The depositary shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Section 7. Notification

The depositary shall notify all signatory States and, upon the entry into force of this Agreement, the Agency of the following:

(a) signatures in accordance with Section 1 of this Article;

(b) deposits of instruments of ratification, acceptance and approval in accordance with Section 5 of this Article;

(c) the date on which this agreement enters into force in accordance with Section 2 of this Article;

(d) exclusions from territorial applications pursuant to Section 4 of this Article.

Schedule A

ELECTION OF DIRECTORS

1. Each election of Directors under Sections 3(b) and 3(c) of Article II shall be by ballot of the Representatives eligible to vote, and in accordance with the following provisions.

2. In balloting for the Directors, each Representative eligible to vote shall cast for one person all of the votes to which he is entitled under Sections 3(b) or 3(c), as the case may be, of Article II. If there shall be more than five persons for whom votes are cast, only those persons receiving more than 20 percent of the total of the votes which can be cast in each election shall be considered elected on the first ballot.

3. When in any election five persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only those representatives who voted on the first ballot for a person not elected.

4. If, after the second ballot, five persons have not been elected, further ballots shall be held on the same principles until five persons have been elected in each election, provided that after four persons are elected, the fifth may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

SCHEDULE B

ARBITRATION

A. Application of this Schedule

1. Whenever under Article VI, Section I of this Agreement a dispute is to be settled by arbitration, the provisions of this Schedule shall apply.

B. Notice of Request for Arbitration

2. An arbitration proceeding may be instituted upon notice by the party requesting the institution of such proceeding to the other parties to the dispute (the "Parties"). Such notice shall contain a statement setting forth the nature of the dispute to be submitted to arbitration and of the relief sought.

C. The Arbitral Tribunal

3. Settlement of a dispute by arbitration shall be by an Arbitral Tribunal as hereinafter provided, unless the Parties otherwise agree.

4. The Arbitral Tribunal shall be constituted as follows:

(a)(i) In case of an arbitration proceeding between the agency and one or more members, the Agency shall appoint one arbitrator and the member or members, collectively, shall appoint one other arbitrator. The Parties shall agree upon the appointment of a third arbitrator who shall be the Umpire.

(ii) However, if members cannot agree on the appointment of an arbitrator or if the Parties cannot agree on the appointment of an arbitrator to be the Umpire, then the Arbitral Tribunal shall be composed solely of an Umpire and any Party may, in accordance with paragraph 5 below, request that such appointment be made by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations.

(b)(i) In case of an arbitration proceeding among two or more members, the Parties shall agree upon the composition of the Arbitral Tribunal.

(ii) If the Parties cannot so agree, the Agency shall, at the request of any Party in accordance with paragraph 5 below, appoint an Arbitral Tribunal composed either solely of an Umpire, or of an uneven number of arbitrators including an Umpire.

5. If within 60 days after the giving of the notice provided by paragraph 2 above, the Parties shall not have agreed upon the composition of the Arbitral Tribunal, any Party may request the appointment of an Arbitral Tribunal as provided in paragraph 4(a)(ii) or 4(b)(ii), as may be appropriate.

6. In case any Umpire or other arbitrator appointed in accordance with this Schedule shall resign, die or become unable to act, a successor shall be appointed in the same manner as herein described for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

D. The Proceedings

7. The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall be convened.

8. Subject to the provisions of this Schedule and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions shall be by majority vote.

9. The Arbitral Tribunal shall afford to all Parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each Party.

10. The Parties shall determine the remuneration of the arbitrators and any other persons required for the conduct of the arbitration proceedings. If the Parties cannot agree on such remuneration before the Arbitral Tribunal is convened, the Tribunal shall fix such remuneration as shall be reasonable under the circumstances. Each Party shall defray its own expenses in the arbitration proceedings. The costs of the Tribunal shall be divided among and borne equally by the Parties. Any question concerning the division of the costs of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

11. Service of any notice or process in connection with any proceeding pursuant to this Schedule or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Schedule

may be made, if on a member, upon authority designated by it pursuant to Article II, Section 9 of this Agreement or, if on the Agency, at its principal office. The Parties to this Agreement waive any and all other requirements for the service of any such notice or process.

ATTACHMENT B

INTERNATIONAL INVESTMENT INSURANCE AGENCY (IIIA)

Staff Memorandum on Principal Outstanding Issues

This memorandum is concerned with the five prinicpal issues on which no consensus was reached in the Committee of the Whole discussions of the IIIA proposal. The issues are taken up under the following headings: link with the Bank; voting rights; financial participation by developing countries; subrogation; and arbitration.

By and large, the successive changes in provisions of the draft Articles of Agreement for an International Investment Insurance Agency, which are traced from the "Report on the Establishment of a Multilateral Investment Guarantee Corp." sent to the Bank in 1965 by the OECD ("the OECD report"), through the first and second drafts of articles prepared by the staff in 1966 and 1968 ("the 1966 draft" and "the 1968 draft") to the most recent draft ("the 1972 draft"), reflect discussions in the Financial Policy Committee and the Committee of the Whole of the Executive Directors, and the staff's attempt, in the light of those discussions, to make proposals which would command the widest possible acceptance.

Link with the Bank

1. The issue under the "link" heading is whether the IIIA articles should establish an organizational link between the Bank and the Agency, e.g., through common membership, representation on the Agency's plenary body, chairmanship of the Agency's Board of Directors, or staff. Three views were expressed by Executive Directors sitting in Committee. Some Directors regarded a link as an essential feature of the IIIA proposal, not only for practical reasons of convenience, efficiency of operations and cost, but also to give the Agency the benefit of the prestige and the reputation of the Bank Group. They also considered it essential that the Articles make explicit provision for the link. At the other extreme was the view that a link would be undesirable, because it would have the inevitable consequence involving the Bank in political issues related to disputes between the Agency and a member arising out of an insured investment. A third, intermediate, view expressed in Committee was that a link with the Bank is not essential, at least initially, and should therefore not be prescribed by the Articles, but since establishment of a link might at some time appear desirable, the Articles should be drafted in a "neutral" fashion which would not foreclose the possibility of establishment of a link by the Agency's governing bodies.

2. The OECD report, which outlined the principal features of an investment guarantee scheme as envisaged by interested OECD members, contemplated that the administering agency would be established as a member of the Bank Group, with the President of the Bank acting as chairman of the Agency's Board of Directors. The 1966 draft Articles made provision for a number of organizational links. The principal of these specified that each Governor of the Bank appointed by a member of the Agency should, ex officio, represent that country on the Agency's plenary body, the Council; that the chairman of the Bank's Board of Governors should serve as chairman of the Council; that the President of the Bank should serve as chairman of the Agency's Board of Directors, and in that capacity, should make recommendations to the Board concerning appointment of the Agency's Managing Director; and that only Bank members might join the Agency as of right. The 1968 draft retained these provisions in essentially the same form, except that it provided that after the expiration of a specified number of years (5 years was suggested), the Council might decide that the Managing Director should become chairman, in which event the provision under which recommendations for managing director would be made to the Agency's Board by the President of the Bank, as Board chairman, would be deemed deleted. The 1972 draft further weakens the link by providing that the Council might at any time decide that the Managing Director should become chairman.

Voting rights

3. The issues under the "voting rights" heading are raised by the provisions concerning (a) arrangements for electing the Agency's Board of Directors and (b) distribution of voting power on the Board itself.

(*a*) *Election of the Board of Directors*

4. There was general agreement among the Directors that the Agency's capital-exporting country members, as a group, and its capital-importing country members, as a group, should each be represented on the Agency's Board. But views were divided on the question whether, in the election of Directors, each country within the group should cast one vote or whether votes should be weighed; whether the voting arrangements for the two groups should be the same; and, if weighted voting is to apply within either group, what the basis of weighting should be.

5. The OECD report contemplated that the votes of capital-exporting countries would be weighted, and that, in the weighting, the amount of each country's loss-sharing obligations (i.e., the amount of insurance it had sponsored) would be a factor. It did not propose a specific weighting formula.[1]

The report made no suggestion concerning election of Directors representing capital-importing countries. The 1966 draft articles provided for weighting capital-exporting countries' votes on the basis of the amount of insurance sponsored, except that a country which had sponsored as much as 15 percent of all insurance issued could appoint a Director. In the election of Directors representing developing countries, however, each country would have one vote; the draft directed that arrangements be made to assure equitable geographic representation. The 1968 draft retained these provisions, and added the requirement that arrangements for electing Directors representing developing countries also take account of the volume of insured investment in each such country's territories. Recognizing that a developing country might be not only the recipient of insured investment (i.e., a "host country") but also a sponsor of insurance, the 1968 draft provided that a developing country which had sponsored more insurance than was outstanding on investments made in its territories might elect to participate, in the election of Directors, with the capital-exporting group.[2]

6. The 1972 draft departs from the prior provisions in several respects. It eliminates provision for appointed Directors. Each member, whether in the capital-exporting or the developing country group, would have the same number of basis votes plus one vote for each $1,000 contibuted to the Common Working Capital Fund.[3] A capital-exporting member would have one additional vote for the equivalent of each $100,000 of insurance it had sponsored; a developing country member would have one additional vote for each $1 million of insurance outstanding on investments made within its territories. Under these arrangements, the amount of insurance sponsored and the amount of insured investment received would, over the years, become increasingly important factors in the distribution of voting power within the capital-exporting and the developing country groups, respectively, in the election of the Agency's Directors.

(*b*) *Voting rights in the Board of Directors*

7. The issue of the distribution of voting rights in the Board of Directors itself involves consideration of how to distribute voting power between the two groups of Directors, and whether, and if so how, to weight the votes of Directors.

8. The OECD report suggested an eight-member Board, of which five Directors would represent the capital-exporting group. Each Director would cast one vote. The 1966 draft articles contemplated that the Board would have a minimum of 9 and a maximum of 11 members. Four Directors would represent developing countries. The capital-exporting members would be represented by at least five, and no more than seven, Directors. Each Director would cast one vote, except that if there should be fewer than seven Directors representing the capital-exporting country group, those Directors would cast seven votes, divided equally among them. In committee discussions of the 1966 draft, some Directors representing developing countries expressed the view that the smallest possible majority should

---

[1] The OECD report and the staff drafts all make special provision for constituting the initial Board of Directors.

[2] The 1972 draft extends this option to any developing country which has sponsored more than $1 million of insurance, irrespective of the amount of insured investment it has received.

[3] See discussion under "Financial Participation by Developing Countries," below.

be given to the group of Directors representing capital-exporting countries on the Agency's Board. Assuming an 11-member Board, they proposed a ratio of 5 to 6, rather than a ratio of 4 to 7. Some members of the Committee representing developed countries proposed that the voting power of individual Directors be weighted to bear some reasonable relationship to financial participation, say by reflecting the amount of insurance sponsored. However, the 1968 draft retained both the 4 to 7 ratio (with an indication of the tentative nature of the provision) and the provision for unit voting on the Board.

9. In discussions on the 1968 draft, some developing countries took the position that the developing country and the capital-exporting country groups should have the same voting power on the Board. Most of the capital-exporting countries continued to feel that the capital-exporting group should have a controlling voice within the Agency, particularly if the developing country group were to have no loss-sharing obligation (see "Financial Participation by Developing Countries," below). The 1972 draft attempts to reconcile these positions by providing for a Board of 10 Directors, half representing capital-exporting countries and half capital-importing countries, but with the former group exercising 65 percent of the voting power and the latter 35 percent. In lieu of the one-Director-one-vote provisions of the earlier drafts, the 1972 draft provides that each Director shall exercise a vote proportionate to the number of votes by which he was elected. These provisions were drafted in the expectation that the Agency's Board, like the Bank Board, would rarely, if ever, take action opposed by a numerical majority of the Directors, even if it had the support of Directors exercising a majority of total voting power. A further step in the direction of reconciling the positions of developing and capital-exporting countries would be to require that major decisions on potentially sensitive issues be taken by a qualified (rather than a simple) majority.[4]

Financial participation by developing countries

10. The issue under this heading is whether and to what extent developing country members should participate financially in the expenses and obligations of the IIIA, through contributions (a) to payment of claims for losses, should these exceed reserves built up from premium income, (b) to initial working capital, and (c) toward administrative expenses, should premium income be insufficient to meet those expenses.

11. The OECD report contemplated that losses would be shared only among countries which had sponsored insurance, and none of the successive staff drafts has made provision for mandatory loss-sharing by a developing country whose relationship to the insurance scheme has been solely that of host country (that is, which has not sponsored insurance). In Committee, however, the view was expressed that all members of a multilateral agency should assume some responsibility for losses, although capital-importing country liability should be relatively limited. A few developing countries indicated willingness in principle to accept a modest loss-sharing obligation.

12. The question of developing-country contributions to working capital or to administrative expenses are considered here together. The OECD report makes no reference to working capital. Both the 1966 and the 1968 staff drafts confined the obligation to provide working capital to the Agency's capital-exporting members. Each such member, upon accepting membership, would be required to make an "initial payment" (1966), or "advance for working capital" (1968), in an identical amount ($1 million). These payments or advances would be refundable in whole or in part at the Agency's discretion. As for administrative expenses, the OECD report contemplated that these would be shared by all members, including host countries. It did not, however, suggest a basis for doing so. The 1966 and 1968 drafts authorized the Agency to make calls for administrative expenses, but only upon capital-exporting members (irrespective of whether they had sponsored insurance) and upon those developing countries which had sponsored insurance. In Committee, the view was expressed that all members, including all capital-importing country members, should assume some responsibility for meeting administrative expenses.

---

[4] The 1972 draft requires a qualified majority vote by the Directors in a number of instances, e.g., in connection with recommendations to the Council that a nonmember of the Bank be invited to join the Agency, that the Managing Director become chairman of the Agency's Board, and that the articles of agreement be amended; for a decision by the Agency, as subrogee of an insured investor, to arbitrate a dispute with a host country; for approval of the Agency's budget; and to change the location of the Agency's principal office.

13. The 1972 draft establishes a permanent Common Working Capital Fund (the "Common Fund") to which each member of the agency would be required to contribute, upon joining, by way of a nonrefundable membership fee. The main purpose of the Common Fund would be to meet the Agency's administrative expenses pending receipt of income (i.e., to serve as a source of working capital), and to meet any excess of administrative expenses over income. In contrast to the comparable provisions of the earlier drafts, contributions to the Common Fund would not be uniform, even for capital-exporting members: they would be related to each member's Bank subscription, equivalent to three fourths per mil thereof. Assuming that all members of the Bank became members of the Agency, the Common Fund would amount to something of the order of $24 million.[5] The burden upon developing-country members would be minimized by permitting these members (but not capital-exporting countries) to substitute for 90 percent of their contributions non-negotiable, non-interest-bearing notes payable in their own currency. Again assuming that all developing country members of the Bank joined the Agency, and that all took advantage of the substitution provision, the effective contribution of the developing country group would be of the order of $750,000. Notes could be cashed by the Agency and the proceeds used to meet administrative expenses incurred in the member's currency, the proceeds could be exchanged for freely convertible currency only with the consent of the member concerned. These provisions, it may be noted, were considered acceptable by a number of Directors, some of whom represented developing countries, although other Directors were opposed to any financial participation by developing countries.

Subrogation

14. Most legal systems provide that an insurer, having paid the claim of an insured, will, either by operation of law or pursuant to the terms of the contract of insurance, be subrogated or succeed to any rights of the insured against a third party. The OECD report contemplated that it would be a condition precedent to issuance of a guaranty (insurance) that the prospective host country agree to recognize the administering agency as successor or subrogee, although subrogation would not be required if the host country had accepted the jurisdiction of "an arbitral tribunal established by international agreement".[6] Both the 1966 and the 1968 drafts made provision for subrogation or succession of the Agency and the recognition thereof by members.[7] The 1972 draft makes provision for subrogation or succession of the Agency, to the extent provided in the contract of insurance, except where the insured investor, under an agreement with the host country, may himself pursue his claim in an arbitration proceeding under the Convention on the Settlement of Investment Disputes.

15. In Committee, some Directors objected to any provision for subrogation on the ground that it would ultimately lead to a confrontation between the Agency and a member country. This objection would seem to go to the essence of a multilateral insurance institution. The objection could only be met by an express provision in the Articles that the Agency, having paid the claim of an insured investor, should not seek to recoup from the host country. There was also some expression of concern in Committee that, if the Articles made provision for subrogation, the Agency might be more disposed to pay claims under insurance contracts, in the expectation of subsequently being able to recover from the host country. In response, the staff noted that national investment insurance schemes made provision for subrogation and succession of the administering agency, but it had not been the practice of the national agencies to pay claims unless they were satisfied, or a court or arbitral tribunal had determined, that the claim was well-founded. Moreover, a subrogee could not recover from the host country merely on the ground that it had paid an insured investor's claim under an insurance contract.

16. A possible approach to resolution of the issue would be to provide that the Agency, as subrogee, could not lodge a formal claim against a host country except with the approval of the Agency's Board of Directors, by a qualified majority vote. (As noted below, the 1972 draft conditions institution of arbitration proceedings by the Agency against the host country upon such prior approval.)

---

[5] In 1973 dollars.

[6] The reference was presumably to the International Centre for Settlement of Investment Disputes. At the time the OECD Report was sent to the Bank, the Convention on the Settlement of Investment Disputes, which established the Centre, had only recently been submitted to governments.

[7] In the 1966 draft, the provisions covering subrogation and succession were separate from those concerned with settlement of disputes; in the 1968 draft, the subjects were covered together; in the 1972 draft, subrogation and succession are again separate from the disputes section.

Arbitration

17. The principal issue under the "arbitration" heading concerns the provision to be made for settlement of disputes between the Agency and a member, where the Agency is subrogee of or successor to an insured investor.[8]

18. The OECD report suggested that it should be a condition precedent to the issuance of a guaranty (insurance) that "appropriate arrangements" shall have been made for settling claims of the administering agency as subrogee or successor, against a host country, except where the latter had agreed that the insured investor might prosecute his claim "in an arbitral tribunal established by international agreement" (see footnote 6). The 1966 draft provided that all disputes involving members—which would include disputes of the indicated character—were to be settled, if possible, by negotiation; if negotiation did not lead to resolution and the parties did not agree to other method of settlement, resort was to be had to arbitration. The 1968 draft made no change in the substance of this provision; it merely stated the intention more clearly. The 1972 draft gives separate treatment to disputes between a host country and the agency as subrogee. With respect to these, it provides that, if the parties do not settle the dispute by negotiation or agree to another method of settlement, the dispute must be submitted to binding ad hoc arbitration, unless the host country has agreed to arbitrate the issues with the investor before the Centre for Settlement of Investment Disputes. The 1972 draft, as noted earlier, also provides that the Agency may not institute formal arbitration proceedings in this situation except with the approval of the Agency's Board by a qualified majority vote (at least 60 percent of the total voting power).

19. In Committee, some Directors objected to the provision for international arbitration on the ground that it was inconsistent with the concept of sovereignty as understood in their countries, and that it increased the possibility of a confrontation between a host country and the international community (in the person of the Agency).

2. The dispute would, by definition, have arisen in a context in which the Agency, having made payment to an insured investor under a contract of insurance, believed itself entitled to recoup all or part of that payment from the host country. The funds paid out by the Agency would have their source, in whole or in major part, in capital-exporting member countries. The dispute could, therefore, embarrass relations between the members concerned in other institutions of the bank group. That is the reason for making provision for recourse to third party settlement, should it not be possible to settle the dispute through negotiation. In the view of the staff, such a provision would be essential should the Agency be created as a member of the Bank Group. As regards the forum for settlement, in view of the character of the parties involved in the dispute, that is, a state and a public international institution, the only suitable forum appears to be an international one. The 1972 draft attempts to provide assurance that a decision by the Agency to institute arbitration proceedings will be taken only after careful consideration by the provision referred to above, requiring that such a decision have the approval of at least 60 percent of the total voting power of the Agency's Board.

---

[8] The "settlement of disputes" provisions also cover other types of disputes, i.e., disputes among members, disputes between the Agency and a member where the Agency is not acting as successor or subrogee (e.g., between the Agency and a capital-exporting member over loss-sharing), and disputes between the Agency and an insured investor. However, these provisions have not given rise to serious difficulties within the Committee.

Appendix F.—OPIC Internal Memorandum on Federal Government Insurance Programs

[OPIC Internal]

Through: Joseph H. Price.
From: Carl H. Middleton.
Subject: Federal Government Insurance Programs.

Since the Depression, U.S. citizens have increasingly looked to Government for help when disaster strikes. A government may react by (1) doing nothing; (2) providing relief from tax revenues; or (3) sponsoring insurance pools for those sharing risks in common. Increasingly the United States has opted for the insurance alternative where disasters have national implications; where tax-funded relief programs are inappropriate; and where private insurance coverage is inadequate. OPIC is one os several dozen modern Federal insurance programs. This paper will examine these programs within the perspective of the broad Federal movement to use the insurance alternative.

OPIC's insurance program is concerned with certain specialized noncommercial risks which are felt to be impediments to the kind of U.S. overseas investment which is important for the economic development of host countries and which is beneficial to the U.S. economy. Closely analogous Federal programs which also provide insurance against specialized risks are: (1) Export-Import Bank (EXIM Bank), (2) The Federal Riot Reinsurance Program, (3) The Federal Crime Insurance Program, (4) The Merchant Marine War Insurance Program, (5) The Federal Aviation War Risk Insurance Program, (6) The Federal Housing Administration, and (7) the Veterans' Administration Guaranty Program. Each of these programs is briefly described below.

EXIM BANK

EXIM Bank promotes the sale of U.S. goods and services abroad by providing direct loans, guaranties, and/or insurance. Its insurance explicitly covers the political risks of inconvertibility, expropriation, and war or civil disturbance. Its direct loans and guaranties implicitly assume the same political risks since, in most instances, EXIM Bank does not seek recourse against U.S. firms where default on the loan or guaranty results from political events. EXIM Bank's war risk coverage includes "civil disturbance" which is substantially broader than OPIC's coverage of "insurrection." EXIM Bank's outstanding portfolio of loans, guaranties, and insurance is in excess of $17 billion.

FEDERAL RIOT REINSURANCE

The Federal Insurance Administration (FIA), reinsures eligible insurance companies against losses due to riots and civil disorders when they participate under State fair plans in not turning down homeowners in riot-prone areas for insurance against (a) fire and extended coverage, (b) vandalism and malicious mischief, and (c) burglary and theft. Since 1968, the FIA has collected $80 million in premiums and bears a maximum potential liability under this program of $250 billion.

FEDERAL CRIME INSURANCE

The FIA also insures against loss from burglary, larceny, robbery, vandalism, and malicious mischief up to $5,000 per residence and $20,000 per business in areas where the Secretary of Housing finds "a critical market unavailability situation for crime insurance exists" * * * As of December 31, 1972, $90 million of insurance was in force. The risk insured against here is not as clearly defined as the riot and civil disorder risks mentioned above.

MARITIME WAR RISK INSURANCE

The Maritime Administration issues binders for U.S. ships and U.S. flags of convenience ships against war risks for a 30-day period after the outbreak of war between any of the five great powers or in the event of a nuclear explosion involving hostile action. In return for issuing such a binder, the USG is authorized to requisition ships subject to the binder. Binders have been issued on 1,100 ships with a maximum potential liability of $18 billion. This war risk insurance provides substantially more coverage than OPIC's since it insures against personal liability for death or injury of employees.

Another notable feature of this program is that it only comes into force when private insurance is not available at reasonable costs. Private insurance automatically terminates at the outbreak of war between two or more of the five great powers and it does not insure hostile nuclear incidents. Like the Maritime war risk program, OPIC was formed due to the lack of private insurance to cover political risks.

COMMERCIAL AVIATION WAR RISK INSURANCE

The FAA insures commercial flights between foreign points (where private insurance is not reasonably available) against damage to the aircraft and personal liability resulting from certain specialized risks including, war, insurrection, nationalization, confiscation, and seizure. The premium of 0.2 percent per annum produced $2,750,000 in 1972 covering a maximum potential liability of $1.9 billion. The FAA's coverage of both war and expropriation risks is closely analogous to OPIC's coverage.

In addition to the above program, the FAA manages a war-risk binder program similar to the Maritime Administration. In the event of the outbreak of war between any of the five major powers, any aircraft for which a $200 annual binder fee has been paid would be insured against damage to the aircraft and personal liability to passengers and crew. A similar program applies to aircraft on call to the State Department or Defense Department. Maximum potential liability under these programs is estimated to exceed $70 billion.

FEDERAL HOUSING ADMINISTRATION

The FHA had $138.5 billion of mortgage loan insurance in force as of June 30, 1972. While this Federal insurance program was not designed to insure against political risks, its policies operate to waive deficiency claims where damage was caused by riots or civil disturbance. The FHA does not take deficiency judgments against homeowners whose homes are destroyed by riots, civil disturbances, or by natural disasters. In addition the FHA will reinsure loans for purchasing or constructing homes even in riot-prone areas where conventional financing is not available at a reasonable cost. The effect of these policies is to form a de facto insurance pool since points paid to the FHA in politically stable areas are high enough to cover losses to homes in riot-prone areas.

VETERANS' ADMINISTRATION

The VA has guaranteed loans of about $40 billion to purchases or construct homes. Like the FHA, the VA has formed a de facto insurance pool benefiting homes in riot-prone areas by its policy to accept a deed in lieu of foreclosure if foreclosure is deemed to be against equity and good conscience. This provision is interpreted to cover homes destroyed by riots, civil commotion, and natural catastrophes.

OPIC's approximately $3 billion maximum liability is only 0.6 percent of the total Federal insurance maximum liability of $535 billion against similar specialized risks. Even if the FHA, VA, and Federal riot and crime insurance coverages are eliminated, OPIC would represent only 3 percent of the remaining $107 billion of political risk insurance carried by Eximbank, the Maritime Commission, and the FAA. These figures, however, only illustrate part of the Federal Government's use of the insurance alternative. Federal insurance programs—explicit insurance and de facto pooling of risks—are so pervasive that it is difficult

to identify them all. A partial list of the Federal insurance programs is given below:

1. Social Security Administration.
2. Medicare and Medicaid programs.
3. Atomic Energy Commission (insures up to $500 million for each nonwar domestic nuclear incident).
4. Federal Deposit Insurance Corporation.
5. Federal Savings and Loan Insurance Fund.
6. National Credit Union Insurance Fund.
7. Check Forgery Insurance (issued by the Treasurer).
8. Federal Crop Insurance Corporation (insures against losses caused by natural hazards).
9. Agricultural Credit Insurance (insures subsidized loans to farmers for productive purposes).
10. Rural Housing Insurance (insures loans for rural housing).
11. Rural Development Fund (insures loans for water, electrical, telephone, industrial, and community facilities).
12. Student Loan Insurance.
13. Higher Education Facilities Loan and Insurance Fund.
14. Unemployment Trust Fund.
15. The Small Business Administration (loans and loan guaranties for small business purposes and for disaster relief).
16. National Flood Insurance.

CONCLUSION

The new Federal emphasis on the insurance alternative has two common denominators. First, instead of reacting to general or personal disasters by either non-action or relief from tax funds, pools are formed for those sharing risks in common. Second, the actual risks are often reduced by programs designed and implemented by the Federal insurer. For example, the national flood insurance program requires communities to take certain flood prevention precautions to qualify for insurance. The FIA crime insurance program sets standards for securing insured premises against break-ins. Eximbank's political insurance premium varies according to the varying political risks in different countries.

OPIC's programs and policies also have reduced the political risks to U.S. investments in friendly, developing countries. Foreign governments are less likely to expropriate U.S. property where OPIC by bilateral treaty is subrogated to the investors' rights against the foreign governments. Risks have been further reduced by OPIC's growing expertise in helping the U.S. investor to structure his investment in such a way as to minimize political friction with the host government. For instance, in certain sensitive projects OPIC may require that the investment be multinationalized or that the contract contain international arbitration clauses in order to qualify for OPIC insurance. OPIC also declines to insure various types of investments and may decline to insure investments in a country where OPIC has too great a concentration of insurance.

OPIC can be compared and contrasted in many ways with other Federal insurance programs. OPIC's premiums, for instance, are designed to make OPIC self-supporting, unlike Federal flood insurance which is 90 percent subsidized. OPIC is one of the Federal insurance programs, like Eximbank, which is opportunity oriented as opposed to being problem oriented. OPIC does not merely ameliorate disasters; it provides an incentive for wealth creating activity which increases jobs and the U.S. standard of living. OPIC is distinguished because it is actively trying to put itself out of business by developing a private insurance alternative.

Appendix G.—OPIC/Agribusiness Council Project Development Through December 1972

	I	II	III	IV	V
Fiscal year 1970	Morocco	Cattle feed	D	-------	
	Colombia	Fruits and vegetables	NF	-------	
	Afghanistan	Poultry and eggs	NF	-------	
	Korea	Fishing	F	$5.5	I
	Malagasy Republic	Flour mill	F	.3	
	Nigeria	Fishing	D	-------	
	Costa Rica	Integrated cattle	F	4.0	
	Liberia	Flour mill	F	.3	I, F
	Iran	Field crops	NF	-------	
Fiscal year 1971	Indonesia	Cocoanut processing	F	1.3	I, F
	Iran	Beef, lamb processing	F	13.0	
	Central America	Tuna processing	NF	-------	
	Honduras	Egg production	D	-------	
	Iran	Fruits and vegetables	P	-------	
	Mexico	Oilseed crushing	D	-------	
	Iran	Seeds	P	-------	
	Brazil	Protein foods	P	-------	
	Cameroon	Avocado production	P	-------	
	Costa Rica	Shrimp	P	-------	
	Central America	Seed	P	-------	
	Iran	Food transport	D	-------	
	Zaire	Milk plant	P	-------	
	Indonesia	do	F	5.0	I
Fiscal year 1972	Kenya	Retail markets	D	-------	
	Indonesia	Spices	P	-------	
	Nicaragua	Integrated beef	P	-------	
	Malawi	Seed	P	-------	
	Cameroon	Pineapple cannery	P	-------	
	Iran	Feeds, livestock	F	18.0	
	Brazil	Fresh fruits and vegetables	P	-------	
	Indonesia	Feed mill	NF	-------	
	Dahomey	Peanut processing	F	6.0	
Fiscal year 1973 (6 months).	Brazil	Shrimp	P	-------	
	do.[1]	Swine processing	P	-------	
	do.[1]	Poultry processing	P	-------	
	do.[1]	Integrated beef	P	-------	
	do.[1]	Sugar central	P	-------	
	do.[1]	Milk products	P	-------	
Total				53.4	

[1] Represents a concentrated effort, at the request of the Brazilian Government to bring U.S. agribusiness firms to the more underdeveloped parts of the country.

Note: Col. I—Country; II—The business; III—Result (Feasible, Not Feasible, Dropped, Pending); IV—Total project nvestment ($000,000); V—Further OPIC participation (Insurance, Finance).

99-341—73——11

Appendix H.—Preliminary Guidelines for Analysis of Developmental Effects of OPIC Projects

Purpose: Section 231(f) of the authorizing statute directs OPIC to assure that projects it assists be responsive to the "special needs and requirements" of the host country's economy and contribute to its social and economic development. One purpose of the foreign government approval (FGA) procedure is to give this assurance. In addition, the OPIC application form for insurance requires the applicant to provide in sections 8 and 9 (copy attached) detailed information on each proposed project's direct effects on the host economy and its degree of dependence upon tariff protections or other subsidies. Similar information is required in considering a proposal for financial assistance.

The following guidelines are intended to assist analysis of the developmental impact data obtained from the applicant or other sources. These guidelines are an aid to judgment, not a substitute for judgment. Their purpose is to sharpen issues for appropriate policy-level decisions. Parts of the guidelines will not be applicable to many projects. No project is likely to show positive developmental effects on every indicator. Experience with the use of these norms and continuing research on actual developmental results of mature projects will lead to refinement of these guidelines.

Procedure: Each project paper submitted for approval of OPIC participation involving $1 million or more of OPIC-insured investment or $1 million or more of OPIC direct and/or guaranty financing will include a section headed, "Developmental Effects." This section will summarize and evaluate developmental impact estimates obtained from the applicant or other sources, covering such of the following factors as may be critical to a judgment of its effects on the host country's economy.

A. *Foreign exchange.*—Net annual foreign exchange earnings and/or savings generated by the project in the first 5 years following completion. The net result is derived by subtraction of yearly value of imports (c.i.f.) required in production and foreign exchange remittances of earnings, interest, fees, et cetera from the total value of exports (f.o.b.) to be attained and/or imports replaced (c.i.f) by the project.

Evaluation: Good, if net result is positive and the sum of exports and import-replacement is 150 percent or more of remittances to foreign investors/licensors. Acceptable, if net result is positive.

B. *Domestic revenue.*—Net annual average taxes paid to host country (internal and external), including duties on imports required in production, in the project's first 5 years after completion, after deducting import duties on replaced imports of the product(s).

Evaluation: Good, if net annual average tax revenues equals 10 percent or more of total investment in project. Acceptable, if tax revenue/investment ratio for the project is equal to the tax revenue/investment average for the same broad sector (manufacturing, mineral extraction, transportation, construction, other services) in the host country.

C. *Tariff protection on product(s):*

(1) Level of protection preexisting in the product field in the host country, or

(2) Level of protection negotiated by the investor(s) as a condition for making the investment, and

(3) Duration of protection. (In some projects this may require judgment as to whether the proposed plant is of such uneconomic size that the applicant's estimate of the duration of protection required is unrealistic.)

Evaluation: Good, if imports of the product(s) are not subject to quantitative restriction and tariff level is less than 30 percent of cost insurance freight value, and duration of protection is 5 years or less. Acceptable, if quantitative restrictions on imports are preexisting and less than 100 percent exclusion, tariff duties on competing imports do not exceed 50 percent, and duration of protection is less than 8 years.

(A modified analysis will be required in the case of an export monopoly concession.)

D. *Local capital mobilization.*—Amount of additional capital to be invested from local private sources in the project and the projected capital:output ratio of the project.

Evaluation: Good, if local private investment is a substantial portion of total investment in the project. Acceptable, if there is any local capital investment in the project.

(Note. These evaluations assume that the capital:output ratio of the project is more favorable than most alternatives for local capital.)

E. *Local market prices of the product(s).*—Comparison of the projected local market prices of the product(s) with existing prices of essentially the same product(s) either produced locally or imported.

Evaluation: Good, if the project's production will be priced lower than current local prices at comparable stage of marketing. Acceptable, if the project's product(s) will be priced no higher than 20 percent above current local prices and the project has a strongly positive effect on the country's balance of payments.

F. *Effect on existing local producers of the product(s).*—Prospective competitive impact on existing producers of essentially the same product(s).

Evaluation: Good, if local price-effect evaluation is "good" and total employment in the product field concerned will be increased. Acceptable, if F.G.A. process has expressly taken this factor into account.

G. *Effect on local supplier and/or downstream industries.*—Quantified stimulative effects on market demands.

Evaluation: Good, if the project substantially increases local market for production supplies and components and/or for local fabrication, packaging or distribution of the end product. Acceptable, if any incremental stimulus to local industries can be identified.

H. *Employment and skill creation.*—Employment stimulation and organized training by categories of employees (management, professional/technical, and general labor) during the construction or installation period, the first year and the fifth year of operation, and any reliable indicator of effects on local salary and wage scales.

Evaluation: Good, if the project's employment:capital ratio at full production (with employment expressed in man-years) is at least 25 percent greater than the employment capital ratio in U.S. production in the same 4-digit SIC product categories and the applicant states that wage levels of the porject will be significantly higher than existing levels in similar production in the host country. Acceptable, if the project will make a significant net increase in employment in the host country and includes specific plans for local staff training.

I. *Effects on technological level, ecological factors, project-financed additions to host country infrastructure and other significant effects on the host country.*—A summary of any other significant positive or negative factors important to determining the project's developmental impact, without comparative evaluation.

Sections 8 and 9 of the OPIC Application Form for Insurance

The economic and social development of the host country. The law (section 231(f), Foreign Assistance Act) requires OPIC "to encourage and support only those private investments in less developed countries and areas which are sensitive and responsive to the special needs and requirements of their economics and which contribute to the social and economic development of their people."

(A) Present projected impact of the project on the host country economy:

1. Project additional annual domestic revenues (taxes, duties) which the host country may be expected to obtain during the first 5 years of production or operation of the project (projection should be net of current revenues such as duties on substituted imports).

2. What new local private investment will be contributed to the project (e.g., local equity financing, etc.). What local raw materials and locally manufactured items will be used in operation of the project?

3. What other new local investment or increased economic activity can be foreseen as a result of the project (e.g., expansion by local private suppliers or customers, public/private investment in related facilities—roads, power plants, etc.).

4. How will prices set for major product(s) of the project compare with existing selling prices for similar products. Project likely percentage change from present prices for products (whether imports or local production).

5. List principal competitors (include market shares of each). Are they locally or foreign owned?

6. What adverse ecological effects, if any, will result from this project? Have you discussed these with the host government?

(B) What is the present projected yearly average foreign exchange impact of the project for the first 5 years?

1. Yearly value (cif) of imports replaced ---------- $----------
2. Yearly value (fob) of exports generated ---------- ----------

(A) Total ---------- ----------

3. Yearly value (cif) of imported raw materials used in production ----------
4. Yearly remittance of profits, loan repayment, fees, etc ---------- ----------

(B) Total ---------- ----------

5. Net foreign exchange saving or cost (A–B) ---------- ----------

(C) PROJECTED EMPLOYMENT DATA

	Construction period		1st year's operation		5th year's operation	
	Host country	Expatriates	Host country	Expatriates	Host country	Expatriates
Management						
Professional/technical						
Labor						

What effect do you anticipate the project's local employment will have on local salaries and wage scales?

What relationships do you expect with local trade unions?

(D) Other contributions to development.

Describe briefly other specific constructive development contributions resulting from the project (e.g., any unique transfer of technology, special training program for host country nationals, new facilities such as schools, housing, or medical care planned to be provided for the local community in connection with the project).

Appendix I.—Projections of OPIC Finance Programs Through 1980 (OIPC Staff Study)[1]

The attached two tables demonstrate that under certain assumptions the OPIC financing programs can operate and grow on a self-sustaining basis. The projections were carried through 1980 and were based on rates of growth of $30 million and $40 million annually.

OPIC is limited by statute to loan guaranties no greater than four times the investment guaranty reserve. The reserve is presently $75 million. The reserve must be used to pay all losses in the guaranty portfolio, which thereby reduce guaranty capacity by four times the amount of the loss. The reserve may be replenished or increased by allocations from OPIC earnings, or by appropriations from Congress. For the purpose of this study, it was assumed that all earnings of the finance programs, both guaranty fees and interest on direct loans, net of operating expenses, are appropriated by the Board to the guaranty reserve. In addition, the interest earned on the invested portion ($30.9 million of $75 million at 6–30–73) of the reserve is assumed to be credited to the reserve. These earnings are sufficient to cover losses and permit growth without any necessity to seek additional appropriations from Congress, provided losses do not exceed $50 million over the 8 year period.

With $30 million annual growth, finance earnings permit a net increase in the reserve from $70.0 million ($75 million opening reserve less an assumed $5 million loss) at the end of fiscal year 1973 to $96.4 million at the end of 1980, and growth in the guaranty portfolio from $194 million to $296 million. With $40 million annual growth, the guaranty reserve increases to $101.4 million and the portfolio to $361 million. During 2 of the early years when $40 million in new business is being written $4.3 million must be "borrowed" from OPIC's insurance earnings to maintain guaranty reserves at required levels, but these funds are repaid and replaced by increased earnings of the finance program in the following years.

For the purpose of these projections losses are assumed to average $5 million a year. In addition, a contingency reserve of $10 million has been set aside out of the guaranty reserve to cover extraordinary losses above $5 million. These assumptions are felt to be conservative, especially in the later years, since the OPIC guaranty contract as presently written requires payment of maturities as they fall due, rather than on an accelerated basis. Losses substantially in excess of those projected would either constrain further growth of the guaranty program or cut deeply into general corporate earnings allocable to the insurance reserve or, in the extreme case, require congressional replenishment of the guaranty reserve.

These projections should not be interpreted as suggesting that the guaranty program can be operated without the full faith and credit backing of the U.S. Government. This backing is essential to raising long-term loan funds for projects in developing countries from institutional lenders.

---

[1] Prepared for the Congressional Research Service.

NEW GUARANTIES ANNUALLY, $30,000,000

	1973[1]	1974	1975	1976	1977	1978	1979	1980	Total
Guaranties outstanding	193.6	214.2	235.3	253.4	254.4	267.5	271.1	296.4	296.4
Projected additions to reserves:									
Reserves beginning of year	75.0	70.0	70.2	72.0	75.5	79.9	84.9	90.4	75.0
Net finance earnings[2]		3.5	4.9	6.2	6.8	6.8	6.8	6.7	41.7
Earnings on reserves[3]		1.7	1.9	2.3	2.6	3.2	3.7	4.3	19.7
Losses	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(40.0)
Appropriation from insurance earnings									
Total reserve end of year	70.0	70.2	72.0	75.5	79.9	84.9	90.4	96.4	96.4
Required reserves:									
Statutory reserves (25 percent)	49.7	54.8	60.1	64.6	64.9	68.1	69.0	75.4	75.4
Contingency reserve[4]	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Total	59.7	64.8	70.1	74.6	74.9	78.1	79.0	85.4	85.4

[1] 1973 figures reflect budgeted amounts; no earnings will be added to the Guaranty Reserve in 1973.
[2] Net finance earnings are fees and interest earned on guaranties and direct loans less Finance Division expenses.
[3] The portion of the Guaranty Reserve composed of retained earnings is invested in U.S. Government securities at 5½ percent per annum.
[4] A special reserve has been set aside out of the 1973 Guaranty Reserve to provide a cushion in case of an unforseen loss.

NEW GUARANTIES ANNUALLY, $40,000,000

	[1] 1973	1974	1975	1976	1977	1978	1979	1980	Total
Guarantles outstanding	193.6	224.2	255.3	282.7	292.7	314.5	326.9	360.9	360.9
Projected additions to reserves:									
Reserves beginning of year	75.0	70.0	70.2	73.8	80.7	83.2	88.6	94.3	75.0
Net finance earnings[2]		3.5	5.2	6.8	7.5	7.6	7.7	7.6	45.9
Earnings on reserves[3]		1.7	1.9	2.3	2.9	3.3	3.9	4.5	20.5
Losses	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(40.0)
Appropriation from insurance earnings[4]			1.5	2.8	(2.9)	(.5)	(.9)		
Total reserve end of year	70.0	70.2	73.8	80.7	83.2	88.6	94.3	101.4	101.4
Required reserves:									
Statutory reserves (25 percent)	48.4	56.1	63.8	70.7	73.2	78.6	81.7	90.2	90.2
Contingency reserve[5]	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10 0	10.0
Total	58.4	66.1	73.8	80.7	83.2	88.6	91.7	100.2	100.2

[1] 1973 figures reflect budgeted amounts; no earnings will be added to the Guaranty Reserve in 1973.
[2] Net finance earnings are fees and interest earned on guaranties and direct loans less Finance Division expenses.
[3] The portion of the Guaranty Reserve composed of retained earnings is invested in U.S. Government securities at 5½ percent per annum.
[4] To the extent finance earnings are insufficient in 1975 and 1976, the required reserves will be made up by appropriated insurance earnings.
[5] A special reserve has been set aside out of the 1973 Guaranty Reserve to provide a cushion in case of an unforeseen loss.

Appendix J.—Foreign Investment Disputes Involving U.S. Capital

Department of State,
Washington, D.C., June 18, 1973.

Memorandum

To: Mr. Hans Binnendijk, Library of Congress
From: Theodor Rumme, INR/REC
Subject: Foreign Investment Disputes Involving U.S. Capital

Attached is a tentative worldwide list of firms which were or have been involved in investment disputes since June 30, 1971. To put this list in perspective and to avoid misunderstandings regarding companies which have been included or omitted a few comments about how this list was compiled are necessary.

Investment dispute.—As we have used the term in compiling this list, an investment dispute is any situation which could result in a firm divesting itself of all or part of its ownership in the assets it holds in a foreign territory. The impetus for a dispute may have originated with an overt act either by some host government entity or by the firm's owners (who may have perceived the investment climate as growing unfavorable). In the latter case, even the most amicable and mutually agreed upon divestitures presumably involve negotiations (hence disputes) about the value of the firm's assets. Given this definition of investment dispute, no conclusions should be drawn, on the basis of this list alone, about the attitudes of the governments of the countries, included in the list, toward foreign investment.

The list is tentative.—This list is based on a preliminary review of Department and overseas post reports on investment disputes, as well as conversations with country desk officers. For most countries, the desk officers were the sole sources of information. Since it is probable that not all disputes have been reported and since newly assigned desk officers may not be aware of earlier disputes, the list is unlikely to be complete.

De minimus cases not included.—*De Minimus* disputes involving U.S. capital of less than $1 million have generally not been included in the list. When no information on the value of the U.S. capital in a disputed investment was available, the case was included.

Settlement of disputes.—Some of the investment disputes listed as unsettled have been in the final stages of negotiations. Overseas posts may not have been informed that settlements were reached, or if informed, posts may not yet have eported the settlements to the Department.

Africa

Algeria: Detersav, Algerie (Procter and Gamble)

Central African Republic: Diamond Distributors, Inc. (settled)

Ghana:

British Aluminium (Reynold Metals—settled)
Pfizer (settled)
Sterling Drugs (settled)
Starkist (settled)
African Manganese (Union Carbide)

Kenya:

Standard Chartered Banks (Chase Manhattan)
National and Grindlays Bank (First National City Bank of N.Y.)

Liberia:

Bethlehem Steel
Republic Steel

Libya:

Sahara Bank (Bank of America, Morgan Guaranty Trust Co.)
Chappagua Oil Co.
Sahara Insurance Co.
Exxon
Bunker Hunt, Inc.

Morocco: Holiday Inns/Occidental International

Nigeria:

Gulf
Mobil
Texaco
Chevron
Philips (with AGIP)

Somalia: National and Grindlays Bank (First National City Bank of N.Y.)

Sudan:

American Life Insurance Co. (settled)
Barclays Bank (Bank of America—settled)
Hartford Fire Insurance Co. (settled)
National and Grindlays Bank
National Cash Register

Togo: [1] Campagnie Togoleise de Mines Bennin (W. R. Grace—settled)

Uganda:

American Life Insurance Co. (settled in part)
Barclays Bank (Bank of America—settled)
Standard Bank (Chase Manhattan—settled)
National and Grindlays Bank (First National City Bank of N.Y.—settled)
International Television Sales, Ltd.

Latin America

Bolivia:

Bolivia Gulf Oil Co. (settled)
[1] International Metals Processing Co. (settled)
[1] Mina Matilde Corp. (settled)

Chile:

[2] Cia Minera Andina (Cerro)
[2] Cia de Cobre Chuquicamata (Anacanda)
[2] Cia de Cobre El Salvador (Anacanda)
[2] Cia Minera Exotica (Anacanda)
[2] Soc. Minera El Teniente (Kennecott)
[2] Ford Motor Co.
[2] Chilean Telephone Co. (ITT)
[2] Dow Quimica
[2] Petroquimica Dow S.A. (Dow)
MADECO (General Cable)
[2] Electromat, SA (General Electric)
Concretos Redy-Mix (International Basic Economy Corp.)
[2] Quimica Industrial (International Chemical Fibers)
IRECO Chile (IRECO Chemical)
American Screw (Chile) SA (Textron)
US movie distributorships (Allied Artists, Paramount, MGM, Twentieth Century Fox, United Artists, Universal International, Warner Bros, Columbia Pictures)
Sociedad Quimica y Minera de Chile (Anglo-Lautaro Nitrate) (settled—bought out)
Armco Chile (Armco Steel—settled, bought out 51 percent of 70 percent)
[1] Bank of America (settled—bought out)
Bethlehem Chile Iran Mines Co. (Bethlehem Steel—settled, bought out)
Embotelladora Andina, SA (Coca-Cola—settled, bought out)
Industrias Quimicas DuPont (DuPont—settled, bought out)
[1] First National City Bank (settled—bought out)
General Motors (settled—plant leased)

---

[1] OPIC—Issued and settled.
[2] OPIC—Issued.

[1] Industrias NIBSA SGM SudAmericana LTDA.
(Northern Indiana Brass Co. settled—bought out)
[1] Celulosas Arauco (Parsons & Whittemore) settled—bought out
RCA SA Electronica (RCA—settled, GOC bought 25 percent of RCA's percent)
[1] Alimentos Purina
Crown Cork
Guias Telefonicas de Chile

Costa Rica: RECOPE (Allied Chemical)

Cuba: 5,800 outstanding claims

Ecuador:

All American Cables and Radio (2 cases, 1 settled)
I.T.T. (2 parcels of land)
[2] Forestal Equatoriana, S.A. (Georgia Pacific International Corp.)
Minas Y Petroleos (Amerada Hess, Aminoil)
Texaco-Gulf
Gulf of Guayaquil

El Salvador: [2] International Railways of Central America (also Guatemala)

Guatemala:

Empresa Electrica (Boise Cascade—settled)
International Railways of Central America (also El Salvador)

Guyana: ALCAN Aluminium of Canada (settled)

Haiti: Du Pont Caribbean Translinear Corp.

Mexico: Compania de Azufre Veracruz, SA

Panama: Fuerza y Luz (Boise Cascade—settled)

Peru:

International Petroleum Co.
Conchan (Standard Oil of California)
[2] W. R. Grace & Co.
Marcona Mining Co.
Cerro Corp.

Trinidad and Tobago:

Continental Telephone Co. (settled)
Trinidad and Tobago Flour Mills (settled)

Venezuela:

The following oil companies are in dispute with the GOV over what assets must revert to Venezuela under the reversion of petroleum assets law:
Creole (Standard of N.J.)
Mobil
Texaco
Sinclair
Continental
Amoco
Gulf
Sun Oil
Charter
Chevron
Texas

Near East and South Asia

Bahrein:

BAPCO
Texaco
Chevron

Bangladesh:

[2] Belton Bagging Co.
Associated Bagging Corp.

---

[1] OPIC—Issued and settled.
[2] OPIC—Issued.

India:
American Insurance Co.
Great American Insurance Co.
Hanover Insurance Co.
Hartford Fire Insurance Co.
Home Insurance Co.
New Hampshire Insurance Co.

Iran:
International Oil Consortium:
Texaco, Chevron, Exxon, Gulf, Mobil, Iricon (American Independent Oil Co., Atlantic Richfield, Getty, Continental Charter, Chevron)
IPAC: Amoco (with Iranian company, NIOC)
IMINOCO:
Phillips (with ENI, Indian Oil and Gas Commission, NIOC)
LAPCO:
Murphy, Sun Oil, Atlantic Richfield, Union (with NIOC)
Shahopour Chemical Co. (Allied Chemical—settled)

Iraq:
Basrah Petroleum Co.
Exxon, Mobil (with BP, CFP, Shell, Gulbenkian)
Iraq Petroleum Co. (Settled)

Kuwait:
Kuwait Oil Co.
Gulf (with BP)

Lebanon: International Petroleum Co.

Pakistan: American Life Insurance Co.

Qatar: Qatat Petroleum Co.
Exxon, Mobil (with BP, CFP, Shell, Gulbenkian).

Saudi Arabia: Aramco
Texaco, Chevron, Exxon, Mobil.

Sri Lanka:
Pfizer.
Sterling Drug Co.

Syria:
Mobil.
Exxon.

United Arab Emirates:
Abu Dhabi Petroleum Co.
Exxon, Mobil (with BP, CFP, Shell, Gulbenkian).
Dubai Marine Areas, Ltd.
Continental, Sun Oil, Deutscher Texaco (with CFP, Hispanoil).

Peoples Democratic Republic of Yemen:
Texaco, Chevron.
Exxon.
Mobil.

Europe

Czechoslovakia: 2630 outstanding claims

Hungary: 1,153 outstanding claims

Italy: Raytheon Co.

East Asia

Peoples Republic of China: $196 million in outstanding claims

Republic of China:
Mobil China Allied Chemical Co. (Mobil Allied Chemical—settled).

Appendix K.—General Policy and Guidelines for Insurance of Large and Sensitive Projects

Overseas Private Investment Corporation

March 8, 1971

GENERAL POLICY AND GUIDELINES

Eligibility of project—*Large or sensitive projects.*

This policy statement provides guidelines for the issuance of insurance coverage for projects which, because of their size or other attributes, can be characterized as involving particularly sensitive relationships between the investor, the host country, and the U.S. Government acting through OPIC

A. LEGISLATIVE AUTHORITY

This statement implements, in part, the following provisions of the Foreign Assistance Act of 1961, as amended:

"Section 231 . . . In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—

"(d) to conduct its insurance operations with due regard to principles of risk management . . . ;

"(f) to encourage and support only those private investments in less developed friendly countries and areas which are sensitive and responsive to the special needs and requirements of their economies, and which contribute to the social and economic development of their people;

"(g) to consider in the conduct of its operations the extent to which less developed country governments are receptive to private enterprise, domestic and foreign, and their willingness and ability to maintain conditions which enable private enterprise to make its full contribution to the development processes; . . . "

B. CRITERIA

The following criteria will be applied in determining which projects will usually be subject to this policy:

1. *Size of project.*—The policy normally applies to all projects involving a total U.S. investment of approximately $25 million or more.

2. *Utilities and other public facilities.*—The policy normally applies to investment in utilities, communications, transportation, and similar projects which in the United States would be customarily regarded as regulated industries or common carrier services.

3. *Protected industries.*—The policy normally applies to investments receiving, through special host country agreement, significant economic benefits (e.g., tax, tariffs, concessions) not accorded other investors through laws or regulations of general applicability.

4. *Natural Resources.*—The policy applies to natural resources projects which involve the search for and extension of irreplaceable minerals from their natural setting or their refining or processing at or near the point of extraction. (Note additional guidelines for natural resources projects set forth below.)

C. GUIDELINES FOR INSURANCE

Investments covered by this policy will be subject to the following guidelines for insurance coverage:

1. *Term of coverage.*—(a) Equity investment insurance will usually not extend beyond 12 years. (b) Debt investment insurance for noninstitutional lenders may extend for a 12-year period, but in appropriate cases coverage may be extended for the initial term of the loan. Loans by institutional investors will normally be covered for the initial term of the loan.

2. *Amount of coverage.*—The insured amount will not exceed the amount of the original investment (except to the extent that OPIC approves, on a negotiated basis, additional coverage for retained earnings or accrued but unpaid interest). The initial amount of coverage will be adjusted on a predetermined declining basis to be negotiated with the investor on the basis of projected profit repatriation, straight line amortization, depreciation, or other appropriate formula.

3. The option of selecting standby coverage will not be available in respect of that portion of the investment already committed to the project.

4. In cases involving an investment in excess of $50 million, OPIC may limit the maximum amount it will insure based upon the concept of self-insurance and such factors as the amount and nature of the insurance portfolio then outstanding in the host country, the portfolio concentration in the industry, and other principles of risk management.

5. OPIC may prescribe variations from the usual fee structure for projects under this policy. Such variations may be based on the factors enumerated in the preceding paragraph, as well as the size of the investment, the degree of risk involved and other characteristics of the project.

6. In any case covered by this policy, OPIC may take special steps to determine whether the criteria specified above in Section 231 of the Foreign Assistance Act of 1961, as amended, have been met. These may include:

(a) Steps to ascertain whether any agreements between investor and host government were fairly and openly negotiated;

(b) Discussions with the host government and the investor to evaluate their judgment and expectations of the project in the light of their respective priorities and policies;

(c) Additional official assurances from appropriate levels of the host government that U.S. Government encouragement of the particular project is desirable;

(d) A judgment as to the acceptability and fairness of the investment to the host country.

D. ADDITIONAL GUIDELINES FOR NATURAL RESOURCES PROJECTS

1. *Exploration.*—During the exploration phase of a natural resources project, insurance coverage will be available only for tangible and removable assets. Intangible costs (labor, concession payments, etc.) and costs of tangible property left in the ground will not be covered.

2. *Production and initial refining facilities located at or near production site.*—Investment in new facilities for nonpetroleum projects may be covered. Such investment will generally include capital costs of permanent shafts, storage and transportation facilities, et cetera for commercial production, excluding capitalized costs from the exploration phase. With respect to petroleum projects, only tangible and removable assets will be insured although projects of exceptional development significance may be permitted additional coverage on an individually negotiated basis.

3. Payments under concession contracts, natural resources in the ground or the capitalized value of such resources of concession agreements will be excluded from coverage. Breach of the concession contract will not be deemed an act of expropriation per se, but will be judged on the basis of the insurance contract standard definition of expropriation.

Approved by OPIC Board of Directors; March 8, 1971. [BDR(71)18] OPIC: B Veret/P Counts.

ALTERNATIVE INSURANCE COVERAGE FOR LARGE OR SENSITIVE PROJECTS

A. Insurance applications affected by alternative policy

1. Applications for all projects deemed large ($25 million of insured investment) or sensitive (by industry category) under the large or sensitive project policy guidelines approved by the OPIC Board [see PG 5.03 of Mar. 8, 1971].

2. On a case-by-case basis, applications for projects of any size in any country where unusual risks are deemed by OPIC to be present.

B. Insurance applications not affected by alternate policy

Standard coverage will be available for all insurance applications not in categories 1 or 2 above, unless coverage reductions are required on individual contracts to comply with country concentration ceilings or because of war risk considerations.

C. Insurance to be given applications subject to alternate policy

1. Coverage A (Inconvertibility): standard coverage for 20 years.
2. Coverage C (War): standard coverage for 20 years.
3. Coverage B. (Expropriation):

(a) *Debt:* Normally, a standard coverage will be given for the duration of the debt not to exceed 12 years and with no grace period in the contract (subject to the same extension terms as those set forth for equity in para. 3(c)(i) below). Where an unusual risk of an early expropriation claim is deemed present, OPIC may give less than standard coverage. Except for debt owed directly or indirectly to financial institutions (such as banks, insurance companies and Edge Act corporations), debt owed to equity owners will be insured on the same basis as an equity investment (see subpara. (c) below). For purposes of this policy, equity owned and debt owed by related corporations shall be deemed to be the equity and debt of the same party. Debt owed directly or indirectly to financial institutions will be given the ordinary limited coverage, not to exceed 12 years whether or not the financial institution is an equity owner. Parent company guaranties of institutional debt will also be given the ordinary limited coverage, not to exceed 12 years.

(b) *Debt overruns:* Possible overruns in the first 3 years may be covered but must be anticipated and placed on standby at the outset.

(c) *Original equity investment:* Investors will be given coverage as follows:

(i) Coverage will be limited to a 12-year term, subject to a further 8-year extension wholly within OPIC's discretion, and on such terms as OPIC decides (such terms generally to include a noncancelable contract for the additional 8 years at a coverage level of 50 percent); such discretion is to be exercised by OPIC, upon a request submitted by an insured investor, no later than 6 months before the termination of the 12-year contract.

(ii) Coverage will be limited to 90 percent of equity investment during the first 3 years of the insurance contract, declining at an annual rate of 10 percent thereafter until the minimum coverage of 50 percent is reached at the beginning of year seven.

(iii) Coverage of equity investment in proportions higher than the above-stated norms may be given where such important factors as multilateralization, large existing coinsurance and substantial local equity participation are present to reduce OPIC risks.

(iv) Coverage of equity investment in proportions lower than the above-stated norms may be given when the investment is judged by OPIC to present especially high risks of future vulnerability to expropriation.

(d) *Equity overruns:* Possible equity investment overruns in the first 3 years to complete the project may be covered but must be anticipated and placed on standby at the outset. Such investment will be subject, when made, to co-insurance as required above and will not lengthen the term of the contract.

(e) *Earnings:* The ratable share of losses suffered by the foreign enterprise will operate to reduce compensation.

Earnings retained in the foreign enterprise and attributable to the investor's equity interest will be covered in amounts and percentages up to but not exceeding coverage of the original equity investment in effect from time to time.

(f) *Coverage for "Retained Reinvested Earnings" and/or subsequent new investment:* Applications for additional coverage on these grounds, if in connection with new projects or further expansions, will be considered on their merits when presented.

This policy was approved by the OPIC Board of Directors on October 26, 1971 [BDR(71)67].

○

KANSAS STATE
UNIVERSITY
LIBRARY
MANHATTAN

KANSAS STATE
UNIVERSITY
LIBRARY
MANHATTAN