

Send to: PUREVDORJ, MUNKHSELENGE
WAKE FOREST UNIVERSITY SCHOOL OF LAW
1834 WAKE FOREST DR
WINSTON SALEM, NC 27109-8758

Time of Request: Sunday, November 28, 2010 21:23:34 EST

Client ID/Project Name:

Number of Lines: 134

Job Number: 2841:255646859

Research Information

Service: Terms and Connectors Search

Print Request: Current Document: 1

Source: Doing Business in France

Search Terms: § 16.04 Export Financing, Credits and Insurance



1 of 1 DOCUMENT

Doing Business in France

Copyright 2010, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

CHAPTER 16 IMPORT-EXPORT TRADE

2-16 Doing Business in France § 16.04

§ 16.04 Export Financing, Credits and Insurance

[1] Introduction

In order to encourage the export of French goods and foster a positive trade balance, France has also established a number of programs which promote the establishment and facilitate the operations of exporting firms. The purpose of this section is to briefly describe French export financing, credits and insurance programs for which a foreign investor or his French investment vehicle may qualify.

Since extra-governmental documentary credit arrangements pursuant to which a bank agrees to tender payment for goods upon the presentation of specified documents are widely used throughout the world, and given the fact that such arrangements present no particularities in France, their purposes or functioning will not be discussed here in detail. Suffice it to say that French documentary credit arrangements are often governed by the rules set forth in the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce. n1

[2] Export Financing

There is a large variety of export financing programs available in France. Certain programs provide loans to exporters on a preferential basis or at reduced interest rates; other programs provide short-term equity investments.

Those firms which agree to increase the volume of their sales outside of the European Community by thirty percent over a period of four fiscal years may apply for medium and long-term loans at reduced interest rates. In order to qualify for such subsidized loans, the applicant must also, *inter alia*, agree to increase its sales outside the EC to at least five percent of its total sales over a period of four fiscal years. Detailed information about the availability of these loans and the reduced interest rates may be obtained from the *Direction Generale du Commerce Exterieur* (www.exporter.gouv.fr), the *Banque de Developpement des PME*, the *Societe de Developpement Regional*, or a commercial bank.

Those French firms which acquire or create a business vehicle abroad in order to increase their export capabilities may also qualify for long-term loans at reduced rates of interest. In order to qualify for such subsidized loans, the foreign investment of the applicant must, *inter alia*, increase exports over a period of five years to at least three or four times the amount of the original foreign investment. The amount which may be borrowed under this program varies, but can be as much as seventy to one hundred percent of the foreign investment. Detailed information about the availability and

conditions of such loans may be obtained from the *Direction Generale du Commerce Exterieur* or a commercial bank.

The last important financing program designed to encourage exports provides short-term loans to facilitate the maintenance of an inventory of French products abroad. Specifically, French firms which maintain an inventory abroad for reasons other than supplying a subsidiary which produces or installs its products may qualify for loans of up to seventy percent of the value of the inventory. Detailed information about the availability and conditions of such loans may be obtained from the *Direction Generale du Commerce Exterieur* or a commercial bank.

In addition to providing the foregoing loans, French export financing programs have been established in order to provide equity investments in French exporting firms. Specifically, medium-sized French firms which realize approximately twenty percent of their sales abroad or which have exports in excess of their industry's average may benefit from a short-term minority equity investment (or a short-term investment in convertible debentures) from a special governmental corporation known as the *Societe pour le Financement des Industries Exportatrices* (SOFININDEX). Such investments are intended to assist in improving the ability of the recipient firms to export by providing the necessary financing. The average size of such investments is approximately 90,000 euros. Detailed information about this program may be obtained from SOFININDEX. n2

[3] Export Credits

In order to bolster French exports, two types of credit programs have been created. Pursuant to the first one, the purchaser credit program, one or more French banks loan money to foreign purchasers of French products who, were it not for the loan, would pay for such products over a period of time; because of the loan, the French exporter is not required to extend credit to his purchaser. Before a purchaser loan (*credit acheteur*) may be granted, the *Direction des Relations economiques Exterieures* must approve it after having consulted the *Commission des Garanties et du Credit au Commerce Exterieur*. In addition, a purchaser loan must be covered by an insurance policy issued by the *Compagnie Francaise d'Assurance pour le Commerce Exterieur* (COFACE). n3 Detailed information about the availability and operation of the purchaser credit program may be obtained from the *Direction Generale du Commerce Exterieur du Commerce Exterieur*, the *Direction Generale du Commerce Exterieur*, COFACE or a commercial bank.

The second type of credit program, the supplier credit program (*credit fournisseurs*), is designed to increase the cash flow of French exporters by discounting medium and long-term receivables owed to them by foreign purchasers or by loaning them money on the strength of their medium and long-term contractual relations with foreigners. This program is limited to those exporters who have receivables that can only be collected in more than eighteen months, who have taken out a COFACE insurance policy against political risks, and who have been approved by the *Commission des Garanties et du Credit au Commerce Exterieur*. The amount discounted or advanced may be as much as one hundred percent of the receivables owing to the French exporter. Detailed information on the availability and operation of the supplier credit program may be obtained from the *Banque Francaise du Commerce Exterieur*, the *Direction Generale du Commerce Exterieur*, COFACE or a commercial bank.

[4] Export Insurance

The *Compagnie Francaise d'Assurance pour le Commerce Exterieur* (COFACE) n4 was founded on June 1, 1946 in order to encourage import-export trade by providing insurance coverage, under the auspices and with the financial support of the State, against the four principal risks encountered by exporters. n5

The first kind of risk against which a French exporter may protect himself is what is known as a purely political risk such as a war, a revolution or a riot occurring outside of France, an act or a decision of a foreign government which would render the execution of the insured contract impossible, or an act or a decision of the French government prohibiting the exportation or manufacture of certain goods. The second kind of risk, known as elements risk, includes storms, floods, earthquakes, volcano eruptions or other acts of God taking place outside of France. The third kind of

risk, known as monetary risk, can be of two types: the first type is the transfer risk and consists in the risk that political or economic events or legislative or administrative measures occurring outside of France prevent or stop the transfer of the funds to be paid by the debtor; the second type is the currency risk created by foreign currency exchange rate fluctuations. The fourth kind of risk, known as commercial risk, consists in the risk that the debtor may be insolvent or that he may simply fail to pay the amount owing in a timely manner. Note that in no event will COFACE insurance protect the exporter from losses caused by a dispute of a technical or commercial nature between the exporter and his foreign purchaser such as a failure, on the part of either party, to comply with the terms of the underlying commercial contract. Finally, a French exporter may also obtain COFACE insurance either against foreign exchange rate fluctuations when the contractual price is expressed in a foreign currency or against the risks involved in carrying out a market research campaign.

Although the insurance policies issued by COFACE vary according to the nature of the underlying transaction and the risks covered, they may nonetheless be classified into three major types. The first type of COFACE insurance, the global insurance policy (*police globale*), covers all loans or credits extended by the exporter to his purchasers which are payable in more than 180 days but in less than three years. The second type of COFACE insurance, the subscription policy (*police d'abonnement*), covers all credits and risks which the exporter wishes to insure provided, however, that the credits insured do not extend beyond three years. The last type of COFACE insurance, the transactional policy (*police individuelle*), covers for up to five years the risks arising out of a specified commercial contract, usually relating to a large public works project or a sale of heavy machinery.

COFACE insurance never reimburses all of the losses incurred by the exporter: only a fraction, known as *quotite garantie*, is recoverable. The amount of such *quotite garantie* usually ranges from 80 to 95 percent of the exporter's losses. If, after recovery under a COFACE insurance policy, the exporter is able to collect the sums it was compensated for, it must remit a portion of the sums to COFACE. Finally, the inchoate right to receive benefits under a COFACE insurance policy may be discounted, assigned or otherwise transferred by the exporter, if COFACE agrees thereto.

Inasmuch as COFACE is partially funded by the State, and in light of the fact that the purpose of COFACE is to encourage French exports, insurance policies are usually issued by COFACE only in connection with export transactions involving French exporters. Consequently, certain requirements are imposed with respect to the exporters and the export transactions so as to ensure that COFACE coverage is of primary benefit to the French economy. For example, where the insurance policy covers an export credit transaction, the exporter must have its registered office and carry out its main business activities in France. Since there is no specific requirement relating to the control of the exporting business entity, French subsidiaries of foreign companies are not precluded from obtaining COFACE insurance coverage. Furthermore, where a COFACE insurance policy is issued in connection with an export credit transaction, the goods or services exported must, as a rule, be of French origin. n6 However, where COFACE insurance covers an investment credit transaction, the exporting business entity must not only have its registered office and carry out its main activities in France but, in addition, it must be under French control. n7

The general terms and conditions of COFACE insurance policies either exclude goods or services of foreign origin from their coverage or restrict such coverage to goods or services of French origin having a maximum foreign content of ten percent. Finally, the expenses incurred abroad to carry out an export transaction covered by a COFACE insurance policy may, under certain circumstances, n8 benefit from such coverage.

FOOTNOTES:

(n1)Footnote 1. *See Uniform Customs and Practice for Documentary Credits (UCP 600)*. The headquarters of the International Chamber of Commerce are located at 38, Cours Albert 1er, 75008 Paris, France (ICC website: www.iccwbo.org).

(n2)Footnote 2. SOFININDEX is located at 48 bis, rue Fabert 75007 Paris and can be reached by e-mail at: contact@sofinindex.com.

(n3)Footnote 3. *See* § 16.04[4] *infra*.

(n4)Footnote 4. COFACE's address is 12, Cours Michelet, La Defense 10, 92065 Paris La Defense cedex, France (www.coface.fr).

(n5)Footnote 5. *Insurance Code*, arts. R.442-8-2 to R.442-8-6.

(n6)Footnote 6. *See* § 16.02[3][b][ii][A] *supra* (Origin of Goods).

(n7)Footnote 7. The concept of control is not defined for purposes of COFACE insurance by any text of general application and is dealt with on a case-by-case basis.

(n8)Footnote 8. More particularly, such expenses must be invoiced to the French exporter and must be necessary to carry out the export transaction, but they may not exceed the amount of the down payment provided for in the underlying commercial contract.