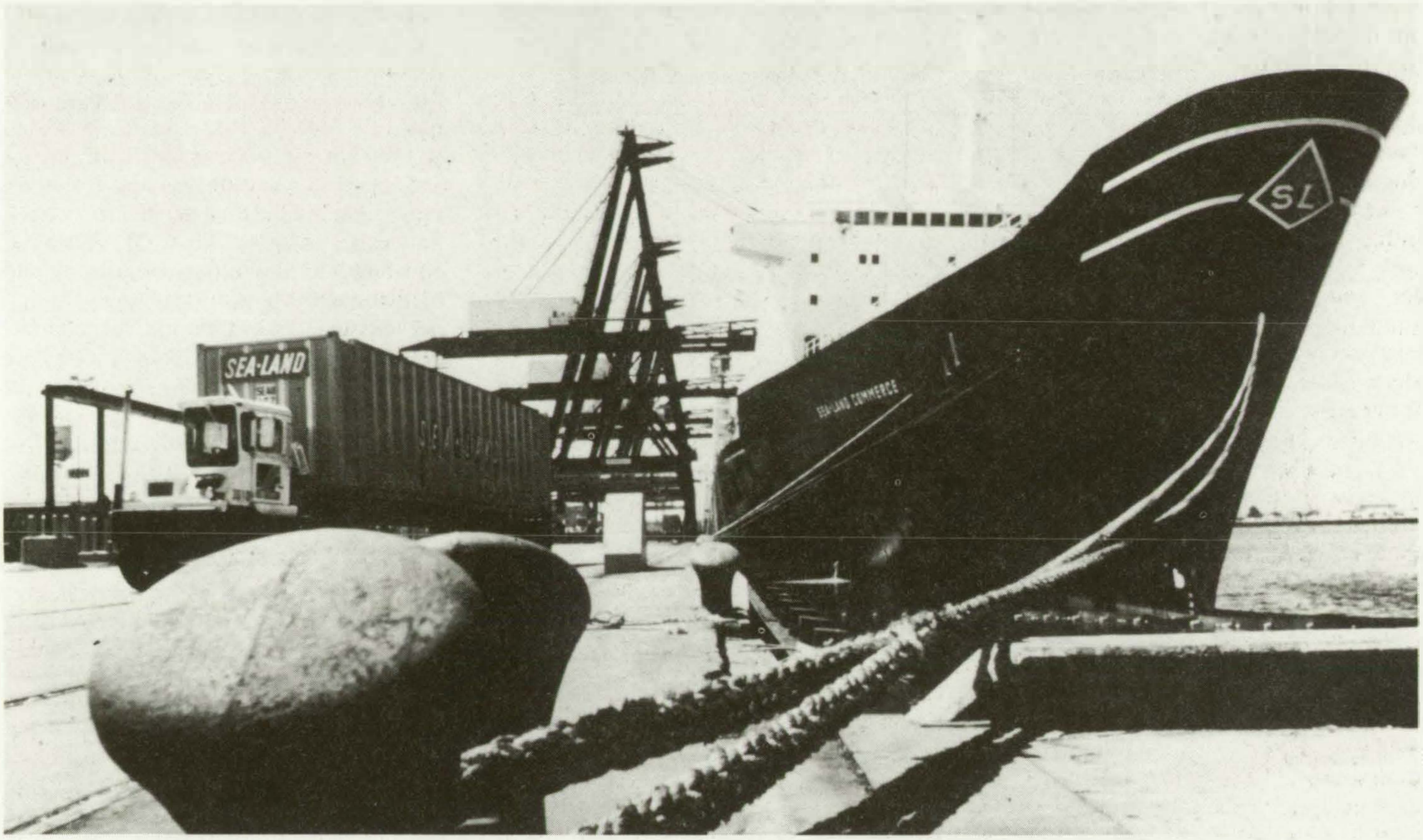
The Export Trading Company Act of 1982

Kay McLennan
(202) 447-6235



The Export Trading Company Act (ETCA) of 1982 provides a means for U.S. exporters to compete more effectively in international markets.

The legislation allows separate complementary U.S. businesses and associations, including producers, processors, transporters, and marketers capable of handling all aspects of international trade to operate collectively as a single export trading company. Previously a company wanting to export needed to contract separately for a number of services, including financing, shipping, and marketing. The complexities associated with this process tended to discourage smaller firms from exporting. The ETCA allows firms to join together to export products and services. Firms retain their individual identity and management, while serving as partners under the larger heading of an export trading company.

Many different types of industries are expected to take advantage of the ETCA. Agriculture, in particular, may benefit in several ways. The ETCA provisions that encourage exporting can be expected to enhance existing markets for agricultural exports. In addition, the provisions which allow service industries to combine with agricultural industries may encourage individual small firms to become involved in exporting, thereby increasing the income they receive from foreign sale of their products.

Development of the ETCA

Joint exporting ventures, as well as legislation promoting exports are not new. The Webb-Pomerene Act (WPA) of 1918, for example, allows U.S. companies to compete better in foreign markets by forming cartels under which competing firms collectively establish export prices and contract terms.

The ETCA is similar to this earlier legislation in that it permits companies to join together to facilitate trade. The ETCA, however, is designed to foster competition in international trade by encouraging a greater number and variety of firms to become involved in exporting. Participation in joint exporting ventures, for example, is broadened under the ETCA to directly include sources of financing and trade services. Banks are now permitted to own an interest in exporting companies, which extends their role beyond financing and allows them to be actively involved in the management of exporting enterprises.

Similarly, direct involvement in joint exporting is extended to trade service companies. Previously, these firms participated primarily through contracts with exporting businesses. Active participation and ownership by trade service businesses enables companies with varied

Figure 1. Possible Participants and Functions of an Agricultural ETC

resources to provide a total service package usually not available before, including documentation, transportation, marketing knowledge, insurance, and legal advice.

The organization of an ETC is not specified in the legislation. Rather, management and operation are decided by the participating firms. The ETC can be organized in a variety of ways to provide as narrow or as wide a range of products or services as desired. Accordingly, an ETC may be a one-stop, full-service exporting venture which offers a unique investment opportunity for many firms, including those previously excluded from such ventures.

The ETCA also contains provisions which allow companies to apply for antitrust certification pre-clearance. This provides joint exporting ventures limited immunity from criminal and civil suits under both Federal and State antitrust laws.

The ETC concept has been successfully applied in Japan, Korea, West Germany, and other countries. These countries have effectively expanded the markets for their products by encouraging firms with complementary business talents to form export trading companies. The ETCA provides U.S. firms with access to the same resources so they can compete successfully with their foreign counterparts.

Basic Provisions of the ETCA

Under title I, an export trading company is defined as one which is organized and operated principally for the purpose of exporting goods and services produced in the United States. This title also directs the Secretary of Commerce to establish an office to promote and encourage the formation of export trading companies and associations and to facilitate contact between producers of exportable goods and services and trade service firms.

Title II allows banks to invest in or own up to 100 percent of an ETC. However, there are safeguards to protect the Nation's banking system. These include limiting a bank's financial investment in an ETC to 5 percent of its assets and restricting loans to an ETC to 10 percent of a bank's assets. Banks must also obtain approval from the Federal Reserve Board for their proposed investment in an ETC. The petition may be disapproved only in response to unsafe or unsound banking practices.

To provide further financial assistance to exporters, title II directs the Export-Import Bank of the United States to develop a new loan guarantee program for ETCs. This is intended primarily to promote exports by small and minority businesses and agricultural concerns by guaranteeing loans made to these groups.

Title II additionally addresses countertrade, widely practiced by exporters. Specifically, the ETCA will extend antitrust immunity for certified activities to a countertrade export sale.

Countertrade can take the form of bartering or offsetting purchases. Bartering is simply the exchange of one good for another, while offsetting purchases involve the actual exchange of currency. A U.S. firm, for example, might buy a particular commodity from another country which would then use the currency generated by the sale to buy an equally valued amount of a particular commodity from the U.S. firm. By countertrading, countries which may otherwise lack currency are able to purchase foreign products. Given the limited foreign currency holdings of many U.S. trading partners, particularly developing countries, countertrade is an important tool for increasing foreign agricultural sales.

Title III provides limited antitrust immunity in the form of a certificate issued by the U.S. Department of Commerce with the agreement of the Department of Justice. To qualify for the certificate, the applicant's export-related conduct must satisfy four specific standards. It must not (1) substantially lessen competition or restrain trade in the United States or restrain the export trade of a U.S. competitor; (2) unreasonably enhance, stabilize, or depress prices in the United States; (3) be an unfair method of competition; or (4) reasonably be expected to result in resale in the United States of the exported goods or services. Certification is not necessary to export, but it is particularly warranted when exporters have a substantial share of a domestic market.

Finally, title IV amends the Sherman Antitrust Act to specify that it does not apply to export trade unless there is an adverse anticompetitive effect on commerce in the United States or on the export commerce of a U.S. resident.

Applying the ETCA to Agriculture

Participants in agricultural exporting ventures have a great deal of latitude in developing the structure of their export trading companies. The scope and operation are determined by the products to be exported, the foreign markets to be targeted, the services to be provided, the trading activities, and the probable participants and investors.

Product possibilities range from marketing a single commodity to an entire market basket of farm products. A specialized or single-product ETC in Oregon, for example, might market cherries or apples. Alternatively, a regional Georgia-based company might export different foods produced in the South, including poultry, meat products, soybean oil, peaches, and pecans.

The foreign markets to be targeted may range from a particular country or region to the entire world. The extent of the market would depend upon demand for the product, the cost and availability of transportation, and the available resources of a particular ETC. Where a commodity requires sophisticated planning for marketing and promotional activities, smaller specialized trading firms may be more effective than general trading companies.

Conceptually, an ETC would be capable of performing a wide range of services. A full service ETC, for example, would take title to the exportable products and provide a total service package, including foreign marketing intelligence, sales, packaging, documentation, insurance, warehousing, transportation, and financing. In contrast, other ETCs may concentrate on particular services such as shipping and documentation.

Many possibilities also exist concerning the scope of activities an ETC may perform. Specifically, in addition to exporting, an ETC may be involved in importing, countertrade, or arranging trades between various countries other than the United States. While the available business opportunities and resources of an ETC will largely determine the extent of activities, the export market will also be a factor. Targeting markets in developing countries, for example, will almost certainly require utilizing some form of countertrade. Accordingly, since these countries have been identified as potential sources of expanding food imports, agricultural ETCs will be likely candidates for countertrade.

Finally, an ETC may be structured to suit the needs or interests of probable participants or investors. In the examples of a regional Georgia-based ETC that exports many products and the specialized Oregon-based company exporting only a single product, the participants and investors may include individual producers, cooperatives, regional or local banks, shipping companies, port authorities, existing export management companies, and State economic development authorities. □

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