APPENDIX I

A STUDY ON INTRODUCTION OF INTERNATIONAL FACTORING IN INDIA

QUESTIONNAIRE FOR EXPORTERS

(Please put ✓ mark in appropriate space)

1. (a) Name of the Unit:

(b) Address:

(c) Constitution: □ Sole proprietorship

□ Partnership

□ Private Ltd. Company

□ Public Ltd. Company

□ Others (specify)

(d) Year of establishment:

(e) Nature of activity/ties □ Manufacturing

□ Trading

□ Others (specify)
(f) Item/s of manufacturing/trading (specify first three major items):

(g) Sector:  □ Registered small scale industry
            □ Non small scale industry

(h) Specialised Status:   □ 100% export oriented unit
                          □ Export house
                          □ Trading house
                          □ Star trading house
                          □ Unit in free trade zone
                          □ Unit in export processing zone
                          □ Any other (specify)
2. Details of exports:

<table>
<thead>
<tr>
<th>Year ending March 31st</th>
<th>Total Sales (Rs.' 000)</th>
<th>Total Exports (Rs.' 000)</th>
<th>Number of Invoices per annum</th>
<th>Country/ties to which exports have taken place</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>1990</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. (a) In India, export finance provided by banks is generally backed by Letter(s) of Credit to be opened by bank(s) of overseas buyer(s). Does this hold true in your case?

- [ ] Yes
- [ ] No

(b) If yes, state the extent of its application:

- [ ] Fully
- [ ] 75-100% of cases
- [ ] 50-75% of cases
- [ ] 25-50% of cases
- [ ] Less than 25% cases
4. (a) Are you satisfied with the existing system of export finance backed by Letter of Credit?

☐ Yes ☐ No

(b) If no, could you please state the reasons for the same?

5. (a) Do you experience any problem in realisation of export trade debts?

☐ Yes ☐ No

(b) If yes, please explain your problem(s)

6. (a) Does your experience in realisation of export trade debts vary in respect of exports to different countries?

☐ Yes ☐ No

(b) If yes, please narrate your countrywise experience.

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7. (a) What are your present arrangement for administering sales ledger (i.e. booking orders, delivery, maintenance of sales register etc.)

☐ Self managed

☐ Managed through a part time accountant on contract basis

☐ Managed through a full time employee

(b) Do you think that the existing arrangements are adequate, efficient and economic for sales administration?

☐ Yes ☐ No

8. (a) Are you satisfied with the standard policies/schemes to the exporters issued by Export Credit Grantee Corporation of India Ltd.?

☐ Yes ☐ No

(b) If no, could you please tell us about your problem?

9. Would you like to have a separate institutional arrangement for protecting you against possible financial losses arising out of financial inability/bankruptcy/insolvency of the overseas buyer(s)?

☐ Yes ☐ No

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10. Were you aware of international factoring before the receipt of this questionnaire?

☐ Yes  ☐ No

11. If international factoring services are introduced, would you like to avail of the same?

☐ Yes  ☐ No

12. If yes, for which of the following purposes you would like to avail of the factoring facilities? You may tick more than one option, if you so desire.

(i)  ☐ Availing of finance against trade debts

(ii) ☐ Collection of trade debts

(iii) ☐ Maintenance of sales ledger

(iv) ☐ Availing of debt insurance facility

(v)  ☐ Availing of consultancy services

(vi) ☐ Others (pl. specify)

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13. If you like to have the factoring facilities for more than one purpose as stated above, rank them in order of your preference.

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Availing of finance against trade debts</td>
<td></td>
</tr>
<tr>
<td>(ii) Collection of trade debts</td>
<td></td>
</tr>
<tr>
<td>(iii) Maintenance of sales ledger</td>
<td></td>
</tr>
<tr>
<td>(iv) Availing of debt insurance facility</td>
<td></td>
</tr>
<tr>
<td>(v) Availing of consultancy services</td>
<td></td>
</tr>
<tr>
<td>(vi) Others (pl. specify)</td>
<td></td>
</tr>
</tbody>
</table>

14. In what way, availing of international factoring services may help your business? Please rate them from 1 to 5, where, 1 = Significant effect and 5 = no effect. You may reply to as many statements as you like, by circling the appropriate number.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Significant Effect</th>
<th>Some Effect</th>
<th>Not Much Effect</th>
<th>Little Effect</th>
<th>No Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) will enable you to increase exports</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(ii) will enable you to increase profits</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(iii) will improve your cash flow positions</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(iv) will improve your collection period</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(v) will give you security against bad debts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(vi) will lessen your work load</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>(vii) others (pl. specify)</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
15. For availing of factoring services, what, according to you, would be in the reasonable charges towards:

(i) Discount charges

(ii) Administrative services (service charges for ledger maintenance, collection of debts, credit insurance premium etc.)

16. If international factoring services are introduced in India, who, according to you, should provide the same?

☐ Banks

☐ Subsidiaries (Bank sponsored)

☐ Private factoring organisations

☐ Others (pl. specify)

17. Do you think that availing of factoring services would adversely affect your relationship with your existing banker(s)?

☐ Yes ☐ No

Date: ____________________ Signature ____________________

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Annexure

Conceptual Framework of International Factoring

International Factoring is an innovative financing concept in international trade transactions. This is usually applicable when there is an open-ended sale transaction (i.e., transaction not backed by letter of credit) between an export and an importer. Under this arrangement, factoring agreement is executed between an export factor and the exporter by virtue of which the export trade receivables are assigned to the export factor. A specific per cent, say upto 80-85 per cent of the value of the invoices assigned is made available to the exporter. Then onwards the export factor becomes responsible for entire sales ledger administration of the exporter. Responsibility of collection of debt also vests in him. This means that the export factor either directly or through his counterpart known as import factor in the importer’s country, is responsible for collection of debts from the importer. Normally the facility operates on a Without Recourse basis, meaning thereby that the factor provides debt protection facility to the exporter in case of insolvency/bankruptcy/financial inability of the importer to pay back the debts. The remaining portion that is, 20-15 per cent of the invoice value is released to the exporter on receipt of the proceeds from the importer.
APPENDIX II

A STUDY ON INTRODUCTION OF INTERNATIONAL FACTORING IN INDIA

QUESTIONNAIRE FOR BANKS

NAME OF THE BANK:

1. How do you assess the future prospects of international factoring in India?

2. (a) What are the problems likely to be encountered while launching international factoring in the country?

(b) What are your suggestions for overcoming the above problems?

3. What, according to you, would be the nature and extent of competition between an international factoring agency (say, even subsidiary of your bank, likely to be set up) and the bank providing export finance?

4. Could you please state the possible areas of co-operation between your bank and an international factor?

5. (a) Do you think that international factoring, if introduced, would gradually replace the Letter of Credit backed export credit in India?

☐ Yes ☐ No

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(b) If yes, could you please assess effect of this replacement on banks' credit?

6. Do you feel that introduction of international factoring services in India would help in:

(a) improving export of the country □ Yes □ No

(b) expedition collection of export trade debts □ Yes □ No

(c) improving profitability of the exporters availing this service □ Yes □ No

7. (a) As a bank executive, do you wish that your bank should launch the international factoring services?

□ Yes □ No

(b) If yes, what type(s) of organisational preparedness on part of the bank is/are required?

Signature

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APPENDIX III

A STUDY ON INTRODUCTION OF
INTERNATIONAL FACTORING IN INDIA

QUESTIONNAIRE FOR FACTORING COMPANIES

(Please put ✓ mark in the appropriate space)

1. Name and address of the Company:

2. Date of commencement of domestic factoring business:

3. (a) How do you assess future prospects of international factoring in India?

   (b) Could you please give justification for your assessment given above?

4. When do you propose to start international factoring activities?
5. Have you already obtained necessary permission from the Reserve Bank of India/Ministry of Finance to start international factoring?

☐ Yes  ☐ No

6. What type of facilities would like to offer? You may tick more than one option, if you desire.

☐ Export factoring (all services)

☐ Import factoring (all services)

☐ Both export and import factoring

☐ Only collection and insurance facilities (non-fund activities)

☐ Only collection services

☐ With recourse factoring

☐ Without recourse factoring

7. Do you propose to enter into any tie-up arrangements with ECGC towards providing insurance facilities?

☐ Yes  ☐ No

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8. (a) Do you intend to become member of any international chain/group?

☐ Yes  ☐ No

(b) If yes, which chain/group would you prefer to join?

9. What are the proposed charges for providing international factoring services?

(a) Towards providing finance ____________________________

(b) Towards administrative charges ____________________________

10. (a) Have you conducted any market research to determine the potential for such services?

☐ Yes  ☐ No

(b) If yes, could you please state the salient finding thereof?

11. (a) What, according to you are the major problems that need to be tackled to make international factoring a success in India?
    Kindly give your response under the following classified broad heads:
(i) Policy issues:

(ii) Legal problems:

(iii) Taxation problems:

(iv) Operational aspects:

(v) Organisational aspects:

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(b) Could you suggest solutions to the above problems?

(i) Policy issues:

(ii) Legal problems:

(iii) Taxation problems:

(iv) Operational aspects:

(v) Organisational aspects:

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12. How do you assess the nature and extent of competition between an international factor and banks providing export finance?

13. Do you think that the introduction of international factoring would gradually replace the letter of credit backed export finance in India?

- [ ] Yes
- [ ] No

14. What according to you are the possible benefits of international factoring, if introduced in the country? You may tick more than one option if you so desire.

- [ ] It will improve exports of the country
- [ ] It will result in expeditious collection of export trade debts
- [ ] It will result in improvement in profitability of the exporters availing the service

SIGNATURE:

NAME:

DESIGNATION:

Thank you very much for your response
APPENDIX - IV
UNIDROIT CONVENTION ON
INTERNATIONAL FACTORING
THE STATES PARTIES TO THIS
CONVENTION,

CONSCIOUS of the fact that international factoring has a significant role to play in the development of international trade,

RECOGNISING therefore the importance of adopting uniform rules to provide a legal framework that will facilitate international factoring, while maintaining a fair balance of interests between the different parties involved in factoring transactions,

HAVE AGREED as follows:

CHAPTER I - SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I

1. This convention governs factoring contracts and assignments of receivables as described in this Chapter.

2. For the purposes of this Convention, "factoring contract" means a contract concluded between one party (the supplier) and another party (the factor) pursuant to which:
the supplier may or will assign to the factor receivables arising from contracts of sale of goods made between the supplier and its customers (debtors) other than those for the sale of goods bought primarily for their personal, family or household use;

(b) the factor is to perform at least two of the following functions:
- finance for the supplier, including loans and advance payments;
- maintenance of accounts (ledging) relating to the receivables;
- collection of receivables;
- protection against default in payment by debtors;

(c) notice of this assignment of the receivables is to be given to debtors.

3. In this Convention references to "goods" and "sale of goods" shall include services and the supply of services.

4. For the purposes of this Convention:

(a) a notice in writing need not be signed but must identify the person by whom or in whose name it is given;

(b) "notice in writing" includes, but is not limited to, telegrams, telex and other telecommunication capable of being reproduced in tangible form;

(c) a notice in writing is given when it is received by the addressee.
Article 2

1. This Convention applies whenever the receivables assigned pursuant to a factoring contract arise from a contract of sale of goods between a supplier and a debtor whose places of business are in different States and:

   (a) those States and the State in which the factor has its place of business are Contracting States; or

   (b) both the contract of sale of goods and the factoring contract are governed by the law of a Contracting State.

2. A reference in this Convention to a party’s place of business shall, if it has more than one place of business, mean the place of business which has the closest relationship to the relevant contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of that contract.

Article 3

1. The application of this Convention may be excluded:

   (a) by the parties to the factoring contract; or

   (b) by the parties to the contract of sale of goods, as regards receivables arising at or after the time when the factor has been given notice in writing of such exclusion.
2. Where the application of this Convention is excluded in accordance with the previous paragraph, such exclusion may be made only as regards the Convention as a whole.

Article 4

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

CHAPTER II - RIGHTS AND DUTIES OF THE PARTIES

Article 5

As between the parties to the factoring contract:

(a) a provision in the factoring contract for the assignment of existing or future receivables shall not be rendered invalid by the fact that the contract does not specify them individually, if at the time of conclusion of the
contract or when they come into existence they can be identified to the contract;

(b) a provision in the factoring contract by which future receivables are assigned operates to transfer the receivables to the factor when they come into existence without the need for any new act of transfer.

Article 6

1. The assignment of a receivable by the supplier to the factor shall be effective notwithstanding any agreement between the supplier and the debtor prohibiting such assignment.

2. However, such assignment shall not be effective against the debtor when, at the time of conclusion of the contract of sales of goods, it has its place of business in a Contracting State which has made a declaration under Article 18 of this Convention.

3. Nothing in paragraph 1 shall affect any obligation of good faith owed by the supplier to the debtor or any liability of the supplier to the debtor in respect of an assignment made in breach of the terms of the contract of sale of goods.

Article 7

A factoring contract may validly provide as between the parties thereto for the
transfer, with or without a new act of transfer, of all or any of the supplier's rights
deriving from the contract of sale of goods, including the benefit of any provision in the
contract of sale of goods reserving to the supplier title to the goods or creating any
security interest.

Article 8

1. The debtor is under a duty to pay the factor if, and only if, the debtor does not
have knowledge of any other person's superior right to payment and notice in
writing of the assignment:

(a) is given to the debtor by the supplier or by the factor with the supplier's
authority;

(b) reasonably identifies the receivables which have been assigned and the
factor to whom or for whose account the debtor is required to make
payment; and

(c) relates to receivables arising under a contract of sale of goods made at or
before the time the notice is given.

2. Irrespective of any other ground on which payment by the debtor to the factor
discharges the debtor from liability, payment shall be effective for this purpose if
made in accordance with the previous paragraph.
Article 9

1. In a claim by the factor against the debtor for payment of a receivable arising under a contract of sale of goods the debtor may set up against the factor all defences arising under that contract of which the debtor could have availed itself if such claim had been made by the supplier.

2. The debtor may also assert against the factor any right of set-off in respect of claims existing against the supplier in whose favour the receivable arose and available to the debtor at the time a notice in writing of assignment conforming to Article 8(1) was given to the debtor.

Article 10

1. Without prejudice to the debtor's rights under Article 9, non-performance or defective or late performance of the contract of sale of goods shall not by itself entitle the debtor to recover a sum paid by the debtor to the factor if the debtor has a right to recover that sum from the supplier.

2. The debtor who has such a right to recover from the supplier a sum paid to the factor in respect of a receivable shall nevertheless be entitled to recover that sum from the factor to the extent that:
the factor has not discharged an obligation to make payment to the supplier in respect of that receivable; or

(b) the factor made such payment at a time when it knew of the supplier’s non-performance or defective or late performance as regards the goods to which the debtor’s payment relates.

CHAPTER III - SUBSEQUENT ASSIGNMENTS

Article 11

1. Where a receivable is assigned by a supplier to a factor pursuant to a factoring contract governed by this Convention:

(a) the rules set out in Articles 5 to 10 shall, subject to sub-paragraph (b) of this paragraph, apply to any subsequent assignment of the receivable by the factor or by a subsequent assignee;

(b) the provisions of Articles 8 to 10 shall apply as if the subsequent assignee were the factor.

2. For the purpose of this Convention, notice to the debtor of the subsequent assignment also constitutes notice of the assignment to the factor.

Article 12

This Convention shall not apply to a subsequent assignment which is prohibited by the terms of the factoring contract.
CHAPTER IV - FINAL PROVISIONS

Article 13

1. This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Unidroit Conventions on International Factoring and International Financing Leasing and will remain open for signature by all States at Ottawa until 31 December 1990.

2. This Convention is subject to rectification, acceptance or approval by States which have signed it.

3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depository.

Article 14

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. For each State that ratifies, accepts, approves, or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day
of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

**Article 15**

This Convention does not prevail over any treaty which has already been or may be entered into.

**Article 16**

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes
of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph 1, the Convention is to extend to all territorial units of that State.

**Article 17**

1. Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply where the supplier, the factor and the debtor have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

2. A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply where the supplier, the factor and the debtor have their places of business in those States.

3. If a State which is the object of a declaration under the previous paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the
new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 18

A Contracting State may at any time make a declaration in accordance with Article 6(2) that an assignment under Article 6(1) shall not be effective against the debtor when, at the time of conclusion of the contract of sale of goods, it has its place of business in that State.

Article 19

1. Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under Article
17 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

4. Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. A withdrawal of a declaration made under Article 17 renders inoperative in relation to the withdrawing State, as from the date on which the withdrawal takes effect, any joint or reciprocal unilateral declaration made by another State under that article.

Article 20

No reservations are permitted except those excessively authorised in this Convention.

Article 21

This Convention applies when receivables assigned pursuant to a factoring contract arise from a contract of sale of goods concluded on or after the date on which the Convention enters into force in respect of the Contracting States or States referred to in paragraph 1(b) of the article, provided that:
(a) the factoring contract is concluded on or after that date; or

(b) the parties to the factoring contract have agreed that the Convention shall apply.

Article 22

1. This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that State.

2. Denunciation is effected by the deposit of an instrument to that effect with the depositary.

3. A denunciation takes effect on the first day of the month following the expiration of six months after the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it takes effect upon the expiration of such longer period after its deposit with the depositary.

Article 23

1. This Convention shall be deposited with the Government of Canada.

2. The Government of Canada shall:
(a) inform all States which have signed or acceded to this Convention and the
President of the International Institute for the Unification of Private Law
(Unidroit) of:

(i) each new signature or deposit of an instrument of ratification, acceptance,
approval or accession, together with the date thereof;

(ii) each declaration made under Articles 16, 17 and 18;

(iii) the withdrawal of any declaration made under Article 19 (4);
(iv) the date of entry into force of this Convention;
(v) the deposit of an instrument of denunciation of this Convention together
with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all signatory States, to
all States acceding to the Convention and to the President of the
International Institute for the Unification of Private Law (Unidroit).

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorised by their
respective Governments, have signed this Convention.

Done at Ottawa, this twenty-eighth day of May, one thousand nine hundred and
eighty-eight, in a single original, of which the English and French texts are equally
authentic.