

109TH CONGRESS
2D SESSION

S. 3938

AN ACT

To reauthorize the Export-Import Bank of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Export-Import Bank
5 Reauthorization Act of 2006”.

1 **SEC. 2. EXTENSION OF AUTHORITY.**

2 Section 7 of the Export-Import Bank Act of 1945
3 (12 U.S.C. 635f) is amended by striking “2006” and in-
4 serting “2011”.

5 **SEC. 3. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.**

6 Section 2(b)(9)(B)(iii) of the Export-Import Bank
7 Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by
8 striking “2006” and inserting “2011”.

9 **SEC. 4. EXTENSION OF AUTHORITY TO PROVIDE FINANC-**
10 **ING FOR THE EXPORT OF NONLETHAL DE-**
11 **FENSE ARTICLES OR SERVICES THE PRIMARY**
12 **END USE OF WHICH WILL BE FOR CIVILIAN**
13 **PURPOSES.**

14 Section 1(c) of Public Law 103–428 (12 U.S.C. 635
15 note; 108 Stat. 4376) is amended by striking “2001” and
16 inserting “2011”.

17 **SEC. 5. DESIGNATION OF SENSITIVE COMMERCIAL SEC-**
18 **TORS AND PRODUCTS.**

19 Section 2(e) of the Export-Import Bank Act of 1945
20 (12 U.S.C. 635(e)) is amended by adding at the end the
21 following new paragraph:

22 “(5) DESIGNATION OF SENSITIVE COMMERCIAL
23 SECTORS AND PRODUCTS.—Not later than 120 days
24 after the date of the enactment of this Act, the Ex-
25 port-Import Bank of the United States shall submit
26 a list to the Committee on Banking, Housing, and

1 Urban Affairs of the Senate and the Committee on
 2 Financial Services of the House of Representatives,
 3 which designates sensitive commercial sectors and
 4 products with respect to which the provision of fi-
 5 nancing support by the Bank is deemed unlikely by
 6 the President of the Bank due to the significant po-
 7 tential for a determination that such financing sup-
 8 port would result in an adverse economic impact on
 9 the United States. The President of the Bank shall
 10 review on an annual basis thereafter the list of sen-
 11 sitive commercial sectors and products and the Bank
 12 shall submit an updated list to the Committee on
 13 Banking, Housing, and Urban Affairs of the Senate
 14 and the Committee on Financial Services of the
 15 House of Representatives of such sectors and prod-
 16 ucts.”.

17 **SEC. 6. INCREASING EXPORTS BY SMALL BUSINESS.**

18 (a) IN GENERAL.—Section 3 of the Export-Import
 19 Bank Act of 1945 (12 U.S.C. 635a) is amended by adding
 20 at the end the following:

21 “(f) SMALL BUSINESS DIVISION.—

22 “(1) ESTABLISHMENT.—There is established a
 23 Small Business Division (in this subsection referred
 24 to as the ‘Division’) within the Bank in order to—

1 “(A) carry out the provisions of subpara-
 2 graphs (E) and (I) of section 2(b)(1) relating to
 3 outreach, feedback, product improvement, and
 4 transaction advocacy for small business con-
 5 cerns;

6 “(B) advise and seek feedback from small
 7 business concerns on the opportunities and ben-
 8 efits for small business concerns in the financ-
 9 ing products offered by the Bank, with par-
 10 ticular emphasis on conducting outreach, en-
 11 hancing the tailoring of products to small busi-
 12 ness needs and increasing loans to small busi-
 13 ness concerns;

14 “(C) maintain liaison with the Small Busi-
 15 ness Administration and other departments and
 16 agencies in matters affecting small business
 17 concerns; and

18 “(D) provide oversight of the development,
 19 implementation, and operation of technology
 20 improvements to strengthen small business out-
 21 reach, including the technology improvement re-
 22 quired by section 2(b)(1)(E)(x).

23 “(2) MANAGEMENT.—The President of the
 24 Bank shall appoint an officer, who shall rank not
 25 lower than senior vice president and whose sole exec-

utive function shall be to manage the Division. The officer shall—

“(A) have substantial recent experience in financing exports by small business concerns; and

“(B) advise the Board, particularly the director appointed under section 3(c)(8)(B) to represent the interests of small business, on matters of interest to, and concern for, small business.

“(3) STAFF.—

“(A) DEDICATED PERSONNEL.—The President of the Bank shall ensure that each operating division within the Bank has staff that specializes in processing transactions that primarily benefit small business concerns.

“(B) RESPONSIBILITIES.—The small business specialists shall be involved in all aspects of processing applications for loans, guarantees, and insurance to support exports by small business concerns, including the approval or disapproval, or staff recommendations of approval or disapproval, as applicable, of such applications. In carrying out these responsibilities, the small business specialists shall consider the

1 unique business requirements of small busi-
2 nesses and shall develop exporter performance
3 criteria tailored to small business exporters.

4 “(C) APPROVAL AUTHORITY.—In an effort
5 to maximize the speed and efficiency with which
6 the Bank processes transactions primarily bene-
7 fitting small business concerns, the small busi-
8 ness specialists shall be authorized to approve
9 applications for working capital loans and guar-
10 antees, and insurance in accordance with poli-
11 cies and procedures established by the Board.

12 “(D) IDENTIFICATION.—The Bank shall
13 prominently identify the small business special-
14 ists on its website and in promotional material.

15 “(E) EMPLOYEE EVALUATIONS.—The eval-
16 uation of staff designated by the President of
17 the Bank under subparagraph (A), including
18 annual reviews of performance of duties related
19 to transactions in support of exports by small
20 business concerns, and any resulting rec-
21 ommendations for salary adjustments, pro-
22 motions, and other personnel actions, shall ad-
23 dress the criteria established pursuant to sub-
24 section (g)(2)(B)(iii) and shall be conducted by
25 the manager of the relevant operating division

1 following consultation with the senior vice presi-
 2 dent of the Division.

3 “(F) STAFF RECOMMENDATIONS.—Staff
 4 recommendations of denial or withdrawal for
 5 medium-term applications, exporter held multi-
 6 buyer policies, single buyer policies, and work-
 7 ing capital applications processed by the Bank
 8 shall be transmitted to the Senior Vice Presi-
 9 dent of the Division not later than 2 business
 10 days before a final decision.

11 “(4) RULE OF INTERPRETATION.—Nothing in
 12 this Act shall be construed to prevent the delegation
 13 to the Division of any authority necessary to carry
 14 out subparagraphs (E) and (I) of section 2(b)(1).

15 “(g) SMALL BUSINESS COMMITTEE.—

16 “(1) ESTABLISHMENT.—There is established a
 17 management committee to be known as the ‘Small
 18 Business Committee’.

19 “(2) PURPOSE AND DUTIES.—

20 “(A) PURPOSE.—The purpose of the Small
 21 Business Committee shall be to coordinate the
 22 Bank’s initiatives and policies with respect to
 23 small business concerns, including the timely
 24 processing and underwriting of transactions in-
 25 volving direct exports by small business con-

cerns, and the development and coordination of efforts to implement new or enhanced Bank products and services pertaining to small business concerns.

“(B) DUTIES.—The duties of the Small Business Committee shall be determined by the President of the Bank and shall include the following:

“(i) Assisting in the development of the Bank’s small business strategic plans, including the Bank’s plans for carrying out section 2(b)(1)(E) (v) and (x), and measuring and reporting in writing to the President of the Bank, at least once a year, on the Bank’s progress in achieving the goals set forth in the plans.

“(ii) Evaluating and reporting in writing to the President of the Bank, at least once a year, with respect to—

“(I) the performance of each operating division of the Bank in serving small business concerns;

“(II) the impact of processing and underwriting standards on trans-

1 actions involving direct exports by
2 small business concerns; and

3 “(III) the adequacy of the staff-
4 ing and resources of the Small Busi-
5 ness Division.

6 “(iii) Establishing criteria for evalu-
7 ating the performance of staff designated
8 by the President of the Bank under section
9 3(f)(3)(A).

10 “(iv) Coordinating with other United
11 States Government departments and agen-
12 cies the provision of services to small busi-
13 ness concerns.

14 “(3) COMPOSITION.—

15 “(A) CHAIRPERSON.—The Chairperson of
16 the Small Business Committee shall be the sen-
17 ior vice president of the Small Business Divi-
18 sion. The Chairperson shall have the authority
19 to call meetings of the Small Business Com-
20 mittee, set the agenda for Committee meetings,
21 and request policy recommendations from the
22 Committee’s members.

23 “(B) OTHER MEMBERS.—Except as other-
24 wise provided in this subsection, the President
25 of the Bank shall determine the composition of

1 the Small Business Committee, and shall ap-
 2 point or remove the members of the Small
 3 Business Committee. In making such appoint-
 4 ments, the President of the Bank shall ensure
 5 that the Small Business Committee is com-
 6 prised of—

7 “(i) the senior managing officers re-
 8 sponsible for underwriting and processing
 9 transactions; and

10 “(ii) other officers and employees of
 11 the Bank with responsibility for outreach
 12 to small business concerns and under-
 13 writing and processing transactions that
 14 involve small business concerns.

15 “(4) REPORTING.—The Chairperson shall pro-
 16 vide to the President of the Bank minutes of each
 17 meeting of the Small Business Committee, including
 18 any recommendations by the Committee or its indi-
 19 vidual members.”.

20 (b) ENHANCE DELEGATED LOAN AUTHORITY FOR
 21 MEDIUM TERM TRANSACTIONS.—

22 (1) IN GENERAL.—The Export-Import Bank of
 23 the United States shall seek to expand the exercise
 24 of authority under section 2(b)(1)(E)(vii) of the Ex-
 25 port-Import Bank Act of 1945 (6 U.S.C.

1 635(b)(1)(E)(vii)) with respect to medium term
2 transactions for small business concerns.

3 (2) CONFORMING AMENDMENT.—Section
4 2(b)(1)(E)(vii)(III) of the Export-Import Bank Act
5 of 1945 (12 U.S.C. 635(b)(1)(E)(vii)(III)) is amend-
6 ed by inserting “or other financing institutions or
7 entities” after “consortia”.

8 (3) DEADLINE.—Not later than 180 days after
9 the date of the enactment of this Act, the Export-
10 Import Bank of the United States shall make avail-
11 able lines of credit and guarantees to carry out sec-
12 tion 2(b)(1)(E)(vii) of the Export-Import Bank Act
13 of 1945 pursuant to policies and procedures estab-
14 lished by the Board of Directors of the Export-Im-
15 port Bank of the United States.

16 **SEC. 7. ANTI-CIRCUMVENTION.**

17 Section 2(e) of the Export-Import Bank Act of 1945
18 (12 U.S.C. 635(e)) is amended—

19 (1) by inserting after paragraph (1), the fol-
20 lowing flush paragraph:

21 “In making the determination under subparagraph
22 (B), the Bank shall determine whether the facility
23 that would benefit from the extension of a credit or
24 guarantee is reasonably likely to produce commod-
25 ities in addition to or other than the commodity

1 specified in the application and whether the produc-
 2 tion of the additional commodities may cause sub-
 3 stantial injury to United States producers of the
 4 same, or a similar or competing, commodity.”;

5 (2) in paragraph (2), by adding at the end the
 6 following:

7 “(E) ANTI-CIRCUMVENTION.—The Bank
 8 shall not provide a loan or guarantee if the
 9 Bank determines that providing the loan or
 10 guarantee will facilitate circumvention of a
 11 trade law order or determination referred to in
 12 subparagraph (A).”; and

13 (3) by adding at the end the following:

14 “(5) FINANCIAL THRESHOLD DETERMINA-
 15 TIONS.—For purposes of determining whether a pro-
 16 posed transaction exceeds a financial threshold
 17 under this subsection or under the procedures or
 18 rules of the Bank, the Bank shall aggregate the dol-
 19 lar amount of the proposed transaction and the dol-
 20 lar amounts of all loans and guarantees, approved
 21 by the Bank in the preceding 24-month period, that
 22 involved the same foreign entity and substantially
 23 the same product to be produced.”.

1 **SEC. 8. TRANSPARENCY.**

2 (a) IN GENERAL.—Section 2(e) of the Export-Import
3 Bank Act of 1945 (12 U.S.C. 635(e)), as amended by sec-
4 tion 7 of this Act, is amended by adding at the end the
5 following:

6 “(6) PROCEDURES TO REDUCE ADVERSE EF-
7 FECTS OF LOANS AND GUARANTEES ON INDUSTRIES
8 AND EMPLOYMENT IN UNITED STATES.—

9 “(A) CONSIDERATION OF ECONOMIC EF-
10 FECTS OF PROPOSED TRANSACTIONS.—If, in
11 making a determination under this paragraph
12 with respect to a loan or guarantee, the Bank
13 conducts a detailed economic impact analysis or
14 similar study, the analysis or study, as the case
15 may be, shall include consideration of—

16 “(i) the factors set forth in subpara-
17 graphs (A) and (B) of paragraph (1); and

18 “(ii) the views of the public and inter-
19 ested parties.

20 “(B) NOTICE AND COMMENT REQUIRE-
21 MENTS.—

22 “(i) IN GENERAL.—If, in making a
23 determination under this subsection with
24 respect to a loan or guarantee, the Bank
25 intends to conduct a detailed economic im-
26 pact analysis or similar study, the Bank

1 shall publish in the Federal Register a no-
2 tice of the intent, and provide a period of
3 not less than 14 days (which, on request
4 by any affected party, shall be extended to
5 a period of not more than 30 days) for the
6 submission to the Bank of comments on
7 the economic effects of the provision of the
8 loan or guarantee, including comments on
9 the factors set forth in subparagraphs (A)
10 and (B) of paragraph (1). In addition, the
11 Bank shall seek comments on the effects
12 from the Department of Commerce, the
13 International Trade Commission, the Of-
14 fice of Management and Budget, the Com-
15 mittee on Banking, Housing, and Urban
16 Affairs of the Senate, and the Committee
17 on Financial Services of the House of Rep-
18 resentatives.

19 “(ii) CONTENT OF NOTICE.—The no-
20 tice shall include appropriate, nonpropri-
21 etary information about—

22 “(I) the country to which the
23 goods involved in the transaction will
24 be shipped;

1 “(II) the type of goods being ex-
2 ported;

3 “(III) the amount of the loan or
4 guarantee involved;

5 “(IV) the goods that would be
6 produced as a result of the provision
7 of the loan or guarantee;

8 “(V) the amount of increased
9 production that will result from the
10 transaction;

11 “(VI) the potential sales market
12 for the resulting goods; and

13 “(VII) the value of the trans-
14 action.

15 “(iii) PROCEDURE REGARDING MATE-
16 RIALLY CHANGED APPLICATIONS.—

17 “(I) IN GENERAL.—If a material
18 change is made to an application for
19 a loan or guarantee from the Bank
20 after a notice with respect to the in-
21 tent described in clause (i) is pub-
22 lished under this subparagraph, the
23 Bank shall publish in the Federal
24 Register a revised notice of the intent,
25 and shall provide for a comment pe-

riod, as provided in clauses (i) and (ii).

“(II) MATERIAL CHANGE DEFINED.—In subclause (I), the term ‘material change’, with respect to an application, includes—

“(aa) a change of at least 25 percent in the amount of a loan or guarantee requested in the application; and

“(bb) a change in the principal product to be produced as a result of any transaction that would be facilitated by the provision of the loan or guarantee.

“(C) REQUIREMENT TO ADDRESS VIEWS OF ADVERSELY AFFECTED PERSONS.—Before taking final action on an application for a loan or guarantee to which this section applies, the staff of the Bank shall provide in writing to the Board of Directors the views of any person who submitted comments pursuant to subparagraph (B).

“(D) PUBLICATION OF CONCLUSIONS.—Within 30 days after a party affected by a final

1 decision of the Board of Directors with respect
 2 to a loan or guarantee makes a written request
 3 therefor, the Bank shall provide to the affected
 4 party a non-confidential summary of the facts
 5 found and conclusions reached in any detailed
 6 economic impact analysis or similar study con-
 7 ducted pursuant to subparagraph (B) with re-
 8 spect to the loan or guarantee, that were sub-
 9 mitted to the Board of Directors.

10 “(E) RULE OF INTERPRETATION.—This
 11 paragraph shall not be construed to make sub-
 12 chapter II of chapter 5 of title 5, United States
 13 Code, applicable to the Bank.

14 “(F) REGULATIONS.—The Bank shall im-
 15 plement such regulations and procedures as
 16 may be appropriate to carry out this para-
 17 graph.”.

18 (b) CONFORMING AMENDMENT.—Section 2(e)(2)(C)
 19 of such Act (12 U.S.C. 635(e)(2)(C)) is amended by in-
 20 serting “of not less than 14 days (which, on request of
 21 any affected party, shall be extended to a period of not
 22 more than 30 days)” after “comment period”.

1 **SEC. 9. AGGREGATE LOAN, GUARANTEE, AND INSURANCE**

2 **AUTHORITY.**

3 Subparagraph (E) of section 6(a)(2) of the Export-
4 Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is
5 amended to read as follows:

6 “(E) during fiscal year 2006, and each fis-
7 cal year thereafter through fiscal 2011.”.

8 **SEC. 10. TIED AID CREDIT PROGRAM.**

9 Section 10(b)(5)(B)(ii) of the Export-Import Bank
10 Act of 1945 (12 U.S.C. 635i–3(b)(5)(B)(ii)) is amended
11 to read as follows:

12 “(ii) PROCESS.—In handling indi-
13 vidual applications involving the use or po-
14 tential use of the Tied Aid Credit Fund
15 the following process shall exclusively apply
16 pursuant to subparagraph (A):

17 “(I) The Bank shall process an
18 application for tied aid in accordance
19 with the principles and standards de-
20 veloped pursuant to subparagraph (A)
21 and clause (i) of this subparagraph.

22 “(II) Twenty days prior to the
23 scheduled meeting of the Board of Di-
24 rectors at which an application will be
25 considered (unless the Bank deter-
26 mines that an earlier discussion is ap-

1 appropriate based on the facts of a par-
 2 ticular financing), the Bank shall
 3 brief the Secretary on the application
 4 and deliver to the Secretary such doc-
 5 uments, information, or data as may
 6 reasonably be necessary to permit the
 7 Secretary to review the application to
 8 determine if the application complies
 9 with the principles and standards de-
 10 veloped pursuant to subparagraph (A)
 11 and clause (i) of subparagraph (B).

12 “(III) The Secretary may request
 13 a single postponement of the Board of
 14 Directors’ consideration of the appli-
 15 cation for up to 14 days to allow the
 16 Secretary to submit to the Board of
 17 Directors a memorandum objecting to
 18 the application.

19 “(IV) Case-by-case decisions on
 20 whether to approve the use of the
 21 Tied Aid Credit Fund shall be made
 22 by the Board of Directors, except that
 23 the approval of the Board of Directors
 24 (or a commitment letter based on that
 25 approval) shall not become final (ex-

cept as provided in subclause (V)), if the Secretary indicates to the President of the Bank in writing the Secretary's intention to appeal the decision of the Board of Directors to the President of the United States and makes the appeal in writing not later than 20 days after the meeting at which the Board of Directors considered the application.

“(V) The Bank shall not grant final approval of an application for any tied aid credit (or a commitment letter based on that approval) if the President of the United States, after consulting with the President of the Bank and the Secretary, determines within 30 days of an appeal by the Secretary under subclause (IV) that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6). If no such Presidential determination is made during the 30-day period, the approval by the Bank of

1 the application (or related commit-
 2 ment letter) that was the subject of
 3 such appeal shall become final.”.

4 **SEC. 11. PROHIBITION ON ASSISTANCE TO DEVELOP OR**
 5 **PROMOTE CERTAIN RAILWAY CONNECTIONS**
 6 **AND RAILWAY-RELATED CONNECTIONS.**

7 Section 2(b) of the Export-Import Act of 1945 (12
 8 U.S.C. 635(b)) is amended by adding at the end the fol-
 9 lowing new paragraph:

10 “(13) PROHIBITION ON ASSISTANCE TO DEVELOP
 11 OR PROMOTE CERTAIN RAILWAY CONNECTIONS AND
 12 RAILWAY-RELATED CONNECTIONS.—The Bank shall not
 13 guarantee, insure, or extend (or participate in the exten-
 14 sion of) credit in connection with the export of any good
 15 or service relating to the development or promotion of any
 16 railway connection or railway-related connection that does
 17 not traverse or connect with Armenia and does traverse
 18 or connect Baku, Azerbaijan, Tbilisi, Georgia, and Kars,
 19 Turkey.”.

 Passed the Senate September 30 (legislative day,
 September 29), 2006.

Attest:

Secretary.

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