

Calendar No. 639

109TH CONGRESS
2D SESSION

S. 3938

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2006

Mr. CRAPO, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

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”.

6 **SEC. 2. EXTENSION OF AUTHORITY.**

7 Section 7 of the Export-Import Bank Act of 1945
8 (12 U.S.C. 635f) is amended by striking “2006” and in-
9 serting “2011”.

1 SEC. 3. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

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

5 SEC. 4. EXTENSION OF AUTHORITY TO PROVIDE FINANC-

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

13 SEC. 5. DESIGNATION OF SENSITIVE COMMERCIAL SEC-
14 TORS AND PRODUCTS.

15 Section 2(e) of the Export-Import Bank Act of 1945
16 (12 U.S.C. 635(e)) is amended by adding at the end the
17 following new paragraph:

18 “(5) DESIGNATION OF SENSITIVE COMMERCIAL
19 SECTORS AND PRODUCTS.—Not later than 120 days
20 after the date of the enactment of this Act, the Ex-
21 port-Import Bank of the United States shall submit
22 a list to the Committee on Banking, Housing, and
23 Urban Affairs of the Senate and the Committee on
24 Financial Services of the House of Representatives,
25 which designates sensitive commercial sectors and
26 products with respect to which the provision of fi-

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

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

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

17 “(f) SMALL BUSINESS DIVISION.—

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

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

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

9 “(C) maintain liaison with the Small Busi-
10 ness Administration and other departments and
11 agencies in matters affecting small business
12 concerns; and

13 “(D) provide oversight of the development,
14 implementation, and operation of technology
15 improvements to strengthen small business out-
16 reach, including the technology improvement re-
17 quired by section 2(b)(1)(E)(x).

18 “(2) MANAGEMENT.—The President of the
19 Bank shall appoint an officer, who shall rank not
20 lower than senior vice president and whose sole exec-
21 utive function shall be to manage the Division. The
22 officer shall—

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

1 “(B) advise the Board, particularly the di-
2 rector appointed under section 3(c)(8)(B) to
3 represent the interests of small business, on
4 matters of interest to, and concern for, small
5 business.

6 “(3) STAFF.—

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

12 “(B) RESPONSIBILITIES.—The small busi-
13 ness specialists shall be involved in all aspects
14 of processing applications for loans, guarantees,
15 and insurance to support exports by small busi-
16 ness concerns, including the approval or dis-
17 approval, or staff recommendations of approval
18 or disapproval, as applicable, of such applica-
19 tions. In carrying out these responsibilities, the
20 small business specialists shall consider the
21 unique business requirements of small busi-
22 nesses and shall develop exporter performance
23 criteria tailored to small business exporters.

24 “(C) APPROVAL AUTHORITY.—In an effort
25 to maximize the speed and efficiency with which

1 the Bank processes transactions primarily bene-
2 fitting small business concerns, the small busi-
3 ness specialists shall be authorized to approve
4 applications for working capital loans and guar-
5 antees, and insurance in accordance with poli-
6 cies and procedures established by the Board.

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

23 “(F) STAFF RECOMMENDATIONS.—Staff
24 recommendations of denial or withdrawal for
25 medium-term applications, exporter held multi-

1 buyer policies, single buyer policies, and working
2 capital applications processed by the Bank
3 shall be transmitted to the Senior Vice President
4 of the Division not later than 2 business
5 days before a final decision.

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

10 “(g) SMALL BUSINESS COMMITTEE.—

11 “(1) ESTABLISHMENT.—There is established a
12 management committee to be known as the ‘Small
13 Business Committee’.

14 “(2) PURPOSE AND DUTIES.—

15 “(A) PURPOSE.—The purpose of the Small
16 Business Committee shall be to coordinate the
17 Bank’s initiatives and policies with respect to
18 small business concerns, including the timely
19 processing and underwriting of transactions in-
20 volving direct exports by small business con-
21 cerns, and the development and coordination of
22 efforts to implement new or enhanced Bank
23 products and services pertaining to small busi-
24 ness concerns.

1 “(B) DUTIES.—The duties of the Small
2 Business Committee shall be determined by the
3 President of the Bank and shall include the fol-
4 lowing:

5 “(i) Assisting in the development of
6 the Bank’s small business strategic plans,
7 including the Bank’s plans for carrying out
8 section 2(b)(1)(E) (v) and (x), and meas-
9 uring and reporting in writing to the
10 President of the Bank, at least once a
11 year, on the Bank’s progress in achieving
12 the goals set forth in the plans.

13 “(ii) Evaluating and reporting in writ-
14 ing to the President of the Bank, at least
15 once a year, with respect to—

16 “(I) the performance of each op-
17 erating division of the Bank in serving
18 small business concerns;

19 “(II) the impact of processing
20 and underwriting standards on trans-
21 actions involving direct exports by
22 small business concerns; and

23 “(III) the adequacy of the staff-
24 ing and resources of the Small Busi-
25 ness Division.

1 “(iii) Establishing criteria for evaluating
2 the performance of staff designated
3 by the President of the Bank under section
4 3(f)(3)(A).

5 “(iv) Coordinating with other United
6 States Government departments and agencies
7 the provision of services to small business
8 concerns.

9 “(3) COMPOSITION.—

10 “(A) CHAIRPERSON.—The Chairperson of
11 the Small Business Committee shall be the senior
12 vice president of the Small Business Division.
13 The Chairperson shall have the authority
14 to call meetings of the Small Business Committee,
15 set the agenda for Committee meetings,
16 and request policy recommendations from the
17 Committee’s members.

18 “(B) OTHER MEMBERS.—Except as otherwise
19 provided in this subsection, the President
20 of the Bank shall determine the composition of
21 the Small Business Committee, and shall appoint
22 or remove the members of the Small Business Committee.
23 In making such appointments, the President of the Bank shall ensure

1 that the Small Business Committee is com-
2 prised of—

3 “(i) the senior managing officers re-
4 sponsible for underwriting and processing
5 transactions; and

6 “(ii) other officers and employees of
7 the Bank with responsibility for outreach
8 to small business concerns and under-
9 writing and processing transactions that
10 involve small business concerns.

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

16 (b) ENHANCE DELEGATED LOAN AUTHORITY FOR
17 MEDIUM TERM TRANSACTIONS.—

18 (1) IN GENERAL.—The Export-Import Bank of
19 the United States shall seek to expand the exercise
20 of authority under section 2(b)(1)(E)(vii) of the Ex-
21 port-Import Bank Act of 1945 (6 U.S.C.
22 635(b)(1)(E)(vii)) with respect to medium term
23 transactions for small business concerns.

24 (2) CONFORMING AMENDMENT.—Section
25 2(b)(1)(E)(vii)(III) of the Export-Import Bank Act

1 of 1945 (12 U.S.C. 635(b)(1)(E)(vii)(III)) is amend-
2 ed by inserting “or other financing institutions or
3 entities” after “consortia”.

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

12 **SEC. 7. ANTI-CIRCUMVENTION.**

13 Section 2(e) of the Export-Import Bank Act of 1945
14 (12 U.S.C. 635(e)) is amended—

15 (1) by inserting after paragraph (1), the fol-
16 lowing flush paragraph:
17 “In making the determination under subparagraph
18 (B), the Bank shall determine whether the facility
19 that would benefit from the extension of a credit or
20 guarantee is reasonably likely to produce commod-
21 ities in addition to or other than the commodity
22 specified in the application and whether the produc-
23 tion of the additional commodities may cause sub-
24 stantial injury to United States producers of the
25 same, or a similar or competing, commodity.”;

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

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

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

20 SEC. 8. TRANSPARENCY.

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

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

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

11 “(i) the factors set forth in subpara-
12 graphs (A) and (B) of paragraph (1); and
13 “(ii) the views of the public and inter-
14 ested parties.

15 “(B) NOTICE AND COMMENT REQUIRE-
16 MENTS.—

17 “(i) IN GENERAL.—If, in making a
18 determination under this subsection with
19 respect to a loan or guarantee, the Bank
20 intends to conduct a detailed economic im-
21 pact analysis or similar study, the Bank
22 shall publish in the Federal Register a no-
23 tice of the intent, and provide a period of
24 not less than 14 days (which, on request
25 by any affected party, shall be extended to

1 a period of not more than 30 days) for the
2 submission to the Bank of comments on
3 the economic effects of the provision of the
4 loan or guarantee, including comments on
5 the factors set forth in subparagraphs (A)
6 and (B) of paragraph (1). In addition, the
7 Bank shall seek comments on the effects
8 from the Department of Commerce, the
9 International Trade Commission, the Of-
10 fice of Management and Budget, the Com-
11 mittee on Banking, Housing, and Urban
12 Affairs of the Senate, and the Committee
13 on Financial Services of the House of Rep-
14 resentatives.

15 “(ii) CONTENT OF NOTICE.—The no-
16 tice shall include appropriate, nonpropri-
17 etary information about—

18 “(I) the country to which the
19 goods involved in the transaction will
20 be shipped;

21 “(II) the type of goods being ex-
22 ported;

23 “(III) the amount of the loan or
24 guarantee involved;

1 “(IV) the goods that would be
2 produced as a result of the provision
3 of the loan or guarantee;

4 “(V) the amount of increased
5 production that will result from the
6 transaction;

7 “(VI) the potential sales market
8 for the resulting goods; and

9 “(VII) the value of the trans-
10 action.

11 “(iii) PROCEDURE REGARDING MATE-
12 RIALLY CHANGED APPLICATIONS.—

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

24 “(II) MATERIAL CHANGE DE-
25 FINED.—In subclause (I), the term

1 ‘material change’, with respect to an
2 application, includes—

20 “(D) PUBLICATION OF CONCLUSIONS.—
21 Within 30 days after a party affected by a final
22 decision of the Board of Directors with respect
23 to a loan or guarantee makes a written request
24 therefor, the Bank shall provide to the affected
25 party a non-confidential summary of the facts

1 found and conclusions reached in any detailed
2 economic impact analysis or similar study con-
3 ducted pursuant to subparagraph (B) with re-
4 spect to the loan or guarantee, that were sub-
5 mitted to the Board of Directors.

6 “(E) RULE OF INTERPRETATION.—This
7 paragraph shall not be construed to make sub-
8 chapter II of chapter 5 of title 5, United States
9 Code, applicable to the Bank.

10 “(F) REGULATIONS.—The Bank shall im-
11 plement such regulations and procedures as
12 may be appropriate to carry out this para-
13 graph.”.

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

19 **SEC. 9. AGGREGATE LOAN, GUARANTEE, AND INSURANCE**
20 **AUTHORITY.**

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

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

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

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

5 “(ii) PROCESS.—In handling indi-
6 vidual applications involving the use or po-
7 tential use of the Tied Aid Credit Fund
8 the following process shall exclusively apply
9 pursuant to subparagraph (A):

10 “(I) The Bank shall process an
11 application for tied aid in accordance
12 with the principles and standards de-
13 veloped pursuant to subparagraph (A)
14 and clause (i) of this subparagraph.

15 “(II) Twenty days prior to the
16 scheduled meeting of the Board of Di-
17 rectors at which an application will be
18 considered (unless the Bank deter-
19 mines that an earlier discussion is ap-
20 propriate based on the facts of a par-
21 ticular financing), the Bank shall
22 brief the Secretary on the application
23 and deliver to the Secretary such doc-
24 uments, information, or data as may
25 reasonably be necessary to permit the
26 Secretary to review the application to

1 determine if the application complies
2 with the principles and standards de-
3 veloped pursuant to subparagraph (A)
4 and clause (i) of subparagraph (B).

5 “(III) The Secretary may request
6 a single postponement of the Board of
7 Directors’ consideration of the appli-
8 cation for up to 14 days to allow the
9 Secretary to submit to the Board of
10 Directors a memorandum objecting to
11 the application.

12 “(IV) Case-by case decisions on
13 whether to approve the use of the
14 Tied Aid Credit Fund shall be made
15 by the Board of Directors, except that
16 the approval of the Board of Directors
17 (or a commitment letter based on that
18 approval) shall not become final (ex-
19 cept as provided in subclause (V)), if
20 the Secretary indicates to the Presi-
21 dent of the Bank in writing the Sec-
22 retary’s intention to appeal the deci-
23 sion of the Board of Directors to the
24 President of the United States and
25 makes the appeal in writing not later

1 than 20 days after the meeting at
2 which the Board of Directors consid-
3 ered the application.

1 **SEC. 11. PROHIBITION ON ASSISTANCE TO DEVELOP OR**
2 **PROMOTE CERTAIN RAILWAY CONNECTIONS**
3 **AND RAILWAY-RELATED CONNECTIONS.**

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

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

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