AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 141

107TH CONGRESS *1st Session*	SENATE	REPORT 107–52

THE EXPORT-IMPORT BANK REAUTHORIZATION ACT OF 2001

R E P O R T

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1372



AUGUST 3, 2001.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89–010 WASHINGTON : 2001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

PAUL S. SARBANES, Maryland, *Chairman*

CHRISTOPHER J. DODD, Connecticut	PHIL GRAMM, Texas
TIM JOHNSON, South Dakota	RICHARD C. SHELBY, Alabama
JACK REED, Rhode Island	ROBERT F. BENNETT, Utah
CHARLES E. SCHUMER, New York	WAYNE ALLARD, Colorado
EVAN BAYH, Indiana	MICHAEL B. ENZI, Wyoming
ZELL MILLER, Georgia	CHUCK HAGEL, Nebraska
THOMAS R. CARPER, Delaware	RICK SANTORUM, Pennsylvania
DEBBIE STABENOW, Michigan	JIM BUNNING, Kentucky
JON S. CORZINE, New Jersey	MIKE CRAPO, Idaho
DANIEL K. AKAKA, Hawaii	JOHN ENSIGN, Nevada

STEVEN B. HARRIS, *Staff Director and Chief Counsel*
WAYNE A. ABERNATHY, *Republican Staff Director*
MARTIN J. GRUENBERG, *Senior Counsel*
BRIAN J. GROSS, *Republican Deputy Staff Director and Counsel*
ADRIENNE VANEK, *Republican Economist*

CATHERINE CRUZ WOJTASIK, *Staff Director, International Trade and Finance Subcommittee*
DANIEL M. ARCHER, *Republican Professional Staff Member*
HEATHER O. WEST, *Republican Legislative Fellow*

CONTENTS

	Page
Introduction	1
History of the Legislation	1
Overview	2
Tied Aid Credit Fund	4
Term of Reauthorizaion	5
Market Windows	5
Small Business Financing by the Ex-Im Bank	7
Inspector General For Ex-Im Bank	8
Ex-Im Bank's Economic Impact Standard	8
Ex-Im Bank's Competitiveness Report	9
Section-by-Section Analysis of S. 0000: "The Export-Import Bank Reauthorization Act of 2001"	10
Section 1. Short title	10
Section 2. Extension of authority	10
Section 3. Sub-Saharan Africa Advisory Committee	10
Section 4. Guarantees, Insurance, Extension of Credit	10
Section 5. Financing for Small Business	10
Section 6. Market Windows	10
Appendix	15
Regulatory Impact Statement	10
Changes in Existing Law	13
Cost of Legislation	10

Calendar No. 141

107TH CONGRESS *1st Session* | SENATE | REPORT 107–52

THE EXPORT-IMPORT BANK REAUTHORIZATION ACT OF 2001

AUGUST 3, 2001.—Ordered to be printed

Mr. SARBANES, Mr. BAYH, and Mr. HAGEL, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 1372]

INTRODUCTION

On July 18, 2001, the Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported an original bill, the Export-Import Bank Reauthorization Act of 2001. This Act reauthorizes, for a period of five years through September 30, 2006, (1) the charter of the Export-Import Bank of the United States (Ex-Im Bank), and (2) the sub-Saharan Africa advisory committee. The Act also requires the Ex-Im Bank to submit the Bank's annual competitiveness report to Congress not later than June 30 each year. The Ex-Im bank is also required to include a compilation and analysis of data regarding "market windows" and their effects on the Bank's competitiveness in the report and to estimate the annual amount of export financing available from other government and government-related agencies for the Bank's annual competitiveness report. An amendment by Senator Allard, as modified by a second degree amendment by Senator Sarbanes, was adopted by voice vote which would require that 18 percent of the Ex-Im Bank's aggregate loan, guarantee, and insurance authority be used to finance small business exports. An amendment by Senators Hagel, Bayh, and Sarbanes was adopted by voice vote which would authorize Ex-Im Bank to match foreign market windows financing. The Committee voted 21–0 in favor of adopting the bill.

HISTORY OF THE LEGISLATION

The Export-Import Bank of the United States was created in 1934 and established under its present law in 1945 to aid in financing and promoting U.S. exports. The Bank operates under a

renewable charter, the Export-Import Bank Act of 1945, as amended, and was last authorized in 1997 through September 30, 2001.

The Subcommittee on International Trade and Finance of the Committee on Banking, Housing, and Urban Affairs held two hearings on the reauthorization of the Ex-Im Bank. The principal issues raised in the hearings were the value of the Ex-Im Bank to U.S. exporters, the use of the Tied Aid Credit Fund, market windows financing, adverse economic impact determinations, and the impact of the Administration's proposed 25 percent budget cut for the Ex-Im Bank.

On May 17, 2001, the Subcommittee on International Trade and Finance held a hearing to solicit the views of representatives of small and large exporting companies, the banking community, as well as academic experts. Testifying before the Subcommittee were: Darin P. Narayana, President of Bank One International (representing the Bankers' Association for Finance and Trade); Dean R. Dort II, Vice President of Deere & Company (representing the Coalition for Employment through Exports and the National Foreign Trade Council); C. Fred Bergsten, Director of the Institute for International Economics; Thomas McKenna, Executive Director of the Indiana Department of Commerce; E. Robert Meaney, Senior Vice President of Valmont Industries; Peter Bowe, President of Ellicott Machinery Corporation International (representing the U.S. Chamber); and Terrence D. Straub, Vice President of Governmental Affairs of USX Corporation.

On June 19, 2001 the Subcommittee held its second hearing on the reauthorization of the Ex-Im Bank to solicit the views of the Administration. Witnesses included: John Robson, President and Chairman of the Export-Import Bank and John Taylor, Under Secretary of the Treasury for International Finance.

OVERVIEW

The Committee on Banking, Housing, and Urban Affairs last reauthorized the charter of the Ex-Im Bank in 1997. The Committee has strongly supported the Ex-Im Bank's role in helping U.S. exporters compete in international markets.

In the Committee's view, there are two compelling market-based reasons for the existence of the Ex-Im Bank. First, the Ex-Im Bank has a critical role to play in leveling the playing field for U.S. exporters by matching the public financing made available by foreign governments. In addition, the Ex-Im Bank provides leverage to U.S. negotiators seeking to achieve international agreements to limit the use of government export subsidies. U.S. exporters are able to compete effectively in international markets on the basis of price and quality. When foreign governments provide subsidized financing for their exporters, U.S. exporters are placed at a competitive disadvantage.

Second, emerging market economies can pose credit risks of such magnitude that commercial banks are reluctant to finance U.S. exports to those countries even though they may present extraordinary opportunities for U.S. exporters. The Ex-Im Bank has the difficult but important task of weighing the project in light of the country risk rating and determining if a guarantee should be provided for a commercial export loan that would make possible an export deal that otherwise would not occur.

The Ex-Im Bank has also played a role in helping to cope with international financial crises. In 1997, during the Asian financial crisis, Ex-Im Bank was one of the first banks to finance exports to the most severely impacted Asian countries, providing them with important inputs and machinery that helped improve their economies.

It is also worth noting that over the past five years the interest and fees collected by the Ex-Im Bank have earned the federal government over $4 billion.

When the Banking Committee last reauthorized the Ex-Im Bank four years ago, there was a sense that progress was being made in controlling the growth of export credits offered by national governments. The Organization for Economic Cooperation and Development (OECD) Arrangement on tied aid credits seemed to be having some effect, and there was a hope that further progress could be made. Tied aid transactions (excluding Japan) have decreased from $9 billion in 1992 to $3.8 billion in 2000. However, Japan has shifted some of its financing from untied aid to tied aid, and now represents 70 percent of all financing attributable to tied aid.

In addition, according to the most recent international data, in 1998 there was nearly $500 billion in export credit issued around the world by export credit agencies of other governments. Ex-Im Bank's share of that was only $13 billion. The U.S. now ranks seventh in export credit activity behind Japan, France, Korea, Canada, Germany, and the Netherlands. Foreign governments have also been utilizing other mechanisms such as market windows and untied aid to get around the OECD Arrangement.

In light of these developments, the proposal in the Administration's budget to reduce funding for the Ex-Im Bank by 25 percent was a subject of concern raised by members of the Committee present at the hearings held on May 17 and June 19. Given the growing use of export credits by foreign governments and efforts to get around the restrictions that exist, concern was expressed that this was not the time to reduce the resources of the Ex-Im Bank. Concern was also expressed about proposals floated by OMB to compensate for the proposed reduction in funding by raising the fees on Ex-Im Bank loans, reducing the proportion of Ex-Im Bank financing in export deals, and imposing a more stringent standard on whether an export deal really requires Ex-Im Bank financing. It was not clear that these proposals were being developed with consideration of the lending policies of the export credit agencies of other countries to determine how these proposals would affect the competitiveness of Ex-Im Bank financing.

During the Committee's consideration of the Export-Import Bank Reauthorization Act of 2001, seven issues were the focus of attention and action: the Tied Aid Credit Fund of the Ex-Im Bank; the term of the reauthorization of the Ex-Im Bank; the competitive challenge to the Ex-Im Bank posed by foreign market windows; Ex-Im Bank financing for small business; the need for an Inspector General for the Ex-Im Bank; the Ex-Im Bank's policy on the domestic economic impact of exports financed by the Ex-Im Bank; and the collection of information on the activities of foreign export credit agencies as part of the Ex-Im Bank's annual competitiveness report. Following is a discussion of these issues and the actions taken by the Committee.

Tied Aid Credit Fund

Perhaps the issue that gained the most attention during the subcommittee hearings on May 17 and June 19 was the Tied Aid Credit Fund. In particular, the experience of Valmont Industries of Omaha, Nebraska, a leading irrigation equipment manufacturer, was the subject of considerable discussion.

The senior vice president of Valmont was a witness at the May 17 hearing. According to his testimony, Valmont had applied to the Ex-Im Bank for tied aid financing to match the bid of an Austrian company supported by government tied aid financing. Ex-Im Bank staff carefully reviewed the application and determined that the application had merit and could lead to significant follow-on sales for Valmont. At a meeting of the Ex-Im Bank Board on March 1, Ex-Im Bank staff joined with the Commerce Department representative present in recommending approval of the application. Disagreeing with the Ex-Im Bank's analysis, the Treasury Department recommended against approval. After considering the recommendations, the Ex-Im Bank Board voted 4–0 in favor of the application. However, after the Board's vote, discussions were held between representatives of the Ex-Im Bank and Treasury. Ex-Im Bank afterward sent Valmont a letter indicating that the Bank was unable to take favorable action on its request. Subsequently Valmont lost the deal.

At the June 19 hearing with the Ex-Im Bank and Treasury, members of the Committee expressed deep concerns over the handling of the case. First, there appeared to have been a lack of consultation between the Treasury Department and Ex-Im Bank prior to the meeting of the Ex-Im Bank Board on March 1. Second, most previous disagreements between the Ex-Im Bank and the Treasury Department had been resolved prior to Board meetings. Never before had a case approved by the Board been overturned.

The Ex-Im Bank Charter provides that the tied aid credit program shall be administered by the Ex-Im Bank "in consultation with the (Treasury) Secretary and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to carry out the purposes" described in the charter. These purposes are focused on efforts to enforce and facilitate new international agreements restricting the use of tied aid. The Charter was amended in 1992 to give the Ex-Im Bank additional authority to match foreign tied aid credits when it determines that "United States trade or economic interests justify the matching" even if the foreign credits are in compliance with an international agreement.

As noted, in the past Ex-Im Bank and the Treasury Department have collaborated closely on the use of the Tied Aid Credit Fund. The Treasury, which has lead responsibility in negotiating arrangements in the OECD to limit export credits, has provided general guidance to Ex-Im Bank on how the Tied Aid Credit Fund could be used to advance the negotiating objectives. While agreement has usually been reached on individual tied aid cases, when disagreements have arisen in the past, Treasury has deferred to the judgment of the Ex-Im Bank Board. That did not occur in this case.

The Valmont case therefore generated serious concern among members of the Committee. It is the view of the Committee that while the Treasury Department has responsibility to provide over-

all policy guidance to the Ex-Im Bank on the use of the Tied Aid Credit Fund as it relates to furthering international negotiations to restrict the use of tied aid credits, final case by case decisions on the use of the Tied Aid Credit Fund, after consultation with the Treasury, are the responsibility of the Ex-Im Bank. The members of the Committee at the June 19 hearing strongly urged the Ex-Im Bank and the Treasury Department to work out a set of procedures for consultation that would avoid a recurrence of what happened in the Valmont case.

Subsequent to the hearing, Ex-Im Bank and the Treasury Department engaged in an extended effort to address this problem. As a result, a written set of procedures and principles were worked out by Ex-Im Bank and Treasury. The procedures provide for extensive consultations between Ex-Im Bank and Treasury over all tied aid credit applications, including direct consultations between the Ex-Im Bank and Treasury over all tied credit applications, including direct consultations between Ex-Im Bank and the Secretary of the Treasury. The procedures also provide that the "Ex-Im Bank's Board will not take any final action on any tied aid application unless the procedures for Ex-Im Bank/Treasury cooperation" are followed. In the view of the Committee this means that once the procedures are followed, the final case by case decisions on the use of the Tied Aid Credit Fund are the responsibility of the Ex-Im Bank Board.

The principles provide that "Tied aid matching cases are reviewed by Ex-Im Bank's Board of Directors, with input from other agencies, especially from the Treasury Department, which has policy oversight responsibility." This is consistent with the Committee's understanding of Treasury's role in the Tied Aid Credit Fund.

A copy of the procedures and principles is contained as an Appendix to this Committee Report. The Committee hopes that the implementation of these procedures and principles will avoid a recurrence of the kind of problem illustrated by the Valmont case.

Term of reauthorization

The Export-Import Bank Reauthorization Act of 2001 provides a 5-year reauthorization of the Export-Import Bank. The Administration recommended a 4-year reauthorization.

The Committee intentionally provides a 5-year authorization in order to take the reauthorization of the Ex-Im Bank out of the Presidential election cycle. When the reauthorization of the Ex-Im Bank falls in the first year of a President's term, it runs the risk that a new President will be taking office, as occurred this year. In that case, a new Administration must struggle not only to put in place a new Chairman of the Ex-Im Bank but also cope with providing leadership for the reauthorization of the Ex-Im Bank as well. The Committee believes that it makes more sense to put the reauthorization of the Ex-Im Bank in the second year of a President's term to assure that a new Ex-Im Bank Chairman has been put in place and has been on the job with sufficient time to provide leadership for the reauthorization of the Bank.

Market windows

In hearings held in the International Trade and Finance Subcommittee on May 17 and June 19, witnesses from industry, aca-

demia, and the Administration commented on the growing challenge to U.S. exporters posed by foreign market windows.

For the purposes of this reauthorization, the term "market windows" means any government-supported entity or any facility provided by a government-supported entity that provides export financing that is claimed not to be subject to the disciplines of the Arrangement on Guidelines for Officially Supported Export Credit established through the Organization for Economic Cooperation and Development (OECD). Since the OECD Arrangement has not agreed upon a definition of market windows, the Committee refrained from including a definition in the statute. This definition is provided in the Committee Report as guidance for implementation of the statute with the expectation that the international understanding of the meaning of the term may evolve.

Market windows are government-sponsored enterprises (for example, government owned or directed financial institutions) which provided export financing at below market rates. However, the foreign governments—notably Germany and Canada—which support them claim that these enterprises are not official export credit agencies, and thus not subject to the disciplines of the OECD Arrangement. Currently, two government entities operate very active market windows. They are the German market window KfW and the Canadian market window, the Export Development Corporation (EDC). The result is that these foreign market windows can provide subsidized export financing outside the OECD Arrangement and give their exporters a competitive advantage over U.S. exporters. Also, because these foreign market windows are not subject to the OECD disciplines, there is often a transparency problem—it is difficult to find out the terms of the financing they provide.

The Ex-Im Bank Act currently authorizes the Ex-Im Bank to "provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with the United States." Since market windows are government-supported entities, the Ex-Im Bank views its current statute as providing Ex-Im Bank authority to match market windows financing (but not to create its own market windows institutions). The Committee agrees with that view. However, the Committee believed it would be helpful to make this authority explicit so as to remove any question about Ex-Im Bank's authority and also to send a message to the foreign market windows of U.S. concern about their operations.

As a result, the Committee adopted by voice vote at its markup on July 18 an amendment offered by Senators Hagel, Bayh, and Sarbanes. The amendment had two provisions. First, it directed the executive branch to seek increased transparency over the activities of market windows in the OECD Export Credit Arrangement. If it is determined that market windows are disadvantaging U.S. exporters, the U.S. would be directed to seek negotiations in the OECD for multilateral disciplines and transparency for market windows.

Second, the amendment explicitly authorized the Ex-Im Bank to provide financing on terms and conditions that are inconsistent

with those permitted under the OECD Export Credit Arrangement to match financing terms and conditions that are being offered by market windows if such matching advances negotiations for multilateral disciplines and transparency within the OECD, or when market windows financing is being offered on terms that are more favorable than available from private financial markets. Ex-Im Bank could also match market window financing when the market window refuses to provide sufficient transparency to permit Ex-Im Bank to determine the terms and conditions of the market window financing. The Committee understands that Ex-Im Bank has the authority to match market windows financing that is consistent with the terms of the OECD Arrangment.

In addition, the Committee held the view that increased information was needed on the activities of foreign market windows. As a result, Section 3 of the bill specifies that the Bank's annual report to Congress on export credit competition should include information on export financing available to foreign competitors through market windows.

The Committee believed that it was very important to make clear that Ex-Im Bank has the authority to match market windows financing in order to allow U.S. exporters to compete on a level playing field, and to direct the executive branch to seek negotiations in the OECD for multilateral disciplines and transparency for market windows financing.

Small business financing by the Ex-Im Bank

The Committee has strongly supported the Ex-Im Bank's efforts to provide export financing for small business. The Ex-Im Bank Act currently requires that "the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports directly by small business concerns which shall not be less than 10 percent of such authority for each fiscal year."

During the Committee's markup on July 18, Senator Allard offered an amendment which would have increased to 25 percent by 2004 the portion of Ex-Im Bank's financing devoted to small business. Senator Sarbanes offered a second degree amendment, which was adopted, to increase the amount to 18 percent.

According to the Ex-Im Bank, in FY 2000 small business comprised 18 percent of the total value of all Ex-Im Bank financing authorizations and 86 percent of all transactions supported by Ex-Im Bank. In FY 1999 these numbers were 16 percent and 86 percent respectively. In FY 1998 they were 21 percent and 85 percent respectively.

The Committee believed that the requirement for Ex-Im Bank small business financing could reasonably be raised to a level of 18 percent without causing disruption to Ex-Im Bank's lending programs. Ex-Im Bank remains free to go above this level, as it has in the past, but the Committee was concerned that requiring a higher level could have the unwanted effect of tying up available Ex-Im Bank resources if the Ex-Im Bank could not achieve higher levels of small business financing in a given year.

Inspector General for Ex-Im Bank

During the Committee markup on July 18, Senator Allard offered an amendment that would establish an Inspector General for the Ex-Im Bank. Members of the Committee agreed in principle that Ex-Im Bank could benefit from having an Inspector General. Senator Dodd suggested, however, that it might be a better use of Ex-Im Bank's limited resources for Ex-Im Bank to share an Inspector General with the Agency for International Development, which already has such a sharing relationship with the Overseas Private Investment Corporation (OPIC). Senator Gramm suggested that the Ex-Im Bank share an Inspector General with OPIC, as both are independent agencies with related purposes. Senator Allard withdrew his amendment with the understanding that an effort would be made to reach an agreement so that this issue could be addressed on the Senate floor.

Ex-Im Bank's economic impact standard

The Export-Import Bank Act requires the Ex-Im Bank to assess whether its loans are likely to cause substantial injury to U.S. industry, and not to extend such support if the loans would have an adverse impact on U.S. production and employment.

During the Committee markup on July 18, Senator Bayh offered an amendment with Senators Shelby, Stabenow, and Schumer that would prohibit the extension of a loan or guarantee by the Ex-Im Bank to any entity subject to a countervailing duty or antidumping order. This is consistent with the Bank's current practice.

In addition, the amendment would also prohibit the extension of a loan or guarantee by the Ex-Im Bank to any entity subject to an investigation under the countervailing duty and antidumping laws unless the Bank determines that the loan or guarantee would not result in increased imports of the product covered by the investigation and would not adversely affect the domestic industry. It is a more heightened level of scrutiny than the Bank currently practices. The Bank does not currently take preliminary investigations into account. Under a proposed revision to current Ex-Im Bank procedures, the existence of countervailing duty or antidumping investigations could be considered by the Ex-Im Bank when making loan guarantee decisions.

Under the amendment, the Bank would also be required to solicit comments from parties who would be substantially adversely affected by a proposed loan or guarantee regarding the existence and magnitude of excess capacity in the affected industry and the potential adverse impact on U.S. production and employment. Again a similar approach is being considered by the Ex-Im Bank in its proposed revisions.

The amendment by Senator Bayh was prompted by Ex-Im Bank's approval in December 2000 of a loan guarantee for a project that will increase by 1.5 million metric tons hot-rolled steel capacity at the Benxi Iron and Steel Company in China. That decision was made at a time when, in the view of the proponents of the amendment, the existence of excessive foreign steel capacity was well known and the domestic steel industry was in a state of severe crisis caused by foreign steel producers dumping into U.S. markets causing the loss of over 20,000 jobs. The Ex-Im Bank, which previously has both approved and disapproved steel-related projects,

in this case approved the guarantee based upon its conclusion that the additional capacity would not displace U.S. steel production. The proponents of the amendment expressed concern that the Ex-Im Bank should not fund projects that will lead to increased global oversupply and injury to U.S. workers and businesses. The loan was extended over opposition from other members of the Administration. Secretary of Commerce Norman Y. Mineta wrote to the Ex-Im Bank in vigorous opposition to the loan; Secretary of the Treasury Lawrence Summers wrote to the World Bank calling on all financial institutions to withhold financing for overseas steel projects.

After objections were raised by members of the Committee that the amendment was overly broad, Senator Bayh withdrew the amendment with an understanding that an effort would be made to work out an agreement to address the issue prior to Senate floor consideration of the bill.

Ex-Im Bank competitiveness report

Section 3 of the Export-Import Bank Reauthorization Act makes a number of changes to Ex-Im Bank reporting requirements to ensure more timely and complete reporting of the activities of foreign export credit agencies.

Section 3 requires the Ex-Im Bank to submit its annual competitiveness report to Congress not later than June 30 of each year. Currently, the annual competitiveness report comes to Congress in late summer/early autumn, too late to be used for any oversight or legislation in any given year. Also, with the current submission date, the Advisory Committee's annual recommendations, completed in December each year, are eight to nine months old. Finally, by moving the reporting date to June 30, the Ex-Im Bank will have ample time to include data on other report credit agencies, in light of the fact that the Berne Union reports on global export credit agency activity come in forty-five (45) days after the close of each quarter.

As previously mentioned, Section 3 also specifies that the Bank's annual competitiveness report to Congress should include information on export financing available to foreign competitors through market windows. As noted above, for the purposes of this Act, the term market windows means any government-supported entity or any facility provided by a government-supported entity that provides export financing that is claimed not to be subject to the disciplines of the Arrangement on Guidelines for Officially Supported Export Credit established through the Organization for Economic Cooperation and Development.

Finally, Section 3 requires the Ex-Im Bank to estimate the annual amount of export financing available from the government and government-related agencies and include that information in Ex-Im's annual competitiveness report. The Ex-Im Bank shall use the quarterly and annual data from the Berne Union or other sources in preparing these annual estimates. If the Bank deems the sources or information to be sensitive, that information may be transmitted to Congress on a confidential, or classified, basis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Export-Import Bank Reauthorization Act of 2001".

Section 2. Extension of authority

Section 2 extends the expiration date of the Export-Import Bank Act from September 30, 2001 to September 30, 2006.

Section 3. Sub-Saharan Africa advisory committee

Section 3 extends the expiration date for the sub-Saharan Africa advisory committee of the Export-Import Bank from September 30, 2001 to September 30, 2006.

Section 4. Guarantees, insurance, extension of credit

Section 4 requires the Ex-Im Bank to submit its annual competitiveness report to Congress not later than June 30 of each year. Section 3 also specifies that the Bank's annual report to Congress on export credit competition should include information on export financing available to foreign competitors through market windows. Finally, Section 3 requires the Ex-Im Bank to estimate the annual amount of export financing available from the government and government-related agencies and include that information in Ex-Im's annual competitiveness report.

Section 5. Financing for small business

Section 5 increases from 10 percent to 18 percent the amount the Ex-Im Bank must make available of its aggregate loan, guarantee, and insurance authority each fiscal year to finance exports directly by small business concerns.

Section 6. Market windows

Section 6 directs the U.S. to seek negotiations for multilateral disciplines and transparency for market windows within the OECD Export Credit Arrangement. It also authorizes the Ex-Im Bank to match market windows financing that is inconsistent with the Arrangement if the matching advances OECD negotiations or the market windows financing is offered on terms and conditions more favorable than financing available from private financial markets.

REGULATORY IMPACT STATEMENT

Pursuant to rule XXVI, paragraph 11(b), of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes it would result in no net increase in the regulatory burden imposed by the Government.

COST OF LEGISLATION

The cost estimate of the Congressional Budget Office appears below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 2001.

Hon. PAUL S. SARBANES,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for a bill to reauthorize the Export-Import Bank of the United States.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1372—A bill to reauthorize the Export-Import Bank of the United States

Summary: The bill would extend the authority of the Export-Import Bank of the United States (Eximbank) to enter into new direct loan obligations and new guaranteed loan commitments through 2006. The bill would authorize new efforts by the U.S. government to bring export financing (so called "market windows") offered by certain foreign banks owned or supported by their governments into compliance with the terms of the export credit arrangement among the major exporting countries. It would also increase the Eximbank's set-aside for financing exports by small businesses from 10 percent to 18 percent of its credit obligations and commitments. Finally, the bill would continue the sub-Saharan Africa Advisory Committee and add new reporting requirements.

Assuming the appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $202 million in 2002 and $3.2 billion over the 2002–2006 period. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Estimated budget authority [1]	910	49	41	37	31	31
Estimated outlays	813	628	306	186	102	68
Proposed changes:						
Estimated authorization level [2]	0	887	918	946	971	993
Estimated outlays	0	202	571	725	834	889
Spending under the bill:						
Estimated authorization level [1 2]	910	936	959	983	1,002	1,024

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
Estimated outlays	813	830	877	911	936	957

[1] The 2001 level is the amount appropriated for that year.
[2] The estimate assumes that funding for Eximbank would continue at the 2001 level adjusted for inflation. Funding at the 2001 level without adjustment for inflation would lower outlays by $7 million in 2002 and by $0.2 billion over the 2002–2006 period.

Basis of estimate: The Eximbank provides about $12 billion annually in loans and guarantees to finance the export of United States' goods and services. The bill would extend the Eximbank's authority to provide financing through 2006, an additional five years. The estimate assumes the Eximbank would receive appropriations for administrative expenses and the cost of new loans and guarantees, as defined by the Federal Credit Reform Act, at the start of each fiscal year and that outlays would follow historical patterns.

CBO's estimate of spending under current law assumes there would be no future appropriations for the cost of new credits and that administrative expenses would be reduced to the level necessary to service outstanding credits. Under the bill, CBO assumes that spending by the Eximbank would continue at the 2001 level adjusted for inflation.

The bill would encourage the Eximbank to seek negotiations that would bring the terms of market windows and the information made available about them into compliance with the export credit arrangement of the Organization for Economic Cooperation and Development. The bill would authorize the Eximbank to offer financing on terms and conditions more generous than permitted under the arrangement, if necessary, to advance these negotiations, or if a foreign government refuses to provide information on its market windows. Based on information from the Administration, it appears that the most likely variances from arrangement terms that could be offered under the bill would be longer loan maturities or increased financing to cover 100 percent of value of an export.

Market windows are typically available to borrowers with low or moderate risk. CBO estimates that increasing the maximum maturity of Eximbank's credits from 12 years to 15 years would increase the cost of moderate risk credits by 2 percent. For example, providing $1 billion in financing with longer terms would require an additional $20 million in subsidy appropriations. Similarly, financing 100 percent of the value of $1 billion in exports would increase the cost of financing by another $10 million.

Given the uncertainty of how the Eximbank might implement the new provision and what its potential future financing requirements might be, CBO estimates that Eximbank could continue to provide $12 billion to $14 billion a year in financing under the bill with a subsidy appropriation at baseline levels. This estimate takes into account the fact that, while more generous terms would increase the cost of financing any particular export, the Office of Management and Budget's economic and technical assumptions for 2002 would lower the estimated cost of Eximbank financing in general. A program level of $13 billion in new credits in 2002 would require $100 million less in subsidy appropriations than it did in 2001. Higher costs for credits targeted at market windows could be offset by the lower estimated cost of lending within arrangement terms.

Increasing the set-aside for exports by small businesses to 18 percent would bring the statutory floor to about the ratio of current operations. Based on information from the Eximbank, CBO estimates that increasing the set-aside would not significantly affect its lending and that the other provisions in the bill would not significantly increase the institution's administrative expenses.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: This bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Joseph C. Whitehill; Impact on State, local, and tribal governments: Elyse Goldman; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.

APPENDIX

PROCEDURES FOR ENHANCED EX-IM/TREASURY COOPERATION ON TIED AID TRANSACTIONS

1. Ex-Im and Treasury staffs shall promptly share with each other all written materials received from exporters, other government agencies, or third parties, relating to proposed or pending Ex-Im Bank tied aid transactions. In particular, Ex-Im staff shall provide Treasury staff with a copy of each tied-aid application received by Ex-Im Bank within 5 business days of receipt.

2. Within 10 business days of receiving an application or inquiry on possible tied aid use, Ex-Im staff (after consulting with Treasury staff) will contact the exporter/applicant and either provide a preliminary indication on the likelihood that the transaction would meet the parameters for tied aid use or identify specific information needed for Ex-Im and Treasury staff to provide such an indication.

3. In order to further the negotiations of improved OECD tied aid rules or enforce compliance with existing OECD rules, Treasury staff may recommend that the Bank support specific tied aid applications or that the Bank support tied applications countering certain categories of foreign aid credits.

4. Ex-Im staff shall send Treasury staff a report at each month's end indicating the status of pending and outstanding tied aid transactions. Where there is a significant mid-month status change, Ex-Im staff shall alert Treasury staff.

5. Within 30 business days of receipt of a tied aid application, Ex-Im and Treasury staffs shall meet to discuss their preliminary views on the merits of the application and to develop an approach regarding processing of the application.

6. Ex-Im staff shall provide Treasury staff drafts of all tied-aid Board memos at least 10 business days before the projected date for final-memo distribution. Within 5 business days of receiving such drafts, Treasury staff shall either provide written comments to Ex-Im Bank staff or provide written notice that Treasury staff has no comments. Written comments or a statement of Treasury staff's views shall be attached to the Board memos. Treasury staff may request in writing that distribution of the final memo and Board consideration of the application be delayed for up to 10 business days in order to provide additional time for consultation or for Treasury to submit written comments. Any such written request received prior to the close of the business day immediately preceding the scheduled Board meeting will be honored by Ex-Im Bank. If, after these consultations, Treasury and Ex-Im staffs disagree on the merits of a particular matching tied aid offer, Board

consideration of the application shall be delayed for up to an additional 10 business days during which time the Under Secretary of the Treasury for International Affairs and the Ex-Im Bank Chairman will meet to seek to resolve the differences. Should agreement not be reached following such consultation, within 10 business days the Secretary of the Treasury and the Ex-Im Bank Chairman shall exchange letters setting forth their written views on how agreement might be reached.

7. Ex-Im Bank's Board will not take any final action on any tied aid application unless the procedures for Ex-Im Bank/Treasury cooperation described above have been followed.

Review

Treasury and Ex-Im Bank staff will meet on an annual basis to review and discuss data and trends on the application for and use of the War Chest and the use of tied aid credit financing by foreign governments.

Treasury and Ex-Im Bank staff will meet on a semi-annual basis to review Ex-Im Bank and Treasury cooperation with respect to the administration of the War Chest and to discuss any changes to the procedures outlined above that may be necessary to improve cooperation and more effectively administer the program.

The Annual Tied Aid Report to Congress, which Ex-Im Bank staff and Treasury together prepare, will henceforth contain a section reviewing Ex-Im and Treasury cooperation with respect to this Understanding.

PRINCIPLES AND GUIDANCE FOR THE TIED AID WAR CHEST

Principle No. 1. The Tied Aid War Chest is a resource that should be used purposefully and selectively, with the simple standard being that applications would be where there is a clear and precise purpose evidenced. Such use not only maximizes the probable value of its employment, but also enhances the actual deterrence value of the amounts remaining.

Principle No. 2. The War Chest is not to be applied "offensively"; that is, there will be no initiation of Tied Aid using the War Chest. Rather, the War Chest will be used to counter situations where there is a reasonable evidentiary basis that there is (either formally or informally) a foreign tied aid offer. In countering such offers the U.S. offer is not necessarily contained by the terms of the original offer. Moreover, the "no initiation" principle does not preclude technical initiation when the approach is the only way to effectively counter the offer of another country.

Principle No. 3. A prime use of the War Chest is to "police" the Helsinki accords—aggressively counter such actions as de facto tied aid (so called "untied" aid), absence of mandated notification rules, or refusal to abide by Consultation findings. In this context, Treasury has an explicit right (or "put") to recommend Tied Aid use for specific cases—or categories of cases—in support of Tied Aid Negotiating objectives.

Principle No. 4. Another prime (not secondary) use is in defending U.S. exporters from examples or patterns of use that effectively (whether intentional or not) form a threat to long-run U.S. market

share/access in merging markets. The idea is to respond to reasonable evidence of tied aid use that may create long-run trade advantage for foreign exporters.

Principle No. 5. Any use of the War Chest should be for a project which meets Ex-Im Bank's environmental guidelines.

Tied aid defined

Tied aid is government-to-government concessional financing of public sector capital projects in developing countries. Tied aid is provided by the aid agencies of OECD member governments, sometimes in joint financing packages with their national export credit agencies (their ex-im banks), or by their export credit agencies alone. Tied aid terms are much more concessional than the typical export credit terms offered by Ex-Im Bank and its counterparts. Tied aid usually involves total maturities longer than 20 years; interest rates equal to one-half to two-thirds of market rates in the currency of denomination; or large grants (equal to 35 percent or more of contract value) offered in conjunction with regular export credits. Regular export credits—involving terms up to and including 10–12 years—are not tied aid, and are not the subject of this Fact Sheet.

Principles for use of the Tied Aid War Chest

1. The Tied Aid War Chest is a resource that is governed by the simple standard of purposeful and selective use to deter or defend against foreign tied aid that distorts trade, and is utilized so as to maximize the value of these resources. A prime use of the War Chest is to leverage OECD negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, and to police existing multilateral rules. Another prime use is to defend U.S. exporters from examples or patterns of foreign tied aid use that effectively (whether intentional or not) form a significant threat to U.S. market share/access in emerging markets. In this regard, its aim is to deter, or if not possible, to match trade distorting foreign tied aid offers by reopening bid opportunities closed to U.S. exporters by foreign tied aid offers.

2. The War Chest is not to be applied "offensively" to introduce tied aid into an export competition; that is, there will be no initiation of tied aid using the War Chest to give exporters an advantage over standard export credits. Rather, the War chest will be used to counter situations where there is credible evidence that a foreign government is offering tied aid (formally or informally) to distort trade to provide a significant competitive advantage for foreign exporters. The War Chest is not an instrument for the routine support of U.S. exports and jobs. However, the "no initiation" principle does not preclude technical initiation when that approach is the only way to effectively counter the offer of another country.

3. The War Chest will be used aggressively to counter violations of the OECD tied aid rules. In pursuing this objective, the War Chest will be used to counter uses of de facto tied aid (so-called untied aid), absence of mandated notification rules, exploitation of the OECD exemption for small projects, or refusal to abide by Tied Aid Consultations findings. More generally, Ex-Im Bank will consider matching a foreign tied aid offer if it receives credible evidence that

another OECD member government's export credit agency or aid ministry is violating the internationally-agreed rules in letter or in spirit for competitive gain. In using the War Chest to leverage negotiations for multilateral agreements to restrict aid-financed trade distortions, Ex-Im Bank will work with Treasury to identify projects or categories of projects where such financing can advance U.S. international negotiating objectives.

4. Any use of the War Chest should be for a project which meets Ex-Im Bank's environmental guidelines.

Implementation of War Chest matching policy

Determination of eligibility for tied aid under the OECD rules

Before a foreign tied aid matching offer will be made, the Treasury Department (in coordination with Ex-Im) will try to determine whether or not the project is eligible for tied aid under the OCED rules. If the project appears ineligible for tied aid, Treasury will "challenge" the project in the OECD in order to have it formally declared ineligible for tied aid. In this case any OECD government would be prevented from offering tied aid for the project under the OECD tied aid rules and competition would proceed on market, or standard Ex-Im Bank, financing terms. If the donor persists in an offer determined by the OECD to be ineligible for tied aid, whether through a direct violation of the rules or by seeking formally to derogate from the rules, Ex-Im Bank will automatically offer matching financing.

If the project is eligible for tied aid, Ex-Im Bank will proceed consistent with timing needs of the case to evaluate the matching request against its principles.

Ex-Im Bank requires credible information about foreign tied aid offers before offering specific matching terms. Ex-Im Bank has access to formal prior notifications of foreign tied aid offers required under OECD tied aid rules. Ex-Im Bank will also review recipient governments' written or oral (e.g., to Ex-Im Bank or U.S. Embassy) confirmations; press reports; and/or copies of correspondence or bilateral aid protocol agreements among foreign exporters, donor, and recipient governments. Ex-Im Bank seeks as much of the following information as practicable regarding each foreign tied aid credit for which matching is requested: specific financing terms (including currencies of denomination, grace periods, repayment terms, interest rates, grant amounts); amounts of tied aid financing; dates of foreign tied aid offers; descriptions of projects; names of donor agencies; names of recipient government agencies; names of foreign exporters.

Ex-Im Bank carefully screens tied aid matching requests. Tied aid matching cases are reviewed by Ex-Im Bank's Board of Directors, with input from other agencies, especially from the Treasury Department, which has policy oversight responsibility. Ex-Im Bank prefers to use standard export credits and does not seek competitive advantage in approving tied aid. Ex-Im Bank does not offer tied aid in order to reserve otherwise competitive contracts solely for U.S. exporters; nor to induce approval of contracts that would not otherwise be approved.

Ex-Im Bank will consider as many of the following factors as may be relevant to a specific case at a particular time:

The total budget cost of the transaction;

The clarity and extent of any pattern or trend indicating intent to use tied aid funds to acquire commercial advantage for specific exporters or products;

The clarity and extent of any pattern or trend indicating intent by donor country to use tied aid funds as part of a national strategy of trade promotion;

The economic/developmental feasibility of structuring such transactions in the specific market on standard export credit terms;

The possible effect of the loss of the sale/access to market/market share on the medium and long-term viability of the supplier(s) as an entity or exporter;

The small business status of the supplier(s);

The nature of the export or project in terms of environmental benefits;

The existence/reality of International Competitive Bidding procedures;

The extent of competitor displacement;

The clarity and specificity of documents relating to the foreign tied aid offer;

The existence and extent of any pattern or trend in terms of tied aid use by the donor country (i.e., is it a "spoiled market");

The ability of any War Chest use to be successful within the bounds of the Helsinki rules;

The ability of any War Chest use to be successful without posing a danger to the parameters to tied aid use derived from case precedent and laid out in the Ex Ante Guidance; and

The available War Chest resources.

○