

(8)(A) the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 635(b)(1) of this title, including the total amount expended by the Bank to do so; and

(B) if the Bank has been unable to comply with such subparagraphs—

- (i) an analysis of the reasons therefor; and
- (ii) what the Bank is doing to achieve, and the date by which the Bank expects to have achieved, such compliance.

(July 31, 1945, ch. 341, § 8, formerly § 9, 59 Stat. 529; Pub. L. 90-267, § 1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 93-646, § 10, Jan. 4, 1975, 88 Stat. 2336; Pub. L. 95-630, title XIX, § 1907(b), Nov. 10, 1978, 92 Stat. 3725; Pub. L. 98-181, title VI, §§ 618(b), 623, Nov. 30, 1983, 97 Stat. 1259, 1262; Pub. L. 99-472, § 20(b), (c), Oct. 15, 1986, 100 Stat. 1209, 1210; renumbered § 8, Pub. L. 102-429, title I, § 121(c)(2), Oct. 21, 1992, 106 Stat. 2199; Pub. L. 106-569, title XI, § 1104(a)(4), Dec. 27, 2000, 114 Stat. 3032; Pub. L. 107-189, § 12, June 14, 2002, 116 Stat. 704; Pub. L. 109-438, § 20, Dec. 20, 2006, 120 Stat. 3282.)

PRIOR PROVISIONS

A prior section 8 of act July 31, 1945, ch. 341, was renumbered section 7 and is classified to section 635f of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109-438 added subsec. (f).

2002—Subsecs. (c) to (e). Pub. L. 107-189 added subsecs. (c) to (e).

2000—Subsec. (b). Pub. L. 106-569 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interest of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.”

Subsec. (c). Pub. L. 106-569 redesignated subsec. (c) as (b) and directed redesignation of subsec. (e) as (c).

Subsec. (d). Pub. L. 106-569 struck out subsec. (d) which required report to include actions taken by Bank to aid industries, preserve and create highly skilled jobs, and enhance opportunity for business growth and expansion and comments of Advisory Committee.

Subsec. (e). Pub. L. 106-569, which directed redesignation of subsec. (e) as (c), could not be executed. See 1986 Amendment note and Termination Date of 1986 Amendment note below.

1986—Subsec. (e). Pub. L. 99-472 temporarily added subsec. (e). See Termination Date of 1986 Amendment note below.

1983—Subsec. (b). Pub. L. 98-181, § 618(b)(1), inserted “and of the activities of the member of the Board appointed to represent the interests of small business”.

Subsec. (c). Pub. L. 98-181, § 618(b)(2), added subsec. (c).

Subsec. (d). Pub. L. 98-181, § 623, added subsec. (d).

1978—Subsec. (b). Pub. L. 95-630 inserted provision that in addition, the Bank include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.

1975—Pub. L. 93-646 designated existing provisions as subsec. (a), substituted provisions calling for an annual report as of the close of business on the last day of each fiscal year, for provisions calling for a semiannual re-

port as of the close of business on June 30 and Dec. 31 of each year, and added subsec. (b).

1968—Pub. L. 90-267 changed name of “Export-Import Bank of Washington” to “Export-Import Bank of the United States”.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

TERMINATION DATE OF 1986 AMENDMENT

Section 20(c) of Pub. L. 99-472 provided that: “Effective March 2, 1988, the amendment made by subsection (b) [amending this section] is repealed.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as a note under section 635 of this title.

REPORTS

Pub. L. 107-189, § 8(c), June 14, 2002, 116 Stat. 701, provided that: “The Export-Import Bank of the United States shall include in the annual report required by section 8(a) of the Export-Import Bank Act of 1945 [12 U.S.C. 635g(a)] for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act [12 U.S.C. 635(b)(1)], and on how the efforts are assisting small businesses.”

FINANCING FOR RENEWABLE ENERGY PROJECTS

Pub. L. 101-167, title V, § 534(d), Nov. 21, 1989, 103 Stat. 1231, provided that:

“(1) Of the financing provided by the Export-Import Bank that is utilized for the support of exports for the energy sector, the Bank shall seek to provide not less than 5 per centum of such financing for renewable energy projects.

“(2) The Export-Import Bank shall take all appropriate steps to finance information exchanges and training whose purpose it is to help link United States producers in the renewable energy sector with assistance programs and potential foreign customers.

“(3) Beginning on April 15, 1990, the Chairman of the Export-Import Bank shall submit an annual report to the Committees on Appropriations on the Bank’s implementation of this subsection.”

SUBMISSION OF ANNUAL REPORT

Pub. L. 89-348, § 2(9), Nov. 8, 1965, 79 Stat. 1312, modified requirement relating to submission of reports to Congress by providing for annual reports instead of semiannual reports.

§ 635g-1. Annual competitiveness report

(a) In general

Not later than June 30 of each year, the Bank shall submit to the appropriate congressional committees a report that includes the following:

(1) Actions of Bank in providing financing on a competitive basis, and to minimize competition in government-supported export financing

A description of the actions of the Bank in complying with the second and third sentences of section 635(b)(1)(A) of this title. In this part of the report, the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters (including through use of market windows

(as defined pursuant to section 635i-3(h)(7) of this title) and, to the extent such information is available to the Bank, indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. With respect to the preceding sentence, the Bank shall use all available information to estimate the annual amount of export financing available from each such government and government-related agency. In this part of the report, the Bank shall include a survey of a representative number of United States exporters and United States commercial lending institutions which provide export credit on the experience of the exporters and institutions in meeting financial competition from other countries whose exporters compete with United States exporters.

(2) Role of Bank in implementing strategic plan prepared by the Trade Promotion Coordinating Committee

A description of the role of the Bank in implementing the strategic plan prepared by the Trade Promotion Coordinating Committee in accordance with section 4727 of title 15.

(3) Tied aid credit program and fund

The report required by section 635i-3(g) of this title.

(4) Purpose of all Bank transactions

A description of all Bank transactions which shall be classified according to their principal purpose, such as to correct a market failure or to provide matching support.

(5) Efforts of Bank to promote export of goods and services related to renewable energy sources

A description of the activities of the Bank with respect to financing renewable energy projects undertaken under section 635(b)(1)(K) of this title, and an analysis comparing the level of credit extended by the Bank for renewable energy projects with the level of credit so extended for the preceding fiscal year.

(6) Size of Bank program account

A separate section which—

(A) compares, to the extent practicable, the size of the Bank program account with the size of the program accounts of the other major export-financing facilities referred to in paragraph (1); and

(B) makes recommendations, if appropriate, with respect to the relative size of the Bank program account, based on factors including whether the size differences are in the best interests of the United States taxpayer.

(7) Co-financing programs of the Bank and of other export credit agencies

A description of the co-financing programs of the Bank and of the other major export-financing facilities referred to in paragraph (1), which includes a list of countries with which the United States has in effect a memorandum of understanding relating to export credit agency co-financing and, if such a memoran-

dum is not in effect with any country with a major export credit-financing facility, an explanation of why such a memorandum is not in effect.

(8) Services supported by the Bank and by other export credit agencies

A separate section which describes the participation of the Bank in providing funding, guarantees, or insurance for services, which shall include appropriate information on the involvement of the other major export-financing facilities referred to in paragraph (1) in providing such support for services, and an explanation of any differences among the facilities in providing the support.

(9) Export finance cases not in compliance with the arrangement

Detailed information on cases reported to the Bank of export financing that appear not to comply with the Arrangement (as defined in section 635i-3(h)(3) of this title) or that appear to exploit loopholes in the Arrangement for the purpose of obtaining a commercial competitive advantage. The President of the Bank, in consultation with the Secretary of the Treasury, may provide to the appropriate congressional committees the information required by this subsection in a separate and confidential report, instead of providing such information in the report required by this subsection.

(10) Foreign export credit agency activities not consistent with the WTO agreement on subsidies and countervailing measures

A description of the extent to which the activities of foreign export credit agencies and other entities sponsored by a foreign government, particularly those that are not members of the Arrangement (as defined in section 635i-3(h)(3) of this title), appear not to comply with the Arrangement and appear to be inconsistent with the terms of the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19, and a description of the actions taken by the United States Government to address the activities. The President of the Bank, in consultation with the Secretary of the Treasury, may provide to the appropriate congressional committees, the information required by this subsection in a separate and confidential report, instead of providing such information in the report required by this subsection.

(b) Inclusion of additional comments

The report required by subsection (a) shall include such additional comments as any member of the Board of Directors may submit to the Board for inclusion in the report.

(c) Appropriate congressional committees

The term "appropriate congressional committees" means the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(July 31, 1945, ch. 341, §8A, as added Pub. L. 109-438, §13(a), Dec. 20, 2006, 120 Stat. 3277.)

§ 635h. Exemption from prohibition of section 955 of title 18

Notwithstanding the provisions of section 955 of title 18, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

(July 31, 1945, ch. 341, § 9, formerly § 11, 59 Stat. 529; Sept. 3, 1954, ch. 1263, § 29, 68 Stat. 1237; Pub. L. 90-267, § 1(a), Mar. 13, 1968, 82 Stat. 47; renumbered § 9, Pub. L. 102-429, title I, § 121(c)(3), Oct. 21, 1992, 106 Stat. 2199.)

PRIOR PROVISIONS

A prior section 9 of act July 31, 1945, ch. 341, was renumbered section 8 and is classified to section 635g of this title.

AMENDMENTS

1968—Pub. L. 90-267 changed name of “Export-Import Bank of Washington” to “Export-Import Bank of the United States”.

1954—Act Sept. 3, 1954, substituted “section 955 of title 18” for “section 804a of title 31”.

§§ 635i to 635i-2. Repealed. Pub. L. 102-429, title I, § 121(c)(1), Oct. 21, 1992, 106 Stat. 2199

Section 635i, act July 31, 1945, ch. 341, § 12, as added June 9, 1947, ch. 101, § 4, 61 Stat. 131; amended Mar. 13, 1968, Pub. L. 90-267, § 1(a), 82 Stat. 47, related to assumption of rights and liabilities of existing Bank by Export-Import Bank of the United States including transfer of funds, property, personnel, etc.

Section 635i-1, act July 31, 1945, ch. 341, § 13, as added Nov. 30, 1983, Pub. L. 98-181, title VI, § 619(a), 97 Stat. 1260, related to establishment of special facilities in support of export transactions to Brazil and Mexico.

Section 635i-2, act July 31, 1945, ch. 341, § 14, as added Nov. 30, 1983, Pub. L. 98-181, title VI, § 621, 97 Stat. 1261, related to notification to Congress of decrease in capital level of Bank.

§ 635i-3. Tied Aid Credit Fund and program

(a) Findings

The Congress finds that—

(1) tied aid and partially untied aid credits offered by other countries are a predatory method of financing exports because of their market-distorting effects;

(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction;

(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes;

(5) the Bank has, at a minimum, the following two tasks—

(A)(i) first, the Bank should match foreign export credit agencies and aid agencies when

they engage in tied aid outside the confines of the Arrangement and when they exploit loopholes, such as untied aid;

(ii) such matching is needed to provide the United States with leverage in efforts at the OECD to reduce the overall level of export subsidies;

(iii) only through matching foreign export credit offers can the Bank buttress United States negotiators in their efforts to bring these loopholes within the disciplines of the Arrangement; and

(iv) in order to bring untied aid within the discipline of the Arrangement, the Bank should consider initiating highly competitive financial support when the Bank learns that foreign untied aid offers will be made; and

(B) second, the Bank should support United States exporters when the exporters face foreign competition that is consistent with the Arrangement and the Subsidies Code of the World Trade Organization, but which places United States exporters at a competitive disadvantage; and

(6) there should be established in the Bank a tied aid program to target the export markets of those countries, including those that are not a party to the Arrangement, which make extensive use of tied aid or partially untied aid credits, or untied aid used to promote exports as if it were tied aid, for commercial advantage for the purposes of—

(A) enforcing compliance with the existing Arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes; and

(B) facilitating efforts to negotiate, establish, and enforce new or revised comprehensive international arrangements effectively restricting the use of tied aid and partially untied aid credits, or untied aid used to promote exports as if it were tied aid, for commercial purposes; and

(C) promoting compliance with Arrangement rules among foreign export credit agencies that are not a party to the Arrangement;

and such program should be used aggressively for such purposes.

(b) Establishment of tied aid credit program

(1) In general

The Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c) of this section—

(A) to supplement the financing of a United States export when there is a reasonable expectation that predatory financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export and with special attention to matching tied aid and partially untied aid credits extended by other governments—

(i) in violation of the Arrangement; or

(ii) in cases in which the Bank determines that United States trade or eco-