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ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING

October 10, 2002

Eduardo Aguirre, Vice Chairman
United States Export-Import Bank
811 Vermont Avenue, NW
Washington, D.C. 20571

Dear Mr. Aguirre,

I appreciate the opportunity to provide comments on the proposed changes to the Export-Import Bank's (Ex-Im or the Bank) economic impact procedures (procedures), which should reflect the changes Congress made to Ex-Im's Charter during its reauthorization in June, 2002. I commend the Bank's attempts to implement the mandated changes, but find that your draft proposal falls short in several ways. I am confident, however, that once I clarify the statute and Congressional intent, Ex-Im will make the appropriate adjustments to the final procedures.

Pursuant to the amendment, the Bank is required to revise its economic impact procedures to ensure that the grant of a loan or guarantee will not significantly increase imports of "substantially the same product" covered by a preliminary determination in an AD/CVD case. In the draft procedures, the Bank proposes using product descriptions from cases before the ITC to determine the scope of coverage. These product descriptions are for a different purpose, and frequently limit a product definition. The new procedures must make clear Congress' intent to apply the prohibition not only to the product as defined by the case but also to substantially similar products including those that are one or two steps upstream or downstream from the product subject to an order or determination. Otherwise, existing orders or determinations would be subverted.

Also, let me make clear that my amendment and its legislative history state that the Bank may not extend a loan or guarantee for a product that is subject to an AD/CVD order or a determination under Title II of the Trade Act of 1974 (Section 201 determinations), unless the Bank exercises its waiver authority. Bank staff seems reluctant on this point. The amendment language and Congress during the conference on the Bank's reauthorization, clearly decided that the Section 201 trigger for Ex-Im's prohibition should be a determination by the International Trade Commission (ITC), not the president. In fact, there should be no ambiguity on this point because Title II of the Trade Act of 1974 consistently uses the term "determination" to denote an affirmative injury finding by the ITC and not in reference to the president's discretionary authority to impose relief. Therefore, the use of the language "determination under Title II of the Trade Act of 1974" in my amendment unequivocally references the ITC determination.

According to the reauthorization language, Ex-Im must also establish a public notice and comment period for loans and guarantee applications involving entities or products subject to either a Section 201 investigation or a preliminary AD/CVD injury determination. The Bank's proposed procedures would limit its analysis to loans and guarantees above \$10 million. The dollar threshold was specifically rejected in the legislative process. The new procedures must apply to any entity subject to an AD/CVD preliminary injury determination, and must establish a new process to take into account such preliminary determinations.

Additionally, in considering a loan or guarantee involving more than \$10 million of Bank financing, Ex Im must take into account any Section 201 investigation initiated by either the president, the Congress or the ITC. It has come to my attention that Ex Im has been carving up transactions over \$10 million in order to avoid an economic impact analysis on those transactions. It is not the intent of Congress that the Bank use this process to avoid either the old or new economic impact provisions.

The amendment further mandates that the Ex Im must correctly state the scope of the impact of an AD/CVD order on its procedures. An AD/CVD order should prevent loans and guarantees to all foreign producers (not just to the entity subject to the order) of the product covered by the order. The Bank's current procedures require denial of a loan to foreign producers that are subject to AD/CVD orders unless the exception applies. Ex Im's staff recommends no change to the current procedures. My amendment, however, indicates that the Bank cannot provide a loan to any producer of a product that is substantially the same as a product subject to an order. By this description, if there is an order against Mexican hot-rolled steel, for example, then the Bank may not support a loan to an Indonesian producer to produce hot-rolled either. The proposed procedures must be clarified to reflect this distinction. The language of my amendment supports this. The amendment reads, "The Bank shall not provide any loan or guarantee to an entity *for the resulting production of substantially the same product* that is the subject of—(i) a countervailing duty or antidumping order . . . ; or (ii) a determination under Title II of the Trade Act of 1974." (emphasis added). The statutory language plainly indicates that the prohibition turns on the type of product, not the product together with the entity.

Ex Im must insert an explicit reference in its procedures indicating that it will take into account public comment in addition to the one percent substantial injury test when determining oversupply. Currently a full economic impact analysis occurs only when substantial injury is found. The substantial injury test is an objective calculation equaling at least 1% of U.S. production. Consistent with the statute, the new procedures strongly suggest that Ex Im take into account comments received from the public sector during the notice and comment period. An additional sentence explicitly stating that the substantial injury 1% test is now supplemented by comments in order to determine oversupply is warranted.

Unless there be any doubt, comments indicating that Congress intended only minor changes to Ex Im's procedures conflict squarely with legislative intent. Some opponents argue that because the Bank made changes to its procedures in September 2001, that no significant changes are required now. This position is simply wrong. Congress had the benefit of the 2001 procedures and chose, nevertheless, to amend the statute. As such, the amendment must be fully implemented in the procedures.

Finally, there are several issues, including proportionality and the use of export credit facilities, which are of concern to me. I request that Ex Im staff set up a meeting with my staff to discuss these concerns and that my staff be provided with any internal Ex Im documents requested.

I also look forward to being provided with better notice of pending Bank transactions. In addition, I expect that if my staff verbally requests internal Ex Im documents and memoranda, that those documents be provided in a timely fashion, and certainly prior to the Ex Im Board's vote.

Thank you again for the opportunity to comment on changes to the Ex Im Bank's economic impact procedures. We must ensure that Ex Im continues to assist exporters where the assistance does not contribute to further injury to domestic manufacturers. Making sure that the Bank collects as much information as possible, establishes a more transparent process, and most critically, ensures that the existence of preliminary AD/CD orders and Section 201 investigations are factored into the decision process, would go a long way toward improving current practice. I recognize the effort that the Bank has undergone to improve the procedures, and I know that you will strongly consider my views, as the author of this provision. I look forward to continuing to work with you.

Sincerely,



Evan Bayh