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The Ex-Im Bank Calls for a Change to Get Back in the Game

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THE EX-IM BANK CALLS FOR A CHANGE TO GET BACK IN THE GAME

Alyse Fischer*

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I. Introduction

Franklin D. Roosevelt created the Export-Import Bank of the United States (“Ex-Im Bank” or “the Bank”) eighty-two years ago as one of his initiatives to economically reengage America with the rest of the world during the Great Depression.¹ Today, after months of uncertainty in regards to the future of the Ex-Im Bank, the Bank again offers American businesses an opportunity to grow sales internationally.² The Ex-Im Bank is the official export credit agency of the

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¹ U.S. Dep’t of State Office of the Historian, *New Deal Trade Policy: The Export-Import Bank & the Reciprocal Trade Agreements Act, 1934*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/export-import-bank>.

² See Erica Werner, *Congress Revives the Export-Import Bank as Business Establishment Wins Out Over Tea Party*, U.S. NEWS & WORLD REP. (Dec. 4, 2015), <http://www.usnews.com/news/business/articles/2015/12/04/congress-revives-the-export-import-bank-establishment-win> (“President Barack Obama signed legislation Friday reviving the federal Export-Import Bank five months after Congress allowed it to expire. The bank is a small federal agency that makes and guarantees loans to help foreign customers buy U.S. goods.”).

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United States focusing on facilitating international trade.³ The Bank is required to follow regulations set forth through the United States' participation in the Organization for Economic Co-operation and Development Arrangement ("OECD Arrangement").⁴ The OECD Arrangement is an agreement between numerous countries across the world that provides an officially supported framework for exporting.⁵

The Ex-Im Bank creates a financial market for both potential and active exporters who are unable to obtain necessary financial support from private lenders.⁶ The inability of exporters to obtain lending from private banks is typically due to the exposure of extra risk.⁷ The Ex-Im Bank provides a reliable financing outlet for exporters, even in the most challenging market conditions.⁸ Congress has specified that the Ex-Im Bank shall not compete with private lenders, but rather supplement lending where the private sector is unable or unwilling to meet demand.⁹ Additionally, the Ex-Im Bank's main mission is to provide more jobs in the United States through facilitating U.S. exports.¹⁰ Congress should charge the Ex-Im Bank with increasing its dollar outlay for small businesses while sustaining its level of support for large U.S.-based multinational corporations and enhance U.S. Ex-Im Bank competitiveness by deregulation of the OECD Arrangement.

This article will first give an overview of the history of the Ex-Im Bank including the creation of the charter as well as the growth the Bank has experienced

³ 12 U.S.C. § 635(a)(1) (2015) ("The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country.").

⁴ See Exp.-Imp. Bank of the U.S., *Organization of Economic Cooperation & Development*, EXIM.GOV, <http://www.exim.gov/who-we-serve/congressional-and-government-stakeholders/facts-about-exim/oeed>.

⁵ See *The Arrangement on Export Credits*, ORG. FOR ECON. COOPERATION & DEV., <http://www.oecd.org/tad/xcred/arrangement.htm>; see also EXP.-IMP. BANK OF THE U.S., *Annual Report 2014* at 13 (2014).

⁶ See Loren B. Thompson, *Ex-Im Bank: How a Small Agency Delivers Big Benefits For America's Economy*, LEXINGTON INST. 1, 5 (Jan. 28, 2014), <http://lexingtoninstitute.org/wp-content/uploads/2014/02/Ex-Im-Bank-Benefits-American-Economy.pdf> ("Because Ex-Im is prohibited by its charter from competing with private-sector lenders, it focuses on transactions where no market sources of credit are available.").

⁷ See Robert Allen, *The Export-Import Bank's Relevancy Today*, NYU BRADEMAs CTR. 1, 2 (2015) *pending* at <https://www.nyu.edu/brademas/pdf/RobertAllen.pdf>. ("The World Trade Organization outlined the four varieties of risk that must be accounted for when examining a proposed international transaction as economic or commercial risk, exchange rate risk, transportation risk, and political risk.").

⁸ Robert E. Rubin & Vin Weber, *The Ex-Im Bank Keeps Americans in Business; A Government Agency That Increases US Jobs and Earns Money for the Treasury Deserves Bipartisan Support*, WALL ST. J., Mar. 27, 2012, at A11 (pointing to the 2008 financial crisis stating, "As global financial markets contracted, Ex-Im financing expanded, thereby ensuring that U.S. exporters could still reach foreign markets.").

⁹ See SHAYERAH ILIAS AKHTAR, CONG. RESEARCH SERV., R43581, EXPORT-IMPORT BANK: OVERVIEW AND REAUTHORIZATION ISSUES 1 (2015) ("Ex-Im Bank's financing [. . .] must supplement, not compete with, private sources of financing."); see also 12 U.S.C. § 635(b)(1)(B).

¹⁰ See 12 U.S.C. § 635(a)(1) ("credits shall be to contribute to maintaining or increasing employment of United States workers."); see also *Annual Report 2014*, *supra* note 5, at 1.

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since its inception. The article will then discuss who the Bank benefits and how the Bank functions. This will be followed by an analysis of the importance of the Bank on the U.S. economy shown through an international competitive advantage, increased employment, and a reduction in risks of exporting as well as the importance of the Ex-Im Bank to small businesses specifically. The article will also analyze how the OECD Arrangement has affected the Bank. Finally, the article will offer a proposal to increase focus and funding to small businesses in addition to working towards increasing participation in the OECD Arrangement through deregulation of the OECD Arrangement.

II. Background

A. Creation of the Export-Import Bank

Franklin D. Roosevelt became president in 1933, when the United States was in the midst of The Great Depression.¹¹ Between 1929 and 1932, international export and import volume fell by 30 percent.¹² At this time, Roosevelt was receiving pressure to extend U.S. diplomatic recognition to the Soviet Union.¹³ In response, Roosevelt created the first Export-Import Bank in February 1934, which, at that time, only supported trade between the United States and the newly formed Soviet Union.¹⁴ Roosevelt created a second Export-Import Bank supporting trade between the United States and Cuba the following month.¹⁵ A few months later in July 1934, Roosevelt expanded the operations of the second Export-Import Bank to include all countries other than the Soviet Union.¹⁶ The following year Congress consolidated the two banks into one and granted it more capital and powers.¹⁷ Ten years later, Congress enacted the Export-Import Bank Act of 1945, leaving the country with virtually the same Export-Import Bank that exists today.¹⁸

¹¹ U.S. Dep't of State Office of the Historian, *supra* note 1. See *The Great Depression*, HISTORY, <http://www.history.com/topics/great-depression>.

¹² Allen, *supra* note 7, at 11.

¹³ *Id.* at 11-12.

¹⁴ U.S. Dep't of State Office of the Historian, *supra* note 1.

¹⁵ *Id.*

¹⁶ U.S. Dep't of State Office of the Historian, *supra* note 1.

¹⁷ *Id.*

¹⁸ See David Brack Bryant, Comment, *The Export-Import Bank: It's History, Function, and the Reauthorization Act's Impact on the United States and Latin America*, 9 LAW & BUS. REV. AM. 743, 743 (2003) ("Since its inception, the focus of the [B]ank has broadened in scope, but the Ex-Im Bank's purposes remain relatively the same.") ("The Export-Import Bank Act of 1945 reincorporated the Ex-Im Bank as a U.S. government corporation, and the purposes and objectives of the Bank remain relatively unchanged today.").

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B. Growth Since the Bank's Inception

Since the Bank's inception, it has been reauthorized seventeen times.¹⁹ Until recently, the Bank was viewed as a necessary-and-beneficial component of the United States business strategy and economy.²⁰ Previously, both major political parties viewed the Bank as a tool for advancing the conditions of private business operations—similar to government funding of private research initiatives.²¹ However, a recent lack of bipartisan support for the Ex-Im Bank resulted in a lapse of the charter in July 2015.²² This lapse was due to a small group of Tea Party Republicans who opposed the Ex-Im Bank on ideological grounds.²³ These opposing Republicans claimed the U.S. government had no right to interfere with global financial affairs, calling the Ex-Im Bank an “embodiment of corporate welfare.”²⁴ After a five-month lapse, President Obama signed the reauthorization of the Ex-Im Bank at the beginning of December 2015, marking the seventeenth reauthorization of the Bank.²⁵

While the objectives and purposes of the Bank have remained steady since its inception, the Ex-Im Bank has grown tremendously in response to the growing and evolving global markets.²⁶ In the beginning, the Bank only provided direct loans to domestic exporters.²⁷ Furthermore, between 1934 and 1935 loan disbursements totaled around \$14 million with a majority of the money disbursed for buying and minting silver.²⁸ The Bank has since evolved and now provides various trade-financing solutions including: direct loans; working capital guaran-

¹⁹ Fred P. Hochberg, *Protecting America's Competitive Advantage: Why the Export-Import Bank Matters*, 94 FOREIGN AFFAIRS 59, 59 (May/June 2015) (stating that the Bank has been reauthorized 16 times since its inception and pointing out that the Bank's charter was due to lapse in July 2015); see also Nick Timiraos, *Export-Import Bank is Revived*, WALL ST. J. (Dec. 9, 2015), <http://www.wsj.com/articles/export-import-bank-set-for-renewal-1449265587> (stating that the Bank was officially reauthorized after its recent lapse of charter, making the most recent authorization the 17th authorization).

²⁰ James Fallows, *ExIm Redux: A Sign of Congress Stepping Back From the Brink?*, THE ATLANTIC (Oct. 27, 2015), <http://www.theatlantic.com/notes/all/2015/09/the-defunding-of-the-export-import-bank/406873/#note-412657>.

²¹ *Id.*

²² See Press Release, The White House Office of the Press Sec'y, FACT SHEET: The Export-Import Bank: Supporting American Exports and American Workers in Every State Across the Country, (June 30, 2015) <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-export-import-bank-supporting-american-exports-and-american> (“Ex-Im has earned the support of the last 13 U.S. presidents, Republicans and Democrats alike); see also Nick Timiraos & Kristina Peterson, *Small Businesses Bear Burden of Ex-Im Bank Shutdown*, WALL ST. J., July 28, 2015 (“The Ex-Im Bank [. . .] stopped accepting new loans at the beginning of July after Congress allowed its charter to expire.”).

²³ Hochberg, *supra* note 19, at 59; see also *Beggar-Thy-Neighbour Banking*, THE ECONOMIST (July 5, 2014), <http://www.economist.com/node/21606324/print>.

²⁴ *Beggar-Thy-Neighbour Banking*, *supra* note 23.

²⁵ Timiraos, *supra* note 19.

²⁶ Bryant, *supra* note 18, at 744.

²⁷ Allen, *supra* note 7, at 17.

²⁸ See Gardner Patterson, *The Export-Import Bank*, 58 Q. J. OF ECON. 65, 68 (1943) (“During 1934 and 1935 the Bank was more or less experimenting and very few loan authorizations were made. The total was slightly over \$57 million. Even this is an exaggerated statement of its activity, since actual disbursements amounted to only \$14 million; and of this total, over \$13 million of the disbursements were in connection with the buying and minting of silver in the United States for the Republic of Cuba.”).

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tees; loan guarantees; finance lease guarantees; and export-credit insurance to both domestic and foreign firms.²⁹ In the Ex-Im Bank's latest annual report, the Bank reported over \$20 billion in authorizations for fiscal year 2014.³⁰ Furthermore, in fiscal year 2014, the types of exporters included, but were not limited to: manufacturing, services, satellites, agribusiness, aircraft and avionics, oil and gas, power generation, and mining industries.³¹

Additionally, when the Bank was created in 1935 there was little regulation of international trade between the United States and other prominent exporting nations.³² Prior to 1976, no internationally defined and approved trade market regulation existed.³³ Around this time however, export credit policies amongst countries emerged and in 1978 the Organisation for Economic Co-operation and Development ("the OECD") created the OECD Arrangement.³⁴ The OECD Arrangement provides regulation in the export trade business with the goal of preventing competition on a basis of advantageous financing terms, thereby encouraging competition primarily on service, quality, and price.³⁵ Twenty-three countries are parties to the OECD Arrangement, but key international export nations such as Brazil, China, India, and Russia are not member-parties.³⁶ The OECD Arrangement sets limitations on the export credit agencies of the participating countries.³⁷ Such limitations include, but are not limited to categories such as: minimum repayment terms; minimum cash down payment; minimum risk premium rates; and minimum interest rates.³⁸ With a lack of participation in

²⁹ Allen, *supra* note 7, at 17; see Exp.-Imp. Bank of the U.S., *What We Do*, EXIM.GOV, <http://www.exim.gov/what-we-do#by-name>.

³⁰ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7.

³¹ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 26 (listing the main industrial sectors the Ex-Im Bank supported).

³² See *Arrangement on Officially Supported Export Credits*, ORG. FOR ECON. COOPERATION & DEV. 1, 7 (Feb. 1, 2016), [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg\(2016\)1](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg(2016)1) ("The main purpose of the Arrangement [. . .] is to provide the institutional framework for an orderly market for officially supported export credits,") (implying no regulation previously existed).

³³ See *Summary Overview of the Arrangement*, ORG. FOR ECON. COOPERATION & DEV., <http://www.oecd.org/tad/xcred/summaryoverviewofthearrangement.htm> (stating that talks about developing regulation for exporting started in 1976, implying no standard regulations were in place before 1976).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *The Arrangement on Export Credits*, *supra* note 5 ("The Participants to the Arrangement are: Australia, Canada, the European Community (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom), Japan, Korea (Republic of), New Zealand, Norway, Switzerland and the United States."); see also EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 13 (comparing financing export volumes of OECD Arrangement participants to those of select Non-OECD Arrangement participants, suggesting these non-members are key international export countries, Table A-1).

³⁷ See *Summary Overview of the Arrangement*, *supra* note 32 ("The Arrangement places limitations on the terms and conditions of export credits that benefit from official support.").

³⁸ See *Summary Overview of the Arrangement*, *supra* note 32 (listing specific limitations the OECD Arrangement places on participating countries).

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the OECD Arrangement from non-member countries the United States still faces significant, unregulated competition in the exporting industry.³⁹

III. Discussion

A. Who the Ex-Im Bank Benefits

The Ex-Im Bank benefits both the United States economy and its domestic exporting industries.⁴⁰ Congress has made it clear that the Bank is not authorized to *compete* with local private lenders, but to supplement private banks in instances where exporters are unable to obtain financial aid necessary to participate in international trade.⁴¹ Private banks shy away from financing projects in developing markets because of the high risks associated with these projects.⁴² In fiscal year 2014, 68 percent of the Ex-Im Bank's authorizations, or nearly \$14 billion, financed emerging, consequently more risky, markets.⁴³

To better accomplish the Bank's purpose, the Bank's charter requires that it focus on geographical, sectoral, and business-size-based differences among exporters.⁴⁴ Geographically, Congress has identified 190 countries the Bank is allowed to support.⁴⁵ However, Congress has prioritized some countries over others.⁴⁶ For instance, Congress has identified sub-Saharan Africa as a priority region.⁴⁷ Additionally, in regards to sectoral focus, Congress has identified domestic industries with high export growth potential and required the Bank to focus on them.⁴⁸ These industries include: aircraft, renewable energy, oil and gas, agribusiness, medical equipment and services, mining, construction equip-

³⁹ See *Beggar-Thy-Neighbour Banking*, *supra* note 23 (estimating China's (a non-OECD Arrangement member) official export credit totaled around \$111 billion, which is more than a third of the global total, suggesting China to be a significant competition to all other ECAs); see also EXP.-IMP. BANK OF THE U.S., *Report to the U.S. Congress on Global Export Credit Competition*, EXIM.GOV, at 2 (June 2015), http://www.exim.gov/sites/default/files/reports/EXIM%202014CompetReport_0611.pdf (reporting shows non-OECD-compliant ECAs in countries such as China, Japan, and Korea are financing much more than the U.S., at lower rates, with more lenient terms, and "minimal risk-related fees" than that of the Ex-Im Bank).

⁴⁰ See Thompson, *supra* note 6, at 9 ("The Export-Import Bank has a long history of promoting economic growth and progress.")

⁴¹ See Allen, *supra* note 7, at 14 ("[T]he 'Bank expects to supplement rather than compete with existing sources of export and import credit, [and] short-term credit [less than 180 days] will be granted only when unusual circumstances indicate that commercial banks can not handle the business.'")

⁴² See Hochberg, *supra* note 19, at 62 ("As private lenders have shied away from projects in developing markets, export credit agencies have stepped in."); see AKHTAR, *supra* note 9, at 17 ("Private lenders and insurers conduct the majority of the short-term export financing, though ECAs may play an active role in supporting certain sectors, such as taking on risks of financing small business exports.")

⁴³ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7.

⁴⁴ AKHTAR, *supra* note 9, at 9.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ AKHTAR, *supra* note 9, at 9.

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ment and services, and power generation.⁴⁹ Finally, the Ex-Im Bank's charter prioritizes aid to small and medium-sized enterprises ("SMEs") over large enterprises.⁵⁰

The focus points required by the Ex-Im Bank's charter match the needs the Bank presently serve.⁵¹ For instance, the Bank plays an exceptionally vital role for small-business exporters.⁵² In fiscal year 2014, 3,300 small businesses received authorizations from the Ex-Im Bank with 545 of these small businesses using the Ex-Im Bank for the first time.⁵³ These 3,300 small business authorizations totaled over \$5 billion in direct financial support, 25 percent of the total authorizations.⁵⁴ In addition to the direct impact on small businesses, a significant portion of export revenue from larger Ex-Im Bank recipients indirectly supports small suppliers and subcontractors.⁵⁵ While small businesses only accounted for about a quarter of the Bank's authorizations in fiscal year 2014,⁵⁶ this level of financial aid—together with the indirect benefits from Ex-Im Bank financial aid to larger businesses—shows the significant impact the Ex-Im Bank has on small businesses engaged in international trading.

The Ex-Im Bank also benefits the United States economy.⁵⁷ The charter requires Ex-Im Bank officials to consider potential adverse effects any authorization may have on industries and/or employment in the United States.⁵⁸ With these considerations in mind, the Ex-Im Bank successfully supported 164,000 jobs for the United States economy and contributed \$674.7 million of surplus money profits to American taxpayers in fiscal year 2014, from fees and interest imposed on users.⁵⁹ Over the past twenty years, the Ex-Im Bank has contributed over \$6.9 billion to the United States Treasury.⁶⁰ While many government agencies create jobs for the United States economy, the Ex-Im Bank is unique in that it creates the jobs at no cost to the government in addition to generating money for the United States Treasury.⁶¹

⁴⁹ AKHTAR, *supra* note 9, at 9.

⁵⁰ *Id.*

⁵¹ See Thompson, *supra* note 6, at 9 (giving an example about the potential of Boeing losing market share to Airbus in Sub-Saharan Africa if it didn't have financing access from the Ex-Im Bank. Also talking about the impact the Ex-Im Bank has on small businesses—two focus sectors Congress requires the Ex-Im Bank to focus on).

⁵² See *id.* ("Ex-Im plays an especially potent role [. . .] at small businesses.").

⁵³ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 20.

⁵⁴ *Id.* at 9.

⁵⁵ See Thompson, *supra* note 6, at 9 ("Boeing, for instance, sources about 80% of its business activity domestically, and has 17,000 suppliers – most of them small or medium size companies.").

⁵⁶ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7, 9.

⁵⁷ See *id.* at 7 ("In October, [the Bank] wired \$674.7 million to the U.S. Treasury to support deficit reduction.").

⁵⁸ AKHTAR, *supra* note 9, at 29; see also 12 U.S.C. § 635(a)(2) (2015).

⁵⁹ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7; Thompson, *supra* note 6, at 9.

⁶⁰ EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7.

⁶¹ See Thompson, *supra* note 6, at 6 ("What makes Ex-Im different is that it uses no taxpayer money while achieving impressive results."); see also EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 7 (see parenthetical from footnote 57).

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B. How the Ex-Im Bank Works

The Ex-Im Bank is an independent government agency operating on a self-sustaining basis through fees and interest collected from users.⁶² The Bank is responsible for making authorizations to businesses unable to obtain loans, insurance programs, and guarantees from private lenders.⁶³ The Ex-Im Bank is only allowed to extend loans when commercial credit is unavailable to a business, in order to avoid a financing competition between the Bank and private lenders.⁶⁴ As such, the Ex-Im Bank is strictly demand driven, but regulated by Congress through an exposure limit.⁶⁵ This limits the amount of guarantees, loans, and insurance the Ex-Im Bank is allowed to have outstanding at one time.⁶⁶

Any business unable to obtain commercial credit can apply for an authorization from the Ex-Im Bank if it meets the following five requirements: (1) the business has been up and running for at least three years; (2) the business has at least one person working full-time; (3) the business has a Dun & Bradstreet Number; (4) the business has a positive net worth; and (5) the business exports products made in the United States or services provided by workers in the United States.⁶⁷ If a business meets these requirements, the Ex-Im Bank offers, *inter alia*: (1) direct loans; (2) working capital finance; (3) loan guarantees; and (4) export credit insurance.⁶⁸ Direct loans are typically extended to foreign buyers of United States goods and services.⁶⁹ Working capital financing assists busi-

⁶² EXP.-IMP. BANK *Annual Report 2014*, *supra* note 5, at 1; *see also* The White House Office of the Press Sec'y, *supra* note 22 ("Ex-Im doesn't cost taxpayers a penny. In fact, due to fees and interest, the Bank generated \$675 million in returns for taxpayers last year.").

⁶³ *See* EXP.-IMP. BANK OF THE U.S., *The Facts about EXIM Bank*, EXIM.GOV, <http://www.exim.gov/about/facts-about-ex-im-bank> ("EXIM Bank fills export financing gaps through its loan, guarantee, and insurance programs when the private sector is unable or unwilling to do so.").

⁶⁴ *See* U.S. CHAMBER OF COM., *The Export-Import Bank of the United States: Its Impact on U.S. Competitiveness, Exports, and Jobs*, USCHAMBER.COM, <https://www.uschamber.com/international/sup-port-ex-im-bank/about/export-import-bank-united-states-its-impact-us> ("Ex-Im extends loans and guarantees to all applicants that meet its strict lending requirements but does so only when commercial credit is unavailable or when it is necessary to counteract below-market credit from foreign ECAs."); *see also* Thompson, *supra* note 6, at 3 ("Because Ex-Im is prohibited by its charter from competing with private-sector lenders, it focuses on transactions where no market sources of credit are available.").

⁶⁵ EXP.-IMP. BANK OF THE U.S., *Annual Report 2015*, at 46 (2015) ("[T]he Bank's current exposure cap, also known as its statutory authority, is \$140.0 billion.").

⁶⁶ *See* Sen. Richard C. Shelby Holds a Hearing on Oversight of the Export-Import Bank of the United States: Hearing on S. 819 Before the Comm. on Banking, Hous. & Urban Affairs, 104th Cong. 2 (2015) [hereinafter Sen. Richard C. Shelby] ("Ex-Im does not pick winners and losers. Rather, it serves any eligible American business seeking competitive financing. We are, by definition, demand-driven."); *see also* AKHTAR, *supra* note 9, at 12 ("Ex-Im Bank's charter places a statutory limit on the aggregate amounts of loan, guarantees, and insurance that the Bank can have outstanding at any one time (often-times referred to as the Bank's exposure. . . limit).").

⁶⁷ EXP.-IMP. BANK OF THE U.S., *Get Started*, EXIM.GOV, <http://exim.gov/get-started#what>.

⁶⁸ AKHTAR, *supra* note 9, at 5.

⁶⁹ *See id.* ("Direct loans have no minimum or maximum size, but generally involve amounts of more than \$10 million. The Bank extends to the U.S. company's foreign customer a loan covering up to 85% of the U.S. contract value. Direct loans are available for medium- and long-term transactions, but most commonly are offered on a long-term basis. The direct loans carry fixed interest rates and generally are made at terms that are the most attractive allowed under the provisions of the OECD Arrangement. The specific rates charged on Ex-Im Bank are based on the Commercial Interest Reference Rates.").

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nesses that have exporting potential but lack sufficient capital funds to market and/or produce goods or services for international trade.⁷⁰ This is primarily a benefit to small businesses.⁷¹ Furthermore, the Ex-Im Bank can work with private lenders by providing loan guarantees to foreign buyers of domestic goods, wherein the United States promises to pay the debt of the buyers with interest if the buyers default.⁷² Finally, the Ex-Im Bank offers export credit insurance to protect both exporters and lenders from losses of non-repayment due to political or commercial reasons.⁷³

Of course, in providing financial support to private businesses, the Ex-Im Bank must accept some measure of risk; however, the charter maintains stiff regulations to insure against these potential risks.⁷⁴ Through methods such as credit underwriting, monitoring the risks of the Bank's current transactions, exercising due diligence of potential transactions, and increasing staffing levels of the Bank's Asset Monitoring Division, the Ex-Im Bank boasts a minimal default rate of 0.235 percent as of September 2015.⁷⁵

⁷⁰ See AKHTAR, *supra* note 9, at 7 (“Working capital guarantees provide repayment guarantees to lenders on secured, short- and medium-term working capital loans made to qualified exporters. They can be for a single loan or a revolving line of credit, and typically are for one year, but can be extended to up to three years. Working capital guarantees cover up to 90% of the principal and interest on a loan made to an exporter by a private lender for export-related accounts receivables, and up to 75% for export-related inventory. Generally, each product must have more than 50% U.S. content based on all direct and indirect costs for eligibility. The interest rates for working capital loans guaranteed by Ex-Im Bank are set by the commercial lenders.”).

⁷¹ *Id.*

⁷² See *id.* at 7 (“Loan guarantees are intended to cover repayment risk. Medium- and long-term loan guarantees are typically used to finance purchases of U.S. capital equipment and services. Unlike insurance [. . .], loan guarantees are *unconditional*—representing Ex-Im Bank’s commitment to a commercial bank for full repayment in the event of a default. There is no limit on the transaction size for a loan guarantee. Ex-Im Bank provides a guarantee of up to 85% or 100% of the U.S. content, whichever is lower, with a minimum 15% down payment required from the buyer. It provides coverage for 100% of the commercial and political risks of borrower repayment.”).

⁷³ See *id.* at 7 (“Short-term exporter insurance is available for products shipped from the United States and with at least 50% content [. . .]. Ex-Im Bank offers a renewable one-year policy that generally covers up to 180-day terms, but can be extended up to 360 days for qualifying transactions. It also maintains short-term insurance policies for lenders. Depending on the policy, the Bank will cover 90-95% of nonpayment losses due to commercial and political risks. Ex-Im Bank can extend medium-term insurance, generally up to five years and with a maximum cover of \$10 million, to both exporters and lenders, covering one or a series of shipments. The Bank will insure up to 85% of the contract price prior to delivery. If the foreign content is more than 15%, it will only support the U.S. portion. It requires the buyer to make cash payment to the exporter equal to 15% of the net U.S. contract value. It covers 100% of nonpayment due to commercial and political risk.”).

⁷⁴ See *id.* at 15 (“[The Bank’s] charter requires a reasonable assurance of repayment for all transactions supported by the Bank and for the Bank to have reasonable provisions for losses.”).

⁷⁵ See AKHTAR, *supra* note 9, at 5. (“The Bank has a system in place to mitigate risks through credit underwriting and due diligence of potential transactions, as well as monitoring risks of current transactions.”); see also Sen. Richard C. Shelby, *supra* note 66, at 4-5 (“Ex-Im continues to proactively implement risk management improvements to further ensure we remain faithful stewards to the taxpayer. [. . .] [The Bank] increased staffing in [their] Asset Monitoring Division by 33 percent and [they] went beyond all federal requirements to implement mandatory ethics training for all employees.”); see also *The Facts about EXIM Bank*, *supra* note 63 (“As reported to Congress, EXIM Bank’s active default rate was 0.235%—less than one fifth of one percent—as of September 30, 2015.”).

IV. Analysis

A. Why the Ex-Im Bank is Crucial for the United States Economy

The Ex-Im Bank is crucial for the United States economy for numerous reasons. For instance, the Ex-Im Bank keeps our country internationally competitive, is responsible for significant job creation, reduces the risk associated with exporting, and generates a significant amount of money for American taxpayers on an annual basis.⁷⁶ With the Ex-Im Bank created in an attempt to restore the U.S. economy during the Great Depression, along with the substantial role the Bank played in buffering the 2008 recession, the Bank is an important tool in sustaining our economy.⁷⁷

B. International Competitive Advantage

All nations with a major trading industry have an agency equivalent to the Ex-Im Bank of the United States.⁷⁸ There are at least 60 other countries with export-import banks across the world supporting their respective countries in similar financial transactions.⁷⁹ Several of these banks who are not participants of the OECD Arrangement have been given more authority and flexibility by their respective governments to keep up with loosely regulated countries like China, who far surpassed the United States in money spent on export transactions.⁸⁰ Having an export-import bank for the United States allows our country to remain internationally competitive.⁸¹ Without the Ex-Im Bank, international customers would take their business to competing companies in other countries or U.S.

⁷⁶ See Carolyn B. Maloney, TOP TEN REASONS FOR RENEWING THE U.S. EXPORT-IMPORT BANK (Joint Economic Committee) (2015) (discussing reasons why the Bank should be reinstated at the point when reauthorization was questionable. The document notes the Bank's role in keeping the United States internationally competitive, job creation, and money generated for American taxpayers); see also AKHTAR, *supra* note 9, at 15 ("Ex-Im Bank seeks to manage the risks it faces in its transactions. Its charter requires a reasonable assurance of repayment for all transactions supported by the Bank and for the Bank to have reasonable provisions for losses.").

⁷⁷ Thompson, *supra* note 6, at 1 ("[I]n the midst of the greatest economic depression the nation had ever known, the federal government established a new agency that could create jobs by helping U.S. companies to export their goods and services. That agency came to be known as the Export-Import Bank, and it has played a vital role in strengthening U.S. trade competitiveness despite remaining small by Washington standards."); see also Maloney, *supra* note 76 ("Exports have played an important role in helping the economy recover from the Great Recession and they are critical for our long-term prosperity. Over the course of the recovery, export growth has accounted for nearly 30 percent of GDP growth.").

⁷⁸ Loren Thompson, *Ten Valuable Things America Will Lose if the Export-Import Bank Dies*, FORBES (Oct. 23, 2015, 10:14 AM), <http://www.forbes.com/sites/lorenthompson/2015/10/23/ten-valuable-things-america-will-lose-if-the-export-import-bank-dies/>.

⁷⁹ U.S. Chamber of Com., *supra* note 64; AKHTAR, *supra* note 9, at 16.

⁸⁰ See Hochberg, *supra* note 19, at 60 ("In the past two decades, the nature of export competition has fundamentally changed: as an increasing number of countries operate with little regard for established international guidelines, export competition has come to resemble the Wild West. To keep up with countries, such as China, that are willing to shell out billions of dollars to help their exporters close a deal, other governments have given their own versions of the Export-Import Bank more flexibility and authority."); see also Sen. Richard C. Shelby, *supra* note 66, at 16 ("China [. . .], in two years has done about \$670 billion worth of loans and guarantees. It took [the United States] 80 years to get to \$590 billion.").

⁸¹ See Maloney, *supra* note 81 ("The Ex-Im Bank is needed to level the playing field so U.S. business are not at a competitive disadvantage against foreign competitors.").

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companies would shift manufacturing offshore.⁸² The Ex-Im Bank exists because private lenders simply cannot provide equivalent lending.⁸³ The Bank provides the United States with the competitive edge necessary to stay relevant in today's international trade marketplace.⁸⁴

C. Positive Influence on Employment in the United States

The Ex-Im Bank's biggest mission is to create and sustain U.S. jobs.⁸⁵ In fiscal year 2014, the Ex-Im Bank supported the creation of 164,000 jobs in the United States.⁸⁶ Furthermore, the Bank has supported the creation of over 1.3 million jobs over the past six years.⁸⁷

The Bank plays an imperative role for jobs at small businesses.⁸⁸ The Ex-Im Bank directly supported over 3,300 small businesses in fiscal year 2014,⁸⁹ thereby supporting jobs at these small businesses. The Bank also indirectly influences jobs at small businesses that do not directly work with the Ex-Im Bank.⁹⁰ Several of the corporate giants that obtain financing from the Ex-Im Bank in turn use small U.S. businesses, such as subcontractors and suppliers, for various aspects of their export dealings.⁹¹ Without the support of the Ex-Im Bank, these

⁸² See Maloney, *supra* note 76 ("The private sector simply would not be able to take over for Ex-Im. According to leaders of the Financial Services Roundtable and BAFT, "Without Ex-Im Bank programs, commercial banks often could not provide the required financing, resulting in lost sales for their corporate clients and lost jobs for employees at those companies.").

⁸³ *Id.* ("Many overseas customers insist on the option of using official export credit as a condition of doing a deal. Without Ex-Im, deals that may have gone to American companies like Boeing, GE and Caterpillar may go to foreign companies like Airbus, Siemens and Komatsu instead."); see also Jackie Calmes, *A Single Senator Stymies the Export-Import Bank*, N.Y. TIMES, June 27, 2016, http://www.nytimes.com/2016/06/28/business/international/a-single-senator-stymies-the-export-import-bank.html?_r=0 (quoting multiple companies announcing that they have plans to expand and/or relocated manufacturing to international locations).

⁸⁴ Thompson, *supra* note 78 ("We will lose global market share in key industries such as aerospace and telecommunications. . . foreign customers would find it easier to obtain financing on favorable terms from countries with export credit agencies, so it is there that they would turn for their jetliners, earth movers and locomotives.").

⁸⁵ *Annual Report 2014*, *supra* note 5, at 1 ("Ex-Im Bank [. . .] exists to support American jobs by facilitating the export of U.S. goods and services.").

⁸⁶ *Id.* at 6.

⁸⁷ *Id.*

⁸⁸ See Thompson, *supra* note 6, at 9 ("Ex-Im plays an especially potent role in creating jobs at small businesses.").

⁸⁹ *Annual Report 2014*, *supra* note 5, at 7.

⁹⁰ See Thompson, *supra* note 6, at 1 ("Even when Ex-Im financing supports the exports of big companies like Boeing and Caterpillar, much of the money passes through to small suppliers and subcontractors."); see also *id.* at 9 ("[I]n December of 2013, the bank's board approved a \$695 million loan for the export of U.S.-made mining and rail equipment to Australia; a \$641 million loan guarantee for the export of U.S. made oil refining equipment to Turkey; and a \$45 million loan guarantee for the export of U.S.-made turbines to Israel. Over 6,000 jobs were directly tied to these transactions, but there were undoubtedly additional indirect jobs made possible by the resulting economics of scale and other efficiencies.").

⁹¹ See *id.* ("[M]uch of the export revenue generated by larger recipients of Ex-Im financing passes through to small subcontractors and suppliers."); see also *id.* at 9 (Boeing, for instance, sources about 80% of its business activity domestically, and has 17,000 suppliers — most of them small and medium-size companies).

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corporate giants would have no business to give the smaller, indirectly influenced, businesses.⁹² As such, the Ex-Im Bank supports more jobs than its statistics report.⁹³

Additionally, research has shown that jobs supporting U.S. exports are not minimum wage jobs.⁹⁴ Export jobs have been found to have a higher than average rate of pay as well as better benefits.⁹⁵ While the Ex-Im Bank's mission is to create jobs in America, the true impact it has is above and beyond its original, self-proclaimed responsibility.⁹⁶

D. Reduction in Risks Involved with Exporting

The United States is fortunate to be one of the remarkably stable countries in this world and as such, has well-established business practices, institutions, and legal standards with a transparent financial system and sound currency.⁹⁷ While domestic lending has associated risk, this risk does not compare to trading internationally.⁹⁸ Exporting goods to countries that lack the level of stability in the United States creates additional risk to the lenders, making lending for exporting less prevalent among private lenders.⁹⁹ Some countries are only able to guarantee predictability and fairness.¹⁰⁰ The Ex-Im Bank mitigates risk through many avenues such as credit underwriting, monitoring the risks of the Bank's current

⁹² See Thompson, *supra* note 6, at 9 (“[M]uch of the export revenue generated by larger recipients of Ex-Im financing passes through to small subcontractors and suppliers.”); see also Andy Winkler, *Connecting America's Small Businesses to Foreign Buyers: The Role of the Export-Import Bank*, AMERICAN ACTION FORUM (June 23, 2014), <https://www.americanactionforum.org/research/connecting-americas-small-businesses-to-foreign-buyers-the-role-of-the-expo> (“Small business suppliers also feed products into larger companies and benefit when the exports of the final product are expanded. For example, Boeing claims over 21,000 various suppliers and partners in the production of its products.”).

⁹³ See Thompson, *supra* note 6, at 9 (“Ex-Im has a “multiplier effect” for job creation at businesses engaged in the global economy, because in the process of financing a company's exports, it makes the whole enterprise more competitive. The full impact of this effect is hard to measure because so many jobs are sustained indirectly.”).

⁹⁴ See Maloney, *supra* note 76 (“[R]esearch shows that jobs in export industries tend to pay more than average.”).

⁹⁵ See *id.* (“[R]esearch shows that jobs in export industries tend to pay more than average.”); see also Thompson, *supra* note 6, at 9 (“[These jobs] typically pay better wages and benefits than jobs focused on domestic markets. For instance, Boeing—a big user of Ex-Im financing that sells 70-80% of its U.S.-built planes abroad—leads the aerospace sector in worker compensation.”).

⁹⁶ See Thompson, *supra* note 6, at 9 (“Boeing, for instance, sources about 80% of its business activity domestically, and has 17,000 suppliers—most of them small or medium-size companies.”).

⁹⁷ See Maloney, *supra* note 76, at 6.

⁹⁸ See James McDevitt, Op-Ed, *Ex-Im Bank Helps Small Exporters*, WALL ST. J., July 11, 2014, at A12 (“When a bank finances sales to a domestic customer, credit risk is the only concern. Financing an American customer's exports involves the additional factor of political risk. A major international money-center bank with branches and offices world-wide and a staff of sophisticated international economists is well-equipped to assess and possibly assume the political risk. A local or regional bank is not.”).

⁹⁹ See *Beggar-Thy-Neighbour Banking*, *supra* note 24 (“Banks are reluctant to provide long-term export financing, to lend to countries with shaky political or legal regimes, or to small businesses, even more so since new capital standards have made such loans costlier. Export-credit agencies simply fill an unmet need—and their profits prove it.”).

¹⁰⁰ See Thompson, *supra* note 6, at 6 (“[M]ost countries can only aspire to the fairness and predictability of the U.S. system.”).

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transactions, and exercising due diligence of potential transactions.¹⁰¹ The Bank's strong risk management has led to a default rate of 0.235 percent as of September 2015.¹⁰² Additionally, over the past eight decades, the Ex-Im Bank's default rate has been lower than commercial banks.¹⁰³

Exposure to risk for United States taxpayers is also minimal through the security of the exported goods.¹⁰⁴ The Bank reserves over \$4 billion for losses from loans.¹⁰⁵ Through the extensive and proactive risk management initiatives at the Ex-Im Bank and ability to maintain a low default rate, the Bank's services remain attractive to potential users.

E. How the Ex-Im Bank Influences Small Businesses

Small businesses are an integral part to economic development in the United States and other countries alike.¹⁰⁶ Economies benefit from small businesses through new innovations, new industries, and job creation.¹⁰⁷ Furthermore, small businesses have been viewed as vital players in the preservation of free and healthy competition.¹⁰⁸ With corporate giants "downsizing," the number of small businesses has grown, making small businesses the leading source for jobs in the United States.¹⁰⁹

The Ex-Im Bank plays a crucial role in enabling small businesses to generate export sales.¹¹⁰ As Todd McCracken, the president and CEO of the National Small Business Association bluntly put it, "Ex-Im Bank isn't crony capitalism, it isn't a drain on taxpayers and it has no private-market alternative. It's a lifeline to

¹⁰¹ See AKHTAR, *supra* note 9, at 15 ("The Bank has a system in place to mitigate risks through credit underwriting and due diligence of potential transactions, as well as monitoring risks of current transactions."); see also Sen. Richard C. Shelby, *supra* note 66, at 2 ("Ex-Im continues to proactively implement risk management improvements to further ensure we remain faithful stewards to the taxpayer. [. . .] [The Bank] increased staffing in [their] Asset Monitoring Division by 33 percent and [they] went beyond all federal requirements to implement mandatory ethics training for all employees.").

¹⁰² *The Facts about EXIM Bank*, *supra* note 63.

¹⁰³ U.S. Chamber of Com., *supra* note 64.

¹⁰⁴ See *id.* ("Ex-Im loans expose the U.S. taxpayer to little risk as they are backed by the collateral of the goods being exported.").

¹⁰⁵ AKHTAR, *supra* note 9, at 15.

¹⁰⁶ Kitsuron Sangsuvan, *Small Businesses in International Trade*, 41 S. U. L. REV. 145, 146 (2014).

¹⁰⁷ See *id.* ("In almost all cases of successful economic development, small-scale entrepreneurs or small businesses have played a prominent role. [. . .] Small businesses are viewed as a source of entrepreneurship by creating new products that incorporate new ideas.").

¹⁰⁸ See *id.* at 147 ("The existence of substitute products in the market, created by smaller competitors, has been regarded as a key to preserving free competition. The existence of small businesses is also considered an essential element of a healthy competitive market.").

¹⁰⁹ See *id.* ("In the United States, small businesses are the backbone of the economy and the primary source of jobs. While corporate America has been "downsizing," the rate of small business "start-ups" has grown.").

¹¹⁰ See Bryant, *supra* note 18, at 753 ("Private lenders often arrange financing for major buyers, but are unwilling to extend trade credit in small amounts, because they only generate small banking fees.").

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small firms looking to export that otherwise wouldn't be able to do so."¹¹¹ Exporting is not an easy business move for small businesses to make.¹¹² Small businesses are unable to acquire the necessary funding from private banks because the cost to process this type of transaction is not worth the overhead cost to the bank, so the private banks steer clear of lending to small businesses.¹¹³ Additionally, private banks typically do not accept collateral in the form of foreign receivables, a practice accepted by the Ex-Im Bank.¹¹⁴ The Ex-Im Bank provides the otherwise nonexistent opportunity for small businesses to receive financing to export their goods and services until the business grows enough to become attractive to private banks.¹¹⁵

F. How the OECD Arrangement Has Affected the Ex-Im Bank

One hundred percent of the active export credit agencies were held to the rules and regulations of the OECD Arrangement at the OECD Arrangement's inception.¹¹⁶ This one hundred percent figure has since dropped to thirty-five percent in a mere 16 years.¹¹⁷ This drop is due to export deals made by non-OECD Arrangement members, who are able to provide unregulated and opaque exporting deals.¹¹⁸ These non-member countries, primarily Brazil, China, India, and Russia, create the biggest challenge in keeping the United States competitive in exporting.¹¹⁹ China has financed around \$670 billion of exports over the past two years, although given China's opaque tendencies it is possible this number may be closer to \$1 trillion.¹²⁰ In contrast, the Ex-Im Bank has authorized

¹¹¹ Todd McCracken & Diane Katz, *Should Congress Reauthorize the Export-Import Bank? Two Experts Square Off on Whether the Bank Really Helps Small Business*, WALL ST. J., Jan. 26, 2015, <http://www.wsj.com/articles/should-congress-reauthorize-the-export-import-bank-1422244839>.

¹¹² *Sen. Richard C. Shelby*, *supra* note 66, at 2 (Senator Sherrod Brown speaking on behalf of the Ex-Im Bank stating, "It's not easy for small businesses to export.").

¹¹³ *See* McDevitt, *supra* note 98 ("It costs just as much to underwrite and process a \$100,000 transaction as it does a \$100 million transaction. The big banks only do the big deals.").

¹¹⁴ *See* McCracken & Katz, *supra* note 111 ("[M]ost banks won't consider foreign receivables as collateral. [. . .] the Export-Import Bank is a critical tool. Because the bank shoulders some of the risk of international deals, more small businesses are able to export today.").

¹¹⁵ *See* Hochberg, *supra* note 19, at 62 ("The Export-Import Bank [. . .] supports small businesses whose razor-thin margins often deter private financiers. The bank provides the backing necessary for smaller firms to tackle global markets until they grow large enough to become attractive to private lenders.").

¹¹⁶ *Sen. Richard C. Shelby*, *supra* note 66, at 4-5 (statement by Fred P. Hochberg, President and Chairman of the Export-Import Bank of the United States).

¹¹⁷ *Id.*

¹¹⁸ *See Sen. Richard C. Shelby*, *supra* note 66, at 4-5 ("[C]ountries such as China and Russia, which operate outside of the OECD Arrangement, have begun to aggressively back their domestic exporters with unregulated, opaque financing.").

¹¹⁹ *Id.* at 15 (statement by Fred P. Hochberg, President and Chairman of the Export-Import Bank of the United States, "China, Russia, Brazil, and India are not a member [of the OECD Arrangement]. So they are very opaque. They could offer any terms they want, as long as they want, as low interest as they want, subsidize rates. And we really are not able – that's a real threat to U.S. competitiveness.").

¹²⁰ Hochberg, *supra* note 19, at 60.

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around \$590 billion of exports over the past eighty years of operation.¹²¹ Under the current rules and regulations that the OECD Arrangement requires members to abide by, the United States is slowly losing its competitive edge, unable to match offers from non-member countries vying for the same deals.¹²²

V. Proposal

A. Increased Focus on Funding to Small Businesses

Upon signing the reauthorization of the charter in 2012, President Obama stated, “We’re helping thousands of businesses sell more of their products and services overseas, and in the process we’re helping them create jobs here at home.¹²³ And we’re doing it at no extra cost to the taxpayer.”¹²⁴ President Obama strategically made this statement to an audience full of small business owners.¹²⁵ It is no secret that the role small businesses play in the United States economy is growing each year.¹²⁶ Additionally, a key component to growth for small businesses is international trade.¹²⁷ Due to these undeniable facts, it is important that opportunities for small businesses to participate in exporting their goods and services continue to grow.

With private lenders reluctant to extend financing to small businesses for exporting purposes due to the increased risk of dealing with risky markets and the lack of profit to the private banks, the Ex-Im Bank is imperative to small businesses ability to grow.¹²⁸ While 90 percent of the number of authorizations made were for small businesses, only about a quarter of the money spent by the Ex-Im Bank went to small businesses.¹²⁹ Corporate giants are understandably going to

¹²¹ Hochberg, *supra* note 19, at 60.

¹²² *Sen. Richard C. Shelby, supra* note 66, at 5 (statement made by Hochberg, “I was in South Africa [. . .] and I met with Transnet, which is the rail authority in South Africa. They had a large tender for locomotives. In the end, they divided it half to the Chinese, half to the U.S. I asked the head of Transnet: “Well, what kind of financing terms are the Chinese offering you?” So I would know as a businessman what the competition is. And he said, “Well, they said to me, ‘What would I like? 10 years? 15 years? 20 years? A grace period? What do I need – what do I want to make the deal?’ We don’t do that. We offered – the most we can offer is 14 years.”).

¹²³ Thompson, *supra* note 6, at 12.

¹²⁴ *Id.*

¹²⁵ Thompson, *supra* note 6, at 12.

¹²⁶ *See Sangsuvan, supra* note 106, at 147 (“While corporate America has been ‘downsizing,’ the rate of small business ‘startups’ has grown.”).

¹²⁷ *See id.* at 148 (“While small businesses are growing rapidly, international trade and global markets are the critical component of small businesses.”).

¹²⁸ *See Hochberg, supra* note 19, at 62 (“The Export-Import Bank [. . .] supports small businesses whose razor-thin margins often deter private financiers. The bank provides the backing necessary for smaller firms to tackle global markets.”); *see also* Bryant, *supra* note 18, at 753 (“Private lenders often arrange financing for major buyers, but are unwilling to extend trade credit in smaller amounts, because they only generate small banking fees.”); *see also* Kati Suominen, *Exporters as a New Asset Class*, TRADEUP.COM at 2 (Jan. 2014), http://www.tradeupfund.com/uploads/2/6/0/4/26048023/u.s._sme_exporters_as_new_asset_class_-_tradeup_2014.pdf (“SMEs’ typical sources of financing, banks have been pulling back from the small business market. Private equity and angel investments are reserved only for select companies—and typically not destined to helping SMEs grow internationally.”).

¹²⁹ *Annual Report 2014, supra* note 5, at 7, 21.

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have the larger financial requests due to their ability and need to conduct business on a much larger scale, but that does not mean the Ex-Im Bank has reached capacity in financing small businesses.¹³⁰

Small businesses have become such an integral part of our economy that Congress created the Small Business Administration (“SBA”).¹³¹ The SBA is responsible, along with other federal and state agencies, such as the Ex-Im Bank, to assist small businesses in their efforts to participate in international trade.¹³² The Ex-Im Bank already targets small businesses through sponsoring programs for small business owners, which informs these owners of pertinent information about exporting opportunities.¹³³ Increasing efforts like this would help the Ex-Im Bank reach more small businesses.¹³⁴

B. Decrease Regulation of the OECD Arrangement

The United States’ financial deficit as of August 2016 was calculated at \$530 billion.¹³⁵ In the latest annual report from the Ex-Im Bank, the Bank contributed just under \$675 million to the U.S. Treasury to contribute to the deficit for fiscal year 2014.¹³⁶ Throughout the past twenty years, the Ex-Im Bank has contributed \$7 billion for the U.S. Treasury.¹³⁷ The Ex-Im Bank is one of the few government agencies that is not only self-sustaining, but also contributing financially to the U.S. economy.¹³⁸

The annual exposure limit Congress imposes on the Ex-Im Bank has not been met since at least 1997.¹³⁹ Between the Ex-Im Bank profiting the U.S. economy

¹³⁰ See Thompson, *supra* note 6, at 9 (“Ex-Im also has steadily expanded the range of its products and activities targeting small businesses, opening regional offices, sponsoring conferences that highlight overseas selling opportunities, and disseminating information useful to prospective exporters.”); see also Suominen, *supra* note 128, at 2 (“[R]ecent surveys indicate that three-quarters of current SME exporters look to expand their overseas sales, while almost a quarter of the 6 million non-exporters want to start exporting.”).

¹³¹ See Sangsuvan, *supra* note 106, at 155 (“Congress believed that small businesses were a critical component of the economy.” As such, Congress created special programs to support small businesses).

¹³² See *id.* at 163 (“According to the SBA, small businesses should be aided and assisted by the SBA, the Department of Commerce, and other federal and state agencies to increase their ability to compete in international markets. This aid and assistance includes: (1) enhancing their ability to export [. . .].”).

¹³³ See Thompson, *supra* note 6, at 9 (“Ex-Im [. . .] has steadily expanded the range of its products and activities targeting small businesses, opening regional offices, sponsoring conferences that highlight overseas selling opportunities, and disseminating information useful to prospective exporters.”).

¹³⁴ *Id.* (stating the efforts discussed in footnote 133 “have the potential to create U.S. jobs.” An increase in jobs infers an increase in the number of businesses reached by the Ex-Im Bank).

¹³⁵ *Budget*, CONG. BUDGET OFFICE, <https://www.cbo.gov/topics/budget> (last viewed Nov. 5, 2016).

¹³⁶ *Annual Report 2014*, *supra* note 5, at 7.

¹³⁷ See Jackie Calmes, *House Votes Overwhelmingly to Reopen the Ex-Im Bank*, N.Y. TIMES, Oct. 27, 2015, at B1 (“The Democrats’ leader [. . .] cited estimates that the bank [. . .] had earned \$7 billion over two decades for the Treasury through proceeds from loan repayments.”).

¹³⁸ See *The Role of the Export-Import Bank in U.S. Competitiveness and Job Creation: Hearing Before the Subcomm. On Int’l Monetary Policy & Trade of the Comm. On Fin. Services*, 112th Cong. 7 (2011) [hereinafter *The Role of the Export-Import Bank*] (“[B]ecause the bank charges exposure fees to its borrowers, it is not only self-sustaining, but consistently earns a profit for U.S. taxpayers. It is a government program that helps lower the deficit – something I’m sure you don’t hear all that often.”).

¹³⁹ See AKHTAR, *supra* note 9, at 12 (referencing the information found in Figure 5).

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and available funds for use, focus should be on increasing authorizations made by the Ex-Im Bank to increase the total profit for the U.S. economy and meet the exposure limit, if not force an increase on the limit.¹⁴⁰

In order to increase authorizations, an imperative move is to adjust exporting regulations.¹⁴¹ The United States' hands are tied in numerous potential deals because of the country's participation in the OECD Arrangement.¹⁴² Countries that are not participants in the OECD Arrangement are able to offer much more appealing deals to purchasers.¹⁴³ Lowering the regulation standards with the OECD Arrangement would give the United States a better competitive edge to land more deals against some of the leading exporting countries like Brazil, China, India, and Russia.¹⁴⁴ More authorizations would equate to more profit made by the Ex-Im Bank and ultimately more money to contribute to the United States deficit.¹⁴⁵

VI. Conclusions

With the Ex-Im Bank being one of the few federal agencies putting money into the U.S. economy, it is imperative that the Bank not only continue to be successfully operated, but to focus on increasing authorizations to maximize financial returns to our economy. Non-member countries of the OECD Arrangement, such as China, are quickly overshadowing the United States in exporting.

¹⁴⁰ See *The Role of the Export-Import Bank*, *supra* note 138, at 5 (“To improve the effectiveness of the U.S. export finance system, we urge the Congress to [. . .] reauthoriz[e] [. . .] Ex-Im with greater lending authority [. . .] [and] eliminat[e] regulatory restrictions that weaken Ex-Im’s competitiveness vis-à-vis other ECAs.” The suggestion to eliminate regulatory restrictions would help increase authorizations).

¹⁴¹ *Id.* at 6 (“[W]e would urge that Ex-Im be directed to match financing offered by foreign governments competing abroad or in the U.S. home market, where such financing is inconsistent with the OECD arrangement or where investment financing is being offered to win market share from U.S. competitors.”); see also K. William Watson, *Free Trade, Free Markets: Rating the 112th Congress*, 53 *FREE TRADE BULL.* 1, 1 (2013) (“Barriers to international trade reduce consumer options, increase prices, and impede economic growth. Such barriers exist as an instrument for politically powerful interests to secure private gain at public expense.”).

¹⁴² See AKHTAR, *supra* note 9, at 20 (“The government-backed export credit activities of these non-OECD countries may not comply with international export credit standards. China, Brazil, and India may offer below-market and concessionary financing alternatives with which it is difficult for ECAs of OECD members [such as the United States] to compete.”).

¹⁴³ See *id.* (“The OECD Rail Sector Understand, concluded in September 2013, sets guidelines for railway infrastructure exports. It provides repayment terms up to 12 years for transactions in high-income OECD countries, subject to conditions aimed at complementing the private sector, and up to 14 years for transactions in all other countries. [. . .] In contrast to OECD repayment terms, various studies suggest that China’s repayment terms for its rail exports, such as for infrastructure projects in sub-Saharan Africa, can exceed 20 years.”).

¹⁴⁴ *The Role of the Export-Import Bank*, *supra* note 138, at 6 (“[F]or U.S. exporters to be globally competitive, we need Ex-Im to be as flexible and nimble as its global competitors. To that end, we would urge reform of [. . .] Ex-Im policies that diminish Ex-Im’s flexibility and weaken its competitiveness.”); see also AKHTAR, *supra* note 9, at 38 (referencing Table A-1 that compares the OECD Arrangement participant financing volumes with the financing volumes of Brazil, China, India, and Russia, therefore indicating these four countries as the biggest non-OECD ECA competitors).

¹⁴⁵ *The Role of the Export-Import Bank*, *supra* note 138, at 5 (“[G]reater lending authority will in fact only result in an increase in their surplus, their return to the U.S. Treasury.”).

Redefining Business with the Export-Import Bank

The OECD Arrangement is too restricting on exporting for members and if a shift does not happen, member-countries such as the United States will inevitably become irrelevant in the global exporting market.

Furthermore, the Ex-Im Bank should focus more on funding small businesses rather than corporate giants. Small businesses are becoming more prominent players in the marketplace and international trading is an ideal way to increase sales. Because private lenders are much more reluctant to extend funding to these small businesses due to the increased risk the lenders face, the Ex-Im Bank should focus on reaching more small businesses to help fund their exporting needs.