

tion 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 I [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 I [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)—

(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 economic interests justify the matching of tied aid credits extended in compliance with the Arrangement, including grandfathered cases;

(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

(i) engages in predatory official export financing through the use of tied aid or partially untied aid credits, and impedes negotiations or violates agreements on tied aid to eliminate the use of such credits for commercial purposes; or

(ii) engages in predatory financing practices that seek to circumvent international agreements on tied aid; or

(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

(2) Administration of program

The tied aid credit program shall be administered by the Bank—

(A) in consultation with the Secretary and in accordance with the principles, process, and standards developed pursuant to paragraph (5) of this subsection and the purposes described in subsection (a)(5);

(B) in cooperation with United States exporters and private financial institutions or entities, and in consultation with other Federal agencies, as appropriate; and

(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

(3) Coordination with other export financing

Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

(A) any guarantee, insurance, or other extension of credit provided by the Bank under this subchapter;

(B) any export financing provided by any private financial institution or other entity; and

(C) any other type of export financing,

in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

(4) Information on countries which engage in official predatory export financing and impede negotiations

In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary, and the National Advisory Council on International Monetary and Financial Policies. The Bank shall also request and take into consideration the views of the private sector on principal sectors and key markets of countries described in paragraph (1)(B).

(5) Principles, process, and standards governing use of the Fund

(A) In general

The Secretary and the Bank jointly shall develop a process for, and the principles and standards to be used in, determining how the amounts in the Tied Aid Credit Fund could be used most effectively and efficiently to carry out the purposes of subsection (a)(6).

(B) Content of principles, process, and standards

(i) Consideration of certain principles and standards

In developing the principles and standards referred to in subparagraph (A), the Secretary and the Bank shall consider administering the Tied Aid Credit Fund in accordance with the following principles and standards:

(I) The Tied Aid Credit Fund should be used to leverage multilateral negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, to police existing rules, and to seek compliance by those countries that are not a party to the Arrangement.

(II) The Tied Aid Credit Fund will be used to counter a foreign tied aid credit confronted by a United States exporter when bidding for a capital project.

(III) Credible information about an offer of foreign tied aid will be required

before the Tied Aid Credit Fund is used to offer specific terms to match such an offer. In cases where information about a specific offer of foreign tied aid (or untied aid used to promote exports as if it were tied aid) is not available in a timely manner, or is unavailable because the foreign export credit agency involved is not subject to the reporting requirements under the Arrangement, then the Bank may decide to use the Tied Aid Credit Fund based on credible evidence of a history of such offers under similar circumstances or other forms of credible evidence.

(IV) The Tied Aid Credit Fund will be used to enable a competitive United States exporter to pursue further market opportunities on commercial terms made possible by the use of the Fund.

(V) Each use of the Tied Aid Credit Fund will be in accordance with the Arrangement unless a breach of the Arrangement has been committed by a foreign export credit agency.

(VI) The Tied Aid Credit Fund may only be used to defend potential sales by United States companies to a project that is environmentally sound.

(VII) The Tied Aid Credit Fund may be used to preemptively counter potential foreign tied aid offers without triggering foreign tied aid use.

(ii) Process

In handling individual applications involving the use or potential use of the Tied Aid Credit Fund the following process shall exclusively apply pursuant to subparagraph (A):

(I) The Bank shall process an application for tied aid in accordance with the principles and standards developed pursuant to subparagraph (A) and clause (i) of this subparagraph.

(II) Twenty days prior to the scheduled meeting of the Board of Directors at which an application will be considered (unless the Bank determines that an earlier discussion is appropriate based on the facts of a particular financing), the Bank shall brief the Secretary on the application and deliver to the Secretary such documents, information, or data as may reasonably be necessary to permit the Secretary to review the application to determine if the application complies with the principles and standards developed pursuant to subparagraph (A) and clause (i) of this subparagraph.

(III) The Secretary may request a single postponement of the consideration by the Board of Directors of the application for up to 14 days to allow the Secretary to submit to the Board of Directors a memorandum objecting to the application.

(IV) Case-by-case decisions on whether to approve the use of the Tied Aid Credit Fund shall be made by the Board of Directors, except that the approval of the

Board of Directors (or a commitment letter based on that approval) shall not become final (except as provided in subclause (V)), if the Secretary indicates to the President of the Bank in writing the Secretary's intention to appeal the decision of the Board of Directors to the President of the United States and makes the appeal in writing not later than 20 days after the meeting at which the Board of Directors considered the application.

(V) The Bank shall not grant final approval of an application for any tied aid credit (or a commitment letter based on that approval) if the President of the United States, after consulting with the President of the Bank and the Secretary, determines within 30 days of an appeal by the Secretary under subclause (IV) that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6). If no such Presidential determination is made during the 30-day period, the approval by the Bank of the application (or related commitment letter) that was the subject of such appeal shall become final.

(C) Initial principles, process, and standards

As soon as is practicable but not later than 6 months after June 14, 2002, the Secretary and the Bank shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards developed pursuant to subparagraph (A).

(D) Transitional principles and standards

The principles and standards set forth in subparagraph (B)(i) shall govern the use of the Tied Aid Credit Fund until the principles, process, and standards required by subparagraph (C) are submitted.

(E) Update and revision

The Secretary and the Bank jointly should update and revise, as needed, the principles, process, and standards developed pursuant to subparagraph (A), and, on doing so, shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards so updated and revised.

(6) Reconsideration of decisions

(A) In general

Taking into consideration the time sensitivity of transactions, the Board of Directors of the Bank shall expeditiously pursuant to paragraph (2) reconsider a decision of the Board to deny an application for the use of the Tied Aid Credit Fund if the applicant submits the request for reconsideration within 3 months of the denial.

(B) Procedural rules

In any such reconsideration, the applicant may be required to provide new information on the application.

(c) Tied Aid Credit Fund

(1) In general

There is hereby established within the Bank a fund to be known as the "Tied Aid Credit Fund" (hereinafter in this section referred to as the "Fund"), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e).

(2) Expenditures from Fund

Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) and to reimburse the Bank for the amount equal to the concessionality level of any tied aid credits authorized by the Bank.

(d) Consistency with Arrangement

Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

(e) Authorization

There are authorized to be appropriated to the Fund such sums as may be necessary to carry out the purposes of this section. Such sums are authorized to remain available until expended.

(f) Nonreviewability

No action taken under this section shall be reviewable by any court, except for abuse of discretion.

(g) Report to Congress

(1) In general

The Bank, in consultation with the Secretary, shall submit an annual report on tied aid credits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) Contents of reports

Each report required under paragraph (1) shall contain a description of—

(A) the implementation of the Arrangement restricting tied aid and partially untied aid credits for commercial purposes, including the operation of notification and consultation procedures;

(B) all principal offers of tied aid credit financing by foreign countries during the previous 6-month period, including all offers notified by countries participating in the Arrangement, and in particular—

(i) offers grandfathered under the Arrangement; and

(ii) notifications of exceptions under the Arrangement;

(C) any use by the Bank of the Tied Aid Credit Fund to match specific offers, including those that are grandfathered or exceptions under the Arrangement; and

(D) other actions by the United States Government to combat predatory financing

practices by foreign governments, including additional negotiations among participating governments in the Arrangement.

(3) Confidential information

To the extent the Bank determines any information required to be included in the report under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

(h) Definitions

For purposes of this section, the following definitions shall apply:

(1) Tied aid and partially untied aid credit

The terms “tied aid credit” and “partially untied aid credit” mean any credit which—

(A) has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(B) is, in fact or in effect, tied to—

(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(ii) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit; and

(C) is financed either exclusively from public funds or partly from public and partly from private funds.

(2) Secretary

The term “Secretary” means the Secretary of the Treasury.

(3) Arrangement

The term “Arrangement” means the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development.

(4) Blended financing

The term “blended financing” means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

(5) Parallel financing

The term “parallel financing” means financing provided by any combination of official development assistance, official export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.

(6) Offers grandfathered under the Arrangement

The term “offers grandfathered under the Arrangement” means—

(A) financing offers made or lines of credit extended on or before February 15, 1992; or

(B) financing offers extended for subloans under lines of credit referred to in subpara-

graph (A) made on or before August 15, 1992, or, in the case of Mexico, on or before December 31, 1992.

(7) Market window

The Bank, in consultation with the Secretary of the Treasury, shall define “market window” for purposes of this section.

(July 31, 1945, ch. 341, § 10, formerly § 15, as added Pub. L. 99-472, § 19, Oct. 15, 1986, 100 Stat. 1205; amended Pub. L. 100-217, Dec. 29, 1987, 101 Stat. 1454; Pub. L. 100-418, title III, § 3302(b), Aug. 23, 1988, 102 Stat. 1383; Pub. L. 101-240, title I, § 101(b), Dec. 19, 1989, 103 Stat. 2493; Pub. L. 101-513, title V, § 562(d), Nov. 5, 1990, 104 Stat. 2036; renumbered § 10 and amended Pub. L. 102-429, title I, §§ 103, 121(c)(4), Oct. 21, 1992, 106 Stat. 2187, 2199; Pub. L. 104-97, § 1, Jan. 11, 1996, 109 Stat. 984; Pub. L. 104-107, title V, § 579, Feb. 12, 1996, 110 Stat. 751; Pub. L. 105-121, § 3, Nov. 26, 1997, 111 Stat. 2528; Pub. L. 106-569, title XI, § 1103(d)(2), Dec. 27, 2000, 114 Stat. 3031; Pub. L. 107-189, §§ 9, 10(c), (d), 24(a)(2)(E), June 14, 2002, 116 Stat. 701, 703, 704, 708; Pub. L. 109-438, § 10, Dec. 20, 2006, 120 Stat. 3275.)

PRIOR PROVISIONS

A prior section 10 of act July 31, 1945, ch. 341, repealed section 713b of Title 15, Commerce and Trade.

AMENDMENTS

2006—Subsec. (a)(6). Pub. L. 109-438, § 10(b)(1)(A), inserted “, including those that are not a party to the Arrangement,” after “countries” in introductory provisions.

Subsec. (a)(6)(C). Pub. L. 109-438, § 10(b)(1)(B), (C), added subpar. (C).

Subsec. (b)(5)(B)(i)(I). Pub. L. 109-438, § 10(b)(2)(A)(i), struck out “and” after “multilateral rules,” and inserted “, and to seek compliance by those countries that are not a party to the Arrangement” before period.

Subsec. (b)(5)(B)(i)(III). Pub. L. 109-438, § 10(b)(2)(A)(ii), inserted at end “In cases where information about a specific offer of foreign tied aid (or untied aid used to promote exports as if it were tied aid) is not available in a timely manner, or is unavailable because the foreign export credit agency involved is not subject to the reporting requirements under the Arrangement, then the Bank may decide to use the Tied Aid Credit Fund based on credible evidence of a history of such offers under similar circumstances or other forms of credible evidence.”

Subsec. (b)(5)(B)(ii). Pub. L. 109-438, § 10(a), amended cl. (ii) heading and text generally. Prior to amendment, text read as follows: “Once the principles, process and standards referred to in subparagraph (A) are followed, the final case-by-case decisions on the use of the Tied Aid Credit Fund shall be made by the Bank: *Provided however*, That the Bank shall not approve the extension of a proposed tied aid credit if the President of the United States determines, after consulting with the President of the Bank and the Secretary of the Treasury, that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6) of this section.”

2002—Subsec. (a)(4). Pub. L. 107-189, § 10(c)(1), struck out “and” at end.

Subsec. (a)(5). Pub. L. 107-189, § 10(c)(3), added par. (5). Former par. (5) redesignated (6).

Pub. L. 107-189, § 10(c)(2), inserted “, or untied aid used to promote exports as if it were tied aid,” before “for commercial” in introductory provisions and in subpar. (B).

Subsec. (a)(6). Pub. L. 107-189, § 10(c)(3), redesignated par. (5) as (6).

Subsec. (b)(2)(A). Pub. L. 107-189, §9(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "in consultation with the 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 subsection (a)(5) of this section;"

Subsec. (b)(5). Pub. L. 107-189, §9(a)(2), added par. (5).

Subsec. (b)(6). Pub. L. 107-189, §9(b), added par. (6).

Subsec. (g)(1). Pub. L. 107-189, §24(a)(2)(E), substituted "Committee on Financial Services of the House of Representatives" for "Committee on Banking, Finance and Urban Affairs of the House of Representatives".

Subsec. (h)(7). Pub. L. 107-189, §10(d), added par. (7).

2000—Subsec. (g)(1). Pub. L. 106-569 substituted "The Bank" for "On or before October 15, 1992, and every 6 months thereafter, the Bank" and "submit an annual report" for "submit a report".

1997—Subsec. (c)(2). Pub. L. 105-121, §3(a), struck out "through September 30, 1997" after "authorized by the Bank".

Subsec. (e). Pub. L. 105-121, §3(b), amended first sentence generally. Prior to amendment first sentence read as follows: "There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997."

1996—Subsec. (c)(2). Pub. L. 104-107, §579(a), which directed substitution of "1997" for "1995", could not be executed because "1995" does not appear in text after amendment by Pub. L. 104-97. See below.

Pub. L. 104-97, §1(a), substituted "1997" for "1995".

Subsec. (e). Pub. L. 104-107, §579(b), which directed substitution of "1996 and 1997" for "1993, 1994, and 1995", could not be executed because that language does not appear in text after general amendment by Pub. L. 104-97. See below.

Pub. L. 104-97, §1(b), substituted "There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997." for "There are authorized to be appropriated to the Fund \$500,000,000 for each of fiscal years 1993, 1994, and 1995."

1992—Subsec. (a). Pub. L. 102-429, §103(c)(1), (2), substituted "predatory" for "predacious" in par. (1), struck out "temporary" before "tied aid program" in introductory provisions of par. (5), and substituted "existing Arrangement" for "existing arrangement" in par. (5)(A).

Subsec. (b)(1). Pub. L. 102-429, §103(c)(3)(A), substituted "The" for "To carry out the purposes of subsection (a)(5) of this section, the".

Subsec. (b)(1)(A). Pub. L. 102-429, §103(c)(1), (3)(B), substituted "predatory" for "predacious" and inserted before semicolon "and with special attention to matching tied aid and partially untied aid credits extended by other governments—" followed by cls. (i) and (ii).

Subsec. (b)(1)(B). Pub. L. 102-429, §103(c)(1), (3)(C), in cl. (i) substituted "predatory" for "predacious" and "partially untied aid credits, and impedes negotiations or violates agreements on tied aid to eliminate the use of such credits for commercial purposes; or" for "partially untied aid credits; and", added cl. (ii), and struck out former cl. (ii) which read as follows: "impedes negotiations to eliminate the use of such credits for commercial purposes; or".

Subsec. (b)(2). Pub. L. 102-429, §103(c)(4), (5), struck out "of the Treasury" after "Secretary" in subpar. (A) and substituted "United States exporters and private financial institutions or entities, and in consultation with other Federal agencies" for "private financial institutions or entities" in subpar. (B).

Subsec. (b)(4). Pub. L. 102-429, §103(c)(6), inserted at end "The Bank shall also request and take into consideration the views of the private sector on principal sectors and key markets of countries described in paragraph (1)(B)."

Subsec. (c)(2). Pub. L. 102-429, §103(a), substituted "September 30, 1995" for "fiscal year 1992".

Subsec. (e). Pub. L. 102-429, §103(b), amended subsec. (e) generally, substituting present provisions for provisions which authorized appropriations for fiscal years

1987 through 1992 and provided authority for Presidential rescission.

Subsec. (g)(1). Pub. L. 102-429, §103(c)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "REPORT REQUIRED.—Before the end of the 6-month period beginning on October 15, 1986, and every six months thereafter, the Bank, in consultation with the Secretary, shall prepare and transmit a report on tied aid credits to the President of the Senate and the Speaker of the House of Representatives."

Subsec. (g)(2). Pub. L. 102-429, §103(c)(7), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "CONTENTS OF REPORT.—Each report required by paragraph (1) shall contain a description of—

"(A) the principal offers of predacious financing by foreign countries during the course of the previous 6 months;

"(B) steps taken by the United States to combat specific predacious financing practices of foreign countries;

"(C) any use by the Bank of the Tied Aid Credit Fund to match specific predacious financing practices of foreign countries and to initiate tied aid credit offers;

"(D) any additional steps the United States may take in the future to discourage use of predacious financing practices; and

"(E) the progress achieved by negotiations conducted to carry out the purposes described in subsection (a)(5) of this section."

Subsec. (h). Pub. L. 102-429, §103(c)(8), substituted "For purposes of this section, the following definitions shall apply:" for "For the purpose of this section—" in introductory provisions and added par. (6).

1990—Subsec. (c)(2). Pub. L. 101-513, §562(d)(2), substituted "1992" for "1991".

Subsec. (e)(1). Pub. L. 101-513, §562(d)(1), substituted "for fiscal year 1990, \$300,000,000, and for each of fiscal years 1991 and 1992, \$500,000,000" for "and for fiscal years 1990 and 1991, \$300,000,000".

1989—Subsec. (a)(5). Pub. L. 101-240, §101(b)(1), substituted "for the purposes of—", pars. (A) and (B), and concluding provisions for "for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established."

Subsec. (b)(1). Pub. L. 101-240, §101(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: "For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, 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—"

Subsec. (b)(2)(A). Pub. L. 101-240, §101(b)(3), substituted "carry out the purposes described in subsection (a)(5) of this section" for "promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes".

Subsec. (c)(2). Pub. L. 101-240, §101(b)(4), substituted "amount equal to the concessionality level" for "cost" and "through fiscal year 1991" for "during fiscal years 1986, 1987, 1988, and 1989".

Subsec. (e)(1). Pub. L. 101-240, §101(b)(7), which directed the insertion of " , and for fiscal years 1990, 1991, and 1992, \$200,000,000" after "\$300,000,000" was not executed in view of earlier amendment by section 101(b)(5) of Pub. L. 101-240, which inserted " , and for fiscal years 1990 and 1991, \$300,000,000" after "\$300,000,000", and in view of Senate floor amendment of the bill which added the authorization contained in section 101(b)(5) and was intended to replace the authorization now appearing in section 101(b)(7). See Cong. Rec., Vol. 135, pt. 22, pp. 31199, 31203.

Pub. L. 101-240, §101(b)(5), inserted " , and for fiscal years 1990 and 1991, \$300,000,000" after "\$300,000,000".

Subsec. (g)(2)(E). Pub. L. 101-240, §101(b)(6), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “any progress achieved in negotiations to establish a comprehensive international arrangement restricting the use of tied aid and partially untied credits for commercial purposes.”

1988—Subsecs. (c)(2), (e)(1). Pub. L. 100-418 substituted “1988, and 1989” for “and 1988”.

1987—Subsec. (c)(2). Pub. L. 100-217 substituted “during fiscal years 1986, 1987, and 1988” for “during fiscal year 1986”.

USE OF FUND TO DISCOURAGE PREDATORY FINANCING PRACTICES

Pub. L. 100-418, title III, §3302(a), Aug. 23, 1988, 102 Stat. 1383, provided that: “The Congress finds that—

“(1) negotiations have led to an international agreement to increase the grant element required in tied aid credit offers;

“(2) concern continues to exist that countries party to the agreement may continue to offer tied aid credits that deviate from the agreement;

“(3) in such cases, the United States could continue to lose export sales in connection with the aggressive, and in some cases, unfair, tied aid practices of such countries; and

“(4) in such cases, the Export-Import Bank of the United States should continue to use the Tied Aid Credit Fund established by section 15(c) [now 10(c)] of the Export-Import Bank Act of 1945 [12 U.S.C. 635i-3(c)] to discourage the use of such predatory financing practices.”

§ 635i-4. Repealed. Pub. L. 102-429, title I, § 121(c)(1), Oct. 21, 1992, 106 Stat. 2199

Section, act July 31, 1945, ch. 341, §16, as added Oct. 21, 1986, Pub. L. 99-509, title II, §2002, 100 Stat. 1880, related to procedures and terms for sale of Bank loans to public.

§ 635i-5. Environmental policy and procedures

(a) Environmental effects consideration

(1) In general

Consistent with the objectives of section 635(b)(1)(A) of this title, the Bank shall establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs. Such procedures shall provide for the public disclosure of environmental assessments and supplemental environmental reports required to be submitted to the Bank, including remediation or mitigation plans and procedures, and related monitoring reports. The preceding sentence shall not be interpreted to require the public disclosure of any information described in section 1905 of title 18. Such procedures shall apply to any transaction involving a project—

(A) for which long-term support of \$25,000,000 (or, if less than \$25,000,000, the threshold established pursuant to international agreements, including the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, as adopted by the Organisation for Economic Co-operation and Development Council on June 28, 2012, and the risk-management framework adopted by financial institutions for determining, assessing, and managing environmental and social risk in projects (commonly referred to as the

“Equator Principles”)) or more is requested from the Bank;

(B) for which the Bank’s support would be critical to its implementation; and

(C) which may have significant environmental effects upon the global commons or any country not participating in the project, or may produce an emission, an effluent, or a principal product that is prohibited or strictly regulated pursuant to Federal environmental law.

(2) Authority to withhold financing

The procedures established under paragraph (1) shall permit the Board of Directors, in its judgment, to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects of a project.

(b) Use of Bank programs to encourage certain exports

(1) In general

The Bank shall encourage the use of its programs to support the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects (such as exports of products and services used to aid in the monitoring, abatement, control, or prevention of air, water, and ground contaminants or pollution, or which provide protection in the handling of toxic substances, subject to a final determination by the Bank, and products and services for foreign environmental projects dedicated entirely to the prevention, control, or cleanup of air, water, or ground pollution, including facilities to provide for control or cleanup, and used in the retrofitting of facility equipment for the sole purpose of mitigating, controlling, or preventing adverse environmental effects, subject to a final determination by the Bank). The Board of Directors shall name an officer of the Bank to advise the Board on ways that the Bank’s programs can be used to support the export of such goods and services. The officer shall act as liaison between the Bank and other Federal Government agencies, including the agencies whose representatives are members of the Environmental Trade Promotion Working Group of the Trade Promotion Coordinating Committee, with respect to overall United States Government policy on the environment.

(2) Limitations on authorization of appropriations

In addition to other funds available to support the export of goods and services described in paragraph (1), there are authorized to be appropriated to the Bank not more than \$35,000,000 for the cost (as defined in section 661a(5) of title 2) of supporting such exports. If, in any fiscal year, the funds appropriated in accordance with this paragraph are not fully utilized due to insufficient qualified transactions for the export of such goods and services, such funds may be expended for other purposes eligible for support by the Bank.

(c) Inclusion in report to Congress

The Bank shall provide in its annual report to the Congress a summary of its activities under subsections (a) and (b).