

EXIM BANK

PROSPECTS AND PF

AMERICA IS STRONGER WITH THE EXPORT-IMPORT BANK OPERATING AT FULL CAPACITY, BUT KEY PROVISIONS CONCERNING WHO CAN ACCESS THE BANK'S RESOURCES WILL NEED TO BE RECONCILED BETWEEN CONGRESSIONAL DEMOCRATS AND REPUBLICANS BEFORE THE BANK WILL BE RE-AUTHORISED LONG-TERM. A LONG-TERM RE-AUTHORISATION WOULD LIFT PROSPECTS FOR NEW PROJECT FINANCE DEALS THAT RELY ON SUPPORT FROM THE BANK. BY **AARON CUTLER**, PARTNER, AND **KEVIN WYSOCKI**, GOVERNMENT RELATIONS SPECIALIST, **HOGAN LOVELLS**.

The Export-Import Bank plays a critical role in helping facilitate the export of US goods and services throughout the world. Specifically, Congress has authorised the bank to fulfil two important missions.

The first is to provide financing for US exports when the private sector is unable or unwilling to do so. The second is to counter the roughly 110 foreign export credit agencies that potentially advantage foreign exporters at the detriment of US exporters.

The bank's main tools are direct loans, loan guarantees, and export credit insurance, but it also provides specialised finance products such as structured finance, transportation finance, and of course, project finance.

In fact, in September 2019, the bank approved a US\$5bn loan to finance US exports of engineering, procurement, and construction for an onshore plant in Mozambique. As a result of the transaction, a total of 16,400 American jobs, over the next five years, will be supported in Texas, New York, Pennsylvania, Georgia, Tennessee, Florida and the District of Columbia.

Not only is this a win for American workers, but Mozambique expects a net benefit over the life of the project of roughly US\$60bn, or more than four times the country's current gross domestic product. Additionally, the project will help increase Mozambique's electric capacity and help develop the Rovuma Basin, a huge untapped reserve of natural gas.

Since 1993 the bank has funded US\$37.4bn worth of project finance deals in industries such as oil and gas, telecommunications, wind power, solar power, mining, and semiconductors.

While the benefits of such project finance deals may be obvious to American blue and white collar workers that have jobs thanks to these deals provided by the bank, the bank remains a hotly debated issue in Washington. Though the reason why it has been so hotly contested in recent years has changed.

With so much riding on a fully functioning Ex-Im Bank, anyone involved in the export of American goods and services – and particularly those involved in project financing – should pay close attention to how Congress handles the bank.

The bank's first mission, to fill the gaps in private sector financing, has traditionally come

under fire, at different times, by politicians on both the left and the right. Most recently it has been conservative Republicans that have couched the bank's assistance as corporate welfare that mainly benefits large companies that supposedly already have access to the financing they need, but probably at less generous terms.

However, there are fewer conservative Republicans in Congress complaining about this now that President Barack Obama is no longer in office. Instead, their internal compass pointing toward free markets is being superseded by a pragmatic view that in order to counter alleged Chinese trade improprieties, such as currency manipulation and intellectual property theft, that may be putting American workers at a disadvantage, they support a strong bank to help level the international trade playing field.

It also doesn't hurt that China, through its Belt and Road Initiative and support of new international financial institutions and robust export credit, is more active than ever in promoting not only exportation of its products and services, but also its political ideology.

Thus, many members of Congress on both sides of the aisle believe that the bank, especially its second mission to counter foreign export credit agencies, is a useful counterweight in the hegemonic struggle between America and China.

This change by some Republicans is analogous to the Reagan era, when President Reagan cut the bank's funding by 40% in 1982, but then later, in 1986, supported bank re-authorisation as a "needed leverage for use in negotiations to eliminate predatory financing practices".

Currently, Democrats are not buying the line that the bank is corporate welfare. Interestingly, then Senator Obama said the bank was "little more than a fund for corporate welfare" in 2008, but supported the bank throughout his presidency, and ever since then almost all Democrats have followed his lead.

So then what is the problem? Why haven't Republicans and Democrats in Washington agreed to a long-term re-authorisation of the bank, especially if they generally agree that foreign export creditors are a threat to US exports and the corporate welfare issue is mostly sidelined, at least for now?

This summer, it did in fact look like the bank was on the fast track to receive new authorisation from Congress. US House Committee on Financial Services chairwoman Maxine Waters (D-CA) and the committee's ranking member Patrick McHenry (R-NC) had a bipartisan deal that was supposed to sail through the committee. However, at the last second, enough Democratic committee members balked at the agreement and the chairwoman pulled the bill from consideration.

The main sticking points that killed the agreement were provisions related to restrictions on Chinese deals. These provisions attempted to address concerns of Congress regarding the Chinese government by establishing the "Program on China and Transformational Exports" and restricting the access that state-owned and state-controlled Chinese businesses have to the bank's export credit products.

The new programme would aim to neutralise the effect of the Chinese government's export credit efforts by requiring at least 20% of the bank's export credit products to advance key US industries such as artificial intelligence, 5G, and quantum computing.

Democratic members argued these provision were not fine-tuned enough to allow for the bank to use export credit to facilitate trade with benign Chinese companies. Meanwhile, Republicans on the committee were united in support of these enhanced Chinese provisions that they alleged would ensure Chinese state sponsored enterprises would not benefit from the bank.

The differences of opinion between the two parties on this matter persist today, and that is why Congress failed to enact a long-term re-authorisation of the bank and instead recently opted for short-term re-authorisation, the most recent of which extended the bank's re-authorisation through to December 20. It is important to know that without authorisation, the bank can only continue to service

its existing obligations, and no new loan, guarantee, or insurance commitments can be approved.

This isn't the first time in recent memory that Congress has struggled to agree upon a long-term re-authorisation of the bank. In 2015, the bank's authorisation lapsed from July 1 through to December 3 and it didn't get re-authorised until language was added to must-pass bipartisan legislation, the Fixing America's Surface Transportation Act (PL 114-94).

Also problematic, between June 20 2015 and May 8 2019, the bank's board was operating without a quorum, which limited the size of deals the bank could approve to relatively small ones of less than US\$10m.

The bank didn't have a quorum because some Republican senators that considered the bank's assistance as a form of corporate welfare to large businesses, among other issues, refused to confirm new members to the bank's board that they deemed would not make necessary reforms to the bank.

According to the Congressional Research Service, in fiscal year 2018, the bank supported an estimated US\$6.8bn in US exports and 33,000 US jobs by authorising 2,389 transactions totalling US\$3.3bn.

However, these numbers are down from highs in fiscal year 2014, when the bank supported an estimated US\$27.5bn in US exports and roughly 164,000 US jobs by authorising 3,746 transactions totalling US\$20.5bn. The main reason for this downward trend: the bank's quorum issue.

The quorum gridlock ended in May 2019 when the Senate confirmed three of President Donald Trump's nominations to the bank's board. That gave the bank an opening to approve the credit finance deal for the liquefied natural gas (LNG) plant in Mozambique.

So what has happened since July, when leaders in the House Financial Services Committee fell short of reaching a deal on bank reauthorisation



Bipartisan dealer Patrick McHenry in the House of Financial Services Committee in Washington | REUTERS/Joshua Roberts



due to difference of opinion regarding the China provisions? The short answer: nothing in terms of a long-term bipartisan agreement. Chairwoman Waters did introduce HR 4863, the US Export Finance Agency Act of 2019.

This legislation would, among many things, re-authorise the bank for 10 years, increase its lending authority from US\$135m to US\$175m over seven years, and rename the bank as the US Export Finance Agency, which makes sense because its current name is a misnomer – it doesn't help with imports.

With respect to China, the legislation bars the bank's financing from being used to assist certain Chinese end-users – Chinese Army and Intelligence Services, and those included on the Denied Persons List or the Entity List maintained by the US Bureau of Industry & Security. Additionally, it creates a fund so that China's alleged predatory export credit practices can be countered with special terms when bidding for a capital project.

On October 31, the House Financial Services Committee marked up and reported favourably out of committee a long-term re-authorisation bill by a vote of 30-27. However, not a single Republican voted in favour of the legislation.

On November 14, the Trump administration made an official announcement that it doesn't support the House bill because it isn't a "bipartisan, bicameral approach" but that it does support a long-term re-authorisation of the bank. Senate majority leader Mitch McConnell (R-KY) said that the Senate is "... not going to pass the House bill". The following day, the bill passed the Democrat-controlled House of Representatives by a mostly partisan vote of 235-184.

Majority leader McConnell has indicated that he would like to re-authorise the bank as part of upcoming government funding measures. However, it is unclear how long such a re-

authorisation of the bank would last. If the past offers any insight to the future, the chances are any upcoming re-authorisation of the bank through a broader appropriations measure would be short to medium-term, unless major compromises were reached between the parties over the Chinese provisions.

In the Senate, there has been some effort to bridge the gap. Senator Kevin Cramer (R-ND) and Senator Kyrsten Sinema (D-AZ) have introduced HR 2293, the Export-Import Bank Act Re-authorization of 2019. This legislation is co-sponsored by 14 senators and would, among many things, re-authorise the bank for 10 years and increase its lending cap to US\$175bn, but it does not have any provisions related to Chinese access to the bank's financing. At this point, the bill has not received much attention in Congress.

Other factors to consider while the debate in Washington over the re-authorisation of the bank continues are the ongoing trade negotiations between the US and China and the state of the US economy. If the US economy starts to slip, then the Trump administration would be more likely to cut a long-term deal on the bank to reduce uncertainty and to help bolster the economy and shore up support with key voters in important manufacturing states that helped propel the president to victory in 2016.

However, the question remains how hard the Trump administration would push for provisions related to China when they are in the midst of trade negotiations.

Regardless of what happens, Congress should work out its differences and re-authorise the bank as quickly as possible. Over the last decade the bank has supported more than 1.7m jobs that have increased America's influence and presence around the world. Difficult decisions about the China provisions will need to be made, but leaders in Washington must get to the bottom of them. ■



Bipartisan dealer Maxine Waters participates in a House Financial Services Committee | REUTERS/Erin Scott