

Testimony of Douglas Norlen

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Chairman Warner, Ranking Member Johanns, and Members of the Committee, thank you for the opportunity to testify on the reauthorization of the Charter of the United States Export-Import Bank. I am Douglas Norlen, Policy Director, Pacific Environment, a Pacific Rim-based non-profit organization. In this capacity, for fifteen years I have focused on the environmental and social impacts and reforms of public and private finance institutions, with a specialization in export credit agencies, including Ex-Im Bank. I am pleased today to speak about three areas of reforms we believe are necessary to improve the effectiveness of Ex-Im Bank: agency accountability, climate change, and promotion of renewable energy.

Agency Accountability: Congress should require Ex-Im Bank to establish an independent accountability mechanism. Such mechanisms are increasingly the norm at public finance institutions such as the World Bank, International Finance Corporation, Asian Development Bank, European Bank for Reconstruction and Development, Japan Bank for International Cooperation and the U.S. Overseas Private Investment

Corporation (OPIC). They are distinct from Offices of Inspector General, which focus on financial problems, such as fraud, waste and abuse, and internal economy, efficiency and effectiveness. In contrast, independent accountability mechanisms receive and assess complaints from people and communities who claim to be adversely affected by the projects or activities supported by a particular public finance institution because of a violation of the institution's own policies and procedures.

An accountability mechanism at Ex-Im Bank could have three functions. One is to address complaints by affected people seeking to resolve problems with Ex-Im-supported activities. The purpose of this so-called "problem-solving" or "conflict resolution" function is not only to address existing complaints about real or potential harm from Ex-Im Bank activities, but also to prevent such harm from escalating or occurring at all. An example of this might be an Ex-Im Bank-supported mining project that has failed to compensate local people for use of their land. In this example, the affected communities might seek compensation through a problem-solving initiative. Instead of the community members feeling frustrated when attempts to raise concerns at the local level go unanswered, which, in turn, can lead -- and has led -- to drastic actions such as a roadblocks to bring attention to their complaint, an Ex-Im Bank problem-solving mechanism would allow the complainant and the Ex-Im Bank client to enter into a structured dialogue with the help of a mediator to effectively address the issues.

The second function would be compliance review, where the complainant may seek an independent review of the Ex-Im Bank's operation to determine whether Ex-Im Bank has violated its own policies and procedures. The purpose of compliance review is to identify issues of non-compliance with Ex-Im Bank policy as early as possible so that Ex-Im Bank can make timely adjustments to address any issues of non-compliance, and to provide the Ex-Im Bank Board of Directors with findings so that case-specific and systemic issues of non-compliance may be effectively addressed.

The third function would be to provide advice to management on policies, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of projects.

As with other such accountability mechanisms, Ex-Im Bank's mechanism must have appropriate safeguards for independence. The mechanism should be independent from line operations and management and report only to the Board so that Ex-Im Bank management takes no part in the mechanism's operation or oversight. The mechanism should operate in an accessible manner such that affected people could choose to directly access either the problem-solving or compliance review functions through a simple and timely complaint process. The mechanism should also operate in a transparent manner with a public registry of complaints and clear rules of procedure. Further, the mechanism should be empowered to issue public follow-up monitoring reports after agreements are reached through problem solving and after issuance of findings of non-compliance. The mechanism should also be able to conduct

outreach to ensure that it is well known both internally at Ex-Im Bank and externally among clients and affected communities.

An important purpose of these compliance and problem-solving mechanisms is to ensure greater likelihood of project support by local communities, which in turn creates a stable environment for business enterprise and more successful project outcomes. Independent accountability mechanisms are good governance tools that ultimately decrease project risk to Ex-Im Bank and its clients.

In our fifteen years of experience engaging the Bank on specific projects of concern in Africa, the Caucasus, Latin America, Asia and Russia, the agency's response to those that bring evidence of policy violations has been a so-called "open door" policy. This practice falls short, for while concerns can be voiced, a substantive agency response in writing is not required, nor is demonstrated evidence of compliance remedies. When the agency offers its own interpretation of compliance, it becomes its own judge and jury. By contrast, independent accountability mechanisms provide the agency, Congress, and the public an unencumbered independent review of agency compliance and recommendations for problem solving and corrective measures.

A good example of the need for an independent accountability mechanism is the Baku-T'blisi-Ceyhan (BTC) pipeline project transecting Azerbaijan, Georgia and Turkey. In March, 2011, the British Government issued a report which found that the project sponsor, BP, failed to act on reports of human rights abuses by project security personnel including complaints of intimidation measures used against affected

communities in Turkey. The report followed a complaint brought by non-government organizations that say public funders, including Ex-Im Bank, knew about the intimidation, but failed to check whether BP had procedures in place to address and remedy the violations.¹

Years earlier, complaints were filed to the International Finance Corporation Office of Compliance Advisor/Ombudsman concerning environmental impacts on the BTC project, resulting in increased public consultation.² In 2006, a claim was brought to the OPIC Office of Accountability regarding BP's withholding of information on the failure of the BTC pipeline anti-corrosion coating, resulting in improved project monitoring on BTC and other projects.³ However, Ex-Im Bank, which also financed the BTC project, provides project-affected communities with no independent accountability mechanism.

Pacific Environment can provide the Committee with numerous other examples.

We strongly support the language on the creation of an Ex-Im Bank accountability mechanism that is included in the House Ex-Im Bank reauthorization bill that passed the House Financial Services Committee last week by voice vote. We would ask only for the inclusion of a requirement that Ex-Im Bank report to Congress in six months and one year after passage of the bill on its efforts to establish such a mechanism so that the

¹ BP Response to Pipe Conflict Found Lacking, Financial Times, March 10, 2011

² See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=50

³ See <http://www.opic.gov/doing-business/accountability/registry/cr-1-2006>

House and Senate authorizing committees can more readily carry out its appropriate oversight responsibilities.

Meanwhile, Congress should improve Ex-Im Bank's **accountability on fraud and corruption**. Ex-Im Bank's Office of Inspector General (OIG) has expressed increasing concern about fraud and corruption, including such problems associated with Ex-Im Bank's growing number of delegated authority lenders (aka financial intermediaries). The OIG recently issued a report which found that Ex-Im Bank's Nigerian Banking Facility supported a private bank whose Managing Director was removed from office for financial malfeasance by the Central Bank of Nigeria (CBN) in 2009, and was eventually convicted of fraud and sent to prison. Ex-Im Bank Directors eventually revoked this bank's participation in the Nigerian Banking Facility on the basis of the CBN intervention. However, the report also found that:

" [A]t no moment did Ex-Im Bank management state or mention in its October 22, 2009 and October 21, 2010 memoranda to the Board of Directors that a local investigation for corruption charges and guilty plea of a former managing director had taken place nor cite these as reasons for removal."

While not all Ex-Im Bank financial intermediaries are associated with corruption, we do not believe this is an isolated incident. In testimony to the House Committee on Financial Services Subcommittee on International Monetary Policy and Trade, the Inspector General stated,

“...[I]t is vital that Ex-Im Bank enhances due diligence practices in order to better identify fraudulent transactions...,”

“...The OIG has anecdotal evidence of loan officers in lending institutions expressing their position that the lender would not spend resources on due diligence efforts when there is a government guarantee. Although the OIG is not in a position to state that this is a behavior demonstrated by all lenders, we can certainly state that this “moral hazard” issue has been prevalent in fraud cases involving multiple transactions.”

Congress should act on the Inspector General’s recommendations and require more robust policies and procedures for reputational checks, including a requirement of certifications of compliance with foreign and domestic laws including anti-corruption certifications from participating lender and guarantor decision makers.

Fossil fuel financing: As the United States and other countries grapple with the worsening effects of climate change, including severe weather patterns, melting polar ice and increasing wildfires, it is irresponsible and incoherent for a public agency to finance the expansion of carbon-polluting energy projects. Despite Ex-Im Bank’s new carbon policy, and President Obama’s pledge to phase out wasteful fossil fuel subsidies, the agency’s financing for fossil fuel projects increased dramatically in recent years and skyrocketed to a record \$4.5 billion last fiscal year. Ex-Im Bank’s surging financing for fossil fuel projects exacerbates climate change, heaps scarce public funding on

industries that need it least, and ultimately undercuts U.S. Government credibility and leadership towards a global clean energy economy. *Congress should curb Ex Im Bank's wasteful use of public financing on carbon polluting energy projects.*

Renewable Energy: Ex-Im Bank can address both climate change and lead the transition to a clean energy economy by seizing the enormous opportunity to finance renewable energy and energy efficiency now. According to a BP statistical review, renewable energy consumption grew 15.5% in 2010, the fastest rate of expansion since 1990. Installed solar power capacity alone grew an amazing 73% in 2010, while wind grew 24.6%⁴. According to the Pew Center for Global Climate Change, this rapid pace is forecast to lead to annual investments in global renewable energy markets of \$106-\$230 billion a year by 2020 and as much as \$424 billion a year in 2030. Over the next decade, cumulative global investment for renewable power generation technologies could reach nearly \$1.7 trillion.⁵ Most importantly, the bulk of this market (nearly 90%) exists outside of the United States.

Financing appropriate renewable energy and energy efficiency is a compelling opportunity for the United States Export Import Bank to make good on its institutional mandate to stimulate domestic manufacturing, create jobs, position the United States in

⁴ See <http://www.bp.com/subsection.do?categoryId=9037155&contentId=7068627>

⁵ See http://www.pewclimate.org/docUploads/Clean_Energy_Update__Final.pdf

a strategic global sector and provide international leadership on climate change.

While Ex-Im Bank has increased financing for renewable energy, this volume is still just over 1% of the agency's overall financing. The GAO has found that Ex-Im Bank has consistently failed to meet current appropriations law to allocate ten percent of the agency's annual financing for renewable energy and energy efficiency end use technology. Congress can enforce these directives by revising the agency's Charter to *integrate the annual ten percent target, increase the bank's capital authority allocations specifically for renewable energy, and improve Ex-Im Bank's ability to finance appropriate renewable energy upstream in the manufacturing process.*

Thank you again for inviting my testimony, and I look forward to answering any questions that you may have.