



**OFFICE OF INSPECTOR GENERAL
EXPORT-IMPORT BANK
of the UNITED STATES**

Follow-up Report on Export-Import Bank's Economic Impact Procedures

**September 8, 2015
OIG-EV-15-01**

The Export-Import Bank of the United States (“Ex-Im Bank”) is the official export-credit agency of the United States. Ex-Im Bank is an independent, self-sustaining executive agency and a wholly-owned US government corporation. Ex-Im Bank’s mission is to support jobs in the United States by facilitating the export of US goods and services. Ex-Im Bank provides competitive export financing and ensures a level playing field for US exports in the global marketplace.

The Office of Inspector General, an independent office within Ex-Im Bank, was statutorily created in 2002 and organized in 2007. The mission of the Ex-Im Bank Office of Inspector General is to conduct and supervise audits, investigations, inspections, and evaluations related to agency programs and operations; provide leadership and coordination as well as recommend policies that will promote economy, efficiency, and effectiveness in such programs and operations; and prevent and detect fraud, waste, abuse, and mismanagement.

This evaluation was conducted in accordance with the 2012 Quality Standards for Inspection and Evaluation as defined by the Council of Inspectors General on Integrity and Efficiency. This report does not constitute a Government audit and therefore, it was not conducted following the Generally Accepted Government Auditing Standards (“GAGAS”).



OFFICE OF INSPECTOR GENERAL
EXPORT-IMPORT BANK *of the* UNITED STATES



To: David Sena, Senior Vice President & Chief Financial Officer
James Cruse, Senior Vice President, Office of Policy, Planning and
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From: Mark Thorum
Assistant Inspector General, Inspections & Evaluations

Subject: Follow-up Report on Export-Import Bank's Economic Impact Procedures

Date: September 8, 2015

Attached please find the final evaluation Follow-up Report on Export-Import Bank's Economic Impact Procedures. Management agreed with the two recommendations contained in this Report. We consider management's corrective actions to be responsive. The recommendations will be closed upon completion and verification of the implementation of those actions.

We appreciate the courtesies and cooperation extended to us during the evaluation.

cc: Fred Hochberg, Chairman and President
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Attachment: Follow-up Report on Export-Import Bank's Economic Impact Procedures, OIG-EV-15-01, September 8, 2015

EXECUTIVE SUMMARY

Follow-up Report Economic Impact Procedures OIG-EV-15-01, September 8, 2015

Why We Did This Evaluation

We completed a follow-up review in regard to recommendations made to Ex-Im Bank pertaining to OIG's September 2010 evaluation report on the Bank's economic impact procedures (OIG-EV-10-03). The 2010 evaluation determined that Ex-Im Bank could improve its economic impact procedures to (1) better implement the intent of Congress as reflected in the Bank's Charter, (2) improve transparency, and (3) make the process more manageable for US exporters and other participants in the process. The evaluation report included a total of four findings and 16 recommendations.

The objective of this follow-up review was to determine whether Ex-Im Bank had taken appropriate corrective actions to address the reported findings and recommendations made in the OIG's September 2010 evaluation report. Due to congressional interest, the review also evaluated the process that Ex-Im Bank used to receive input from external parties in developing the new procedures.

Ex-Im Bank's Charter expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we recommend the following:

1. Ex-Im Bank should devise a methodology to periodically verify (a) the effectiveness of its economic impact procedures and methodological guidelines in implementing the congressional mandate, and (b) the Bank is following those procedures and guidelines as it processes applications.
2. Ex-Im Bank should issue a formal policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing procedures and guidelines.

What We Found

Ex-Im Bank operates under various congressional mandates, which includes the statutory requirement to determine whether the extension of support in the form of a direct loan or financial guarantee for a proposed transaction would adversely affect the US economy. Section 2(e) of the Bank's Charter contains two statutory prohibitions that prohibit the Bank from offering financial support for US exports whose likely impact would prove negative on US industries and employment. The Bank through its publicly disclosed *Economic Impact Procedures and Methodological Guidelines* and supplemental guidance implements the statutory requirement and prohibitions of the Charter by testing proposed transactions for adverse economic impact.

We found that Ex-Im Bank had made significant progress in implementing the recommendations and addressing the concerns identified in the September 2010 evaluation report. Specifically, OIG found that the Bank had completed corrective actions to address and close 15 of the 16 recommendations. With respect to the remaining recommendation to validate the results of its prior economic impact analyses, OIG recognizes the Bank's continued efforts to identify a feasible approach to carry out this analysis. OIG also recognizes the inherent challenges of undertaking an empirical review given the purported lack of data on the relevant economic characteristics that makes it difficult to establish that the approved transaction caused or contributed to substantial injury to US producers of an exportable good or related employment.

Nevertheless, OIG believes that Ex-Im Bank's economic impact procedures should be verified periodically for effectiveness to ensure compliance with the statutory requirement and to enable improvement to the processes for assessing economic impact. Consequently, OIG has closed and reformulated recommendation B3, with a view to allow the Bank more flexibility in devising a methodology to verify the effectiveness of its economic impact procedures and methodological guidelines and ensure they are being followed.

Finally, in assessing the Bank's process for developing and publishing its current procedures for economic impact, OIG observed that while the Bank received input and considered the views of multiple parties, the Bank does not have a formal policy statement on the engagement of external parties and the use of the notice and comment process in establishing procedures and guidance. A formal policy would provide a written framework and direction for Bank staff when engaging external parties and enhance transparency.

For additional information, contact the Office of Inspector General at (202) 565-3908 or visit <http://www.exim.gov/about/oig>.

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INTRODUCTION

We completed a follow-up review regarding the recommendations made to the Export-Import Bank of the United States (“Ex-Im Bank” or “Bank”) in the Office of Inspector General’s (“OIG”) evaluation report on the Bank’s economic impact procedures issued on September 17, 2010.¹ We initiated the review as part of our annual work plan.

The objective of the follow-up review was to determine whether Ex-Im Bank had taken appropriate actions to address the reported findings and recommendations made in the OIG’s September 2010 evaluation report. The review was not meant to be an evaluation of the issues raised in the previous report, but rather to review and assess whether the Bank’s management actions in response to the 16 recommendations have been implemented. Due to congressional interest, the review also evaluated the process that Ex-Im Bank used to receive input from external parties in developing the new procedures.

SCOPE AND METHODOLOGY

To achieve our objective, we reviewed the Bank’s *Economic Impact Procedures and Methodological Guidelines*, effective April 1, 2013,² *Proposal [for] Economic Impact Procedures and Methodological Guidelines*, dated September 27, 2012, and *Economic Impact Procedures*, effective April 2007. The OIG also reviewed the OIG’s September 2010 *Evaluation Report Relating to Economic Impact Procedures* and Ex-Im Bank’s annual competitiveness reports for calendar years 2010 to 2014. We reviewed applicable laws and regulations such as *The Charter of the Export-Import Bank of the United States* and its enabling legislation, *the Export-Import Bank Reauthorization Act of 2012*.^{3, 4} We interviewed management and staff from Ex-Im Bank’s Office of Policy, Planning and International Relations (“Policy and Planning Group” or “PPG”) to gain an understanding of the Bank’s efforts to address the 16 recommendations contained in the evaluation report. We interviewed staff from PPG and the Office of General Counsel to gain an understanding of the Bank’s processes for developing and publishing the current economic impact procedures. We discussed the status of our open recommendations and the follow-up review with GAO. We observed the Bank’s economic impact analysis process by attending a walk-through of the process provided by PPG staff. We also reviewed various supporting

¹ See Ex-Im Bank OIG’s *Evaluation Report Relating to Economic Impact Procedures* (OIG-EV-10-03, dated September 17, 2010) report, available for inspection at http://www.exim.gov/sites/default/files//oig/reports/EIB_Report_Final_Complete_Web-pdf-uploaded-via-Bulk-Upload-at-ts-2012-07-17-15-40-50.pdf.

² For more information on Ex-Im Bank’s *Economic Impact Procedures and Methodological Guidelines*, see <http://www.exim.gov/policies/economic-impact>.

³ See *The Charter of the Export-Import Bank of the United States* at http://www.exim.gov/sites/default/files//newsreleases/Updated_2012_EXIM_Charter_August_2012_Final.pdf.

⁴ See *Export-Import Bank Reauthorization Act of 2012* at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ122/pdf/PLAW-112publ122.pdf>. Pub. L. No. 112-122, 126 Stat. 357 (2012).

documentation to determine the measures taken by Ex-Im Bank management to implement the 16 recommendations. We performed our review at Ex-Im Bank’s main location in Washington, DC.

We conducted the follow-up review in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.⁵ The standards require the Ex-Im Bank OIG, as appropriate, to follow-up and ensure recommendations made to the Bank are adequately considered and agreed-on corrective actions are fully and properly implemented.

BACKGROUND

Established in 1934 through Executive Order, and subsequently made an independent agency of the United States (“US”) through congressional Charter in 1945, the Ex-Im Bank is a wholly-owned government corporation whose fundamental mission is to aid in the financing and to facilitate the export of US goods and services, and to contribute to the employment of US workers. Ex-Im Bank’s Charter, through its enabling legislation, establishes the Bank’s operations and programs and is reauthorized on a periodic basis. The Bank’s core financing programs include direct loans and guarantees to foreign buyers, export credit insurance for exporters and foreign buyers, and working capital finance to US small business exporters. Ex-Im Bank’s Charter expired on June 30, 2015.⁶ Following a lapse in the Charter, Section 7 authorizes the Bank to perform certain functions including “any of its functions subsequent to such date for the purposes of an orderly liquidation.”⁷

Congressional Mandate

Ex-Im Bank operates under various congressional mandates, which include the statutory requirement to determine whether the extension of Bank support in the form of a direct credit or financial guarantee for a proposed transaction would adversely affect the US economy.⁸ The requirements for this economic impact determination are outlined in Section 2(e) of Ex-Im Bank’s Charter and prohibit the Bank from offering financial support for US exports whose likely impact would prove negative on US industries or employment. Ex-Im Bank is the only export credit agency worldwide with a legislated mandate to

⁵ For more information on the *Quality Standards for Inspection and Evaluation*, see <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

⁶ Pub. L. No. 113-164, 128 Stat. 1874 (2014).

⁷ 12 USC § 635f. Charter, *supra* note 3 at 62.

⁸ The statutory requirement for economic impact analysis was added by Congress to Ex-Im Bank’s Charter in 1968 and has been subsequently modified through the congressional reauthorization process [12 USC § 635(b)(1)(B)(ii); Pub. L. No. 90-267, 82 Stat. 47. (1968)]. The Bank’s requirement to consider the adverse effects of loans and guarantees on US industry and jobs is codified at title 12 USC §§ 635(b)(1)(B)(ii), 635a-2.

conduct an economic impact analysis as a means of determining the potential adverse effect of providing support for the export of a capital good or service.⁹

There are two statutory prohibitions specified in Section 2(e) of the Charter that prohibit Ex-Im Bank from extending financial support for a transaction. For the first statutory prohibition under Section 2(e)(1) to apply, there are two conditions that have to be met as determined by the Bank.¹⁰ The first condition is that “the commodity is likely to be in surplus on the world markets at the time the resulting commodity will first be sold, [i.e., termed structural oversupply]; or the resulting production capacity is expected to compete with US production of the same, similar, or competing commodity, [i.e., termed trade flow impact].” The second condition is that the transaction “will cause substantial injury to US producers of the same, similar, or competing commodity.” According to Section 2(e)4, substantial injury can occur if the extension of Bank financial support for the export of a good or service results in the establishment of or increase in production equal to or in excess of one percent of US production.¹¹ The first statutory prohibition may be disregarded if the exception under Section 2(e)3 applies, whereby “in the judgment of the Board ... the short- and long-term benefits to industry and employment in the US are likely to outweigh the short- and long-term injury to US producers and employment of the same, similar, or competing commodity.”¹²

In regard to the second prohibition of Section 2(e) of the Charter, Ex-Im Bank is prohibited under Section 2(e)(2) from extending financial support if “the resulting production of substantially the same product” is subject to a specified trade measure or preliminary action (e.g., anti-dumping order and/or countervailing duty), unless the transaction applicant demonstrates “extraordinary harm” to the exporter and/or US economy.¹³ The Board’s application of this exception to the second statutory prohibition is subject to public notice and comment in the Federal Register.

Economic Impact Procedures and Guidelines

Although Ex-Im Bank’s Charter does not provide an explicit methodology for economic impact determinations, the Bank is required to implement regulations and procedures to minimize the potential adverse effect of Bank support on US industries.¹⁴ As such, the Bank’s Policy and Planning Group (“PPG”) staff implement the statutory requirement and prohibitions of Section 2(e) of the Charter through the publicly disclosed procedures for

⁹ See the *Report to the US Congress on the Export-Import Bank of the United States and Global Export Credit Competition for the Period January 1, 2013 through December 31, 2013* (dated June 2014) at <http://www.exim.gov/sites/default/files/newsreleases/US-Ex-Im-Bank-2012-Competitiveness-Report-to-Congress-Complete.pdf>.

¹⁰ Charter, *supra* note 3 at 39.

¹¹ Charter, *supra* note 3 at 41.

¹² Charter, *supra* note 3 at 40-41.

¹³ Charter, *supra* note 3 at 39-40.

¹⁴ Title 12 USC § 635a-2. Charter, *supra* note 3 at 91.

economic impact and supplemental guidance. The procedures were last updated pursuant to the *Export-Import Bank Reauthorization Act of 2012* (“Reauthorization Act”), which required the Bank to “develop and make publicly available methodological guidelines to be used by the Bank in conducting economic impact analyses or similar studies” within 180 days of enactment.¹⁵

The 2012 Reauthorization Act also required Ex-Im Bank to (1) maintain supporting documentation for its economic impact analyses and similar studies consistent with the GAO’s *Standards for Internal Control of the Federal Government*,¹⁶ and (2) report on the implementation of recommendations in GAO’s September 2007 evaluation report on the Bank’s economic impact analysis process.¹⁷ The revised *Economic Impact Procedures and Methodological Guidelines* (“Procedures and Guidelines”) were approved by the Bank’s Board on November 19, 2012, and became effective April 1, 2013.¹⁸

Purpose for Procedures and Guidelines

In testing proposed transactions for adverse economic impact, the purpose of the Bank’s Procedures and Guidelines are as follows:

- (1) To ensure that all transactions are screened for economic impact implications;
- (2) To identify those transactions that are subject to applicable trade measures or that pose a significant risk of potential substantial injury to the US economy; and
- (3) To put only those cases that meet the standards through a more extensive economic impact analytical process that is fair, consistent, and publicly transparent.¹⁹

The Bank’s economic impact procedures are comprised of two sections, *Section 1: Economic Impact Applicability* and *Section 2: Methodological Guidelines*. A discussion of each section and the attendant methodology follow below.

Section 1: Economic Impact Applicability

Section 1 consists of five stages, of which the first three stages are designed to determine whether the associated export (a) is an exportable good or service (Stage 1), (b) will result in the production of a good subject to a trade measure (Stage 2), and (c) will establish or expand foreign production capacity of an exportable good (Stage 3).²⁰ As a proposed transaction proceeds through the first three stages it can be effectively “screened-out” from analysis. This means further economic impact analysis of the proposed transaction is not

¹⁵ Pub. L. No. 112-122, 126 Stat. 357 (2012).

¹⁶ For more information, see <http://www.gao.gov/assets/80/76455.pdf>.

¹⁷ See GAO’s *Export-Import Bank: Improvements Needed in Assessment of Economic Impact* (GAO-07-1071, dated September 12, 2007) report, available for inspection at <http://www.gao.gov/products/GAO-07-1071>.

¹⁸ Procedures and Guidelines, *supra* note 2.

¹⁹ Procedures and Guidelines, *supra* note 2 at 2.

²⁰ Procedures and Guidelines, *supra* note 2 at 2-7.

required (e.g., the export does not enable the foreign buyer to produce an exportable good or service) or that Ex-Im Bank support for the transaction is prohibited (i.e., the exportable good is subject to a specified trade measure). Under Stage 4, transactions are divided into one of three categories for further analysis under Stage 5.

- Category A: Transactions not subject to specified trade orders or preliminary trade actions.
- Category B: Transactions subject to specified trade orders.
- Category C: Transactions subject to specified preliminary trade actions.

Stage 5 consists of a series of category specific screens and is designed to identify transactions in which the potential adverse impact is probable and therefore a detailed economic impact analysis conducted by PPG staff is warranted.

Section 2: Methodological Guidelines

Section 2 of Ex-Im Bank's economic impact procedures describe the set of assumptions and analyses applied by PPG staff for those transactions warranting a detailed economic impact analysis.²¹ Refer to Appendix A of this Report for a *Flowchart of the Non-Air Economic Impact Policy of the Export-Import Bank of the United States*.²² In response to adverse impact concerns voiced by the airline industry and in a related lawsuit about the Bank's approval of financial commitments for foreign airlines,²³ PPG staff developed specific screening procedures and a methodology to be applied in analyzing aircraft transactions, *Attachment A: Economic Impact for Services, Aircraft*, of the Bank's Procedures and Guidelines.²⁴ According to PPG staff, the major revisions to the economic impact procedures were the addition of *Section 2: Methodological Guidelines* and the aforementioned Attachment A. Other changes to the procedures included defining the purpose of subjecting transactions to economic impact pursuant to the congressional mandate, "codifying principles" concerning information required by the Bank to perform a detailed economic impact analysis, and defining technical terms (e.g., "watchful eye" and "structural oversupply").

Under the framework described above, the Bank's PPG staff reviews all transactions for potential adverse economic impact. The evidence reviewed includes project specific

²¹ Procedures and Guidelines, *supra* note 2 at 7-12.

²² The flowchart was created by PPG staff for internal purposes and is used as a training tool for new employees.

²³ The plaintiffs in the referenced lawsuit alleged that Ex-Im Bank violated the Section 2(e) requirement to consider the adverse effect and prohibitions of the Charter when it approved financial commitments to a foreign airline in 2011. The plaintiff's also disagreed with the Bank's "screening" (i.e., exclusion) of the commitments from detailed economic impact analysis and claimed the commitments "caused them competitive injury." For more information see https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv2024-55 and <http://law.justia.com/cases/federal/appellate-courts/cadc/12-5294/12-5294-2013-06-18.html>, and the Bank's responses on remand from the US Court of Appeals at <http://www.exim.gov/about/official-notice-and-public-comments>.

²⁴ Procedures and Guidelines, *supra* note 2 at 13-15.

information (e.g., new foreign production and competition) and global industry-specific information (e.g., industry studies and historical data). Applicants are also afforded the opportunity to submit a supplemental trade flow analysis for Board consideration. Ex-Im Bank has developed supplemental guidance for applicants in regard to information needed and its use by the Bank to conduct a detailed economic impact analysis for transactions that facilitate (1) foreign production of an exportable good,²⁵ or (2) foreign passenger aircraft services.²⁶

The results of PPG's economic impact analysis are documented in a memorandum. The memorandum and supporting evidence are provided to Ex-Im Bank's Board of Directors who is responsible for making the final decision as to whether a transaction will or will not proceed through the loan origination process and receive Ex-Im Bank support. If the Bank determines that a transaction meets the legislative specified prohibitions, then economic impact can be the basis for denial of support. Conversely, the Board can exercise the Section 2(e) exceptions to the statutory prohibitions (e.g., the benefits to US industry and employment outweigh the costs) and approve a transaction for support as mentioned previously.

Applications for Bank Support – 2010 to 2014

From 2010 to 2014, Ex-Im Bank "acted on" a total of 1,429 medium- and long-term transactions. This means the Bank "authorized, denied or withdrew" those transactions.²⁷ Of the 1,429 transactions, PPG staff reviewed 557 transactions (39.0 percent) for economic impact because the transaction involved an exportable capital good or service (i.e., Stage 1). Through further screening a total of 34 transactions (2.4 percent) were subjected to a detailed economic impact analysis (i.e., Stages 2 through 5). A total of 27 of the 34 cases yielded a net positive economic impact finding and were subsequently approved by Ex-Im Bank's Board. The remaining seven cases were withdrawn from further consideration for Bank support. For example, an exporter withdrew its application because it did not want to pursue the exception to the prohibition under Section 2(e)(2) of the Charter. Table 1 below provides summary data on applications for Bank support for calendar years 2010 to 2014.²⁸

²⁵ For more information, see <http://www.exim.gov/sites/default/files//Information-Needed-to-Conduct-a-Detailed-Economic-Impact-Analysis-Goods%5B1%5D.pdf>.

²⁶ For more information see <http://www.exim.gov/sites/default/files//Information-Needed-to-Conduct-a-Detailed-Economic-Impact-Aircraft-Passenger-Services%5B1%5D.pdf>.

²⁷ For more information, see the respective competitiveness report at <http://www.exim.gov/news/reports/competitiveness-reports>.

²⁸ Summary data on commercial passenger aircraft transactions is reported in parenthesis. For example, 27 cases involving commercial passenger aircraft were affected by the economic impact mandate in 2014. Prior to the 2013 Procedures and Guidelines, transactions involving an increase in foreign services were screened from further economic impact analysis.

Table 1: Ex-Im Bank Economic Impact Analysis (“EIA”)						
Calendar Year	2010	2011	2012	2013	2014	Total
Total “Acted On” Medium- and Long-Term Transactions	336	344	278	255 (32)	216 (27)	1,429 (59)
Total Cases Directly Affected by Economic Impact Mandate	118	135	98	103 (17)	103 (27)	557 (44)
Cases Subject to Detailed EIA	8	2	10	8 (0)	6 (1)	34 (1)
Cases Subject to Detailed EIA Approved by the Board	7	2	7	7 (0)	4 (1)	27 (1)

Source: Ex-Im Bank’s *Report to the US Congress on the Export-Import Bank and Global Export Credit Competition* for calendar years 2010 to 2014, <http://www.exim.gov/news/reports/competitiveness-reports>

Prior Reports on Economic Impact Procedures

Ex-Im Bank’s statutory mandate to consider the adverse effect of its support on proposed transactions has been the subject of congressional and public interest since its introduction in 1968. With each subsequent reauthorization, the Bank’s requirement to consider the potential adverse effect of providing support for the export of a good or service has been modified a total of nine times. Accordingly, both the General Accountability Office (“GAO”) and the Ex-Im Bank OIG have conducted reviews of the Bank’s economic impact processes and identified opportunities for improvement.

GAO Report (GAO-07-1071)

On September 12, 2007, GAO issued its report entitled, *Export-Import Bank: Improvements Needed in Assessment of Economic Impact*.²⁹ Pursuant to a congressional request, GAO reviewed Ex-Im Bank’s: (1) overall policies and procedures for determining economic impact; (2) the extent to which the procedures provide for the identification and appropriate analysis of applications that could potentially cause adverse economic impact; and (3) the extent to which its policies, procedures, and decisions are transparent to interested and affected parties.

GAO determined that Ex-Im Bank has procedures that identify proposed transactions with the “greatest potential to adversely affect US industry” and require a detailed economic impact analysis of those transactions. The report also acknowledged challenges and areas for improvement in the Bank’s screening and detailed analysis of transactions for economic analysis and limitations in the transparency of the economic impact process. GAO made a total of six recommendations to improve (1) the Bank’s identification and analysis of applications for economic impact and (2) the public transparency of the economic impact process for interested and affected parties. As of the date of this Report, all six of the recommendations made by GAO are closed. See Appendix E of this Report for the six recommendations.

²⁹ *Supra* note 17.

Ex-Im Bank OIG Report (OIG-EV-10-03)

On September 17, 2010, Ex-Im Bank OIG issued its report entitled, *Evaluation Report Relating to Economic Impact Procedures*.³⁰ The review was initiated by the OIG as a continuation of a special project completed by the OIG in November 2007. In Conference Report 109-265, dated November 2, 2005, the OIG was directed to provide a written analysis of loan guarantees provided by the Bank for an ethanol dehydration plant in Trinidad and Tobago (“Trinidad Project”).^{31, 32} Congress wanted to know if the Bank “met the conditions” of Section 2(e)(4) of the Charter in testing the proposed transaction for substantial injury and to report on the usage of “value added” by the Bank in that testing.³³ OIG was also directed to make recommendations as to the appropriateness of “value added” in making determinations with respect to Section 2(e)(4) of the Charter.

On November 5, 2007, the OIG issued a letter response to the House Committee on Financial Services that concluded (1) the Trinidad Project met the conditions of Section 2(e)(4) of the Charter and other related provisions, (2) the “value added” methodology is not routinely used by the Bank to determine whether or not a proposed transaction meets the statutory test of Section 2(e)(4), and (3) the use of the “value added” methodology with respect to the Trinidad Project as expressed in the Bank’s January 2005 report to the Congress was not appropriate.³⁴ The OIG advised the House Committee on Financial Services that it would continue its review of the Bank’s economic impact procedures to further address the conceptual basis of the “value added” methodology, issues identified in the GAO’s September 2007 report, and other matters identified by the OIG in the analysis of the Trinidad Project.

The objectives of the OIG’s 2010 evaluation of Ex-Im Bank’s economic impact procedures were to (1) independently evaluate the Bank’s economic impact procedures as well as critiques and suggestions for their improvement delivered by GAO, members of the Bank’s Board of Directors and management, transaction participants, Congress and other US government agencies having a role in the economic impact review process; and (2) identify opportunities to improve the efficiency and effectiveness of the economic impact procedures within the constraints of existing statutory requirements, the requirements of transaction proponents, and the resources available to Ex-Im Bank.

³⁰ *Supra* note 1.

³¹ For more information, see <http://www.gpo.gov/fdsys/pkg/CRPT-109hrpt265/pdf/CRPT-109hrpt265.pdf>.

³² Congress authorized the Ex-Im Bank OIG in 2002 (Pub. L. No.107-189), amending the Inspector General Act of 1978. The OIG commenced operations in August 2007.

³³ The Consolidated Appropriations Act of 2005 (Pub. L. No. 108-447) required Ex-Im Bank to submit a report to Congress on (1) the economic impact of Bank support for the Trinidad Project on US producers of ethanol and (2) whether the extension of support would result in substantial injury to those producers pursuant to Section 2(e)(4). The Bank applied the “value added” methodology in analyzing the economic impact of the Trinidad Project.

³⁴ Appendix G of the OIG’s September 2010 evaluation report includes the letter to the House Committee on Financial Services. Ex-Im Bank OIG, *supra* note 1 at G-1 to G-14.

The evaluation determined that Ex-Im Bank could improve its economic impact procedures to (1) better implement the intent of Congress as reflected in the Bank's Charter, (2) improve transparency, and (3) make the process more manageable for US exporters and other participants in the process, including the Board of Directors, Congress, US government agencies that review the Bank's actions in this area and observers in relevant US industries. Specifically, 16 recommendations for corrective action were made for the Bank to:

- Better support the Board's congressionally mandated role in deciding economic impact cases (Finding A),
- Guide the Board and staff in deciding economic impact cases (Finding B),
- Improve the transparency of the Bank's economic impact procedures and related determinations (Finding C), and
- Improve the efficiency and responsiveness of the Bank's economic impact procedures by simplifying the process and reallocating resources (Finding D).

On September 10, 2010, Ex-Im Bank management provided its response to the draft evaluation report and agreed that the "current economic impact procedures (including methodology) should be improved, including enhanced transparency and consistency across analyses." The Bank refrained from providing planned corrective actions to address the findings and related recommendations noting that "any significant adjustments" to the economic impact procedures would coincide with the 2011 congressional reauthorization of the Charter. Ex-Im Bank indicated that it would consider the findings and recommendations of both the 2007 GAO and the 2010 OIG reports as part of its "full review and likely overhaul" of its procedures. Ex-Im Bank's management responses and status updates to OIG's 2010 evaluation report are included in Appendix C.

RESULTS OF FOLLOW-UP REVIEW

I. Evaluation Report on Economic Impact Procedures (OIG-EV-10-03, September 17, 2010)

Finding A: Improve economic procedures and reports to better support the Board's congressionally mandated role in deciding economic impact cases.

In the 2010 evaluation report, Ex-Im Bank OIG concluded that the Board's ability to decide economic impact cases between 2002 and 2009 had been impaired by the economic impact analysis reports used by the Board as part of the decision-making process.

To address the potential impairment to the Board's decisional process for economic impact cases, the OIG made three recommendations:

A1. The PPG staff's economic impact reports should present the available quantitative and qualitative information obtained by the PPG staff that is material and relevant to the determination of economic impact in a concise balancing format that addresses each of the elements of the economic impact contemplated by the Charter and which will support the Board's decisional process under section 2(e)(3) of the Charter.

A2. Economic impact reports, supplemented by the Bank's publicly available economic impact procedures, should be written to reasonably inform the reader of the limitations and qualifications of the data, assumptions, estimates, methods and analysis relied upon by the PPG staff and the sensitivity of the conclusions expressed by the PPG staff to possible changes in assumptions or estimates that can be reasonably anticipated. The PPG staff should consider guidance provided by the Office of Management and Budget (OMB) in developing specifications for its analysis and reports to the Board.

A3. Reliance on trade flow analysis or any other quantitative methods used by the PPG staff that effectively decide economic impact cases should be made subject to Board approval and subsequent periodic reaffirmation.

Assessment of Corrective Actions - Recommendations A1 to A3

Based on our assessment, Ex-Im Bank took adequate corrective actions to satisfactorily address the three recommendations made in the OIG's 2010 evaluation report. On November 19, 2012, the Board approved the Bank's revised *Economic Impact Procedures and Methodological Guidelines*, effective April 1, 2013. The April 2013 Procedures and Guidelines, supplemental guidance, and related memoranda reflect this change in methodology. Appendix D of this Report contains a summary of the Bank's corrective actions.

The OIG has closed recommendations A1, A2, and A3 based on our assessment of the Bank’s corrective actions.

Finding B: Develop improved criteria to guide the Board and staff in deciding economic impact cases.

In the 2010 evaluation report, Ex-Im Bank OIG concluded that reliance on quantitative “trade flow” analysis to guide the PPG staff’s recommendation for approval or disapproval of economic impact cases by the Board was responsible for much of the criticism of the economic impact process by the Board of Directors and the Reviewing Agencies.³⁵ And that trade flow analysis, as applied during the period addressed in the 2010 evaluation report, appeared to be inconsistent with the requirements of the Bank’s Charter.

To address concerns in regard to the Bank’s reliance on and application of “trade flow” analysis in deciding economic impact cases, the OIG made four recommendations:

B1. While the data supporting trade flow analysis and the conclusions that may be drawn from that data and analysis have relevance to the Board’s consideration and determination of economic impact cases, trade flow analysis should not be the sole or primary criterion for deciding economic impact cases addressed in the PPG staff’s economic impact reports, and it should not be determinative of the PPG staff’s recommendation, or the Board’s decision, in economic impact cases.

B2. The PPG staff should develop additional criteria for analysis of economic impact that are consistent with the Bank’s Charter and congressional intent to assist the Board in deciding economic impact cases. These criteria should focus on the sort of macroeconomic trends that were characteristic of the US industries that were cited as experiencing substantial economic injury at the hands of foreign competitors in congressional hearings preceding the enactment of the current economic impact requirements expressed in Section 2(e) of the Bank’s Charter.

B3. It is suggested that the Bank’s Economic Impact Procedures provide for a periodic backward looking empirical review to determine whether it appears that transactions approved have in fact caused or contributed to any substantial injury to US producers of an Exportable Good or related employment under the criteria relied upon by the PPG staff and the Board, and whether any projected benefits to the US economy and employment of approving, or disapproving, specific transactions were in fact realized.

³⁵ The Reviewing Agencies include the Departments of Commerce, State and the Treasury, US Trade Representative and the Office of Management and Budget.

B4. It is suggested that in view of the suggestions above at A1, 2, and 3 and B1 and 2, the PPG staff should reevaluate the “sensitive commercial sectors list” promulgated by the Bank pursuant to Section 2(e)(5) of the Charter. In particular, it is suggested that the Bank further refine or omit reference to “Products associated with projects where a significant portion of the output directly produced by the project is destined for the US market and will compete directly with US production,” which is based on “likely net negative trade flow implication.” It is also suggested that the Board be consulted before the sensitive sector list is published to confirm that they are in general accord with it in order to avoid the Bank’s President effectively misrepresenting, and thereby usurping, the Board’s final authority to decide economic impact cases.

Assessment of Corrective Actions – Recommendations B1, B2 and B4

Based on our assessment, Ex-Im Bank took adequate corrective actions to satisfactorily address recommendations B1 and B2. The April 2013 Procedures and Guidelines, supplemental guidance, and related memoranda reflect this change in methodology. As for recommendation B4, we are closing the recommendation based on the Bank’s response and clarifications provided.³⁶ Appendix D of this Report contains a summary of the Bank’s corrective actions.

The OIG has closed recommendations B1, B2 and B4 based on our assessment of the Bank’s corrective actions.

Assessment of Corrective Actions – Recommendation B3

In regard to recommendation B3, OIG recognizes Ex-Im Bank’s continued efforts to identify an approach to retrospectively assess the validity of key assumptions applied when conducting an economic impact analysis (see Appendix D, June 2014 Status Update). During meetings to discuss the status of the recommendation, PPG staff expressed their ongoing concern to the OIG about the usefulness and feasibility of the recommendation given the lack of information to “look back” and review a transaction. Further, as explained by PPG staff the process for a detailed analysis of a proposed transaction “is not a technical evaluation of the likely impact.” Rather, the Bank’s methodological process entails “a hypothetical scenario of a potential worst case impact.” According to PPG staff, “When a transaction poses a threat of a substantial injury, the Bank’s economic impact methodology applies assumptions that yield an extreme worse case outcome. For example, one of the assumptions is that displaced US production cannot be sold to any buyer at any price. Hence, performing ‘backward’ looking analyses to verify the results of a hypothetical analysis that is not intended to predict the likely impact would not inform future analyses.”

³⁶ OIG notes that Ex-Im Bank’s April 2013 Procedures and Guidelines posted on the Bank’s website at <http://www.exim.gov/policies/economic-impact> contain a link to the Bank’s Sensitive Sector List. See also <http://www.exim.gov/policies/economic-impact/sensitive-commercial-sectors>.

In the February 2013 status update, the Bank commented on the aim of the mandate for economic impact “to capture the prevailing political sentiment and technical considerations at the time the Bank authorizes uniquely defined transactions, [and that] checking the accuracy of previous assumptions on past transactions would not likely inform such issues.” The Bank stated further “there is no practical (if any) way to actually look back and determine the validity of key analytical assumptions (e.g., were US producers displaced by products from the Ex-Im Bank-supported foreign project?).”

Although OIG does not express an opinion on the availability of data, we understand Ex-Im Bank’s concerns with respect to the availability of data on economic characteristics and the challenge of distinguishing between changes in economic impact attributable to the respective transaction from changes attributable to other external factors (e.g. policies and customs of the foreign government) that are not within the Bank’s purview. As previously noted, the Bank’s detailed analysis of economic impact is predicated on a worst case scenario versus a prediction of a likely scenario. The OIG’s 2010 evaluation report recognized similar difficulties in achieving the objective of an economic impact analysis such as limitations in data, time and resources.³⁷ These limitations make it difficult in the context of an empirical review to establish that the approved transaction caused or contributed to substantial injury to US producers of an exportable good or related employment.

Nevertheless, OIG believes that Ex-Im Bank should periodically validate its procedures and guidelines for economic impact determinations and related analyses. As prescribed in OMB Circular A-123 Revised, *Management’s Responsibility for Internal Control*, Ex-Im Bank management has a “fundamental responsibility to develop and maintain effective internal control.”³⁸ Internal control is a process effected by Ex-Im Bank’s Board of Directors and management, designed to provide reasonable assurance about the achievement of the Bank’s mission and objectives in regard to effectiveness and efficiency of operations, reliability of financial reporting, and compliance with laws and regulations. As stated in the GAO’s *Standards for Internal Control in the Federal Government*, “control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives.”³⁹ Both the OMB Circular and GAO standards prescribe separate and ongoing evaluations of internal control activities as part of monitoring by federal agencies.

With respect to Ex-Im Bank, Congress has directed the Bank to determine whether the extension of support in the form of a direct credit or financial guarantee for a proposed

³⁷ In the 2010 evaluation report, OIG concluded: “While the objective of economic impact review can be stated simply, it is difficult in practice to achieve due to limitations in data, time and resources, the need to rely on potentially conflicting data and opinions regarding future relationships of supply, demand, prices and terms of international trade in changing markets, and the potentially conflicting interests of different segments of the US economy.” Ex-Im Bank OIG, *supra* note 1 at i.

³⁸ For more information see http://www.whitehouse.gov/omb/circulars_a123_rev.

³⁹ GAO, *supra* note 16.

transaction would adversely affect US industry and employment.⁴⁰ Accordingly, the Bank has implemented procedures and methodological guidelines for its economic impact determinations to ensure Bank personnel carry out the analytical process in accordance with the congressional mandate. Control activities such as those established by Ex-Im Bank for economic impact should be verified periodically to ensure compliance with the statutory requirement, and to enable improvement to the processes for assessing economic impact. The results of this verification are not only important for Bank management to know the effectiveness of the control activity, but also to establish creditability of the analytical process applied and key assumptions made and to inform future decisions as to the evolution of the economic impact requirement. As mentioned previously, Ex-Im Bank's economic impact requirement has been subject to nine modifications since its addition to the Charter in 1968.

Consequently, OIG closed and reformulated recommendation B3 into a new recommendation within this Report to reflect the above considerations. We reformulated the recommendation with a view to allow the Bank more flexibility in devising a methodology to verify the effectiveness of its economic impact procedures and methodological guidelines and to ensure those procedures and guidelines are being followed by the Bank as it processes applications.

The OIG closed and reformulated recommendation B3, and issued a new recommendation in this Report.

RECOMMENDATION 1

Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we recommend the following:

- To ensure compliance with the congressional mandate and to enable improvements to Ex-Im Bank's processes for assessing proposed transactions for adverse economic impact, OIG recommends that the Bank devise a methodology to periodically verify (a) the effectiveness of its economic impact procedures and methodological guidelines in implementing the congressional mandate, and (b) the Bank is following those procedures and guidelines as it processes applications.

Management Response:

Please see Appendix A, Management Response and OIG Evaluation.

⁴⁰ Section 2(b)(1)(B) of the Bank's Charter requires that, "the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry ... and employment" Charter, *supra* note 3 at 12-13.

Finding C: The Bank should improve the transparency of its economic impact procedures and its economic impact determinations.

In the 2010 evaluation report, Ex-Im Bank OIG concluded that the results of economic impact reviews were expressed in relatively brief written reports prepared by the Bank's PPG staff and in minutes of meetings of the Board of Directors, none of which are publicly disclosed or thereafter easily accessible by the Bank's Board and management. The PPG staff's internal procedures for producing economic impact reports rely to a significant extent on the PPG staff's experience and practice in producing prior economic impact reports and are not thoroughly documented.

To address concerns in regard to the transparency of the Bank's economic impact procedures and related determinations, the OIG made three recommendations:

C1. Revising the economic impact procedures to include more information about the PPG staff's methodology and publishing the expanded description on the Bank's website.

C2. Revising the Bank's internal procedures to more fully and accurately describe the PPG staff's methodology in preparing economic impact reports.

C3. Making economic impact reports publicly available after redacting them, or delaying their release, to protect sensitive business confidential information of the transaction proponents.

Assessment of Corrective Actions – Recommendations C1 to C3

Based on our assessment, Ex-Im Bank took adequate corrective actions to satisfactorily address recommendations C1, C2 and C3. The April 2013 Procedures and Guidelines, supplemental guidance, and related memoranda reflect this change in methodology. Appendix D of this Report contains a summary of the Bank's corrective actions.

The OIG has closed recommendations C1, C2 and C3 based on our assessment of the Bank's corrective actions.

Finding D: The Bank should improve the efficiency and responsiveness of the economic impact procedures by simplifying the process and reallocating resources.

In the 2010 evaluation report, Ex-Im Bank OIG concluded that other US government agencies that evaluate the impact on the US economy of specified transactions or developments apply a number of strategies to advance the goals of achieving transparency, reasonably accurate determinations and responsiveness to the interests of the public, transaction participants and other stakeholders that have not been fully evaluated or applied in the context of Ex-Im Bank's economic impact procedures.

To address concerns in regard to the efficiency and responsiveness of the Bank's economic impact procedures, the OIG made six recommendations:

D1. Developing and making public a methodology to identify at an early stage transactions where there appears to be little risk of adverse economic impact in order to allow expedited handling of those cases.

D2. Requesting exporters of capital equipment to provide relevant data that is reasonable available to them, without undue burden, during the application process to support an accelerated review by the PPG staff.

D3. Inviting (but not requiring) proponents of transactions subject to formal economic impact review to submit white paper analyses addressing economic impact concerns that might be raised by the transaction.

D4. Providing earlier notice to Congress and the Reviewing Agencies of the initiation of a substantive economic impact review, after an initial screening review but before PPG staff has prepared a complete economic impact report.

D5. Providing earlier notice to Congress and the Reviewing Agencies of the initiation of a substantive economic impact review, after an initial screening review but before PPG staff has prepared a complete economic impact report.

D6. Hiring, or contracting for the services of, a trained economist with a background in macroeconomic market analysis of the sort required by economic impact review to assist in implementing the improvements suggested in this report.

Assessment of Corrective Actions – Recommendations D1 to D6

Based on our assessment, Ex-Im Bank took adequate corrective actions to satisfactorily address and close recommendations D1 to D6. The April 2013 Procedures and Guidelines, supplemental guidance, and related memoranda reflect this change in methodology. Appendix D of this Report contains a summary of the Bank's corrective actions.

The OIG has closed recommendations D1 to D6 based on our assessment of the Bank's corrective actions.

II. Developing and Publishing Economic Impact Procedures

Ex-Im Bank's economic impact procedures have been the subject of scrutiny by Congress and by affected external parties, particularly in relation to financing of wide-body aircraft. US airlines, particularly Delta Air Lines ("Delta"), have pursued litigation challenging the Bank's application of economic impact procedures, and a US producer of wide-body aircraft, Boeing, is affected by economic impact procedures applied to aircraft transactions. Published reports in March 2015 stated that Ex-Im Bank and Boeing had communicated regarding development of economic impact procedures

related to aircraft financing, prompting congressional concerns.⁴¹ To address these concerns, our review also evaluated the process that Ex-Im Bank used to receive input from external parties in developing the new procedures.

Ex-Im Bank's procedures for economic impact were last updated pursuant to the 2012 Reauthorization Act, which required the Bank to "develop and make publicly available methodological guidelines to be used by the Bank in conducting economic impact analyses or similar studies" within 180 days of enactment.⁴² The Act, however, did not require Ex-Im Bank to amend the procedures for economic impact in effect since 2007. The Bank was only required by the Act to make its methodology for conducting detailed economic impact analyses publicly available.

In addition to publishing the methodology as required by the 2012 reauthorization, the Bank also developed additional procedures to address adverse impact concerns voiced by the airline industry and in a related lawsuit about the Bank's approval of financial commitments for foreign airlines.⁴³ Ex-Im Bank developed specific screening procedures and a methodology to be applied in analyzing aircraft transactions, *Attachment A: Economic Impact for Services, Aircraft* ("Attachment A").⁴⁴ Under the prior procedures for economic impact, transactions involving the export of a good or service that would result in an increase in a foreign service was removed (i.e., screened) from further economic impact analysis.⁴⁵ According to PPG staff, the major revisions to the economic impact procedures were the addition of *Section 2: Methodological Guidelines* and the aforementioned Attachment A. The revised Procedures and Guidelines for economic impact were approved by the Bank's Board on November 19, 2012, and became effective on April 1, 2013.

In revising the procedures for economic impact, Ex-Im Bank received input and considered the views of multiple parties, including the recommendations from GAO and Ex-Im Bank OIG, senior management, a panel of experts in international trade, exports and/or economics, other US government agencies involved in international monetary and financial policies and the Review Agencies ("US government agencies").⁴⁶ In developing the screening procedures and methodology for aircraft transactions, Ex-Im Bank considered the views of Delta obtained through correspondence and the ongoing litigation. The Bank also sought input and information from Boeing as disclosed in an article in *The Wall Street Journal* ("WSJ"), *Boeing Helped Craft Own Loan Rule*, published

⁴¹ For example, see <http://www.wsj.com/articles/boeing-helped-craft-own-loan-rule-1426203934>.

⁴² See *supra* note 15.

⁴³ See *supra* note 23.

⁴⁴ Procedures and Guidelines, *supra* note 2 at 13-15.

⁴⁵ The Bank decided that transactions involving service sectors, such as aircraft, where interested parties have presented concerns of potential adverse impact to the Bank should be subject to further review for economic impact.

⁴⁶ See *supra* note 35.

on March 12, 2015.⁴⁷ Through a Freedom of Information Act request to Ex-Im Bank, the WSJ obtained copies of emails exchanged between the Bank and Boeing in 2012 concerning the proposed Procedures and Guidelines for economic impact. According to Bank staff, as the only wide-body aircraft manufacturer in the US, Boeing was contacted to obtain pertinent data and information about the manufacturing and sales of these aircraft (e.g., deliveries, route plans, and elasticity of demand by sector) for use in developing the procedures and methodology outlined in Attachment A.

Although not required, the Bank solicited public comments on the *Proposed Economic Procedures and Methodological Guidelines* through the Federal Register on September 27, 2012, and in a partially open meeting of the Board of Directors on November 19, 2012.⁴⁸ The proposed Procedures and Guidelines were also accessible to the public on the Bank's website.

OIG notes that the Administrative Procedure Act's ("APA") informal ("notice and comment") rulemaking requirements did not apply to the Bank's development of these procedures.⁴⁹ Title 12 USC §§ 635(e)(7)(F) and 635a-2 exclude the Bank from the notice and comment requirements of "subchapter II of chapter 5 of title 5" (i.e., APA) for development of economic impact procedures. Under § 635(e)(7)(B)(i) and (iii)(I), notice and comment in the Federal Register is only required by statute if (1) the Bank "intends" to conduct a detailed economic impact analysis of a proposed transaction or (2) there is a "material change" to an application where notice has been provided by the Bank of its intention to conduct a detailed economic impact analysis.⁵⁰ Bank staff confirmed that APA's notice and comment requirements do not apply with respect to developing procedures for economic impact. However, the notice and comment process provides the Bank with a systematic approach to obtain public input and vet participants' interests, and provides for a substantive record for analysis. Bank staff explained had they not provided for notice and comment, the Bank would have been subject to more questions and complaints.

In response to the Federal Register notice, Ex-Im Bank received comments from external parties, including individual and joint submissions from trade associations representing various US industries (e.g., aviation, aerospace, manufacturing, iron and steel, nuclear, and satellite), international transaction banking and private sector business enterprises. Public comments were also received from publicly traded

⁴⁷ See *supra* note 41.

⁴⁸ For more information, see <http://www.gpo.gov/fdsys/pkg/FR-2012-09-27/pdf/2012-23866.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2012-11-09/pdf/2012-27421.pdf>.

⁴⁹ Title 5 USC Subchapter II; Pub. L. No. 79-404, 60 Stat. 237 (1946).

⁵⁰ The United States District Court for the District of Columbia has held in multiple cases involving the Bank and the airline industry that the APA rulemaking requirements do not apply to the development of economic impact procedures. For example, see https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv2024-55 and https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0192-54.

corporations (e.g., Boeing and Delta),⁵¹ a privately held company, a member of Congress, trade unions (e.g., International Association of Machinists and Aerospace Workers), and advocacy groups representing US businesses and exporters (e.g., US Chamber of Commerce). To facilitate the review process of the comments received on the proposed Procedures and Guidelines, Ex-Im Bank engaged a panel of experts in international trade, exports and/or economics. The three experts engaged by the Bank were responsible for reviewing and providing comments on the proposed Procedures and Guidelines and public comments received in response to the notice in the Federal Register and from US government agencies.

In reviewing the comments received on the Bank's proposed Procedures and Guidelines, OIG notes the general consensus was supportive of the Bank's efforts to provide greater transparency and clarity to its procedures for economic impact. Even though a number of commenters questioned the extension of the procedures to aircraft transactions, they also provided recommendations to improve the Procedures and Guidelines, including Attachment A. For example, commenters disagreed on the Bank's proposed \$200 million threshold for determining whether an aircraft transaction (i.e., termed "evaluated transaction") warrants further economic impact review. One commenter, Boeing, noted that the threshold is too low, while another commenter, Delta, said the threshold is too high. Although Ex-Im Bank retained the \$200 million threshold for aircraft transactions, the Bank defined what constitutes an "evaluated transaction" with respect to the threshold and described how the substantial injury test (i.e., one percent) is met in the final Procedures and Guidelines.⁵²

Additional changes to the Procedures and Guidelines based on the Bank's consideration of comments received included clarifying the set of assumptions and analyses applied in *Section 2: Methodological Guidelines*. For example, the Bank clarified the requirement for submission of information by applicants for use in the structural oversupply and trade flow analyses for large transactions versus small transactions and noted that it would include the existence of competition from other ECAs in the Bank's economic impact analyses for Board reference.⁵³ The Bank also reduced the proposed threshold when proportionality applies from 20 to 10 percent for transactions in which the Bank's financing is "de minimus"⁵⁴ and clarified the procedures for conducting a "cost analysis" for all transactions under trade flow analysis.⁵⁵

The fact that the Bank received input from and had communications with external parties during the development of the new procedures, prior to publication of the proposed procedures and formal solicitation of comments, may create an appearance of

⁵¹ OIG notes that Delta's comments were submitted jointly with the Airline Pilots Association, International.

⁵² Procedures and Guidelines, *supra* note 2 at 13-14.

⁵³ Procedures and Guidelines, *supra* note 2 at 8 and 9.

⁵⁴ That is the Bank's financing represents 10 percent or less of the total project cost for a proposed transaction.

⁵⁵ Procedures and Guidelines, *supra* note 2 at 9 and 10.

preferential treatment for certain external parties. OIG observed that Ex-Im Bank does not have a formal policy for communicating with and obtaining information from external parties. Although not required by statute, Ex-Im Bank did provide for a notice and comment period with respect to the proposed Procedures and Guidelines for economic impact. However, the Bank staff had additional communications with Boeing outside this framework as evidenced by the e-mail correspondence, and crafted the procedures in response to concerns raised by Delta.

Based on our review of documents and interviews with Bank staff, the OIG did not find evidence that Boeing or any other outside party exercised undue influence with respect to the formulation of the screening procedures and methodology for analyzing aircraft transactions. Ex-Im Bank staff confirmed that they considered the input received from several outside parties in developing the Procedures and Guidelines for economic impact. Further, they noted that the final policies that were adopted did not include certain changes proposed by Boeing. For example, a Bank staff member cited Boeing's comment that the Bank should not implement the economic impact procedures for aircraft transactions as it was not a congressional requirement. The Bank did not agree with Boeing's comment as the procedures and methodology to be applied in analyzing aircraft transactions were approved and implemented. Conversely, in its final policy, the Bank changed how it determines whether the substantial injury test for aircraft transactions is met based on comments received from Delta that "most transactions would fail the proposed 1% test" and therefore, not be subject to a detailed economic impact analysis. Ex-Im Bank revised the denominator in the metric used for calculating the threshold to distinguish between wide-body and narrow-body aircraft. By doing so, the Bank lowered the threshold for transactions to qualify for detailed analysis. Further, the metric used to calculate substantial injury was included in the final policy.

Although our review of the process finds that Ex-Im Bank considered input from a range of sources in developing its revised Procedures and Guidelines for economic impact, including a public notice and comment process, OIG also finds that important input was received through informal methods that were not captured in the public record, and the public notice and comment process was initiated at the discretion of the Bank. In the interest of greater transparency and clarity, Ex-Im Bank should issue a formal policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing procedures and guidance. A formal policy would provide a written framework and direction for Bank staff when engaging external parties and enhance transparency. This policy statement would not necessarily bind the Bank to proceed through notice and comment for any particular action that is explicitly exempt by the Charter or through statute.

RECOMMENDATION 2

Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we recommend the following:

- In the interest of greater transparency and clarity, Ex-Im Bank should issue a formal policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing procedures and guidelines.

Management Response:

Please see Appendix A, Management Response and OIG Evaluation.

CONCLUSION

Ex-Im Bank has made significant progress in implementing the recommendations and addressing the concerns identified in the OIG's September 2010 *Evaluation Report Relating to Economic Impact Procedures*. Specifically, we found that the Bank had completed corrective actions to address and close 15 of the 16 recommendations. However, Ex-Im Bank had yet to address recommendation B3 which suggested that the Bank provide a periodic empirical review to validate the results of its economic impact analyses.

OIG recognizes Ex-Im Bank's continued efforts to address the recommendation. We also recognize the inherent challenges in undertaking an empirical review given the purported lack of time series data on the relevant economic characteristics that makes it difficult to establish that the approved transaction caused or contributed to substantial injury to US producers of an exportable good or related employment. Nevertheless, OIG believes that Ex-Im Bank's economic impact procedures should be verified periodically to ensure compliance with the statutory requirement and to enable improvement to the processes for assessing economic impact. Therefore, OIG closed and reformulated recommendation B3 with a view to allow the Bank more flexibility in devising a methodology to verify the effectiveness of its economic impact procedures and methodological guidelines and ensure those procedures and guidelines are being followed by the Bank as it processes applications.

In assessing the Bank's process for developing and publishing the current procedures for economic impact, OIG observed that the Bank does not have a formal policy statement on the engagement of external parties and the use of the notice and comment process in establishing procedures and guidance. A formal policy would provide a written framework and direction for Bank staff when engaging external parties and enhance transparency.

Finally, Ex-Im Bank's Charter expired as of June 30, 2015. OIG recognizes that implementation of the recommendations in this Report is subject to reauthorization.

APPENDIXES

Appendix A: Management Response and OIG Evaluation



EXPORT-IMPORT BANK
OF THE UNITED STATES

August 31, 2015

Michael McCarthy
Deputy Inspector General
Office of the Inspector General
Export-Import Bank of the United States
811 Vermont Avenue NW
Washington, DC 20571

Dear Deputy Inspector General McCarthy,

Thank you for providing the Export-Import Bank of the United States ("Ex-Im Bank" or "the Bank") Management with the Office of the Inspector General's (OIG) "Follow-up Report on Export-Import Bank's Economic Impact Procedures" (August 2015). Management continues to support the OIG's work which complements the Bank's efforts to continually improve its processes. Ex-Im Bank is proud of the strong and cooperative relationship it has with the OIG.

The Bank is committed to full cooperation with the OIG and will work with staff on implementing all recommendations that resulted from this audit. Additionally, the Bank appreciates that the OIG noted that Ex-Im Bank "made significant progress in implementing the recommendations and addressing the concerns identified in the September 2010 evaluation report" and that the OIG acknowledges that they "did not find evidence that Boeing or any other outside party exercised undue influence with respect to the formulation of the screening procedures and methodology for analyzing aircraft transactions".

Recommendation 1: To ensure compliance with the congressional mandate and to enable improvements to Ex-Im Bank's processes for assessing proposed transactions for adverse economic impact, OIG recommends that the Bank devise a methodology to periodically verify (a) the effectiveness of its economic impact procedures and methodological guidelines in implementing the congressional mandate, and (b) the Bank is following those procedures and guidelines as it processes applications.

Management Response: Ex-Im Bank concurs with the OIG recommendation. Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we agree to the following. In response, the Bank will explore the feasibility of devising a methodology to periodically verify the effectiveness of and adherence to the Bank's Economic

Impact Procedures and Methodological Guidelines (EI Procedures). The devised methodology will be constructed with a view to ensure that the procedures adequately and transparently comply with the statutory requirement, as well as facilitate possible improvements in the Bank's processes with respect to implementation of the EI Procedures.

Recommendation 2: In the interest of greater transparency and clarity, Ex-Im Bank should issue a formal policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing procedures and guidelines.

Management Response: Ex-Im Bank concurs with the OIG recommendation. Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we agree that the Bank shall issue a formal policy statement with respect to engagement of relevant external parties and the use of the notice and comment process in establishing procedures and guidelines related to the economic impact of Bank transactions. In developing such a statement, the Bank will seek to maximize transparency and stakeholder input in the development of procedures and guidelines that influence Ex-Im Bank requirements regarding economic impact.

We thank the OIG for your efforts to ensure the Bank's policies and procedures continue to improve, as well as the work you do with us to protect Ex-Im funds from fraud, waste, and abuse. We look forward to strengthening our working relationship and continuing to work closely with the Office of the Inspector General.

Sincerely,



Charles J. Hall
Executive Vice President and Chief Risk Officer
Export-Import Bank of the United States

OIG Evaluation

On August 31, 2015, Ex-Im Bank provided its management response to a draft of this Report, agreeing with the two recommendations. The response identified the Bank's actions to address the recommendation. OIG considers the Bank's actions sufficient to resolve the reported recommendations, which will remain open until OIG determines that the agreed upon corrective actions are completed and responsive to the reported recommendations. The Bank's management response to the reported recommendations and OIG's assessment of the response are as follows:

RECOMMENDATION 1

Recommendation 1: To ensure compliance with the congressional mandate and to enable improvements to Ex-Im Bank's processes for assessing proposed transactions for adverse economic impact, OIG recommends that the Bank devise a methodology to periodically verify (a) the effectiveness of its economic impact procedures and methodological guidelines in implementing the congressional mandate, and (b) the Bank is following those procedures and guidelines as it processes applications.

Management Response: Ex-Im Bank concurs with the OIG recommendation. Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we agree to the following. In response, the Bank will explore the feasibility of devising a methodology to periodically verify the effectiveness of and adherence to the Bank's Economic Impact Procedures and Methodological Guidelines (EI Procedures). The devised methodology will be constructed with a view to ensure that the procedures adequately and transparently comply with the statutory requirement, as well as facilitate possible improvements in the Bank's processes with respect to implementation of the EI Procedures.

Evaluation of Management's Response: Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

RECOMMENDATION 2

Recommendation 2: In the interest of greater transparency and clarity, Ex-Im Bank should issue a formal policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing procedures and guidelines.

Management Response: Ex-Im Bank concurs with the OIG recommendation. Ex-Im Bank's reauthorization expired as of June 30, 2015. In the event that the Bank were to be reauthorized, we agree that the Bank shall issue a formal policy statement with respect to engagement of relevant external parties and the use of the notice and comment process in establishing procedures and guidelines related to the economic impact of Bank transactions. In developing such a statement, the Bank will seek to maximize transparency and stakeholder input in the development of procedures and guidelines that influence Ex-Im Bank requirements regarding economic impact.

Evaluation of Management's Response: Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

Table 2: Summary of Management's Comments on the Recommendations				
Rec. No.	Corrective Action: Taken or Planned⁵⁶	Expected Completion Date⁵⁷	Resolved: Yes or No⁵⁸	Open or Closed⁵⁹
1.	The Bank will identify options to periodically verify the effectiveness of its EI procedures and guidelines for adherence to those procedures. The recommended course of action is to be presented to the Bank's Executive Working Group ("EWG") and then implemented.	06/17/2016	Yes	Open
2.	The Bank will identify options for issuing a policy statement with respect to the engagement of external parties and the use of the notice and comment process in establishing EI procedures and guidelines. The recommended course of action is to be presented to the EWG and then implemented.	07/29/2016	Yes	Open

⁵⁶ Ex-Im Bank provided an implementation plan with detailed corrective actions and target completion dates to a draft of this Report.

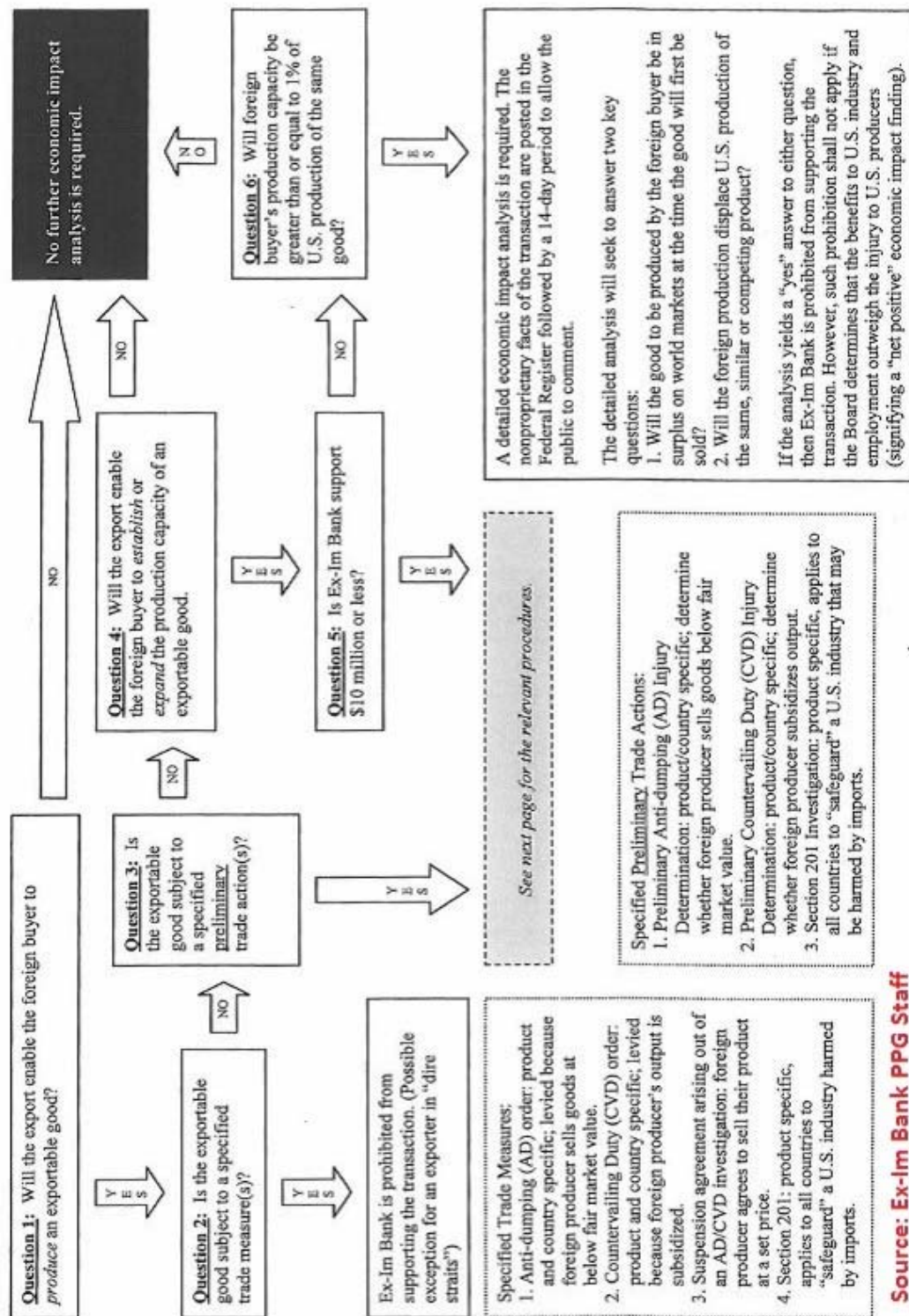
⁵⁷ Ex-Im Bank OIG has requested target completion dates for each of the outstanding recommendations.

⁵⁸ "Resolved" means that (1) Management concurs with the recommendation, and the planned, ongoing and completed corrective action is consistent with the recommendation; or (2) Management does not concur with the recommendation, but alternate action meets the intent of the recommendation.

⁵⁹ Upon determination by Ex-Im Bank OIG that the agreed upon corrective action has been completed and is responsive to the recommendation, the recommendation can be closed.

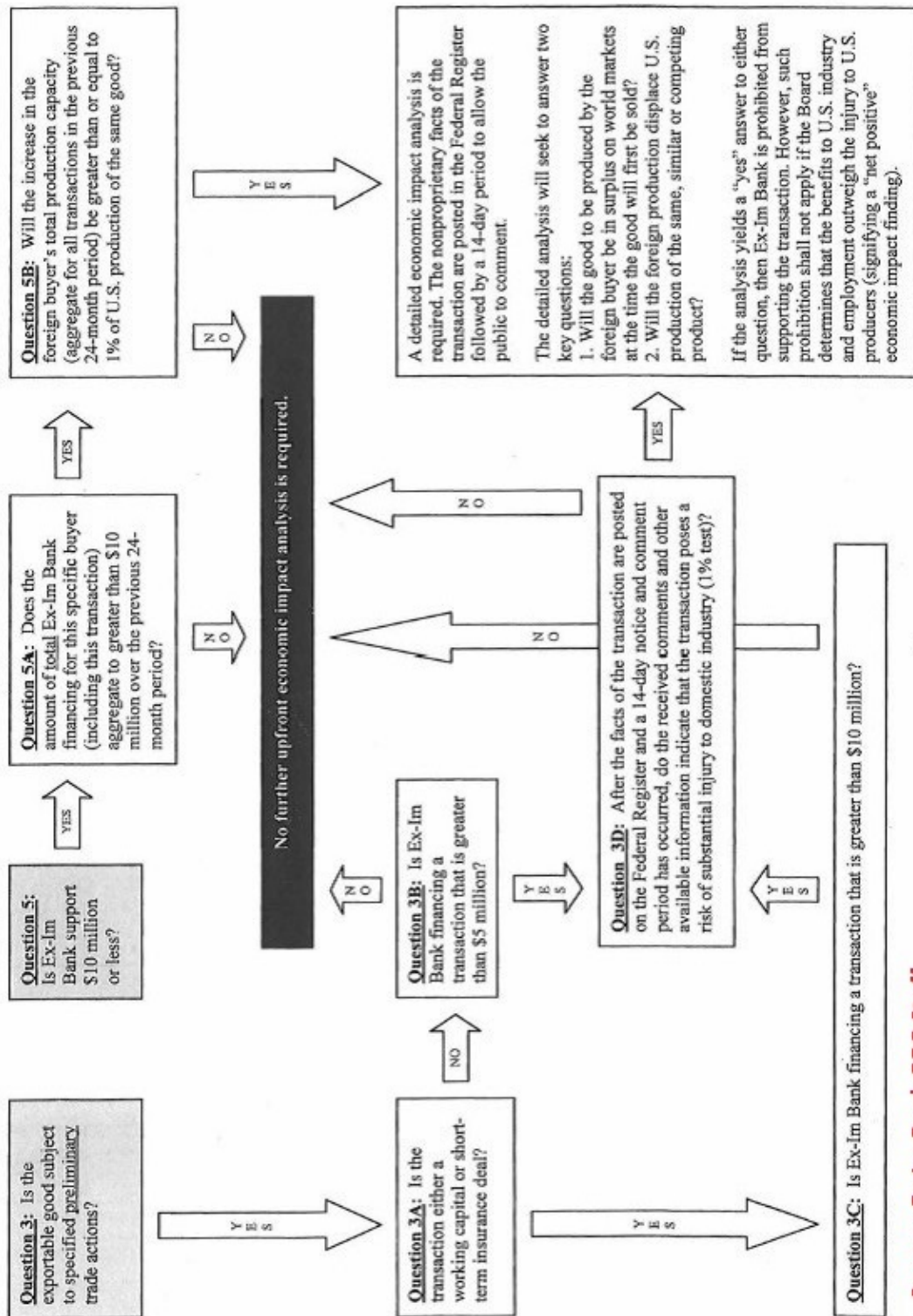
Appendix B: Ex-Im Bank Flow Chart of Non-Air Economic Impact Process

Figure 1: Flowchart of the Non-Air Economic Impact Policy of the Export Import Bank of the United States
Effective April 2013



Source: Ex-Im Bank PPG Staff

Figure 1: Flowchart of the Non-Air Economic Impact Policy of the Export Import Bank of the United States
Effective April 2013



Source: Ex-Im Bank PPG Staff

Appendix C: Ex-Im Bank Management Responses and Status Updates – 2010 OIG Report

Table 3: Management Responses and Status Updates	
Date	Details
September 10, 2010	<u>Management Response:</u> Ex-Im Bank's management agreed "its current economic impact procedures (including methodology) should be improved, including enhanced transparency and consistency across analyses." However, Bank management decided that any revision to its procedures would coincide with the 2011 congressional reauthorization process of the Bank's Charter. The Bank planned to "initiate a full review and likely overhaul" of its procedures, considering the 2007 GAO and 2010 OIG reported findings and recommendations.
July 5, 2011	<u>Status Update:</u> The Bank advised that it had established a time frame for a comprehensive review of the economic impact procedures. The Bank reaffirmed its plan to consider the GAO and OIG reports. The review would also consider the Bank's own assessment of the procedures for economic impact since 2001. The Bank planned to start the review in July 2011 and complete the review by the end of the calendar year.
September 18, 2012	<u>Status Update:</u> The Bank advised that a comprehensive review of the economic impact procedures had commenced. The review process would include input from the public, other US agencies and independent consultants with backgrounds in public policy and international trade issues.
February 12 and 15, 2013	<p><u>Management Response:</u> The Bank's response cited four key themes based on its interpretation of the 2010 OIG evaluation report:</p> <ol style="list-style-type: none"> 1. The OIG views the economic impact mandate as requiring the Bank to support one US firm/sector over another. As such, these decisions need to be made at the political level within Ex-Im Bank (that is, at the Board of Directors level). Economic impact-related decisions are fundamental considerations of relative national benefit. 2. The OIG believes the Bank has inappropriately taken the decisional role from the Ex-Im Bank Board of Directors (Board) by using analytical approaches that effectively decide the outcome. According to the OIG report, such staff practices "usurp the decisional role that Congress intended the Board to exercise." 3. The OIG believes that Economic impact analyses should: (a) be more objective; and (b) provide more perspective from a wider set of interested parties so that the Board has the benefit of this information in its decision making capacity. 4. The OIG is concerned that the current process lacks transparency with respect to both: (a) methodology; and (b) results of the analytical process. <p>With the exception of theme two, the Bank agreed with the concerns outlined in the 2010 evaluation report and incorporated a number of the OIG's suggestions in its revised economic impact procedures. The Bank responded to each of the 16 recommendations.</p>
June 17, 2014	<u>Status Update:</u> On June 17, 2014, Ex-Im Bank provided a status update for each of the 16 recommendations, which included information from the February 2013 management response. A summary of the Bank's corrective actions to address the 16 recommendations is provided in Appendix D below.

Appendix D: Summary of Ex-Im Bank Corrective Actions to Address Recommendations – 2010 OIG Report

Table 4: Summary of Corrective Actions	
No.	Details
A1.	Ex-Im Bank's April 2013 <i>Economic Impact Procedures and Methodological Guidelines</i> ("Procedures and Guidelines") assign responsibility to the Bank's Policy and Planning Group ("PPG") staff for conducting economic impact analysis ("EIA"), including the analytic findings and recommendations. The PPG provides supporting material to the Board, including independent studies and the applicant's submitted information, addressing both technical and financing competition. Finally, the procedures and guidelines clarify that the Board retains the responsibility for approving a transaction, despite adverse findings presented by the PPG, if the "overall benefits exceed the costs."
A2.	The April 2013 Procedures and Guidelines, which are posted on the Bank's website, describe the methodology in detail, as well as the PPG staff's assumptions for the analysis of economic impact.
A3.	The Ex-Im Bank Board has approved all procedures and guidelines, including the April 2013 Procedures and Guidelines that expanded the information and analyses available for Board determinations. This additional material can be provided by applicants, or obtained from independent market or industry experts, and includes information about competition, pricing mechanisms, and displacement.
B1.	The Ex-Im Bank Board considers other factors in addition to trade flow impact in the EIA: (1) structural oversupply relevance; (2) potentially affected parties' comments; and (3) interagency views (i.e., Reviewing Agencies). The Procedures and Guidelines expanded the types of information available for the EIA, including information about competition, pricing advantage, proportionality, and market-based pricing. In addition, certain assumptions can be changed for comparison purposes in the analysis.
B2.	Ex-Im Bank expanded its EIA methodology guidelines. For example, the guidelines now allow consideration under certain conditions of the new foreign production impact from the Bank's proportional share of the project. The Bank also will consider alternate trade flow analyses for transactions in industries with robust US producers.
B3.	Ex-Im Bank is considering further whether there is a feasible and useful approach to retrospectively assess the validity of key assumptions in the analysis of economic impact.
B4.	Ex-Im Bank asserts that "US market orientation" is a critical factor because of the potential for significant displacement in US production and thus the factor should remain on the Sensitive Sectors List. The Bank also asserts that the Charter only provides for the List's approval by the Bank's President and not the Board. Based on this position about the President's and the Board's respective roles, the Bank states that the List should not be added to the economic impact procedures and guidelines for the Board's review and approval.
C1.	Ex-Im Bank's April 2013 Procedures and Guidelines provide the Bank's EIA methods and are posted on its website.

No.	Table 4. Summary of Corrective Actions Details
C2.	Ex-Im Bank's internal procedures (i.e., April 2013 Procedures and Guidelines), which describe its EIA methods, have been finalized and are publicly available.
C3.	Ex-Im Bank follows the conditions in Section 2(e)(7)(d) and 3(c)(10)(F) of the Bank's Charter in making economic impact reports publically available.
D1.	Ex-Im Bank is determining whether it would be appropriate to add sectors to its list of sections in "under supply."
D2.	Ex-Im Bank requires applicants to provide, if possible, independent data or industry reports, or alternatively the best available market information, to inform the analysis, which in turn helps expedite the application process time.
D3.	Ex-Im Bank provides by Federal Register notice the opportunity for affected parties to submit white papers and studies for the Bank's consideration in the EIA.
D4.	At the same time Ex-Im Bank provides notification of an application in the Federal Register, it notifies the congressional oversight committees of transactions requiring a detailed EIA. The Bank also asserts that it initiates early communications with relevant congressional representatives about transactions, and continues its practice of submitting monthly reports to the Reviewing Agencies.
D5.	By the April 2013 Procedures and Guidelines, Ex-Im Bank provides 14 days for the interagency group to review and comment on the draft EIA.
D6.	Ex-Im Bank hired an economist in July 2013 with additional expertise for the PPG's economic impact team.

Appendix E: GAO Recommendations and Status – 2007 Report

Table 5: GAO Recommendations and Status	
No.	Details
1.	<u>Closed – Implemented</u> : To improve Ex-Im’s identification and analysis of applications for economic impact, the Chairman of the Export-Import Bank of the United States should review the \$10 million threshold to determine whether additional steps are needed to mitigate the risk of exempting from more detailed review applications that could meet the definition of substantial injury. The additional steps could include, for example, selectively reviewing transactions that would affect relatively small US industries or sensitive sectors.
2.	<u>Closed – Implemented</u> : To improve Ex-Im’s identification and analysis of applications for economic impact, the Chairman of the Export-Import Bank of the United States should create specific methodological guidelines for staff analyzing applications for economic impact, bearing in mind relevant Office of Management and Budget guidance where appropriate.
3.	<u>Closed – Implemented</u> : To improve Ex-Im’s identification and analysis of applications for economic impact, the Chairman of the Export-Import Bank of the United States should review and strengthen internal controls concerning the economic impact analysis to ensure, for example, that staff members conducting the analyses have sufficient training and guidance in Ex-Im’s economic impact methodology, that relevant Ex-Im staff verify and approve the analyses, and that sufficient documentation is maintained to record key information.
4.	<u>Closed – Implemented</u> : To improve the public transparency of the economic impact process for interested and affected parties, the Chairman of the Export-Import Bank of the United States should clarify publicly available procedures by including more information regarding Ex-Im’s methodology for analyzing applications, such as defining how it incorporates “oversupply” determinations in its analysis and what measures it uses and specifying under what conditions “proportionality” would be used.
5.	<u>Closed – Not Implemented</u> : To improve the public transparency of the economic impact process for interested and affected parties, the Chairman of the Export-Import Bank of the United States should inform interested parties about the sensitive sector list by including a reference to the list in the economic impact procedures.
6.	<u>Closed – Not Implemented</u> : To improve the public transparency of the economic impact process for interested and affected parties, the Chairman of the Export-Import Bank of the United States should publish either individually, or in the publicly available board minutes, the final determinations regarding whether a project would have a positive or negative impact.

Source: GAO’s Export-Import Bank: Improvements Needed in Assessment of Economic Impact (GAO-07-1071, dated September 12, 2007) report, “Recommendations” tab at <http://www.gao.gov/products/GAO-07-1071>

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