

May 10, 1946

Memorandum to the Board of Directors:

Re: Proposed Legislation

Attached hereto are alternative drafts marked "A" and "B" of proposed legislation to reincorporate Export-Import Bank of Washington and increase its lending authority.

With respect to the second purpose the bills are identical. Each bill provides in Section 2 for increasing the borrowing authority of the Bank by \$1,250,000,000 and in Section 3 for increasing by a like amount the limit on loans and guaranties outstanding at any one time.

The reincorporation of the Bank is occasioned by the provisions of Sec. 304 (b) of the Government Control Act which are as follows:

"No wholly owned Government corporation created by or under the laws of any State, Territory, or possession of the United States or any political subdivision thereof, or under the laws of the District of Columbia, shall continue after June 30, 1948, as an agency or instrumentality of the United States, and no funds of, or obtained from, the United States or any agency thereof, including corporations, shall be invested in or employed by any such corporation after that date, except for purposes of liquidations. The proper corporate authority of every such corporation shall take the necessary steps to institute dissolution or liquidation proceedings on or before that date: Provided, That prior thereto any such corporation may be reincorporated by Act of Congress for such purposes and term of existence and with such powers, privileges, and duties as authorized by such Act, including the power to take over the assets and assume the liabilities of its respective predecessor corporation."

Sec. 2 (2) of the Act has been drafted to include all powers with which the Bank is now vested through its District of Columbia charter and the Export-Import Bank Act of 1945.

Section 5 of the proposed bill provides for the transfer of assets and liabilities without further action by either corporate entity.

The single difference in the two drafts pertains to the "term of existence of the Bank." In draft "A" it is provided in the first section that the Bank shall be "a permanent agency of the United States of America." In draft "B" Section 4 provides for a specific date to which the Bank may exercise its functions of making and disbursing loans. It may be said in favor of draft "A" that the Congress took the position last summer that the Export-Import Bank Act of 1945 made the Bank a "permanent agency." That Act, however, did not use the word permanent but was silent on the question of the term of existence. Silence on the point has ordinarily been interpreted to permit an entity to continue indefinitely. I question, however, that such interpretation could be sustained in view of the language of the Corporation Control Act. Accordingly, I am of the opinion that we should either use the word "permanent" or adopt a specific date. I have never seen the word "permanent" used in legislation creating any corporation and I suggest the likelihood of Congressional objection to the bill proposed as form "A". If the Board should so desire, however, we may proceed with form "A" and be prepared to substitute Section 4 of form "B" in the event objection is raised in the Congress to designating an agency as "permanent". We assume a certain risk by adopting such procedure since once action is started to amend a bill, it is not always possible to control the form which the amendment will take and it is important to define clearly the rights of the Bank with respect to the extension of loans and guaranties in the event a specific termination date is included. This we believe we have done in Section 4 of form "B".

Hawthorne Arey  
General Counsel

A BILL

To provide for reincorporating Export-Import Bank of Washington, increasing its lending authority and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 2 (a) of the Export-Import Bank Act of 1945, as amended, (Public Law 173 - 79th Congress, approved July 31, 1945, as amended by Public Law 282 - 79th Congress approved December 28, 1945) is hereby amended to read as follows:

"Sec. 2 (a) There is hereby created a corporation with the name Export-Import Bank of Washington which shall be a permanent agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its territories or insular possessions and any foreign country (or the Philippine Islands) or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell and negotiate, with or without its endorsement, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell securities but not to

"A"

purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion and exchange; to borrow and to lend money; to adopt, alter and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; and to do and perform other functions permitted by law to be done and performed in furtherance of its objects and purposes; and the enumeration of the foregoing powers shall not be deemed to exclude any other powers, rights or privileges necessary to the achievement of such objects and purposes. The Bank is hereby authorized to use all of its assets, including capital and net earnings therefrom, and to use all monies which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions."

Section 2. The Export-Import Bank Act of 1945, as amended, is hereby amended by striking from the first sentence of Sec. 6 thereof the words "two and one-half times the authorized capital stock of the Bank" and by inserting in lieu thereof "\$3,750,000,000."

Section 3. The Export-Import Bank Act of 1945, as amended, is hereby amended by striking from Sec. 7 thereof the words "three and one-half times the authorized capital stock of the Bank" and inserting in lieu thereof "\$4,750,000,000."

Section 4. Sec. 8 of the Export-Import Bank Act of 1945, as amended is repealed and sections 9, 10 and 11 of said Act are renumbered respectively 8, 9 and 10.

Section 5. The Export-Import Bank of Washington created hereby shall by virtue of this Act succeed to all of the rights and assume all of the liabilities of Export-Import Bank of Washington, a District of Columbia corporation, and effective as of the date of this Act any outstanding capital stock of the District of Columbia corporation shall be deemed to have been issued by and shall be capital stock of the corporation created by this Act and all of the personnel, property, records, funds (including all unexpended balances of appropriations, allocations or other funds now available), assets, contracts, obligations and liabilities of the District of Columbia corporation are hereby transferred to, accepted and assumed by the corporation created by this Act without the necessity of any act or acts on the part of the corporation created by this Act or of the District of Columbia corporation, their officers employees or agents or of any other department or agency of the United States to carry out the purposes hereof and it shall be unnecessary to take a ny further action to effect the dissolution or liquidation of Export-Import Bank of Washington, a District of Columbia corporation.

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purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion and exchange; to borrow and to lend money; to adopt, alter and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; and to do and perform other functions permitted by law to be done and performed in furtherance of its objects and purposes; and the enumeration of the foregoing powers shall not be deemed to exclude any other powers, rights or privileges necessary to the achievement of such objects and purposes. The Bank is hereby authorized to use all of its assets, including capital and net earnings therefrom, and to use all monies which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions."

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Section 4. The Export-Import Bank Act of 1945, as amended, is hereby amended by striking Section 8 therefrom and substituting in lieu thereof a new Section 8 as follows:

"Sec. 8. Export-Import Bank of Washington shall continue to exercise its functions until the close of business on \_\_\_\_\_ 19\_\_\_\_ but the provisions of this Section shall not be construed as preventing the Bank from making loans prior to such date which are repayable subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or of issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury, its notes, debentures, bonds or other obligations which mature subsequent to such date."

Section 5. The Export-Import Bank of Washington created hereby shall by virtue of this Act succeed to all of the rights and assume all of the liabilities of Export-Import Bank of Washington, a District of Columbia corporation, and effective as of the date of this Act any outstanding capital stock of the District of Columbia corporation shall be deemed to have been issued by and shall be capital stock of the corporation created by this Act and all of the personnel, property, records, funds (including all unexpended balances of appropriations, allocations or other funds now available), assets, contracts, obligations and liabilities of the District of Columbia corporation are hereby transferred to, accepted and assumed by



the corporation created by this Act without the necessity of any act or acts on the part of the corporation created by this Act or of the District of Columbia corporation, their officers employees or agents or of any other department or agency of the United States to carry out the purposes hereof and it shall be unnecessary to take any further action to effect the dissolution or liquidation of Export-Import Bank of Washington, a District of Columbia corporation.