



**Friends of  
the Earth  
United States**



GLOBAL  
LAW ALLIANCE  
FOR ANIMALS AND  
THE ENVIRONMENT

Secretary Anthony Blinken  
U.S. State Department  
1600 Pennsylvania Ave., NW  
Washington, DC 20240  
Email: [secretary@state.gov](mailto:secretary@state.gov)

August 7, 2024

**Re: Request for Chafee Determination for Export-Import Bank’s financing of activities and projects that substantially contribute to greenhouse gas emissions**

Dear Secretary Blinken:

Over the last two centuries, human-caused greenhouse gas emissions have led to global warming of 1.1°C above pre-industrial levels by 2020 and caused detrimental changes in Earth’s climate.<sup>1</sup> Climate change poses an existential threat to our planet and its biodiversity: effects of climate change include an increased likelihood of compound extreme events,<sup>2</sup> economic damages,<sup>3</sup> and negative impacts to human physical and mental health.<sup>4</sup> It also poses grave risks to human rights, national security, and global financial stability.<sup>5</sup> Greenhouse gas emissions must be cut in half by

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<sup>1</sup> Press Release, IPCC, Urgent climate action can secure a liveable future for all (March 20, 2023), [https://www.ipcc.ch/report/ar6/syr/downloads/press/IPCC\\_AR6\\_SYR\\_PressRelease\\_en.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/press/IPCC_AR6_SYR_PressRelease_en.pdf) (last visited July 4, 2024).

<sup>2</sup> IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, 184 pp., doi: 10.59327/IPCC/AR6-9789291691647, at 51, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf) (last visited July 16, 2024) (noting events such as concurrent heatwaves and droughts, increased fire events, and compound flooding).

<sup>3</sup> *Id.* (noting negative impacts to both climate-exposed sectors, such as agriculture, forestry, fishery, energy, and tourism and individual livelihoods through health and food security and infrastructure destruction).

<sup>4</sup> *Id.* at 50 (noting that climate change has created an increase in climate-related food-borne and water-borne diseases, animal and human diseases appearing in new regions, increases in human mortality and morbidity from extreme heat events, and mental health challenges associated with extreme weather and loss of livelihoods and culture).

<sup>5</sup> See U.N. Human Rights Office of the High Commissioner, OHCHR and climate change: Overview, <https://www.ohchr.org/en/climate-change> (last visited Apr. 11, 2024) (stating that climate change poses grave threats to innumerable human rights, including the rights to life, water and sanitation, food, health, housing, self-determination, culture, and development); U.S. DEPT. OF DEFENSE, CLIMATE ADAPTATION PLAN (2021), at 3, <https://www.sustainability.gov/pdfs/dod-2021-cap.pdf> (last visited July 4, 2024) (noting that the Department of Defense considers climate change “critical national security issue and threat multiplier” and a “top management challenge”); Center for American Progress, Report: Climate Change Threatens the Stability of the Financial System (Nov. 21, 2019), <https://www.americanprogress.org/article/climate-change-threatens-stability-financial-system/> (last visited July 4, 2024).

2030 if warming is to be limited to 1.5°C, the limit necessary to avoid the worst impacts of climate change.<sup>6</sup>

In light of these risks, Friends of the Earth US (“FOE”) requests that the Secretary of State, on behalf of the Biden Administration, make a determination pursuant to the Chafee Amendment in the Charter of the U.S. Export-Import Bank (“EXIM”), 12 U.S.C. § 635(b)(1)(B), that EXIM should deny applications for financial support for all activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions and the climate crisis.<sup>7</sup> Such a determination would be in the national interest because it would clearly and importantly advance U.S. policies related to combatting climate change and protecting the environment, human rights, national security, and global financial stability.

As discussed below, although President Biden has taken significant steps towards lowering greenhouse gas emissions, EXIM has refused to implement the president’s commitment to end government support for fossil fuel projects abroad in nearly all circumstances. Instead, it continues to provide hundreds of millions—and sometimes billions—of dollars each year towards activities and projects whose life-cycle emissions intensity substantially contributes to high greenhouse gas emissions. EXIM’s decision to continue providing this financial support undermines the Administration’s commitments to reducing greenhouse gas emissions and fighting climate change. The President should use the Chafee Amendment to force EXIM to stop its harmful financing decisions that run counter to U.S. national interests and policies.

### **The fight against climate change is a central goal of the Biden Administration.**

Recognizing the grave threat that climate change poses to the American people and to the planet and its ecosystem, the Biden Administration has committed to reducing greenhouse gas emissions nationally and globally since day one of its administration. President Biden has pledged to prioritize climate action and environmental justice.<sup>8</sup> To achieve these commitments, the Administration has implemented climate-forward policies using a whole-of-government

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<sup>6</sup> IPCC, *supra* note 1; see also *Summary for Policymakers*, in GLOBAL WARMING OF 1.5°C: AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY 4 (V. Masson-Delmotte et al. eds, 2018), [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf) (last visited July 4, 2024).

<sup>7</sup> By “financial support,” FOE means all types of support that EXIM might provide, including but not limited to loans, guarantees, insurance, and credits. Similarly, “activities and projects” includes all exports or imports of goods, services and any other projects, transactions, or activities for which EXIM may provide financial support. An activity’s or project’s life-cycle emissions intensity substantially contributes to greenhouse gas emissions if the activity’s or project’s performance standard is equal to or greater than a 100gCO<sub>2</sub>e/kWh threshold, as calculated according to the methodology set out in Annex A to this Letter. Annex A is a Natural Resources Defense Council briefing titled, “Toward a Science-Based Emissions Performance Standard for Energy Investments Under the OECD Arrangement.”

<sup>8</sup> *President Biden’s Actions to Tackle the Climate Crisis*, THE WHITE HOUSE, <https://www.whitehouse.gov/climate/> (last visited July 4, 2024) [hereinafter *Actions*].

approach.<sup>9</sup> This included the creation of a National Climate Task Force, comprising 25 leaders from across the federal government, to tackle the President’s ambitious climate goals, which include (but are not limited to) the following:

- reducing U.S. greenhouse gas emissions 50–52 percent below 2005 levels by 2030;
- reaching 100 percent carbon pollution-free electricity by 2035; and
- delivering 40 percent of the benefits from federal investments in climate and clean energy to disadvantaged communities.<sup>10</sup>

The Biden Administration has also recognized that climate change is not just a threat to the United States but a global issue that must be resolved through international cooperation.<sup>11</sup> On January 20, 2021, as one of his first acts in office, President Biden took immediate action to rejoin the Paris Agreement, the international treaty on climate change.<sup>12</sup> As a Party to the Agreement, the United States has taken on the objectives and obligations imposed by the Treaty, including the goals of “strengthen[ing] the global response to the threat of climate change, in the context of sustainable development” and “pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”<sup>13</sup>

In addition to these important obligations, President Biden has also publicly committed and agreed to eliminate the public financing of fossil fuel projects abroad. Fossil fuel financing contributes to the continued destruction of the environment, shifts the social costs associated with production to nearby communities, and makes it increasingly difficult to transition to clean energy.<sup>14</sup> On January 27, 2021 President Biden signed the Executive Order on Tackling the Climate Crisis at Home and Abroad (“Executive Order 14008”) which ordered that “climate considerations shall be an essential element of United States foreign policy and national security.”<sup>15</sup> This Executive Order affirmed and promised to build upon the main objectives of the Paris Agreement, including the objective to align the flow of financial pathways towards low greenhouse gas emissions and climate-resilient development.<sup>16</sup> Consistent with this Executive Order and its Paris Agreement obligations, in 2021, at the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change, the Biden Administration, along with 38 other countries and

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<sup>9</sup> *FACT SHEET: President Biden’s Leaders Summit on Climate*, THE WHITE HOUSE (April 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/23/fact-sheet-president-bidens-leaders-summit-on-climate/> (last visited July 4, 2024) [hereinafter *Leaders Summit*].

<sup>10</sup> *Actions*, *supra* note 8.

<sup>11</sup> *U.S. International Climate Finance Plan*, THE WHITE HOUSE 10, <https://www.whitehouse.gov/wp-content/uploads/2021/04/U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf> (last visited July 5, 2024) [hereinafter *Climate Finance Plan*].

<sup>12</sup> Press Release, Antony J. Blinken, Sec’y of State, The United States Officially Rejoins the Paris Agreement (Feb. 19, 2021), <https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/> (last visited July 5, 2024).

<sup>13</sup> The Paris Agreement, art. 2(1) and (1)(a), *signed* April 22, 2016, *entered into force* Nov. 4, 2016, [https://unfccc.int/sites/default/files/resource/parisagreement\\_publication.pdf](https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf) (last visited July 5, 2024).

<sup>14</sup> *Fossil Fuel Subsidies in Public Finance*, THE CLIMATE REALITY PROJECT (Oct. 19, 2023), <https://www.climatealityproject.org/blog/fossil-fuel-subsidies-public-finance> (last visited July 5, 2024).

<sup>15</sup> Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

<sup>16</sup> *Id.*

institutions, signed the Statement on International Public Support for the Clean Energy Transition, pledging to “end new direct public support for the international unabated fossil fuel energy sector within one year of signing.”<sup>17</sup>

Unfortunately, despite these Executive Orders and international pledges, the United States continues to perpetuate, if not exacerbate, climate change by providing financial support for activities and projects whose life-cycle emissions intensity substantially contributes to high greenhouse gas emissions through EXIM, its official credit agency.

### **EXIM is critical to the success or failure of the Biden Administration’s climate goals.**

EXIM is an independent federal agency that facilitates the export of U.S. goods and services in order to support the employment of American workers.<sup>18</sup> EXIM provides loans, guarantees, insurance, and credit to American exporters, providing funding when “private sector lenders are unable or unwilling to” and helping to make U.S. exports competitive against foreign exports.<sup>19</sup> In fiscal year 2023, EXIM approved more than \$8.7 billion in direct loans, loan guarantees, and insurance.<sup>20</sup> EXIM’s total portfolio exposure as of September 2023 was more than \$34 billion.<sup>21</sup> Major industrial sectors supported by EXIM include oil & gas (24 percent), manufacturing (20.2 percent), and power projects (8.2 percent)<sup>22</sup>—all of which are significant contributors to greenhouse gas emissions. In just a four-year period, from 2017 to 2021, EXIM financed \$5.78 billion for fossil fuel projects alone.<sup>23</sup> EXIM’s financial support is backed by the full faith and credit of the U.S. government.<sup>24</sup> Because of this, EXIM’s support creates a safeguard that makes it more likely for other financiers to contribute. Although in some instances EXIM may only support a particular aspect of a project or transaction, the Bank’s backing often is essential to

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<sup>17</sup> *Statement on International Public Support for the Clean Energy Transition*, signed April 11, 2021, <https://web.archive.nationalarchives.gov.uk/ukgwa/20230313124743/https://ukcop26.org/statement-on-international-public-support-for-the-clean-energy-transition/> (last visited July 5, 2024) (two other countries have since signed the Statement).

<sup>18</sup> 12 U.S.C. § 635(a)(1) (2019).

<sup>19</sup> *About EXIM*, EXIM, <https://www.exim.gov/about> (last visited July 18, 2024).

<sup>20</sup> EXIM, EXIM ANNUAL MANAGEMENT REPORT FOR THE YEAR ENDED SEPTEMBER 30, 2023 AND SEPTEMBER 30, 2022, at 3 (2023), <https://tredefinanceglobal.com/wp-content/uploads/2024/04/EXIM-2023-Annual-Report.pdf> (last visited July 5, 2024).

<sup>21</sup> *Id.* at 63 (defining exposure “as the authorized outstanding and undisbursed principal balance of loans, guarantees, and insurance. It also includes the unrecovered balance of payments made on claims that were submitted to EXIM in its capacity as guarantor or insurer under the export guarantee and insurance programs. Exposure does not include accrued interest or transactions while pending final approval.”).

<sup>22</sup> *Id.* at 21. These percentages are based on EXIM’s total exposure from the agency’s 2023 fiscal year report. The remaining 14.9 percent of EXIM’s portfolio is a blanket “other industries” category which includes information and communication services providers, agriculture, mining, forestry, fishing and hunting, and construction. *Id.* at 33. The majority of EXIM’s credit exposure, 76.9 percent or \$26.2 billion, is concentrated in three industries, two of which are oil & gas and manufacturing.

<sup>23</sup> Kate Aronoff, *This U.S. Agency Lent Nearly \$1 Billion to Fossil Fuel Projects in 2023*, THE NEW REPUBLIC (Dec. 28, 2023), <https://newrepublic.com/article/177757/export-import-bank-1-billion-fossil-fuel-projects-2023> (last visited July 5, 2024).

<sup>24</sup> 12 U.S.C. § 635k; *see also* EXIM, *About EXIM*, <http://www.exim.gov/about> (last visited Apr. 11, 2024).

getting a project or transaction off the ground.<sup>25</sup>

The Biden Administration has recognized that EXIM’s financial support for activities and projects whose life-cycle emissions intensity significantly contribute to greenhouse gas emissions is problematic. Through Executive Order 14008, President Biden directed the Secretary of State, the Secretary of the Treasury, and the Secretary of Energy to work with EXIM to “identify steps through which the United States can promote *ending international financing of carbon-intensive fossil fuel-based energy*.”<sup>26</sup> Additionally, President Biden created an advisory subcommittee within EXIM, the Council on Climate, to advise “EXIM on how to better support U.S. exporters in clean energy, foster the transition to a low-carbon economy, and create clean U.S. jobs at home.”<sup>27</sup> The Council comprises industry experts whose collective goal is to advise EXIM’s board on how to “support U.S. exporters and American jobs in clean and renewable energy and meet congressional mandates” relating to climate change and renewable energy.<sup>28</sup> EXIM itself has acknowledged the need for renewable energy exports and has committed to carbon dioxide-reduction by providing funding to energy efficient exports.<sup>29</sup> The Agency’s Charter also requires it to have goal to ensure that it makes at least 5 percent of its total financial authority for each fiscal year available for renewable energy, energy efficiency, and energy storage technology exports.<sup>30</sup>

These actions do not come close to offsetting the fact that EXIM continues to provide hundreds of millions of dollars of financial support for activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions every year.<sup>31</sup> In 2023 alone, the Agency provided almost \$1 billion in financing toward oil and gas projects.<sup>32</sup> This includes \$99.7 million to expand an oil refinery in Indonesia,<sup>33</sup> a guarantee of \$90 million to another bank to finance U.S. exporter Freeport LNG Marketing,<sup>34</sup> and \$400 million to two banks to allow major

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<sup>25</sup> See Carlos Anchondo, *Export-Import Bank plan may affect U.S. LNG, renewables*, POLITICO (April 15, 2022), <https://www.eenews.net/articles/export-import-bank-plan-may-affect-u-s-lng-renewables/> (last visited Feb. 12, 2024); see also *About EXIM*, supra n. 19 (“Because it is backed by the full faith and credit of the United States, EXIM assumes credit and country risks that the private sector is unable or unwilling to accept.”).

<sup>26</sup> Exec. Order No. 14008, supra note 15 (emphasis added).

<sup>27</sup> *Leaders Summit*, supra note 9.

<sup>28</sup> *Council on Climate*, EXIM, <https://www.exim.gov/leadership-governance/advisory-committees/council-climate> (last visited July 8, 2024).

<sup>29</sup> *Carbon*, EXIM, <https://www.exim.gov/policies/carbon> (last visited July 8, 2024).

<sup>30</sup> In 2021, only 1.25 percent of EXIM’s new authorizations were for environmentally beneficial exports, with only 0.2 percent for renewable energy. Sherri Ombuya et. al., *The US EXIM Bank: How To Make It Work For Climate And Development*, OXFAM, at 4, [https://webassets.oxfamamerica.org/media/documents/US\\_EXIM\\_brief.pdf](https://webassets.oxfamamerica.org/media/documents/US_EXIM_brief.pdf) (last visited July 8, 2024).

<sup>31</sup> Aronoff, supra note 23. This does not account for funding toward other sectors that also significantly contribute to greenhouse gas emissions. Ombuya, supra note 30 at 4.

<sup>32</sup> Aronoff, supra note 23.

<sup>33</sup> EXIM, News: Export-Import Bank of the United States Board Approves Two Deals in Support of Thousands of U.S. Jobs in Transportation, Energy Sectors (May 11, 2023), <https://www.exim.gov/news/export-import-bank-united-states-board-approves-two-deals-support-thousands-jobs-transportation> (last visited July 8 2024).

<sup>34</sup> EXIM, News: Export-Import Bank of the U.S. Approves Transportation and Energy Sector Transactions (Dec. 21, 2023), <https://www.exim.gov/news/export-import-bank-approves-transportation-and-energy-sector-transactions> (last visited July 8, 2024).

global commodity trader Trafigura Group to purchase US liquefied natural gas.<sup>35</sup> Despite EXIM's awareness of the need to mitigate greenhouse gas emissions<sup>36</sup> and the United States' obligations under the Paris Agreement, EXIM continues to provide significant financial support for oil and gas projects nationally and globally. In fact, the Agency continues to support activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions in developing countries, which the Paris Agreement specifically acknowledges "are particularly vulnerable to the adverse effects of climate change."<sup>37</sup> For example, EXIM has pending fossil fuel projects with potentially significant environmental effects in Mozambique, Mexico, Papua New Guinea, Malaysia, and Guyana.<sup>38</sup>

Alarming, EXIM shows no signs that it intends to cease providing this financial support anytime soon. Although the President's intent to end support for fossil fuels overseas has been clear since E.O. 14008 was issued in the first week of his administration, EXIM has steadfastly refused to adopt a policy to implement this objective. EXIM recently put off a long-planned update of its environmental and social policies until sometime next year (at the earliest), and it is now clear that EXIM leadership does not intend to include such provisions in that update.

Meanwhile, EXIM continues to fund large fossil projects. In October 2023, EXIM approved a loan guarantee of more than \$71.3 million to support the relaunch of an oil terminal in the Bahamas.<sup>39</sup> And in March 2024, in a decision that prompted two members of EXIM's Council on Climate to resign, EXIM's board approved \$500 million for drilling of over 400 new oil and gas wells in Bahrain.<sup>40</sup> EXIM's decisions to continue providing this harmful financial support demonstrate that the Agency's and the Biden Administration's current policies and systems are not enough to deter EXIM's negative contributions to climate change, and the ensuing grave risks to the environment, human rights, national security, and global financial stability.

### **The Biden Administration should use a Chafee determination to help achieve its climate**

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<sup>35</sup> Ajsa Habibic, Trafigura inks \$400 million credit facilities to buy US LNG for European customers, *Offshore Energy* (Oct. 4, 2023), <https://www.offshore-energy.biz/trafigura-inks-400-million-credit-facilities-to-buy-us-lng-for-european-customers/> (last visited July 15, 2024).

<sup>36</sup> *Carbon*, *supra* note 29.

<sup>37</sup> The Paris Agreement, *supra* note 13, at art. 7(6).

<sup>38</sup> *Pending Transactions*, EXIM, [www.exim.gov/policies/exim-bank-and-environment/pending-transactions](https://www.exim.gov/policies/exim-bank-and-environment/pending-transactions) (last visited July 8, 2024).

<sup>39</sup> *Liwathon Receives Loan Guarantee from EXIM for the Relaunch of Liwathon B.O.S. Terminal in Bahamas*, LIWATHON (Oct. 15, 2023), <https://www.liwathon.com/post/liwathon-receives-loan-guarantee-from-exim-for-the-relaunch-of-liwathon-b-o-s-terminal-in-bahamas> (last visited July 8, 2024).

<sup>40</sup> Lisa Friedman & Hiroko Tabuchi, *Two Climate Advisers Quit U.S. Export-Import Bank Over Fossil Fuel Plans*, NEW YORK TIMES (Feb. 5, 2024), <https://www.nytimes.com/2024/02/05/climate/export-import-bank-climate.html> (last visited July 8, 2024); Matteo Civillini, *US trade agency backs oil and gas drilling in Bahrain despite Biden pledge*, CLIMATE HOME NEWS (Feb. 9, 2024, 4:44 PM), <https://www.climatechangenews.com/2024/02/09/us-trade-agency-backs-oil-and-gas-drilling-in-bahrain-despite-biden-pledge/> (last visited July 8, 2024); Hiroko Tabuchi, *U.S. Approves \$500 Million for Bahrain Oil Project, Despite Opposition*, NEW YORK TIMES (Mar. 14, 2024), <https://www.nytimes.com/2024/03/14/climate/exim-financing-biden-bahrain-oil.html>.

**goals.**

As described above, while the Biden Administration has committed to ending all federal funding for fossil fuel projects, EXIM continues to play a major role in providing public funds to promote the continued development of non-renewable energy sources worldwide. In light of EXIM's clear rejection of the Administration's mandates, Friends of the Earth US requests that President Biden, through the Secretary of State, make a Chafee determination targeting EXIM decision-making that is contrary to, and undermines, the Administration's climate goals.

Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, also known as the Chafee Amendment, grants the President the authority to make a determination that EXIM should deny applications for financial support in order to further the national interest. Specifically, the Act provides:

Only in cases where the President, after consultation with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism (including, when relevant, a foreign nation's lack of cooperation in efforts to eradicate terrorism), nuclear proliferation, the enforcement of the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], or the Export Administration Act of 1979, environmental protection and human rights (such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948) (including child labor), should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.<sup>41</sup>

The power to make Chafee determinations was delegated to the Secretary of State in 1979 by Executive Order 12166.<sup>42</sup>

The President and Secretary of State have exercised their power to issue Chafee determinations in the past to determine that it would be in the national interest for EXIM to deny applications for

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<sup>41</sup> 12 U.S.C. § 635(b)(1)(B).

<sup>42</sup> Exec. Order No. 12166, 44 Fed. Reg. 60971 (1979).

financial support for good or services in Chile,<sup>43</sup> Argentina,<sup>44</sup> Cameroon,<sup>45</sup> and Russia.<sup>46</sup> These situations greatly parallel the immediate request. Stated reasons for issuing prior determinations include terrorism and human rights. There can be no doubt that it would similarly be in the national interest to deny applications for financial support for projects and activities, where such denials would clearly and importantly advance U.S. policies toward combating climate change and protecting the environment, human rights, national security, and the stability of the global financial system.

For these reasons, FOE requests that the Biden Administration make a determination, pursuant to the Chafee amendment, that EXIM should deny applications for financial support (including but not limited to loans, guarantees, insurance, and credits) for activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions.<sup>47</sup> Further, as part of the Chafee determination, the Administration should make clear that calculations of greenhouse gas emissions must include Scope 1, 2, and 3 emissions. FOE suggests the following language for the Biden Administration's consideration:

I determine that it is in the national interest and would clearly and importantly advance United States policy in combating climate change and protecting the environment, human rights, national security, and global financial stability, for the Export-Import Bank of the United States to deny applications for financial support (including but not limited to applications for loans, guarantees, insurance, and credits) for activities or projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions. In calculating the potential greenhouse gas emissions related to any particular application, EXIM must include all greenhouse gasses (not only carbon dioxide) and must include Scope 1, 2, and 3 emissions.

This Chafee determination would clearly and importantly advance the Biden Administration's policy directives regarding climate change, particularly the directives targeted at ending the public financing of fossil fuel projects. It would also clearly and importantly advance U.S. policies related to protecting the environment, human rights, national security, and the global financial system.

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<sup>43</sup> Determination Under Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as Amended, 44 Fed. Reg. 72696 (Dec. 14, 1979).

<sup>44</sup> Argentine Republic; Determination Under Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as Amended, and Executive Order 12166, 47 Fed. Reg. 19842 (May 7, 1982).

<sup>45</sup> Determination Under Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945 With Respect to Cameroon, 59 Fed. Reg. 16254 (Apr. 6, 1994).

<sup>46</sup> Determination Under Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as Amended, 65 Fed. Reg. 158 (Jan. 3, 2000).

<sup>47</sup> See *supra* n.7 & Annex A (defining activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions).



Notably, the EXIM’s Charter “prohibition on discrimination based on industry” (also referred to as the “non-discrimination clause”) would not stand in the way of the Biden Administration making a valid Chafee determination targeting EXIM’s financial support for activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions. That provision provides that “the Bank may not deny an application for financing . . . or promulgate or implement policies that discriminate against an application based solely on the industry, sector, or business,”<sup>48</sup> and only applies “to applications for financing by the Bank for projects concerning the exploration, development, production, or export of energy sources and the generation or transmission of electrical power, or combined heat and power, regardless of the energy source involved.”<sup>49</sup> But, the non-discrimination clause only applies “except as provided in [the Act].”<sup>50</sup> A Chafee determination, because it is authorized by statutory language provided elsewhere in EXIM’s Charter, would fall within this exception. Similarly, EXIM’s Charter provides it with the authority to deny financing to a project for environmental reasons (based on the procedures developed by EXIM) and, as such, for this independent reason, all or almost all of EXIM’s denials of applications based on the requested Chafee determination would fall within the exception to the non-discrimination clause.<sup>51</sup> Further, a Chafee determination that EXIM should deny applications based on greenhouse gas emissions would not be solely based on an industry, sector, or business.

EXIM has no justifiable excuse for failing to adapt to the Administration’s climate policies. EXIM’s objects and purposes are “to aid in financing and to facilitate exports of goods and services, imports, and the change of commodities and services between the United States” and other countries “to contribute to the employment of United States workers.”<sup>52</sup> Providing billions of dollars of financial support to high emissions projects creates obvious and fundamental externalities directly counter to the Bank’s objects and purposes. Climate change directly threatens the livelihoods of American workers, including but not limited to fishermen,<sup>53</sup> farmers,<sup>54</sup> and loggers,<sup>55</sup> a threat EXIM seems intent on exacerbating. Moreover, climate change’s destabilizing effects on the global financial system—not to mention devastating impacts to the environment and human rights, and the risks to national security—will undoubtedly have significant negative repercussions on U.S. workers. EXIM also has statutory obligations to promote the export of goods and services related to renewable energy sources,<sup>56</sup> to take into account the potential beneficial and adverse environmental effects of its direct lending and guarantee programs,<sup>57</sup> and to support

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<sup>48</sup> 12 U.S.C. § 635(k)(1)(A)-(B).

<sup>49</sup> *Id.* § 635(k)(2).

<sup>50</sup> *Id.* § 635(k)(1).

<sup>51</sup> *Id.* § 635i-5(a)(2).

<sup>52</sup> *Id.* § 635(a)(1).

<sup>53</sup> *Understanding Our Changing Climate*, NOAA, <https://www.fisheries.noaa.gov/insight/understanding-our-changing-climate> (last visited July 8, 2024).

<sup>54</sup> *Climate Change Impacts on Agriculture and Food Supply*, EPA, <https://www.epa.gov/climateimpacts/climate-change-impacts-agriculture-and-food-supply> (last updated Nov. 16, 2023).

<sup>55</sup> See Andrei P. Kirilenko & Roger A. Sedjo, *Climate change impacts on forestry*, 104 PNAS 19697 (Dec. 11, 2007).

<sup>56</sup> 12 U.S.C. § 635(b)(1)(k).

<sup>57</sup> *Id.* § 635i-5(a)(1).

the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects.<sup>58</sup> And yet, time and time again, EXIM has acted contrary to its statutory obligations, contrary to the Administration's policy directives, and contrary to U.S. interests.

## **Conclusion**

If the Biden Administration intends to fulfill its promises and protect the nation and its citizens from climatic catastrophe, as well as promote U.S. interests in protecting the environment, human rights, national security, and global financial stability, preventing further greenhouse gas emissions is essential. Currently, EXIM continues to provide significant financial support for activities and projects that result in massive greenhouse gas emissions, despite knowing that such support directly and obviously harms America's national interests. EXIM shows no sign of stopping this financial support, despite such financial support plainly contradicting the Administration's climate change pledges and policies. EXIM's Charter provides a tailor-made power designed to allow the Administration to rein in EXIM's harmful decision-making. As such, for the reasons explained above, FOE requests that the Biden Administration make a determination pursuant to the Chafee Amendment that it would be in the national interest for EXIM to deny applications for financial support (including but not limited to loans, guarantees, insurance, and credits) for activities and projects whose life-cycle emissions intensity substantially contributes to greenhouse gas emissions. Such denials would clearly and importantly advance U.S. policies in combatting climate change and protecting the environment, human rights, national security, and global financial stability. Given the billions of dollars of financial support EXIM provides to high-greenhouse gas emitting projects and activities, if the Biden Administration is committed to reducing greenhouse gas emissions, a Chafee determination is essential.

Please let us know available times to schedule a meeting to discuss this letter and the requested Chafee determination. We look forward to hearing from you.

Sincerely,



Erich Pica, President  
Friends of the Earth U.S.

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<sup>58</sup> *Id.* § 635i-5(b)(1).

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