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Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301.570.4544 Fax: 301.570.4545

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U.S. Urging Canada Not to Subsidize Airplane Sales in U.S.

Treasury Department and Export-Import Bank officials have been trying, apparently without success, for two years to dissuade Canada and its export credit agency, Export Development Canada (EDC), from offering subsidized financing for sales of Bombardier aircraft in the U.S. A confrontation could be coming shortly in an expected battle among airplane manufacturers to fill a request from Delta Airlines for bids on new aircraft. In an exclusive interview with WTTL, Ex-Im Chairman Fred Hochberg said the bank has the legal authority to meet any financing that EDC offered if Boeing were to seek aid.

> "The U.S. government is clear; we are not going to sit back idly and let financing come in that is not going to be equitable and fair," Hochberg told WTTL. "We tried to make clear to Bombardier and EDC that they shouldn't do this," he said; but "their intention is to do it."

Boeing and Airbus are part of a bilateral agreement not to offer concessionary financing in each other's markets. Bombardier isn't part of that deal and hasn't competed against Boeing and Airbus because up until now it has limited its products to commuter aircraft that the two big firms don't make. Bombardier is now moving into the larger aircraft space with its C-Series planes that can seat over 100 passengers. "It's been speculative," Hochberg said. "Bombardier is looking to sell this aircraft and they have said they intend to use ECA [export credit agency] financing, but there has been no evidence to date," he said.

Under Section 1912 of Ex-Im's statutory authorization, U.S. firms can petition Treasury for a finding that they are being hurt by foreign subsidized financing and to give Ex-Im authority to make a loan meeting the financing. So far, Treasury hasn't been asked formally to make such a finding. "Our goal would be to take export credit agency support out of the picture," Hochberg said.

Sanctions Cutting 5-15% off Iran's GDP, Prosecutors Claim

U.S. prosecutors claim U.S., European Union (EU) and United Nations sanctions on Iran are making a significant adverse impact on the Iranian economy, according to Steven Pelak, national coordinator of the Justice Department's export enforcement efforts. Based on internal reviews by banks and the financial industry, banks themselves estimate that U.S. sanctions, even standing alone, produce a 5-to-15% GDP hit on the Iranian economy, he told an American Conference Institute forum on deemed exports Sept. 26. "Every dime less that the Iranians have is a dime less to Hizbollah and Hamas; that's why we take enforcement of the Iranian sanctions

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seriously, and we do," he stated. Justice's priorities for export control prosecutions are "Iran and China; China and Iran," he said. The department is focusing on cases that involve exports that could help Iran's military capability, especially its aging air force fleet of planes, and on procurement agents, front companies, facilitators such as freight forwarders, and banks.

> Pelak said the U.S. is getting increased cooperation from foreign banks, including Swiss banks that are now providing bank transaction records underlying illegal diversion schemes, given the increased sanctions and enforcement in the U.S. and EU. International banks are including the names of persons and companies placed on denied parties lists in their systems and blocking their transactions to avoid entangling themselves in U.S. and international sanctions against designated Iranian proliferators. As a result, indicted individuals are coming to Justice to seek settlements because they have been "kicked out of their banks," Pelak noted.

"We have had instances now where defendants, Iranian procurement agents, voluntarily come to the U.S. to plead guilty," he reported. After Iranian military and nuclear procurement agents were indicted and placed on the Commerce denied party list, banks "have put them on their own verboten list," he said. In one case, "a lawyer for a Dutch national literally called us as soon as his client got on the denied party list and asked on behalf of his client, asked, to cooperate with us and he did," Pelak added.

WTO Appellate Body Workload, Changes Slow Deliberations

A heavy caseload and the departure of two members of the World Trade Organization's (WTO) Appellate Body are prompting countries to delay appeals from dispute-settlement panel rulings, a meeting of the WTO Dispute Settlement Body (DSB) Sept. 27 found. The U.S. and Indonesia agreed to delay until next year DSB adoption of the decision in the dispute over U.S. measures affecting clove cigarettes (see **WTTL,** Sept. 12, page 3). Trade officials cited the Appellate Body's high workload as the reason for postponement.

> With Appellate Body members Lilia Bautista and Jennifer Hillman set to leave office Dec. 10, the DSB has ramped up interviews for their replacements. The nominees include two Americans, Thomas Graham and John Greenwald, plus Manzoor Ahmad of Pakistan and Ujal Singh Bhatia of India. All the candidates were in Geneva the week of Sept. 19 for interviews. The selection committee aims to make a recommendation by Nov. 10 and the DSB could make its choice at its Nov. 21 meeting.

In another case, the U.S. and Korea told the DSB they have delayed a request for establishment of a panel to hear Korea's complaint against U.S. antidumping duties on corrosion-resistant carbon steel flat products from Korea in favor of bilateral talks. Before the meeting, South Korea withdrew its panel request. The U.S. said it welcomed Korea's decision.

The U.S. and Indonesia said the decision to extend the deadline for DSB adoption of the panel report on cloves was based in part on the workload of the Appellate Body. The DSB agreed to extend the deadline for adoption of the ruling until Jan. 20, 2012. Japan said the circumstances the DSB would address in the decision are "exceptional in nature." The DSB decision must remain "an exception," it said.

The U.S. told the DSB it will implement a panel ruling in the zeroing case between the U.S. and Vietnam over antidumping duties on shrimp from Vietnam. The panel report was adopted Sept. 2. The U.S. asked for a reasonable time to implement the ruling and Vietnam said it is willing to talk to the U.S. on what that time period should be. The DSB was scheduled to take up adoption of a panel report on the U.S. and European Union complaint against the Philippines over taxes on distilled spirits, but the item was removed from the DSB agenda before the meeting. The Philippines announced Sept. 23 that it is appealing the panel's report, which said its tax policy on distilled spirits violates WTO rules (see **WTTL**, Aug. 22, page 2).

Ex-Im Seeks to Cut Iran Sanctions Provision in House Bill

As House and Senate staffers try to come up with a single, compromise bill to recharter the Export-Import Bank, bank officials are seeking to cut out provisions in a House version (H.R. 2072) that would bar financial aid for any entity that is affiliated with any firm that has engaged in activities that are the subject of U.S. sanctions on Iran. Section 19 of the bill would be "very difficult for customers" and "devastating for us," Ex-Im Vice President for Congressional Affairs Scott Schloegel told the bank's advisory committee Sept. 27. The House provision is much broader and more intrusive than a provision in the Senate bill (S. 1547).

> The House Financial Services Committee reported out H.R. 2072, which awaits House action, and the Senate Banking Committee reported out S. 1547, now waiting for a Senate vote. The bank's charter would have expired Sept. 30 but was extended until Nov. 18 as part of a "continuing resolution" keeping the whole government operating temporarily (see **WTTL**, Sept. 16, page 4). Congressional staffers are trying to come up with one bill that both houses could vote on once to recharter the bank, Schloegel reported.

The House amendment was co-sponsored in committee by Reps. John Campbell (R-Calif.) and Brad Sherman (D-Calif.). It would prohibit the bank from doing business with entities that cannot certify that since July 1, 2010, neither they "nor any other person under common ownership or control with the person" have engaged in any activities for which sanctions might be imposed under various laws and regulations pertaining to Iran.

Most affected by the prohibition would be long-term loan guarantees with negative subsidy rates that generate collections for Ex-Im, according to the House Finance Committee's report on H.R. 2072. "A reduction in the volume of such deals would lower Ex-Im's collections. Based on information from Ex-Im, CBO [Congressional Budget Office] estimates that the bank would originate 40 percent fewer loans and guarantees and that collections would fall by almost $1.5 billion over the 2012-2016 period. In 2015, collections would no longer be sufficient to offset Ex-Im's other costs, thereby reducing spending of those collections," the report stated.

Healthcare Industry Calls for "Larger Vision" in Trade Talks

A multilateral agreement aimed at opening the global healthcare market could be one approach to increasing U.S. exports of a wide range of goods and services in this sector, industry representatives said Sept. 26, unveiling a "white paper" on the growing potential in the field. Separate from a single agreement, similar to WTO deals on information technology and financial services, members of the Alliance for Healthcare Competitiveness urge Washington to develop a comprehensive trade agenda that would address tariffs, transparency, intellectual property rights, government procurement, services and regulations for the healthcare sector. Talks on these issues could be conducted in various venues, from the WTO to regional and bilateral negotiations, the group suggests.

> The goal of these talks would be to increase market access globally for American pharmaceuticals, medical devices, hospital services, insurers and researchers. The white paper notes that the $2 trillion U.S. healthcare market represents one-sixth of the U.S. economy and a third of the $6 trillion global healthcare market.

Global trends are projected to grow the global market to $8.4 trillion by 2015, the paper contends. Growth will come from an aging global population that is becoming more urbanized and middle class. The paper says the global middle class is expected to grow to 4 billion by 2030 from 1.7 billion in 2010; the population over 60 will rise to 1.4 billion from 0.7 billion; and the urban population will increase to 4.9 billion from 3.5 billion. "The keystone of this strategy is the understanding that all the elements in a health ecosystem support one another and that to open opportunities for one of them is often to improve care and create a better market for all," the white paper argues.

* * * Briefs * * *

CHINA: Senate is scheduled to vote Oct. 3 on cloture motion Senate Majority Leader Harry Reid (D-Nev.) filed Sept. 26 to bring up bill (S. 1619) that would require Treasury to identify misaligned currencies and require action by administration if countries fail to correct misalignment. It also would require Commerce to investigate whether currency undervaluation by a foreign government provides countervailable subsidy, if a U.S. industry requests investigation and provides proper documentation. With bipartisan support, bill, which is aimed primarily at China, is expected to pass Senate, but fate in House could depend on if House Ways and Means Committee Chairman Dave Camp (R-Mich.) tries to block it in favor of his proposed broader look at China trade issues (see **WTTL**, Aug. 1, page 3).

ITT: Justice agreed in April to terminate its supervision of ITT, which was condition of company's plea agreement in 2007 – along with $100 million fine – to criminal charges for export control violations (see **WTTL**, April 2, 2007, page 2). Because of remedial actions ITT took, government cut supervision time to three years from five. "The good part of their story is how they really turned it around," Steven Pelak, coordinator of Justice's export control enforcement unit, told conference Sept. 26. ITT "generated a lot of good will within the regulatory compliance world" as a result of its reforms and transparency, he noted. "They presented us with a series of good steps over a couple of years, made a final presentation, and we were really persuaded that they had turned the corner," he added.

SYRIA: OFAC Sept. 27 issued General License No. 11, authorizing services supporting nongovernmental organizations' activities, including humanitarian projects, democracy building and education in Syria. OFAC Sept. 27 also issued General License No. 12, authorizing funds transfers for operating expenses or other official business of third-country diplomatic or consular missions in Syria, provided transfer is not by, to, or through Syrian government or any other person whose property and interests in property are blocked (see **WTTL**, Sept. 5, page 6).

LIBYA: OFAC Sept. 23 issued General License No. 8A authorizing "all transactions involving the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya" with exception of funds blocked by Libyan Sanctions Regulations and involving Gadhafi family. This General License supersedes previous licenses 8 and 1B (see **WTTL**, Sept. 26, page 2).

EXPORT ENFORCEMENT**:** Essex Group Inc. of Fort Wayne, Ind. agreed Sept. 23 to pay $200,000 to settle 14 BIS charges of exporting chemicals to China without required licenses. Between September 2006 and October 2007, Essex allegedly exported aromatic polyamide-imide solution, classified under ECCN 1C008, controlled for national security reasons and valued at approximately $381,700, to China without BIS licenses. Essex Group, which made voluntary self-disclosure, neither admitted nor denied charges.

MORE EXPORT ENFORCEMENT**:** Toll Global Forwarding USA Inc. of Springfield Gardens, N.Y., agreed Sept. 23 to pay $27,000 to settle BIS charges that it exported electronic components to India without proper licenses. Toll Global, freight forwarder, allegedly arranged for export of electronic components designated as EAR99 and valued at $6,041 to Solid State Physics Laboratory, Indian entity on BIS' Entity List, in October 2009 without Commerce licenses. In July 2011, Toll Global settled charges that Baltrans Logistics, freight forwarder it acquired in 2008, made similar exports to India (see **WTTL**, Aug. 8, page 4). Toll Global neither admitted nor denied charges.

AND MORE EXPORT ENFORCEMENT**:** BIS issued six-year denial order against Bahram "Ben" Maghazehe of Newtown, Pa., for illegal shipment of radiographic equipment to Iran without authorization. From February 2007 through June 2007, Maghazehe worked with U.S. company to arrange for export through UAE to Iran of Varian Ximator oncology system, which was subject to EAR and the Iranian Transactions Regulations (ITR) and had declared value of $5,000. Maghazehe was sentenced to five years' probation in New York U.S. District Court in October 2008 after pleading guilty May 14, 2008.

AND MORE EXPORT ENFORCEMENT: Texas Armoring Corporation of San Antonio agreed Sept. 27 to pay $300,000 to settle five BIS charges of exporting armored vehicles under ECCN 9A018 to Saudi Arabia without licenses in October 2004 and selling armored vehicles under ECCN 9A018 for export to Indonesia, Nigeria and Mexico with knowledge that violation was about to occur in 2005 and 2006. Firm also agreed to conduct external audit of its export compliance program. Vehicles included Ford Expedition, Chevy Suburban, Toyota Land Cruiser and Range Rover. Firm neither admitted nor denied BIS charges.

EX-IM BANK: Ex-Im Bank Inspector General, bank staff, and international law enforcement partners collaborated to stop $10 million, direct loan fraud in progress against bank, Ex-Im announced Sept. 22. Name of company wasn't mentioned in Ex-Im press release, but is believed to be Telesens, UK-based telecom services company.