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Obama to Nominate Hirschhorn to BIS Under Secretary

President Obama Sept. 11 confounded all pundits who predicted whom he would nominate to be Bureau of Industry and Security (BIS) under secretary and said he intends to nominate Washington, D.C., attorney Eric Hirschhorn for the post. Hirschhorn, a partner in the firm of Winston & Strawn, is a veteran in the export controls field who has headed the Industry Coalition on Technology Transfer (ICOTT) since 1985. He served as deputy assistant secretary for export administration at Commerce (1980-81), when that position was the chief official on export controls. Earlier from 1977 to 1980 he was on President Carter's staff.

Hirshhorn's name surfaced early as one of possible candidates for the BIS post, but he repeatedly told colleagues he was not interested in the job. A lawyer from Washington state had also been rumored a possible nominee.

"Eric Hirschhorn has a wealth of experience working with export controls, and I look forward to having him onboard as we implement President Obama's vision to reform the export control system and increase the competitiveness of U.S. companies by facilitating the sale of our goods, while protecting national security," said Commerce Secretary Gary Locke in a statement.

Ex-Im Sets Record with Nearly $20 Billion in Financing

The Export-Import Bank will finish fiscal year 2009, which ends Sept. 30, with a record level of financing of nearly $20 billion, Ex-Im Chairman and President Fred Hochberg told the Bank's advisory committee Sept. 9. The Bank's historic financial activities over the last 12 months were driven by the financial crisis which saw more U.S. exporters turning to it for aid as commercial financing dried up and interest rates soared. The largest factor in the more than 30% increase over fiscal 2008 financing of $14.4 billion was a doubling of financing for transportation exports and mainly Boeing aircraft sales.

At the height of the crisis at the end of last year, Ex-Im increased its direct lending program to provide financing for exports when commercial credit ceased to be available. As commercial banks have resumed lending, the Bank has returned to its normal financial business of providing loan insurance and guarantees. The sharp growth in Ex-Im financing came as U.S. exports dropped 24% in the first seven months of 2009 compared to that period in 2008. "What I can see clearly is that our volume is a reflection of banks not being as present in helping

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exporters as they had been in the past," Hochberg told WTTL in an exclusive interview. "That's the reason our volume is up so dramatically from a year ago," he said. "We had to do some direct lending, but that's pulled back dramatically because the banks have come in on that," he added. During the first half of 2009 commercial financing went through a dry period and then loosened up again. Now banks "are much more back" into financing Hochberg noted. "In the April-May period we saw a much bigger pull back by commercial banks. But in June, July and August, we saw banks participating much more than they were in the spring," he said.

> "The outlook for the economy was particularly bleak at that period," he explained. Since then, with the passage of the stimulus legislation and some stabilization of the market, "we are seeing interest rates that our clients are paying coming down," Hochberg said. "They are not quite as low as they were a year or two ago, but certainly they are down from what they were – 50 to 100 basis points down from what they were in the spring," he told WTTL.

Hochberg said he could not predict what the coming year will look like for the Bank's financial programs, but he does expect transportation financing to be less robust than this past year. "The Bank has often been countercyclical. When there is a tightening in the market place, there is a great need for export financing. That's what we're here for," he said. "When we're not needed and the private sector fills in, we have no hard feelings," Hochberg said. "Interest rates are coming down because banks are competing for business," he added.

Another reason Ex-Im had to increase its financial aid for exporters was the decline in the number of banks in general and the decline in the number of banks with international experience in particular, Hochberg noted. To generate more interest in Ex-Im and in export financing, Bank officials will start an eight-city tour Oct. 5 to increase awareness of Ex-Im programs for both exporters and banks.

Ex-Im Advisors Question Restrictions on Foreign Content

A draft report that advisors to the Export-Import Bank submitted to the Bank has questioned whether Ex-Im should revise its current restrictions on the amount of foreign content that can be included in exported goods that it finances. Although discussion of the report at the advisory committee's Sept. 9 meeting showed no consensus among members on the question, members seemed to agree that the definition of U.S. content needs to be clarified and a better way is needed to verify content. The report also questioned whether content is an appropriate proxy for jobs. Members suggested the politically sensitive issue also applies to implementation of Buy American provisions in the stimulus legislation and other U.S. laws.

Currently, Ex-Im rules for medium and long-term financing limit foreign content to 15% of an export supported by the Bank. Some advisory committee members questioned whether this limit should be raised to 25%. "We are probably 20 years behind the times with the 15% content policy," said committee member Stephen Sohn, president of Global Services, Inc.

Foreign Content as Percent of U.S. Goods

	1987	2005
All Capital Goods	24.9%	45.5%
Machinery	15.9	36.1
Computers/Electronics	26.6	65.4
Cars/Trucks	38.7	45.3
Aerospace	9.0	17.3

The chairman of the content subcommittee, Mike Selfridge, regional manager of the Silicon Valley Bank, explained data in the report showing how the level of foreign content in U.S. made goods has grown in the last 20 years (see box). Selfridge suggested the level of foreign content does not reflect the full value of U.S. input because it does not include research and development costs and other value-added activities that go into final products. In many cases, the U.S. value and better paying jobs are not counted in the calculation of U.S. content, he said. Subcommittee member Owen Herrnstadt, trade director for the Machinist and Aerospace Workers union, stressed that there was lack of agreement on this in the subcommittee and said the elements that are now used to measure U.S. content – labor, overhead, materials and services – are clear. He said a way is needed to verify U.S. content. "It's long overdue to figure out how this is done," he said.

New CJ Procedures Are Speeding Up Reviews, BISer Say

New procedures the National Security Council (NSC) imposed on interagency handling of Commodity Jurisdiction (CJ) requests have sped up the process, Bureau of Industry and Security (BIS) staffers report. Under the new rules the NSC issued in June, BIS and Defense have just 20 days to review CJ cases and give their opinions to State's Directorate of Defense Trade Controls (DDTC). Final CJ rulings have to issued in 60 days (see **WTTL**, Aug. 3, page 1). If there are disagreements among the agencies on a CJ, the case must be escalated to a political-level meeting of deputy assistant secretaries (DAS) from the three departments.

> When the rules were first issued, there was a slight increase in the number of CJ cases, but the numbers have returned to previous levels, Dennis Krepps, acting director of the BIS chemical and biological division told the agency's Materials Technical Advisory Committee Sept. 10. With the new rules, action has been quicker on cases involving chemical and biological products and also for aircraft and missile products, he told the TAC.

Krepps and Scott Hubinger of his division stressed the importance of including in requests adequate information on the commercial markets for products covered. "The most important question is marketing, Who do you sell it to, the military or civilian?" Hubinger said. "If that's not in the package, we are going to have to ask for it. That's the basis for our argument with the State Department," he said. Also helpful would be information on foreign availability, Krepps said. "You have to help us make that case," he said, noting that firms need to provide specific information on how their product compares to one available outside the U.S.

Even when there are differences between the agencies, cases are not necessarily escalated to the weekly DAS meeting. In some cases, differences can be worked out through an exchange of information. In other cases, Acting BIS Assistant Secretary for Export Administration Matthew Borman, who has to agree to the escalation, may choose not to escalate a disagreement and just accept another department's views. "He's going to look at the case we present to him, and he may say this is one we are not going to win, so are we going to spend my political capital to say I want to overturn this decision," Krepps said. "He may say, I've done eight of these in the past and not won any of them, so this one doesn't make sense," Krepps noted.

Hearing Reveals Support and Opposition to ThyssenKrupp FTZ

An application for the first Foreign Trade Zone (FTZ) permit ever for use solely by a steel plant has reignited a long-dormant debate over the purpose of zones and whether they create a disadvantage for firms that don't operate in FTZs or subzones. Commerce's FTZ Board, which rules on FTZ applications, held a hearing Sept. 10 on a request by Germany's ThyssenKrupp (TK) for FTZ status for a new steel mill it is building in Calvert, Ala., a suburb of Mobile.

> "It's not frequent that the board initiates a hearing in respect to a particular application, and certainly, in this case, we initiated one without receiving a request," Acting Commerce Assistant Secretary for Import Administration Ronald Lorentzen told the hearing. "It was our assessment that the importance commercially of the issues in this application warrant an opportunity for all sides to make known their views and to allow the Foreign Trade Zone staff to hear first hand and benefit from those views," he said (see **WTTL,** Sept. 7, page 1).

The hearing heard a defense of the application from TK, as well as from Alabama government officials, steel users and the National Association of Foreign Trade Zones. Opposition to the subzone came from TK competitors and unions. The application has strong political support from Alabama Governor Bob Riley and Sen. Jeff Sessions (R-Ala.), as well as Rep. Jo Bonner (R-Ala.) and Mobile Mayor Samuel Jones, both of whom testified at the hearing. Political backing for the subzone reflects the $4.7 billion TK is spending to build the new steel mill and the 2,700 jobs it will create. In its application for a subzone to the Mobile FTZ, TK said zone status would save it about $1 million to $5 million in tariffs annually, primarily on ferroalloy raw materials to be used in its carbon and stainless steel production. TK representatives at the hearing said the company would build the plant whether or not it received subzone status.

> The carbon part of the plant will have capacity to produce 4.1 million metric tons of hot and cold rolled steel, according to TK USA's chief financial officer Michael Lutter. The stainless steel side will have capacity for 1 million metric tons. Subzone status would allow TK to compete with imports and is "not about providing ThyssenKrupp a competitive edge over other producers," testified Bill Methenities of Ernst & Young, consultants to the steel firm. "All U.S. producers are similarly situated and have exactly the same option as ThyssenKrupp" to apply for zone status, he said.

Opposition to the application came from two competing steel firms, AK Steel and Allegheny Ludlum plus the United Steelworkers Union and the Machinists and Aerospace Workers union. AK Vice President Alan McCoy told the board that TK executives recently told investors the company wants to increase its stainless market share in the U.S. from 14% to 20%. McCoy said stainless consumption in the U.S. dropped to 742,000 metric tons in 2009 and is expected to recover to 1.26 million metric tons by 2013. Current U.S. producers have capacity for 2.5 million metric tons, he said. "ThyssenKrupp intends to build enough stainless capacity, just in its first phase, to satisfy on its own 74% of the entire projected U.S. market in 2013," he said.

McCoy noted that TK has received more than $800 million in incentives from Alabama jurisdictions along with additional tax breaks to build the plant in Calvert. Rather than have all steel companies seek FTZ status, McCoy suggested, "a more rational approach would be for TK to work with domestic steelmakers and Congress in support of general duty suspension legislation for steelmaking inputs for all domestic steelmakers – not just for one producer that has already benefitted from massive incentives," he testified.

Wassenaar to Review Composite Materials Controls

At its fall meeting starting Sept. 14, the experts' group of the Wassenaar Arrangement, the multilateral export control regime, will consider a U.S. request to liberalize controls on composite material processing equipment and the threshold for controls on carbon fibers. The proposal stems from recommendations that came from a joint working party of two BIS technical advisory committees(TACs), the transportation and materials TACs, that have been examining composite material controls for some two years. If approved by the experts, the proposals would be put on the agenda for the annual Wassenaar Plenary Meeting in December.

> The working party is also working on a proposal to amend the General Technology Note in Export Control Classification Number (ECCN) 1C010.e. to clarify the methodology for determining when controls apply to composite technology. A draft proposal was provided to BIS which gave the group comments and asked for more information. The working party is expected to file a request for a commodity classification before submitting a final recommendation on the note.

* * * Briefs * * *

CUBA: BIS and OFAC amended trade sanction rules for Cuba in Sept. 8 Federal Register to comply with President Obama's orders from April (see **WTTL**, April 20, page 1).

TRADE FIGURES: While U.S.goods exports in July were up slightly from June they were down 26% from July 2008. Goods imports were off 33% from year ago, Commerce reported Sept. 10.