

Vol. 31, No. 18

May 2, 2011

## State Aiding Firms Exiting Iran to Avoid CISADA Sanctions

State officials say they are willing to forego sanctions against companies trying to extricate themselves from investments in Iran. At the same time, Treasury is proposing new reporting requirements to discourage U.S. banks from maintaining correspondent relationships with foreign banks that deal with Iranian financial institutions. Both policies are aimed at implementing the tougher sanctions imposed on Iran under the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), which was enacted in July 2010.

Under a “special rule” in CISADA, five multinational oil companies have avoided sanctions. At an American Conference Institute program on U.S. trade sanctions April 27, Thomas Delare, director of State’s Office of Terrorist Finance and Economic Sanctions Policy, called the special rule a “temporary pass for energy companies that say, ‘We’re getting out of Iran’.”

Since CISADA was signed, two companies have been sanctioned under the law. State imposed sanctions on Naftiran, a Swiss-based subsidiary of the National Iranian Oil Company, on Oct. 5, 2010, and on Belarusneft, a Belarus state energy company, on March 29, 2011. Under the law’s “special rule”, the department has given a pass to ENI (Italy), INPEX (Japan), Royal Dutch Shell (Netherlands), Statoil (Norway) and Total (France) based on their efforts to get out of Iran. The U.S. effort to secure the voluntary withdrawal of companies in many sectors related to energy has been remarkably effective, Delare noted. “Dozens of companies are coming to us saying the risks are too high; we’re working to extract ourselves,” he said.

Meanwhile, Treasury’s Financial Crimes Enforcement Network (FinCEN) released an advance notice April 27 of a proposal to be published in the Federal Register to impose new rules for U.S. banks to report their relationships with foreign correspondent banks doing business with Iran. The proposed regulations, which could offer a roadmap for U.S. investigators into illegal activities of foreign banks, would allow FinCEN to issue a specific written request to a U.S. bank that maintains such a correspondent account to report to FinCEN the activities the correspondent bank has with Iranian-linked financial institutions and blocked entities.

## Doha Round Negotiators Plan to Keep on Keeping on – For Now

Trade negotiators attending the World Trade Organization’s (WTO) Trade Negotiations Committee (TNC) in Geneva April 29 refused to declare the Doha Round dead or even admit they won’t conclude the round in 2011. While diplomats addressing the informal session grasped for



new ideas to deliver something besides failure this year, there was no offer to switch Doha goals to a “Plan B” or “early harvest” of portions of the negotiating agenda (see *WTTL*, April 25, page 2). At the meeting, a new European Union (EU) proposal to reenergize negotiations on sectoral and non-agriculture market access (NAMA) met with cautious optimism and calls for a quick assessment of whether it could spur talks.

The TNC was “pretty sobering,” Deputy USTR Michael Punke told reporters after the meeting. WTO members in the coming days and weeks will “have to determine the most productive path for moving forward,” he said. Diplomats during the TNC referred only in general terms to the ideas of a “Plan B” or “early harvest”, Punke told reporters.

One developing country ambassador to the WTO has privately suggested the round won’t conclude until 2014 because of the U.S. election and other considerations. No alternative plan has been offered, if the round isn’t completed this year, sources say. Members are having discreet “what-if” discussions of alternative scenarios, but those options were not talked about at the TNC, another trade official said.

Before the TNC meeting, USTR Ron Kirk told a Washington program, “There is no secret that there is a moment of sobriety in Geneva perhaps about how large those gaps are, but we think over the coming weeks there will be an opportunity for us, particularly after the TNC meetings are over, to sit down with our partners to see if we can’t come up with a way forward.” He said, “It is not a time to start assessing blame. Also, I don’t believe it is a time to give up.”

“This Round is, once more, on the brink of failure,” WTO Director-General Pascal Lamy told the TNC, according to his prepared statement. In his statement to the meeting, Punke said, “There is no clear path for closing the stark gaps among the key players.” He added: “We need to confront the issues forthrightly and resist the temptation simply to posture so as to deflect blame in the case of failure.” Speaking to reporters after the meeting, Brazilian Ambassador Roberto Azevêdo noted that Lamy has said there are three unacceptable scenarios: (1) business as usual; (2) stop and reset and (3) drifting away with no action. Azevedo said he agreed that those alternatives are unacceptable. Brazil doesn’t accept the stop and reset scenario, he said. “We don’t accept business as usual,” Azevedo told reporters. Manuel Teehankee, Philippine ambassador to the WTO, told *WTTL* that all speakers to the TNC reiterated their commitment to the round and the importance of deciding what the next step will be.

Jean-Luc Demarty, the European Commission director general of trade, presented a comprehensive proposal to the TNC on a plan for moving sectoral talks forward, particularly for chemicals, machinery and electronics, along with a “product basket approach” for other sectors. Under the EU proposal, developed members would eliminate their tariffs for all products, while developing members could eliminate their tariffs for some products, particularly for products covered by existing sectoral arrangements coming from the Uruguay Round.

“For other products, developing members would reduce the end-rates created by the Swiss formula by a further fixed percentage point. The size of this percentage point cut would have to be one that leads to significant further liberalization, proportionate tariff reductions and efforts that are commensurate with what developed members would do,” Demarty explained.

He said in the chemical sectoral all developing countries should reduce their tariffs at least to the levels of the existing Chemicals Tariff Harmonization Agreement, with certain conditions applied. In electronics and electrical machinery, developing members “would be expected to join the effort of developed countries and eliminate their tariffs in this sector in which they are highly competitive exporters. Audiovisual products, being sensitive to various members, would in our proposal be excluded,” he told the TNC. Demarty said the proposal would allow developing countries to use flexibility in their commitments to the sectorals, while also avoiding “preference erosion” for the poorest WTO members. “The EU has spent a considerable time studying the economic impacts of such a compromise package for NAMA sectorals, and our analysis confirms that it would create significant additional market access on top of the

tariff cutting formula, while ensuring that efforts are balanced and proportionate, and in line with the principle of Special and Differential Treatment,” he stated. “This approach would also be simple, and thus rather easily negotiable provided that Members have the political will to look for solutions to the problems that are currently blocking progress in the Round,” he added.

## **Koreans Waiting to See U.S. Move on FTA**

Korean lawmakers are waiting to see when the U.S. Congress will begin to move legislation to implement the U.S.-Korea Free Trade Agreement before they commit to a vote to ratify the deal, but in the end they will approve the accord, an American congressional delegation found during a visit to South Korea April 27-29. The question of which country is going to move first “is just the usual chatter around any political decision,” Rep. Jim McDermott (D-Wash.) told WTTL in an exclusive phone call from South Korea. McDermott was part of the delegation, which also included Reps. Charles Rangel (D-N.Y.), Joseph Crowley (D-N.Y.) and David Reichert (R-Wash.), along with Commerce Secretary Gary Locke.

McDermott dismissed concerns that political opposition in Korea, particularly from sectors such as agriculture, could derail the accord. “This negotiated treaty is going to pass,” McDermott told WTTL. “There is too much momentum on the side of the Koreans for it not to pass,” he said.

“They are watching us,” he added. “Several people have told us that like anything in a political process, if the government decides they want to do it, it can go rather quickly,” he said. “They just want to see that we are serious this time. Once they see that, it will be all over; it will happen quickly,” McDermott said. “They’re waiting for some signal of what our timeline is.”

McDermott also said the issue of exports from the Kaesong Industrial Zone in North Korea, where several South Korean firms have made investments, is not as big a concern in South Korea as it once was. He noted the Executive Order President Obama issued April 18 barring all imports of North Korean goods into the U.S. (see WTTL, April 25, page 4). “That was written as a statement about Kaesong, at least that’s how it is being interpreted,” McDermott said. “Kaesong was a proposal of the last administration in Korea. They have now had a political change, and, as often happens, a new broom comes in and is not excited about what the last broom did and sweeps in a different direction,” he told WTTL. In addition, South Korean attitudes about North Korea have changed since the North sunk a South Korean navy vessel and killed several South Koreans when it bombed a South Korean island, he noted.

## **Kirk Acknowledges Opposition to Granting Russia PNTR**

USTR Ron Kirk acknowledged April 28 what many in the trade community are saying privately – it will be a tough fight to get Congress to grant Russia permanent-normal-trade-relations (PNTR) status once it accedes to the WTO. “I know there has begun to be some talk in Congress about the wisdom of lifting Jackson-Vanik. Those concerns are real,” Kirk told the Washington International Trade Association (see WTTL, March 14, page 1).

“Those concerns are important to us. Particularly many in our exporting sectors in agriculture continue to rightfully be frustrated by the application of some of the most creative sanitary and phytosanitary standards of any country,” Kirk said. “But the sad reality is that if we don’t get Russia into a rules based trading system, there’s just not a lot we can do right now but talk about it,” he added. “As counterintuitive as it may seem, one of the ways to engage Russia and begin to attack some of these problems is to get the largest country in the G-20 not in a rules based trading system into the WTO,” Kirk argued. Industry sources say Russia has enacted new laws to improve protection for intellectual property rights, a main complaint against Russia. Moscow has also moved toward the creation of special courts to enforce these laws. Nonetheless, they say they recognize Russia’s continued problems with corruption and unfair business practices. They also note that the Russians hate to be compared to China, but concede the U.S.

experience with China and how Beijing has acted since joining the WTO and winning PNTR status will be major point of contention in the debate over granting Russia PNTR.

## OFAC Continues to Open Trade for Libyan Rebels

The U.S. continues to carve out rules to allow trade with parts of Libya outside the control of Moammar Gadhafi and his government, as well as United Nations sanctions. “We’ve tried to issue general licenses wherever possible, obviously to obviate the need for people coming in for specific licenses,” Barbara Hammerle, deputy director of Treasury’s Office of Foreign Assets Control (OFAC) said April 27. “Even when specific licenses are requested, we really do need an urgent, quick, but detailed writing to make us comfortable that what we’re licensing is smart, and that we’re doing it in the right way,” she told a conference in Washington.

“We never thought sanctions alone would do in Gadhafi,” she said. “But we are certainly doing our best to try to make things more and more financially difficult for him,” Hammerle added.

OFAC issued General License No. 5 for Libya April 26. It authorizes U.S. persons “to engage in transactions with or involving Qatar Petroleum or the Vitol group of companies related to oil, gas, or petroleum products exported from Libya under the auspices of the Transitional National Council of Libya (TNC), provided that neither the Government of Libya nor any other person whose property and interests in property are blocked - with the exception of Arab Gulf Oil Company (Agoco), as an entity operating in areas controlled by the TNC and under the auspices of the TNC - receives any benefit from such transactions.”

Separately, it issued a licensing policy for Libya April 26. It establishes “a favorable licensing regime through which U.S. persons can request from OFAC specific authorization to trade in hydrocarbon fuel (*i.e.*, oil, gas, and petroleum products), as well as authorization to support or facilitate the trade in such hydrocarbon fuel, to the extent that such hydrocarbon fuel is exported under the auspices of the Transitional National Council of Libya.” On a case-by-case basis with certain conditions it will allow persons to seek specific licenses to engage in transactions related to the production of oil, gas and petroleum products in areas controlled by the TNC.

### \* \* \* Briefs \* \* \*

SYRIA: BIS April 29 revoked “certain licenses for the export and reexport to Syria of items relating to VIP aircraft used to transport senior officials of the Syrian government.” Due to abuses and political repression in Syria, export and reexport of these items “is deemed contrary to the foreign policy interests of the United States,” it said. All persons holding relevant licenses have been notified of this action, BIS said. Separately, OFAC April 29 added four Syrian entities to SDN list: Mahir Al-Asad, Brigade Commander in Syrian Army’s Fourth Armored Division; Ali Mamluk, director of Syrian General Intelligence Directorate; Atif Najib, ex-head of Syrian Political Security Directorate for Dar’a Province; Syrian General Intelligence Directorate; plus new sanctions on Iran’s Islamic Revolutionary Guard Corps – Qods Force.

ALUMINUM EXTRUSIONS: ITC reached split rulings in final determinations April 28 on antidumping and countervailing duty cases against aluminum extrusions from China. Four members found two like products and two industries; two ITCers found one product. Chairman Deanna Tanner Okun and Commissioners Daniel Pearson, Shara Aranoff and Dean Pinkert found two like products and two industries and voted negative on finished heat sinks from China, but affirmative on all other aluminum extrusions. Vice Chairman Irving Williamson and Commissioner Charlotte Lane found one like product and voted affirmative.

BRAZIL: Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Orrin Hatch (R-Utah) asked ITC April 27 to conduct fact-finding study into competitive factors in Brazil affecting U.S. and Brazilian agricultural sales in third-country markets.

COLOMBIA: USTR Ron Kirk said April 28 that his office has received first tranche of documents from Colombia on steps it has taken to comply with checklist of measures needed to improve labor and human rights in country. Texts are being translated from Spanish into English and U.S. officials will discuss actions after translations are complete, he said (see **WTTL**, April 25, page 3).