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Ex-Im Bill Adds Iran Sanctions Certification Requirement

Exporters that receive financial aid from the Export-Import Bank (Ex-Im) would have to certify that they have not engaged in any activity that violates U.S. sanctions against Iran and have not been the target of sanctions under an amendment the Senate Banking Committee adopted Sept. 8 to a bill to reauthorize the bank through 2015. The amendment, sponsored by Sen. Robert Menendez (D-N.J.), adds to existing restrictions on Ex-Im lending in the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA).

The amendment would prohibit Ex-Im from offering any guarantee, insurance or credit to an exporter unless the exporter certifies that neither it nor any firm it owns or controls has engaged in any activity covered by Iran sanctions legislation or the Iranian Transactions Regulations, including the export of sensitive technology identified in CISADA. If an exporter has engaged in such activity it would have to have received a presidential waiver of sanctions. Any exporter that is the subject of sanctions could not receive Ex-Im aid.

The Ex-Im legislation also would require the bank to review its current domestic content requirements and submit a report on its findings to Congress. The review is to consider the impact the rules have on maintaining and creating U.S. jobs, as well as on the manufacturing and services workforce. The bill also increases Ex-Im's financing authority by \$10 billion a year until it reaches \$140 billion, up from its current \$100 billion cap.

The measure now awaits Senate action, just as a similar House Financial Services Committee bill awaits a House vote (see **WTTL**, June 27, page 2). Compared with previous years, the bank's reauthorization received relatively mild opposition from conservative groups that have called the bank "corporate welfare." Although the libertarian Cato Institute continues to advocate against Ex-Im, arguing that 92.8% of its loans and guarantees go to just ten companies, business groups strongly support its programs. "Failure to reauthorize Ex-Im would amount to unilateral disarmament in the face of other nations' aggressive trade finance programs," Chamber of Commerce Vice President R. Bruce Josten wrote the Banking Committee Sept. 7.

TAA-FTA Dance Has New Partner with GSP

When President Obama told a joint session of Congress Sept. 8 that "it's time to clear the way for a series of trade agreements that would make it easier for American companies to sell their products in Panama and Colombia and South Korea," he was referring to the latest maneuvers



aimed at getting congressional approval for the controversial Trade Adjustment Assistance (TAA) program. Under current plans, the Senate is expected to attach a TAA compromise bill to legislation (H.R. 2832) the House passed on a voice vote Sept. 7 to renew the Generalized System of Preferences (GSP). As GSP was awaiting House action, Senate Majority Leader Harry Reid (D-Nev.) said the Senate would add TAA to the GSP measure when it comes over.

What appears unresolved is how quickly the Senate will act and whether any other amendments will be added to the GSP bill. Any additional amendments could gum up plans for moving TAA and then having Obama submit the free trade agreements (FTAs) with Colombia, Panama and South Korea for votes. The president won't submit the pacts until TAA is passed.

Senate Republicans might try to attach an amendment renewing the president's "fast-track" negotiating authority, so-called Trade Promotion Authority (TPA). "I believe the Minority Leader [Sen. Mitch McConnell (R-Ky.)] will bring that up because TPA is critical to doing any kind of trade agreements," Sen. Orrin Hatch (R-Utah), ranking Republican on the Senate Finance Committee, told WTTL. "I think most people realize that [TAA-GSP deal] is a step toward getting the process completed. The purpose of the GSP bill is to provide a Ways and Means money bill that can be amended with TAA and sent back to the House," he added.

Hatch said he doesn't expect changes to the GSP bill to force the need for a House-Senate Conference that could hang up action on the two measures. "There is no reason to," he said. "If it goes back to the House, the issue is will the House pass TAA as well. If they don't, the administration has indicated it won't go ahead with the free trade agreements," Hatch said.

Finance Committee Chairman Max Baucus (D-Mont.) told WTTL there might be an effort to add renewal of the Andean Trade Preferences Act (ATPA) to the GSP bill. When asked whether there would be other amendments, he said: "Some will try, but no." Business representatives say they expect ATPA to be renewed when Congress acts on the Colombia FTA.

The GSP bill passed by the House extends the program to July 31, 2013. It offers importers the opportunity to file for refunds retroactively of duties paid since the law expired in December 2010. The bill also increases the Customs processing fee to 0.3464 cents from 0.21 cents per value to pay for the program. "Last December, during the holidays, the House passed by voice vote a renewal of this program that would have prevented the lapse of the program. Unfortunately, it never made it out of the Senate," Ways and Means Trade subcommittee chairman Kevin Brady (R-Texas) said during the debate on the GSP bill. Rep. Sander Levin (D-Mich.), ranking Ways and Means member, told the House: "It appears that the prospect is that the Senate will act on GSP by adding TAA. If that is the path for the renewal of TAA, the Republicans have an obligation to ensure that it happens immediately as a primary action."

U.S. Abandons Hope for Small or Big Doha Deal This Year

The U.S. has given up hope that the World Trade Organization (WTO) can reach an agreement before the Eighth Ministerial Conference in December on either a small or big agreement on the Doha Round and now calls for the meeting to focus on the next step in the trade talks. "Our view is that the most workable, most realistic, and least damaging, path would be to acknowledge in a direct and honest manner that the round is not working, and then agree that we will initiate a collective effort of active, structured consideration of next steps," Deputy U.S. Trade Representative (USTR) Michael Punke told a Cairns Group Ministerial Meeting Sept. 8. "Specifically, what do we want the negotiating function of the WTO to accomplish?" he told the group, a coalition for agriculture exporting nations.

Punke said the rise of emerging economies since the launch of the round in 2001 has changed the dynamics of the talks and their goals. "The problem, in our view, is profoundly substantive, and in its essence can be succinctly stated: The world has changed, and WTO Members have starkly different views about the implications of that change," he said. "The divergence

of views on this fundamental question, ultimately, is at the heart of why Doha is proving such a struggle,” he said in his speech. “We know that consideration of this question will lead in some uncomfortable and challenging directions,” he added. Punke said the WTO needs to address how to deal with many distinctions in levels of development and whether “some aspects of the Doha work program have been outpaced by developments in the global economy.”

“Questions like these are hard, but addressing them directly may be the best and only way to ensure the strongest possible future for the WTO. By contrast, failure to address these questions will undermine the credibility of the institution as a forum for negotiation,” Punke argued.

Punke dismissed suggestions that more intense talks might lead to a breakthrough or a different negotiating process could reach a deal. “Certainly it is not a process problem. We know this because we’ve tried them all: ministers meetings, big and small; intensive involvement by Senior Officials; topically organized meetings by small groups of ambassadors; intensification in formal Negotiating Groups,” he noted. “In the weeks between now and December, the United States will be highly skeptical of any proposal that assumes we can fix our problems by rearranging the deck chairs,” Punke declared.

WTO Panel Delivers Mixed Ruling on Clove Cigarettes

Both the U.S. and Indonesia are expected to appeal a Sept. 2 WTO dispute-settlement panel ruling, which said the U.S. acted inconsistent with the Technical Barriers to Trade (TBT) Agreement by its ban on clove-flavored cigarettes but Indonesia had failed to demonstrate that the ban is more trade-restrictive than necessary to fulfill a legitimate objective. While the ban under Section 907(a)(1)(A) of the Food, Drug and Cosmetic Act served the legitimate aim of preventing young people from becoming addicted to smoking, the panel questioned the U.S. decision that would prohibit “the production or sale in the United States of cigarettes containing certain additives, including clove, but would continue to permit the production and sale of other cigarettes, including cigarettes containing menthol.”

“Section 907(a)(1)(A) is inconsistent with Article 2.1 of the TBT Agreement because it accords to imported clove cigarettes treatment less favourable than that it accords to like menthol cigarettes of national origin,” the panel ruled. The measure also was inconsistent with the accord because the U.S. didn’t provide adequate advance notice of the rule and had not allowed enough time between its publication and entry into force. The panel rejected most of Jakarta’s other complaints. Indonesia is the world’s main producer of clove-flavored cigarettes.

U.S., EU Agree to Cooperate against Illegal Fishing

While efforts to reach an agreement in the Doha Round to limit government subsidies for fisheries have languished and appear dead for the year, the U.S. and European Union (EU) pledged Sept. 7 to work together to combat illegal, unreported and unregulated (IUU) fishing. Most of the agreement just calls for talks on future measures, but a key goal would be a multilateral agreement to require fisherman to document and certify compliance with fisheries requirements on landed catches. The accord also says the U.S. and EU will consider adopting an electronic system to exchange information on suspected IUU activities.

EU Maritime Affairs Commissioner Maria Damanaki, who signed the joint statement with Jane Lubchenco, administrator of the National Oceanic and Atmospheric Administration, said she has proposed that the EU end subsidies for large fishing vessels, but admitted getting her idea adopted will be difficult. She said the EU is trying to address the IUU problem with countries that flag the ships doing IUU fishing and the ports where their catch lands. In the EU, “we are going to try to have a new policy, science-based. It’s not easy obviously because it’s a reach change, a radical change, in our culture and our ideas,” she said.

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LIBYA: OFAC Sept. 9 issued General License No.7, authorizing all transactions involving entities owned or controlled by Libyan National Oil Corporation, except Zueitina Oil Company, “provided that such transactions do not involve the Libyan National Oil Corporation or any persons whose property and interests in property are blocked.”

EX-IM BANK: Mardin Varela of Miami, Canadian citizen and lawful permanent resident of U.S., was sentenced Sept. 2 in D.C. U.S. District Court to 12 months and one day in prison for his role in scheme to defraud Ex-Im Bank of more than \$1.3 million. From March 2006 until May 2007, Varela joined others in conspiracy to fraudulently obtain loan intended for purchase and shipment of medical supplies to buyer in Colombia, Ex-Im said. Varela was also sentenced to three years of supervised release and was ordered to pay \$1,560,186.39 in restitution and \$351,833.90 in forfeiture. Varela pleaded guilty on Dec. 17, 2010, to one count of conspiracy to defraud the U.S. and to commit mail fraud.

EXPORT ENFORCEMENT: Vytran LLC of Morganville, N.J., paid \$28,000 to settle charge of unlicensed export to Entity List organization in China, BIS announced Sept. 2. In January 2010, Vytran allegedly exported large-diameter precision cleaver and accessories designated as EAR99 and valued at \$15,000 to the Chinese Academy of Engineering Physics, which was on BIS Entity List, through Chinese intermediate consignee without license. In addition to penalty, firm’s export control compliance manager must complete export control compliance training program within six months. Vytran neither admitted nor denied charges.

EXPORT ENFORCEMENT: A.M. Castle & Co. (AMC) of Franklin Park, Ill., will pay \$775,000 to settle 65 charges of exporting aluminum alloy to China, Singapore, Malaysia and Mexico without licenses, BIS announced Sept. 8. From January 2005 through January 2008, AMC exported aluminum alloy, classified under ECCN 1C202 and controlled for nuclear nonproliferation reasons, valued at approximately \$196,000. AMC also must audit its export controls compliance program. AMC neither admitted nor denied charges.

FCPA: Former Latinode CEO Jorge Granados of Miami was sentenced Sept. 7 in Miami U.S. District Court to 46 months in prison for bribing former government officials in Honduras. Granados pled guilty May 19 to conspiracy to violate FCPA in connection with scheme to pay Honduran telecom officials more than \$500,000 in bribes. To date, four ex-executives of Latinode have pleaded guilty to related charges.

ANTIBOYCOTT: Bank of NY Mellon (Shanghai Branch) agreed to pay \$30,000 to settle 15 BIS charges of violating antiboycott regulations by furnishing information about business relationships with boycotted countries or blacklisted persons, BIS announced Aug. 19. From 2004 through 2007, Bank engaged in transactions from U.S. to Oman. Bank neither admitted nor denied charges. Bank was issued a warning letter Aug. 18, 2009, related to transactions to Yemen (see **WTTL**, Oct. 12, 2009, page 4).

TRADE FIGURES: After hand-wringing drop in exports in June, July exports of goods bounced back strongly to \$126.9 billion, 17.2% increase from last July. July goods imports were off from June due to drop in oil prices but still 15.8% ahead of year ago at \$187.5 billion. Services exports grew 10.2% to \$51 billion in July, while services imports inched up just 3% from last July to \$35.3 billion. July goods exports were highest on record, but imports of capital goods also were record, Commerce reported Sept. 8.

WTO: USTR Ron Kirk has nominated two DC attorneys to fill vacancies on WTO Appellate Body. He proposed Thomas Graham, senior counsel with King & Spalding, and John Greenwald, partner with Cassidy Levy Kent, to fill four-year terms starting in December. They and candidates nominated by other countries will undergo review by WTO committee and members, with selection expected in November.

SOLAR PANELS: Sen. Ron Wyden (D-Ore.) urged President Obama in letter Sept. 8 to consider having administration self-initiate antidumping, countervailing duty or Section 421 safeguard action, as well as WTO complaint against imports of solar panels from China. “We need only look at the bankruptcies of major American innovators and producers of solar panels to see the material injury these imports appear to be inflicting on our domestic industry. Unless the U.S. takes aggressive action to combat the import surge of Chinese solar panels and the unfair trade practices that China employs, our efforts to facilitate the creation of the new jobs our economy needs will be substantially undermined,” Wyden wrote.

PIPE: ITC made “sunset” determination Sept. 9 that revoking antidumping orders on carbon and alloy seamless standard, line and pressure pipe from Japan and Romania would cause renewed injury to U.S. industry. ITC voted 6-0 on Japanese pipe, but split 4-2 on small diameter pipe from Romania.

TIRES: WTO Appellate Body upheld previous dispute-settlement panel report Sept. 5, finding U.S. restrictions on tires from China in Section 421 safeguard action met WTO rules (see **WTTL**, Dec. 20, page 3).