

Vol. 39, No. 43**November 4, 2019**

House Committee Passes Ex-Im Extension

In a vote that was too close for comfort, the House Financial Services Committee Oct. 31 approved a bill (H.R. 4863) to reauthorize the Export-Import Bank (Ex-Im) for ten years, increase the agency's lending authority from \$135 billion to \$175 billion over seven years and rename the bank as the U.S. Export Finance Agency. The bill passed the committee in a 30–27 vote, while three other unrelated bills passed by either unanimous or voice votes.

With just days to spare, Ex-Im Bank got a last-minute extension of its authorization, which was due to expire Sept. 30. The bank now has funding through Nov. 21, thanks to a continuing resolution signed Sept. 27 (see **WTTL**, Oct. 7, page 7).

“I worked long and hard to reach a compromise with Ranking Member McHenry on this issue, and I can tell you that we entered our negotiations earlier this year with trust and in good faith. But ultimately there were certain provisions that the Ranking Member felt strongly about that undermined the goal of reaching a broad bipartisan consensus in the Committee,” Committee Chair Maxine Waters (D-Calif.) said in her opening statement Oct. 29.

Industry groups welcomed the measure. “This deserves strong bipartisan support on the House floor. We appreciate the members who support this critical agency and thank them for their vote on this important legislation,” National Association of Manufacturers VP Linda Dempsey said in a statement. “Manufacturers need long-term certainty that the Ex-Im Bank can keep helping manufacturers secure new sales overseas that support well-paying American jobs,” she added.

State Sanctions Iranian Construction Sector

The administration Oct. 31 added new potential sanctions on Iran after identifying the country's construction sector as being controlled directly or indirectly by the Islamic

Revolutionary Guard Corps (IRGC); and naming four strategic materials as being used in connection with Iran's nuclear, military or ballistic missile programs. "As a result of this determination, the sale, supply, or transfer to or from Iran of raw and semi-finished metals, graphite, coal, and software for integrating industrial purposes will be sanctionable if those materials are to be used in connection with the Iranian construction sector," State said in a fact sheet.

At the same time, the administration identified four materials that would be sanctioned, regardless of end-use or end-user. These materials that are used in nuclear, military or ballistic missile programs include: stainless steel 304L tubes; MN40 manganese brazing foil; MN70 manganese brazing foil; and stainless steel CrNi60WTi ESR + VAR (chromium, nickel, 60% tungsten, titanium, electro-slag remelting, vacuum arc remelting).

The U.S. said "it had imposed sanctions on the Iranian construction sector and trade in four materials used in its military or nuclear programs, even as it waived sanctions to let foreign firms continue non-proliferation work in Iran," the Wisconsin Project tweeted, referring to reports that the administration had plans to renew waivers to sanctions that bar non-U.S. firms from dealing with the Atomic Energy Organization of Iran (AEOI).

Although the administration has yet to formally renew the waivers, Sens. Ted Cruz (R-Texas) and Lindsey Graham (R-S.C.), urged the president to reconsider the decision. "This is disappointing and another lost opportunity to tear up the catastrophic Obama-Iran nuclear deal once and for all. President Trump should immediately order his administration to stop issuing civil nuclear waivers," they said in a joint statement.

"Iran is now openly violating the nuclear deal and stockpiling dangerous nuclear material. There is no justification for letting them continue to build up their program. We intend to work with our Congressional colleagues to advance legislation to reverse this misguided decision," the senators added.

U.S., China Will Need to Find New Rendezvous Location

While all eyes were on the APEC summit in Chile as the location for a potential signing of a U.S.-China "phase one" trade deal, and despite the fact that details of such a deal were still sketchy, the Chilean people and their president had other ideas. Chilean President Sebastian Piñera canceled the summit Oct. 30, citing public protests in Santiago. "Our priority is to safeguard public order, give urgent solutions to social demands + implement an inclusive dialogue," Pinera tweeted.

President Trump was optimistic, tweeting the next day: "China and the USA are working on selecting a new site for signing of Phase One of Trade Agreement, about 60% of total deal, after APEC in Chile was canceled do [sic] to unrelated circumstances. The new location will be announced soon. President Xi and President Trump will do signing!"

Nonplussed, U.S. Trade Representative (USTR) Robert Lighthizer, Treasury Secretary Mnuchin and Chinese Vice Premier Liu He spoke on the phone Nov. 1. “The two sides conducted serious and constructive discussions on properly addressing their core concerns and reached consensus on principles. The two sides discussed the next consultation arrangements,” a Chinese Ministry of Commerce spokesperson after the call. Officials from the two countries have spoken multiple times in the last few weeks since the U.S. announced a verbal truce and suspended an upcoming tariff increase (see **WTTL**, Oct. 28, page 3).

“As to whether the two heads of state will meet, I can tell you that they maintain contact through various means,” a Chinese Foreign Ministry spokesperson said the day before. “The consultations are progressing smoothly and both sides will press ahead with their work as planned. As we’ve been saying, it is China’s hope that the two sides can find a way to resolve the economic and trade issues on the basis of mutual respect, equality and mutual benefit,” he added.

Not to be put off by such progress, Sen. Ron Wyden (D-Ore.) Oct. 29 demanded answers from the Trump administration regarding a possible quid pro quo during China trade negotiations. In letters to trade negotiator Peter Navarro, Treasury Secretary Steven Mnuchin, Secretary of State Mike Pompeo, Commerce Secretary Wilbur Ross and USTR Robert Lighthizer, Wyden asked if an investigation into Vice President Biden, his son or other political rivals of Trump, was discussed as a part of trade negotiations with China.

“[T]here is every reason to believe that the Administration is seeking to link advancement on a trade deal with advancement of its own domestic political agenda,” Wyden wrote. “Contrary to ... assertions, the American people have every right to know if negotiators are using United States’ trade policy to advance President Trump’s personal and political interests,” he continued.

Administration Gives Some GSP Benefits, Takes Some Away

In the midst of an impeachment inquiry that centers around the president’s relations with Ukraine, the White House Oct. 25 restored some of that country’s benefits under the Generalized System of Preferences (GSP) after determining Kyiv “has made progress in providing adequate and effective protection of intellectual property [IP] rights.”

At the same time, the White House suspended \$1.3 billion in trade preferences for Thailand for “not taking steps to afford to workers in Thailand internationally recognized worker rights,” it said. “Accordingly, it is appropriate to suspend the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Thailand, effective six months after the date of this proclamation.”

The administration suspended some of Ukraine’s GSP benefits in December 2017 due to significant concerns with its protection and enforcement of IP rights (see **WTTL**, Jan. 1, 2018, page 4). In recognition of new legislation Ukraine passed in 2018, the U.S. restored

approximately one-third of the \$36 million GSP benefits it originally removed. Responding to news reports and the current political climate, Sens. Ron Wyden (D-Ore.) and Bob Menendez (D-N.J.), the ranking members of the Finance and Foreign Relations committees, asked USTR Robert Lighthizer in a letter Oct. 30 whether the White House interfered in decisions regarding trade preferences for Ukraine.

“It would raise grave concerns both domestically and internationally if U.S. trade policy were used as a bargaining chip to achieve partisan political ends,” Wyden and Menendez wrote. “To ensure that GSP remains an effective and legitimate program that encourages countries to adopt fair trade practices, it is imperative that decisions about beneficiary countries’ eligibility follow a transparent, accountable process that is free from partisan political considerations,” they continued.

Thailand’s GSP eligibility will be revoked effective six months from today for approximately one-third of the country’s GSP trade, which totaled \$4.4 billion in 2018. Additionally, due to longstanding worker rights issues in the seafood and shipping industries, GSP eligibility will be revoked for all seafood products from Thailand, the USTR’s office noted.

“The decision will finally show the Thai government that the international community intends to hold accountable those countries that repeatedly and consistently violate fundamental worker and trade union rights,” said AFL-CIO International Director Cathy Feingold, who also serves as deputy president of the International Trade Union Confederation (ITUC).

China Could Retaliate in WTO Antidumping Dispute

China may impose countermeasures up to \$3.579 billion on imported goods from the U.S. as a result of the U.S.’ failure to comply with the World Trade Organization’s (WTO) ruling in a dispute over methodologies used in antidumping proceedings, a WTO arbitrator determined Nov. 1. China must now ask the WTO’s Dispute Settlement Body (DSB) for formal authorization.

China requested authorization in September 2018 to impose \$7 billion in annual trade sanctions (see **WTTL**, Sept. 17, 2018, page 4). The dispute dates from a complaint China filed in December 2013. In October 2016, a dispute panel found that the Commerce acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement (ADA) in its use of the weighted average-to-transaction (WA-T) comparison methodology, particularly “zeroing.”

The arbitrator used a counterfactual based on a scenario of U.S. compliance with the WTO ruling and calculated the level of nullification or impairment under the assumption that the antidumping measures would be modified (rather than removed in their entirety) to ensure compliance. The calculation was based on trade flows in products subject to 25 previous antidumping duty orders on Chinese imports, to account for the panel and Appellate Body findings that the methodologies used were “as such” or “as applied”

inconsistent with WTO rules. Those previous antidumping duty orders covered: aluminum extrusions, bags, coated paper, diamond sawblades, furniture, OCTG, OTR tires, PET film, ribbons, shrimp, solar panels, steel cylinders, wood flooring, copper pipe and tube, iron pipe fittings, passenger vehicle and light truck tires, residential washers and several different steel products.

Global Steel Forum Work Continues, Despite Outlier

Continuing their disagreement, members of the Global Forum on Steel Excess Capacity (GFSEC) Oct. 26 did not come to a consensus on the forum's future due to at least one country's view that the GFSEC "has achieved its goals and should expire," the chair said in a statement after the meeting.

The disagreement is not new, as the G20 trade and digital economy ministers who met in Japan in June also disagreed on the future of the forum, while coming to consensus on dozens of other issues (see **WTTL**, June 17, page 2).

The chair noted that "a large majority of members have agreed to continue work on the issue of steel excess capacity on the current basis," and cited "the widely shared importance of ensuring that such a future effort is pursued as an open platform where all G20 members and interested OECD members are welcome to join in a spirit of constructive exchange and cooperation."

"The decision by a vast majority of Global Forum members to continue the work of the Forum beyond 2019 is a recognition that severe excess capacity is a continuing crisis," USTR Robert Lighthizer said in statement. "Participation in the Global Forum process is a signal of each member government's commitment to adhere to principles intended to ensure market-based outcomes," he added.

European Union (EU) Trade Commissioner Cecilia Malmström specifically called out China for not joining the consensus. "There are no excuses: those who walk out on the Forum are turning their backs on multilateralism and on solving global problems through cooperation – and give cover to damaging and unacceptable unilateral actions. We call on China to exercise leadership, participate in the Forum and deliver on its commitments," she said in a statement.

Chinese officials noted the forum had come to its natural end, but that Beijing would continue to work with partners. "China regrets that this meeting failed to reach a consensus on the ministerial report. Despite this, China is willing to conduct exchanges and cooperation with relevant parties in an open manner. After the forum is over, the relevant issues in the steel industry can be discussed through the industry's existing channels," the Ministry of Commerce (MOFCOM) posted on its website.

WTO Panel Upholds U.S. Challenge of Indian Export Programs

A WTO dispute panel Oct. 31 upheld U.S. claims that five Indian government schemes provided prohibited export subsidies, giving thousands of companies benefits totaling more than \$7 billion annually from subsidy programs that provide exemptions from certain duties, taxes and fees.

In a statement, USTR Robert Lighthizer called the decision “a resounding victory.” The U.S. first requested WTO dispute settlement consultations with India challenging that country’s export subsidy programs in March 2018 (see **WTTL**, March 19, 2018, page 6).

The WTO dispute panel found the U.S. had “established the existence of a financial contribution” through which a benefit was conferred on the recipient, the WTO said. “Further, the Panel also found that the United States had established that each of those measures was contingent in law upon export performance,” it added.

The panel also rejected India’s claim that it was exempted from the prohibition on export subsidies under the special and differential treatment provisions of the WTO’s Agreement on Subsidies and Countervailing Measures (SCM). The panel determined that India had “graduated” from the exemption it was originally entitled to and was not eligible for any further transition period.

Specifically, the programs at issue are: the Merchandise Exports from India Scheme (MEIS); Export Oriented Units Scheme (EOU) and sector-specific schemes, including Electronics Hardware Technology Parks Scheme (EHTP); Special Economic Zones (SEZ); Export Promotion Capital Goods Scheme (EPCG); and a duty-free imports for exporters (DFIS) program.

The panel recommended that India withdraw the prohibited subsidies under DFIS within 90 days; under the EOU/EHTP/BTP Schemes, EPCG Scheme, and MEIS within 120 days; and under the SEZ Scheme within 180 days.

Section 232 Exclusion Process Needs More Transparency, IG Says

Certain actions that the Bureau of Industry and Security (BIS) has taken during its Section 232 exclusion request reviews, including an unofficial appeals process, communications with an objector, and off-record discussions, give the perception that the process “is neither transparent nor objective,” according to an Oct. 28 management alert from the department’s inspector general’s (IG) office (OIG-20-003-M).

“Department officials and interested parties have discussed information about pending exclusion requests that was not included in the official record. Following some of these off-record communications, Department officials took subsequent action consistent with such communications,” the IG alert said.

Additionally, BIS “changed an internal criterion used to review exclusion requests before posting them online at the request of an objector, creating the perception of undue influence,” it added. “We found no evidence that other interested parties, such as requesters, were aware of the communication and had an opportunity to express their views on the issue. This follow-on action gives the appearance of improper influence to the process by an interested party,” the IG noted.

The IG recommended three specific actions to remedy the situation: regard all decisions as final once they are posted online, or amend the rules to allow for appeals; create a formal process for modifying internal criteria that is used to review exclusion requests, in order to ensure internal criteria are properly vetted and approved prior to implementation; and document all discussions with interested parties.

Dispute Panel Will Take on India’s Retaliatory Tariffs

The WTO Dispute Settlement Body (DSB) Oct. 28 agreed to the U.S.’ second request to establish a panel to rule on India's decision to impose additional duties on certain U.S. products. The Indian tariffs stem from the U.S. decision in 2018 to impose Section 232 duties on steel and aluminum imports, including those from India.

“Section 232 measures on steel and aluminum products imposed by the United States are nothing but disguised safeguard measures to protect the United States’ domestic industry in the garb of national security. Further, India had provided ample time to the United States to resolve issues concerning Section 232 measures but the United States did not agree for any positive solution,” India said at the meeting. India blocked the U.S. first request at a DSB meeting in September (see **WTTL**, Oct. 7, page 5).

“India’s rebalancing measures are in direct response to the unwarranted restrictions imposed by the United States against Indian steel and aluminum exports. India is committed to remove its rebalancing measures as soon as the United States removes its illegal tariffs against Indian steel and aluminum products,” India said. The next regular DSB meeting will take place Nov. 22.

At the same time, the U.S. objected to a request from China for WTO authorization to suspend trade concessions on \$2.4 billion of U.S. imports “in response to the United States’ continued non-compliance” of a WTO ruling on countervailing duties levied on certain Chinese goods (see **WTTL**, Oct. 28, page 1). A WTO arbitrator will now determine the appropriate level of retaliation.

Chinese Drones Grounded Pending Security Review

A push by the U.S. to ban the use of Chinese-made drones is getting a fierce rebuke by the Chinese government. Interior Secretary David Bernhardt Oct. 30 ordered more than 800

drones, used by the department to monitor inaccessible terrain such as dams and other natural resources and infrastructure, grounded and reviewed for the security risks they pose to the U.S.

“Secretary Bernhardt is reviewing ...Interior’s drone program. Until this review is completed, the Secretary has directed that drones manufactured in China or made from Chinese components be grounded unless they are currently being utilized for emergency purposes, such as fighting wildfires, search and rescue, and dealing with natural disasters that may threaten life or property,” Interior spokeswoman Melissa Brown said in a statement. Whether the drones are ever used again would be determined when the security review is completed. How long that would be is unclear.

Sen. Rick Scott (R-Fla.) praised the department’s decision. “After many conversations with my office, it’s good to see Interior change course. Federal agencies should not put our national security at risk by using taxpayer \$\$ to purchase Chinese tech. My bill would codify this policy and extend it to every federal agency,” the senator tweeted Oct. 30.

In September, Scott and fellow Sens. Marco Rubio (R-Fla.), Chris Murphy (D-Conn.), Tom Cotton (R-Ark.), Josh Hawley (R-Mo.) and Richard Blumenthal (D-Conn.) introduced the American Security Drone Act (S. 2502), which would prohibit the U.S. government from procuring drones manufactured by “covered foreign entities” identified as national security threats, such as China.

Chinese Foreign Ministry Spokesperson Geng Shuang reacted to the U.S. move during his daily press briefing, “We hope the U.S. will discard its outdated Cold War thinking and zero-sum game mindset, stop abusing the concept of national security, stop weaving the ‘China threat’ narrative, and stop the wanton oppression of Chinese enterprises,” he told reporters. “It should provide a fair, just and non-discriminatory environment for Chinese businesses in the U.S.,” Geng added.

But he also had a word of caution for Chinese companies operating in the U.S. “We ask Chinese enterprises to observe international rules and local laws and regulations while doing business overseas.”

DJI, the Chinese drone manufacturer, had boasted of Interior’s approval of its products in July. “We’re excited to see the report validate how DJI products can meet the stringent data needs of high-security customers like government agencies and critical infrastructure operators. That’s important, because DOI found DJI drones were far better than those from other companies for their missions. DOI said non-DJI drones were either ‘10x less capable for the same price, or up to 10x more costly than similarly capable DJI aircraft,’ the company said in a blog post.

“After a careful evaluation of DOI’s needs, other products on the market and the data security protections included in DJI Government Edition, the report also concluded the drone market does not offer any alternative products ‘that are competitive in price, required mission and security performance, and necessary scalability to the two tested UAS,’” the company noted at the time.

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STRONTIUM CHROMATE: In 5-0 final vote Oct. 31, ITC found U.S. industry is materially injured by dumped imports of strontium chromate from Austria and France.

STEEL PIPE: In 5-0 “sunset” votes Oct. 31, ITC said revoking antidumping and countervailing duty orders on imports of welded stainless steel pressure pipe from China and antidumping orders on imports from Malaysia, Thailand and Vietnam would renew injury to U.S. industry.

PIPE FITTINGS: In 5-0 “sunset” votes Oct. 31, ITC said revoking antidumping order on imports of malleable iron pipe fittings from China would renew injury to U.S. industry.

FCPA: Jesus Ramon Veroes of Venezuela was sentenced Oct. 29 in Miami U.S. District Court to 51 months in prison for conspiracy to violate Foreign Corrupt Practices Act (FCPA). Codefendant Miami businessman Luis Alberto Chacin Haddad was sentenced in September in Miami court to 51 months in prison for related charges (see **WTTL**, Oct. 7, page 7). Veroes and Chacin pleaded guilty in June. According to Justice sentencing memo, Luis Alfredo Motta Dominguez and Eustiquio Jose Lugo Gomez awarded two Florida-based companies more than \$58 million in procurement contracts with Venezuela’s state-owned electricity company, Corporación Eléctrica Nacional, S.A. (Corpoelec), in exchange for bribes paid to them or for their benefit. Three days after guilty pleas, Dominguez, former Venezuelan government minister, and Motta, former officer at Corpoelec, were indicted in Miami court on charges of laundering proceeds of FCPA violations.

BETTER LATE THAN NEVER: UK residents Cyrus Ahsani and Saman Ahsani, former CEO and chief operations officer (COO) of Unaoil, pleaded guilty in March in Houston U.S. District Court to conspiracy to violate FCPA for their roles in scheme to corruptly facilitate millions of dollars in bribe payments to officials in multiple countries to secure oil and gas contracts, Justice announced Oct. 30. Countries included Algeria, Angola, Azerbaijan, Democratic Republic of Congo, Iran, Iraq, Kazakhstan, Libya and Syria. UK resident Steven Hunter, former Unaoil business development director, pleaded guilty in August 2018 to conspiracy to violate FCPA. Hunter’s sentencing is scheduled for March 13, 2020; Ahsanis are set for sentencing April 20, 2020.

EXPORT ENFORCEMENT: Peter Sotis of Delray Beach, Fla., owner and principal of Add Helium LLC, was arrested Oct. 30 on charges of exporting dual-use goods, including four rebreathers, to Libya without required Commerce license in 2016. Rebreathers, apparatus that absorbs carbon dioxide out of scuba diver’s exhaled breath, are classified under ECCN 8A002. “After being instructed by a Department of Commerce special agent that the rebreathers could not be exported to Libya while a license determination was pending, the coconspirators attempted to evade the export restriction by having an intermediary company, U.S. Company 1, arrange to pick up and export the controlled items to Libya without a license,” indictment, which was unsealed in Miami U.S. District Court, noted. Sotis was released on \$250,000 bond.

AGOA: President will terminate Cameroon’s designation as AGOA beneficiary as of Jan. 1, 2020, due to “gross violations of internationally recognized human rights,” White House said in message to Congress Oct. 31. Despite “intensive engagement” with U.S., country “has failed to address concerns regarding persistent human rights violations being committed by Cameroonian security forces. These violations include extrajudicial killings, arbitrary and unlawful detention, and torture,” White House added.

FORCED LABOR: CBP issued withhold release order Nov. 1 on tobacco and products containing tobacco from Malawi that is produced using forced labor and forced child labor. “Importers may offer proof that their tobacco and tobacco-containing products do not include tobacco from Malawi that was produced with labor prohibited under U.S. law,” CBP said.

RUSSIA: OFAC Nov. 1 issued general licenses (GLs) 13M and 15G, extending previous GLs that expanded sanctions relief for Russian conglomerate GAZ Group. Specifically, OFAC extended GL expiration date to March 31, 2020. GL 15G also includes “expanded authorization for certain safety-related activity and a new authorization for certain activities to comply with environmental regulatory requirements,” OFAC said.

KORUS: Sometimes consultations work. U.S. Nov. 1 welcomed Korea’s passage of amendments to country’s Distant Water Fisheries Development Act, which “enable the Minister of Oceans and Fisheries to administer administrative sanctions for violations of conservation and management measures of regional fisheries management organizations,” USTR said. Agency announced in September it would seek first consultations under environment chapter of U.S.- Korea Free Trade Agreement (KORUS) over illegal, unreported and unregulated fishing (see **WTTL**, Sept. 23, page 4). “We commend Korea for acting expeditiously to strengthen its regime to combat illegal fishing, which disadvantages law-abiding fishermen everywhere,” said USTR Robert Lighthizer in statement.

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