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Congress Gives Ex-Im Bank Seven More Years

While they didn't get quite as long as they hoped, lawmakers and industry groups welcomed the seven-year reauthorization of the Export-Import (Ex-Im) Bank that Congress passed as part of the end-of year spending bill (H.R. 1865). The Senate passed the bill Dec. 19 in a 71-23 vote, with House approval two days earlier in a 297-120 vote.

In a close to party line vote, the House in November voted 235-184 to approve a bill (H.R. 4863) to reauthorize the bank 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 (see **WTTL**, Nov. 18, page 2). These provisions were not in the final spending bill.

Ex-Im Bank President and Chairman Kimberly Reed called the long-term reauthorization a "new era" for the bank. "This seven-year reauthorization, the longest ever in Ex-Im history, will enable Ex-Im to help keep America strong and support American jobs through U.S. exports," she said in a statement. At press time, the president was set to sign the bill.

Other provisions in the final bill include an increase from 25% to 30% in the bank's target threshold of small business financed exports as a percentage of total exports, procedures to establish a temporary board in the absence of a quorum, as well as a goal of reserving 5% of its exposure authority to support renewable energy, energy efficiency, and energy storage technology exports.

House Passes USMCA Implementing Legislation, Soothes Nerves

Within minutes of the House approving the implementing bill (H.R. 5430) for the newly renegotiated U.S.-Mexico-Canada (USMCA) agreement Dec. 19, the emails and statements of support began in earnest. The chamber passed the legislation, which will move to

the Senate in 2020, in a 385-41 vote. The White House sent Congress the bill Dec. 13 (see *WTTL*, Dec. 16, page 3). Changes from the deal originally signed in November 2018 include state-to-state dispute settlement, labor, environment, intellectual property (IP) and automotive rules of origin. Senate Finance Committee Chair Chuck Grassley (R-Iowa) will hold a markup of the bill for Jan. 7, 2020.

“With the House’s passage of implementing legislation for the vastly improved, enforceable version of the USMCA, we replace a deeply flawed trade deal and set enhanced standards for all future U.S. trade agreements to build upon. Now, the Senate must do its job and pass this landmark bill in short order,” House Ways and Means Committee Chair Richard Neal (D-Mass.) said in a statement.

While many unions and pro-union lawmakers eventually supported the bill, the United Auto Workers (UAW) remained skeptical. “We will do all we can to vigilantly monitor the agreement to try to make sure multinational corporations live up to their end of the bargain, but we should have no illusion that our efforts alone will get the job done,” UAW President Rory Gamble said in a statement.

Industry groups that had reservations with the final deal came around. “Even with some shortcomings, USMCA is a strong deal overall that represents a hard-fought bipartisan victory. It’s also a testament to the tenacity of the American business community and its ability to forge consensus on even the most difficult issues,” U.S. chamber CEO Tom Donohue said in a blog post before the House vote.

The U.S. Trade Representative (USTR) had to put out a small fire earlier in the week when Mexico complained about potential labor inspections that had not been formally agreed. USTR Robert Lighthizer assuaged the hard feelings by saying that the legislation authorizes “five attachés from the Department of Labor to work with their Mexican counterparts, workers, and civil society groups.”

“These personnel will not be ‘labor inspectors’ and will abide by all relevant Mexican laws,” he wrote to Mexican chief negotiator Jesus Seade Dec. 16. Lighthizer also noted that the agreement’s rapid-response mechanism allows for an independent panel request on-site verifications to worker rights’ complaints. “But those verifications will be conducted by the independent panelists not by the labor attachés,” he wrote.

State Warns Against Metal Exports to Iran

Parties involved in exports to Iran of graphite electrodes and needle coke, which are essential materials for Iran’s steel industry, face U.S. sanctions risk, State warned exporters in an advisory Dec. 16. These sanctions go beyond simply prohibitions against Iran’s steel industry, the department noted.

“Transfers or exports to Iran of graphite electrodes or needle coke create significant sanctions risk for entities and individuals, including but not limited to producers and

exporters of graphite electrodes and needle coke, port operators, shippers, shipping companies, and vessel operators and owners. Sanctions risks may be present even if the intended end-user is not in Iran's steel sector," State said Dec. 16.

Graphite electrodes are the main heating element used in electric steelmaking, while needle coke is the main input used to create graphite electrodes, State noted. A May Executive Order (EO) authorized further sanctions on Iran's iron, steel, aluminum and copper sectors (see **WTTL**, May 13, page 5).

"Businesses should be aware of the risks created from transferring or exporting needle coke and graphite electrodes to Iran and implement effective due diligence policies, procedures, and internal controls to ensure compliance with applicable legal requirements," it added. "Industry should understand that the particulars of a transfer or export of graphite electrodes or needle coke to Iran such as the shipping line used or intended end-user could also cause such activities to be covered by other Iran sanctions-related authorities."

It is the policy of the U.S. to "deny the Iranian government revenue, including revenue derived from the export of products from Iran's iron, steel, aluminum, and copper sectors, that may be used to provide funding and support for the proliferation of weapons of mass destruction, terrorist groups and networks, campaigns of regional aggression, and military expansion," EO 13871 noted.

Indian Steel Could Be Test Case for WTO Appeals Process

In what could become a test case for the post-Appellate Body (AB) era, the U.S. Dec. 18 appealed a World Trade Organization (WTO) dispute panel ruling on countervailing measures on imported hot-rolled carbon steel flat products from India. As of Dec. 11, the AB does not have a quorum to hear appeals.

The panel in November largely rejected India's claims against U.S. efforts to comply with a previous panel ruling (see **WTTL**, Nov. 18, page 3). "While no division can be established to hear this appeal at this time, the United States will confer with India so the parties may determine the way forward in this dispute, including whether the matters at issue may be resolved at this stage or to consider alternatives to the appellate process." the U.S. said at a WTO Dispute Settlement Body meeting.

"Consistent with the aim of the WTO dispute settlement system, the parties should make efforts to find a positive solution to their dispute, and this remains the U.S. preference," it added. The next regular DSB meeting will take place Jan. 27, 2020.

In a speech to the full WTO membership Dec. 6, WTO Director-General Roberto Azevêdo attempted to stay positive. "Existing WTO rules still apply. WTO disciplines and principles will continue to underpin world trade. And members will continue to use WTO rules to resolve trade conflicts - in regular WTO bodies, through consultations, via dispute

settlement panels, and through any other means envisaged in the WTO agreements,” he said. The day before the meeting, the National Foreign Trade Council (NFTC) released a paper prepared by former U.S. Trade Representative (USTR) official Bruce Hirsh that makes several recommendations “designed to avoid future judicial overreach and strengthen the legitimacy of the Appellate Body.”

The paper includes six key proposals: enforce the 90-day timeframe for appeals; prohibit advisory opinions, and further elaborate the circumstances constituting advisory opinions; clarify that Dispute Settlement Understanding (DSU) Article 3.2 does not justify expanding or narrowing the reach of WTO provisions or filling gaps in WTO coverage.

In addition, the paper proposes the WTO: clarify that customary rules of interpretation of public international law do not justify gap-filling and expanding or narrowing the reach of WTO provisions; affirm that Article 17.6(ii) of the Antidumping Agreement must be given meaning, by clarifying that the provision reflects the principle that WTO adjudicators may not expand or narrow the meaning of broad provisions and general terms; and direct the AB to reject party arguments that expand or narrow the reach of agreement provisions or fill gaps in agreements.

“A breakthrough of some sort on the Appellate Body deadlock is badly needed in Geneva. We commissioned this paper by Bruce because we think the demise of WTO dispute settlement would be a lose-lose for all Members,” NFTC President Rufus Yerxa said in a statement.

CBP Workload Increases Risks to Tariff Drawback Program

Customs and Border Protection (CBP) has not adequately managed the increased workload due to expanded eligibility for the tariff drawback program and has not developed a plan for doing so according to a new Government Accountability office report (GAO-20-182) released Dec. 17. As a result, CBP “faces delays in processing drawback claims that could result in uncertainty for industry, potentially impeding trade,” the report said.

“To help ensure it does not overpay funds, CBP now electronically verifies drawback claims against underlying import information. However, CBP cannot verify drawback claims against underlying export information because it does not maintain detailed information about exports in its new electronic system,” the GAO report noted.

GAO made six recommendations for CBP, including: develop a plan for managing its increased workload; assess the feasibility of flagging excessive export submissions across multiple claims; develop a plan to establish a reliable system of record for proof of export; turn the claim selection feature in ACE back on and finalize and implement procedures to target claims for review; analyze the results of its targeting of claims for review and design responses to mitigate identified risk; and develop a plan to analyze the impact on industry and government of key changes to the drawback program. CBP concurred with all six recommendations.

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MAGNESIUM: In 5-0 negative final vote Dec. 18, ITC found U.S. industry is not materially injured by dumped and subsidized imports of magnesium from Israel.

FLUID END BLOCKS: FEB Fair Trade Coalition, Ellwood Group and Finkl Steel filed counter-vailing and antidumping duty petitions Dec. 19 with ITA and ITC against imports of forged steel fluid end blocks from China, Germany, India and Italy. According to petitions, alleged dumping margins range from 12.82 to 77.24%.

CIGARETTES: Coalition Against Korean Cigarettes filed antidumping duty petitions Dec. 18 with ITA and ITC against imports of 4th tier cigarettes from Korea.

IRAN: Treasury Dec. 19 issued amended GL K-1 extending authorization of maintenance or wind-down of transactions involving Cosco Shipping Tanker (Dalian) Co., Ltd. until Feb. 4, 2020 (see **WTTL**, Oct. 28, page 7). OFAC in September designated six Chinese companies, including Cosco Dalian, and five company executives for “knowingly engaging in a significant transaction for the transport of oil from Iran,” State then said in press statement.

FCPA: Miami financial advisor Frank Roberto Chatburn Ripalda, dual U.S. and Ecuadorian citizen, was sentenced Dec. 18 in Miami U.S. District Court to 42 months in prison followed by 3 years’ supervised release. Chatburn pleaded guilty in October to conspiracy to commit money laundering related to scheme to pay bribes to officials of Ecuador’s state-owned and state-controlled oil company, PetroEcuador. Between 2013 and 2015, Chatburn conspired with foreign official to “conduct financial transactions that were designed to conceal bribe payments” from Brazilian construction conglomerate Odebrecht S.A. Indictment against Jose Carlos Grubisich, former CEO of Odebrecht subsidiary Braskem S.A., was unsealed in November in Brooklyn U.S. District Court on charges of conspiracy to violate Foreign Corrupt Practices Act (FCPA) and money laundering (see **WTTL**, Nov. 25, page 10).

MORE FCPA: Former Goldman Sachs Group Inc. executive Tim Leissner agreed Dec. 16 to pay disgorgement of \$43.7 million to settle SEC charges of violating Foreign Corrupt Practices Act (FCPA) through scheme by which he obtained millions of dollars by paying unlawful bribes to various government officials to secure lucrative contracts. Since 2012, Leissner used third-party intermediary to bribe high-ranking government officials in Malaysia and Abu Dhabi. Guilty plea on FCPA and money laundering charges was unsealed in November 2018 in Brooklyn U.S. District Court. According to court filings at that time, Leissner was ordered to forfeit same \$43.7 million. Sentencing is set for June 11, 2020.

SANCTIONS: Jordanian citizen Issam Shammout and Saudi citizen Ali Abdullah Alhay were indicted Dec. 17 in D.C. U.S. District Court on charges of violating Iran sanctions. Defendants conspired to export Airbus aircraft to blocked Iranian entity Mahan Air without required licenses. Engines and airplanes in question were designated as Export Control Classification Number (ECCN) 9A991.b and controlled for anti-terrorism reasons. OFAC in May 2015 added Iraq-based Al-Naser Airlines, Shammout, and his UAE-based Sky Blue Bird Aviation to its Specially Designated Nationals (SDN) list for providing support to Mahan Air. At same time, BIS added Al Naser Airlines, Bahar Safwa General Trading, and Alhay to existing Temporary Denial Order (TDO) against Mahan Air (see **WTTL**, May 25, 2015, page 11).

MORE SANCTIONS: Indonesian citizen Sunarko Kuntjoro and three Indonesian companies were indicted Dec. 10 in D.C. U.S. District Court on charges of violating Iran sanctions between March 2011 and July 2018. Kuntjoro allegedly exported U.S.-origin aircraft parts, including linear actuator and altimeter, to blocked Iranian entity Mahan Air and Mahan executive Mustafa Oveici without OFAC or BIS licenses. OFAC designated Mahan in October 2011, and BIS added Oveici to Entity List in December 2013.

TOOT YOUR OWN HORN: In Partnership for Public Service's (PPS) list of 2019 Best Places to Work in the Federal Government, ITC was ranked first among 28 small agencies, after ranking second in 2018 and 2017. USTR had nowhere to go but up, ranking 16th. Other small trade agency rankings included Overseas Private Investment Corporation (OPIC) at number 20, and Export-Import Bank was number 26 of 30. Among 420 agency subcomponents, Commerce's International Trade Administration came in at 242 and BIS at 326.

SEAFOOD: Reps. Richard E. Neal (D-Mass.) and Earl Blumenauer (D-Ore.) Dec. 19 requested ITC investigate potential economic effects on U.S. fishermen of competition with illegal, unreported, and unregulated (IUU) seafood imports. "IUU fishing contributes to the overexploitation of fish stocks, threatens the livelihoods of coastal communities, jeopardizes food security, and harms marine ecosystems. IUU fishing also creates unfair competition for U.S. fishermen as imports account for 90% of U.S. seafood consumption," they wrote.

ENERGY: Rep. Richard Neal (D-Mass.) Dec. 19 requested ITC investigate potential economic and renewable energy usage effects of hydro-generated electricity imports from Canada. "Many New England states have set ambitious goals for seeking alternative renewable means of providing energy while also reducing greenhouse gas emissions," he wrote.

SOUTH SUDAN: OFAC Dec. 16 designated two South Sudanese officials -- Cabinet Affairs Minister Martin Elia Lomuro and Defense and Veteran Affairs Minister Kuol Manyang Juuk -- for "expanding or extending the conflict in South Sudan including by obstructing the reconciliation process or peace talks." These "ministers perpetuated the conflict to cement the political status quo, fueling South Sudan's war economy," OFAC noted. In December 2018, OFAC designated two South Sudanese individuals and retired Israeli general, along with six businesses owned or controlled by them, "who have provided soldiers, armored vehicles, and weapons used to fuel the conflict in South Sudan," agency said (see **WTTL**, Dec. 17, 2018, page 7).

EDITOR'S NOTE: In keeping with our regular schedule of 50 issues a year, there will be no issue of *Washington Tariff & Trade Letter* Dec. 30. Our next issue will be Jan. 6, 2020. As always, we wish all our readers **HAPPY HOLIDAYS** and a **HEALTHY AND PROSPEROUS NEW YEAR**.