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Canadian Convicted of Violating US-Cuban Embargo

by LADB Staff

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A jury in Philadelphia found three businessmen guilty of violating the US embargo on trade with Cuba, specifically the 1919 Trading with the Enemy Act. James Sabzali, a Canadian citizen, and two associates, both US citizens, were charged with 76 counts of conspiracy and violating the embargo laws in the sale of US\$2.1 million in water-purification chemicals to Cuba. The conviction has raised the issues of extraterritorial application of US laws and possible infringement on Canadian trading rights.

The three men are executives of the Bro-Tech chemical company based in a Philadelphia suburb. Sabzali is believed to be the only foreign national to be tried on these charges. Sabzali was convicted on 20 of the original 76 counts, Donald Brodie was convicted on 33 counts, his brother Stefan was convicted only on conspiracy charges, and the Bro-Tech company was convicted on 43 counts.

The verdict also requires that Bro-Tech turn over to the government US\$666,000 from its Cuban sales. Prosecutors asked for a 41- to 51-month prison term for Sabzali, but he could get up to 205 years in prison and US\$5 million in fines. Sentencing is scheduled for June 28. Sabzali was formerly a resident of Hamilton, Ontario, where he was a salesman for the Bro-Tech-owned Purolite, a company registered in Ontario.

In 1996, he moved to Pennsylvania to become marketing director for the Bro-Tech US subsidiary. Federal prosecutors investigated Bro-Tech for five years before charging the three men and the company. Sabzali thought he was protected by Canadian citizenship Sabzali said he was "shocked and confused" on hearing the verdict, but federal prosecutors introduced evidence that he was aware of the legal implications of the sales and that the company used various subterfuges to get around the embargo laws.

Sabzali never tried to hide his sales trips to Cuba and never applied for a license to export to Cuba. When he learned he was under investigation, he said, "I figured it wasn't going to affect me. I'm a Canadian." While it is understood that anyone doing business in Cuba is open to prosecution if they enter the US, the Sabzali case is unique in that eight of the 20 counts on which he was convicted relate to sales for Purolite, which he made while still working in Canada, said David Robertson, a Toronto lawyer involved in Sabzali's defense. The rest of the counts refer to sales orders shipped to Cuba from Bro-Tech subsidiaries in Mexico, Italy, Spain, and Great Britain. All of these countries have normal trade with Cuba, and none recognizes the US embargo, said Robertson.

The jury apparently attempted to make the distinction between Sabzali's Canadian and US sales, dropping some counts related to sales of goods shipped to Cuba from Bro-Tech suppliers in Wales and to other sales he made before becoming marketing director and moving to Pennsylvania.

Canadian government caught in the middle

The Canadian government says it is monitoring the situation but has done little so far to intercede on Sabzali's behalf. One Ministry of Foreign Affairs official, clearly aware that many of the counts were for sales made from the US, said Sabzali knew "pretty well" the risk he was taking when he moved to Pennsylvania. However, by obeying US embargo laws, some observers say Sabzali could have been in violation of the Canadian Foreign Extraterritorial Measures Act, which forbids Canadian companies from honoring the US embargo. The law was passed in 1992 to counter the Cuban Democracy (Torricelli) Act of the same year, which among other things, tries to inhibit third-country trade with Cuba. Canada and most other countries opposed aspects of the act because it attempts to extend the reach of US law beyond its borders.

Attorney Robertson called for the Canadian government to issue a formal diplomatic protest against the conviction. "If it doesn't, there is a possibility that it could be considered a form of acknowledgment that Canada has accepted the US jurisdiction over Canada's foreign policy," he said.

The Montreal Gazette said in an editorial that Sabzali was charged with "a ludicrous offense," and noted that the product he sold in Cuba chemical resins used to purify water in Cuban hospitals and factories were goods that the US could sell to Cuba under its own trade rules, which permit the sale of food, medicines, and other humanitarian goods. The editorial went on to point out that a growing number of large US agribusinesses are selling commodities to Cuba. "While it goes after small fish like Sabzali, the US lets big American corporations do more business in Cuba every day." "What we have here is perception and reality," said the editorial. "For public consumption (and electoral politics) the [George W.] Bush administration talks tough on Cuba and maintains the fiction the embargo will eventually force Castro to cave....It's true that Sabzali should have been aware of the risks. But that does not alter the fundamental conclusion: the Cuban trade embargo should be consigned to the ash-bin of history."

Motives for trial explored

One commentator writing in the Montreal Gazette speculated that the Justice Department may have pressed the case to shore up President Bush's right flank in Florida and give his brother Jeb Bush's gubernatorial campaign a boost among Miami's Cuban-exile voters. Another possible explanation is that US businesses are interested in belatedly entering the Cuba market and are pressuring Bush to inflict some damage on the Canadians, who have made sizable investments in Cuba. So far, the Canadian government has not accused the US of violating Canadian sovereignty, but many Canadian newspapers and political observers have.

Eduardo Gamarra, a political scientist at Florida International University in Miami, told The Miami Herald that the incident "could become an international legal battle if Canada takes the case before the World Trade Organization and files an accusation against the United States for being an obstacle to free trade." But US prosecutors deny there is any link between Canada's trade with Cuba and the Sabzali case. Assistant US Attorney Joe Poluka said, "The indictment doesn't allege that they

did anything wrong by going to Cuba....This case is about commerce between the United States and Cuba."

Recent exports to Cuba reach US\$74 million While Bro-Tech sold US\$2.1 million in water-purification chemicals to Cuba, projected exports of food to Cuba have climbed to more than US \$74 million since last November. Last year, the US authorized the sale of US\$30 million in food and medicine to Cuba after Hurricane Michelle hit the island (see NotiCen, 2001-11-29). The exports were permitted under the Trade Sanctions Reform and Export Enhancement Act of 2000, which requires cash transactions. Since then, US actual exports, which come from 25 states, have more than doubled the original figure.

In addition, Cuba says it will buy 1,000 metric tons of apples and 20,000 MT of dried peas valued at another US\$4.5 million. Recent sales contracts include US\$9.4 million in wheat from ADM/Farmland and 10 million eggs from Massachusetts-based Radlo Foods LLC. Among US companies that have had a presence in Cuba since 1995 are General Electric, Microsoft, IBM, and Wal-Mart, according to the New York-based US-Cuba Trade and Economic Council. Among well-known brands readily available in Cuba's dollar stores are Campbell's Soup, Uncle Ben's, and Bumble Bee.

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