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Lawmaker Wants Tuvalu to Stop Flagging Iranian Vessels

Rep. Howard Berman (D-Calif.) is pressing the Obama administration to use the new authority it was given by enactment of the Iran Threat Reduction and Syria Human Rights Act to pressure the island nation of Tuvalu to stop reflagging Iranian vessels. “I recommend that you use the authority of both E.O. 13608 and the new law to take aggressive action to change Tuvalu’s policy of abetting Iran in evading U.S. sanctions,” Berman wrote to Secretary of State Hillary Clinton and Treasury Secretary Timothy Geithner Aug. 13 (see **WTTL**, Aug. 6, page 2).

“I write to register my concern about Iran’s continuing efforts to conceal the operations of its ocean-going oil tankers and cargo vessels that are operated by the National Iranian Tanker Company (NITC) and the Islamic Republic of Iran Shipping Line (IRISL),” Berman wrote. “One of the most egregious examples is the ship registry of the Government of Tuvalu, which has re-flagged some 22 Iranian oil tankers,” he complained. Section 202 of the new law gives regulators authority to impose sanctions on persons worldwide who assist Iran in concealing the identity and operations of Iranian vessels.

A Tuvalu statement July 17 acknowledged it has reflagged some Iranian tankers but claimed it has not engaged in any relationship with IRISL. The tankers were previously registered in Malta or Cyprus, it said. “We would like the U.S. Government to understand and appreciate that Tuvalu depends on its ship registry for an essential part of the country’s income, and as such, Tuvalu is looking to increase the fleet and quality of the registry by ensuring that all vessels registered are classed only with IACS [International Assn. of Classification Societies] members in order to finally attain White List status in the various MOUs similar to other registries such as Malta, Cyprus, Marshall Islands, Vanuatu, etc.,” the statement noted.

Federal Regulators Face Dilemma in Standard Chartered Case

Federal bank regulators and enforcement agencies face a difficult decision in trying to resolve likely federal charges against Great Britain’s Standard Chartered PLC, which reached a preliminary agreement Aug. 14 with New York State banking authorities to settle charges that it illegally handled transactions for Iranian customers. Even though there are still questions about the extent of Standard’s violations, if the federal agencies don’t hit the bank with a fine comparably as large as they imposed on other banks dealing with Iran, they might have to contend with the political charge of being soft on Iran – something the Obama administration won’t want to deal with just before the election. Although the details of the agreement with the New



York State Department of Financial Services (DFS) are still being hashed out, DFS said Standard has agreed to pay a \$340 million civil penalty to the department and install a monitor who will report directly to DFS for two years on the money-laundering risk controls that the bank's New York branch will implement to prevent future violations. A DFS statement said: "The parties have agreed that the conduct at issue involved transactions of at least \$250 billion."

How much of that amount involved violations of U.S. trade sanctions on Iran is unclear. Standard, which voluntarily disclosed all the transactions to DFS as well as to the Treasury and Justice Departments, the Federal Reserve and the Manhattan District Attorney, claimed it had found less than \$14 million in illegal transactions. The voluntary disclosure was based on an extensive audit and analysis of the bank by the Deloitte accounting firm.

"The analysis, that the Group shared with all the U.S. agencies, demonstrates that throughout the period, the Group acted to comply, and overwhelmingly did comply, with U.S. sanctions and the regulations relating to U-turn payments. As we have disclosed to the authorities, well over 99.9% of the transactions relating to Iran complied with the U-turn regulations," a Standard release asserted. Standard's voluntary disclosure and corrective actions normally would serve as mitigating factors in any penalty Treasury's Office of Foreign Assets Control (OFAC) might impose and lead to a deferred prosecution agreement with Justice.

This has been the pattern the government has followed in previous enforcement actions against banks that have violated Iran sanctions. Even with mitigation, however, other banks have been smacked with multimillion-dollar fines, with the \$619 million fine imposed on ING Bank, N.V., being the latest example (see **WTTL**, June 18, page 3).

"The federal enforcement agencies have quality data and analysis in front of them, and now they just have to decide how the law is going to apply and what the potential penalty is," notes Serena Moe, an attorney with the D.C. law firm of Wiley Rein. She points out that U-turn transactions, which allowed foreign banks to go through U.S. banks to convert transactions into dollars for third parties, including Iranian banks, were permitted before 2007.

"What we have here is the U.S. government having changed a policy," Moe says. "This was a conscious policy decision of the executive branch to create a General License, published in the regulations and in effect until 2007, with a clear policy underpinning to create an exception to an otherwise complete embargo to encourage the use of the dollar as a trade currency," she says. Like many in the banking community, as well as some U.S. and European officials, Moe criticizes DFS for jumping ahead of other enforcement agencies to charge Standard and reach a settlement on its own. The effects of New York's action "are really quite disturbing," she contends. "If you have the same set of facts and you have the feds coordinating cases and you have a breakaway enforcement office, it really roils the waters. It makes it hard for people to know how to manage these cases in the future," Moe told **WTTL**.

Court Upholds ITC's Discretion to Weigh Record

The International Trade Commission's (ITC) broad discretion to weigh the evidence in trade cases was upheld in an Aug. 14 Court of International Trade (CIT) ruling that rejected an effort by U.S. steel producers to reverse the ITC's "sunset" determination that U.S. industry would not be injured by the revocation of the antidumping and countervailing duty orders on hot-rolled flat-rolled steel products from Japan and Brazil. CIT Senior Judge Nicholas Tsoucalas ruled that the ITC used proper discretion in deciding not to cumulate imports from the two countries and in its assessment of the potential increase in the volume of imports if the orders were revoked and the vulnerability of the industry to renewed injury (slip op. 12-108).

Tsoucalas cited previous court rulings that said the CIT may not displace the ITC's choice between conflicting views even if the court could justify a different choice. "Therefore, the ITC's discretion not to cumulate is supported by substantial evidence and in accord with the

law,” he ruled in a decision rejecting a suit brought by U.S. Steel and Nucor. “The ITC exercised its discretion and chose not to analyze subject imports cumulatively because it deemed imports from each subject country likely to compete under different conditions in the United States market upon revocation,” he noted. “However, the ITC thoroughly examined and identified potential differences in conditions of competition relating to export orientation, historic volume trends, export market focus, and historic pricing patterns,” he wrote.

In regard to volume analysis, he said the ITC had provided substantial evidence to support its findings on production and consumption. “Most notably, Asian demand has increased significantly since the financial crisis that occurred during the time of the original injury determination. Although Asian production has increased in kind, there has been no history of displacement of Japanese imports to such markets,” Tsoucalas wrote.

“Regarding the likelihood of import volume increases from Brazil, the ITC first noted that Brazilian producers directed at least 87.9% of shipments to the home market during each year of the period of review. In 2010, the last year of the period of review, the home market absorbed 92.7% of the industry’s capacity,” he noted.

Tsoucalas rejected the domestic industry’s contention that the ITC’s vulnerability assessment was flawed, including its views on the weak demand in the U.S. “The ITC explained its interpretation that the lackluster performance of the domestic industry reflected demand conditions in the context of the business cycle rather than structural vulnerabilities of the industry itself,” he wrote. “The ITC provided substantial evidence that steel demand has been historically tied to broad demand trends in the national economy, and that the industry is poised to experience a recovery with projected increases in demand,” he concluded.

The ITC contrasted this demand “with the demand of the original injury determination during which unique market conditions existed due to the Asian financial crisis,” he wrote. “The vulnerability determination did not conflict with the original injury determination because the ITC considered changes in market conditions and projections for increased demand,” he added.

Lifting of Sanctions May Entice More Syrian Defections

If the U.S. is unwilling now to provide arms to anti-government forces in Syria to force out the government of Bashar al-Assad, Treasury might have another tool to undermine the regime from within – enticing Syrian officials to defect by lifting sanctions on them and giving them access to the money they have squirreled away in foreign banks. Treasury took that step Aug. 14 with the announcement that it was removing former Syrian Prime Minister Riyadh Hijab from the Specially Designated Nationals (SDN) and Blocked Persons lists and will no longer freeze his assets. Hijab recently left Syria, reportedly for Jordan.

“Recent civilian and military defections from the Assad regime are further indications that the government is crumbling and losing its grip on power,” said a statement by Treasury Under Secretary for Terrorism and Financial Intelligence David S. Cohen. “The United States encourages other officials within the Syrian government, in both the political and military ranks, to take similarly courageous steps to reject the Assad regime and stand with the Syrian people,” he added.

There is a general belief that many senior officials in the Middle East have offshore bank accounts where they store their money. On July 18, Treasury issued a blocking order on 29 senior Syrian officials, including Hijab. “Three weeks later Hijab chose to defect from the Syrian government and denounce its campaign of violence,” a Treasury statement noted. “One of the goals of identifying and levying sanctions on specific individuals is to encourage them to reconsider their involvement with the current Syrian government,” it said. “It is not too late for others who continue to provide support to the Assad regime to sever their ties and to be relieved of the burden of sanctions,” the department advised.

Romney Makes Trade Part of His Economic Plan

Trade has rarely been elevated to national prominence in presidential elections, but presumptive Republican candidate Mitt Romney has made it one of his five top economic issues in his latest stump speeches. In several speeches laying out his economic goals the week of Aug. 12, Romney put trade at number three. In addition to promising to open new markets for American goods, the former Massachusetts governor targeted China for its unfair trade practices.

Without details, however, Romney's talking points sound like the speeches that Obama trade officials have also made. Republicans have repeatedly criticized the administration for what they contend is its inaction on trade, while Democrats have said their cautious approach is aimed at assuring trade deals address issues of concern to their constituents, including labor and the environment.

"We're going have trade that works for America, and that means we're going to open up new markets for our goods, but it means when people cheat, like China, there will be consequences," he said at one stop. At another speech, Romney said: "We can do a lot more in Latin America and other parts of the world." Trade enforcement was also part of his pitch. "We also need to crack down on nations that cheat and don't play by the rules," he said. "When China steals our technology; when China steals our intellectual property, our patents, our designs and knowhow; when they manipulate their currency, we're going to say, 'No more.' Cheating must have consequences," he asserted (see **WTTL**, April 2, page 1).

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FCPA: Oracle Corporation agreed Aug. 16 to pay SEC \$2 million to settle charges that its India subsidiary, Oracle India Private Limited, violated Foreign Corrupt Practices Act when it sold products and services to Indian government end-users through local distributors and used excess funds to make unauthorized payments to phony vendors from 2005 to 2007. "Some of the recipients of these payments were not on Oracle's approved local vendor list; indeed, some of the third parties did not exist and were merely storefronts," SEC claimed. Oracle neither admitted nor denied charges. "The settlement takes into account Oracle's voluntary disclosure of the conduct in India and its cooperation with the SEC investigation, as well as remedial measures taken by the company, including firing the employees involved in the misconduct and making significant enhancements to its FCPA compliance program," SEC said.

MORE FCPA: Garth Peterson, U.S. citizen living in Singapore and ex-managing director for Morgan Stanley, was sentenced to nine months in jail and three years' supervised release Aug. 16 in Brooklyn U.S. District Court for conspiring to evade firm's internal FCPA accounting controls between 2002 and 2008. Peterson pled guilty and also settled related SEC charges in April 2012 (see **WTTL**, April 30, page 4).

IRAN: OFAC issued guidance Aug. 14 on humanitarian aid to Iran after earthquake that hit country.

DRAWBACKS: Court of Appeals for Federal Circuit Aug. 14 denied Shell Oil appeal seeking to overturn Court of International Trade decision upholding Customs ruling that oil firm was not entitled to drawback on payments for Harbor Maintenance Tax (HMT) and Environmental Tax (ET) because requests were time barred because they were not made within three years of exporting substitute finished petroleum derivatives (*Shell Oil Co. v. U.S.*). "Shell's drawback claims for HMT and ET are time barred, and the 1999 and 2004 amendments do not aid Shell in reviving those claims. Like the importer in *Aectra*, Shell's failure to file protective claims for HMT and ET is fairly attributed to Shell's inaction," appellate court ruled.

ITC: Senate confirmed Meredith Broadbent by voice vote Aug. 2 to be ITC commissioner for term expiring June 16, 2017, replacing Deanna Tanner Okun, whose term expired. Senate Finance Committee approved nomination June 29 (see **WTTL**, Nov. 21, page 4).

HOT-ROLLED CARBON STEEL: USTR in Federal Register Aug. 15 asked for public comments on WTO dispute settlement that India requested in July, challenging Commerce countervailing duties on certain hot-rolled carbon steel flat products. Washington rejected India's claim and blocked its first request for formation of dispute-settlement panel in July.

EDITOR'S NOTE: In keeping with our regular schedule, there will be no issue of *Washington Tariff & Trade Letter* on Aug. 27. Our next issue will be dated Sept. 3.