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Assassination Plot Portends More Iran Enforcement Cases

U.S. exporters and banks, already facing increased prosecution for dealing with Iran, can expect more enforcement pressure in the wake of the unsealing of an indictment Oct. 11 of an Iranian-American on charges of attempting to assassinate Saudi Arabia's ambassador to the U.S. and bomb the Israeli embassy, administration officials indicated in testimony to the Senate Banking Committee Oct. 13. Committee members, however, pressed for tougher action against foreign subsidiaries of U.S. companies that still do business with Iran and foreign firms, particularly Russian and Chinese entities. They also urged support for a new Iran sanctions bill (S. 1048).

> Bureau of Industry and Security (BIS) Assistant Secretary for Export Enforcement David Mills told the committee that 37% of the agency's current investigations involve Iran, representing some 300 open cases. "Iranian violations continue to be a primary area of focus," he testified.

Treasury's scrutiny of banks gained a new tool with the Oct. 11 publication in the Federal Register by the Financial Crimes Enforcement Network (FinCen) of a final rule implementing Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), pointed out David Cohen, under secretary of Treasury for terrorism and financial intelligence. The rule requires U.S. banks to report to FinCen information about transactions of their foreign correspondent banks that might indicate CISADA violations.

"Immediate upon the effect of that rule, we issued a series of information requests to U.S. financial institutions asking about the behavior of some of their correspondents," Cohen testified. "The rule allows us to go out to U.S. financial institutions when we have reason to believe there may be potential CISADA violations," he said. "It is not a conclusion that there is a violation but a very low threshold where we have some reason to believe that there might be a CISADA issue and to seek information," Cohen added. He said the information Treasury obtains will be used to complement the department's other sources of information. He said Treasury is telling foreign banks: "You have a choice to make. You can continue to do business with us or you can continue to do business with designated banks, but you can't do both."

ACTA Needs Congressional Approval, Wyden Contends

Congress and the Obama administration may be heading toward a confrontation over whether the executive branch has authority to enter into the Anti-Counterfeiting Trade Agreement (ACTA) without congressional approval. In an Oct. 12 letter to President Obama, Sen. Ron

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Wyden (D-Ore.) argued the deal that the U.S. and seven other countries signed Oct. 1 needs to be approved by Congress, despite assertions by U.S. Trade Representative (USTR) officials that no further legislative action is required to implement the deal. "Regardless of whether the agreement requires changes to U.S. law, a point that is contested with respect to ACTA, the executive branch lacks constitutional authority to enter a binding international agreement covering issues delegated by the Constitution to Congress' authority absent congressional approval," Wyden asserted.

> At the ACTA signing in Tokyo, Deputy USTR Miriam Sapiro claimed ACTA was consistent with U.S. law and doesn't need further legislation (see **WTTL**, Oct. 10, page 4). Wyden said the president lacks the power to enter international agreements that fall under the authority of Congress to regulate foreign commerce and protect intellectual property. Yet with ACTA, "the USTR looks to be claiming the authority to do just that."

Wyden asked Obama to "formally declare that ACTA does not create any international obligations for the U.S. – that ACTA is not binding." He added: "If you are unwilling or unable to make such a clarification, it is imperative that your administration provide Congress and the public with a legal rationale for why ACTA should not be considered by Congress and work with us to ensure that we reach a common understanding of the proper way for the U.S. to proceed with ACTA."

FTA Votes Don't Signal Change in Obama Trade Policies

The widespread enthusiasm in the business community for congressional approval of free trade agreements (FTA) with Colombia, Panama and South Korea Oct. 12 won't change the political fact that most Democratic lawmakers and the party's base opposed the deals. As a result, President Obama isn't likely to propose any additional bilateral trade pacts during the next 18 months. With World Trade Organization (WTO) talks on the Doha Round deadlocked, the only trade deals the White House will push in the coming year are the Trans-Pacific Partnership (TPP) and permanent-normal-trade relations status for Russia. Besides those two actions, there is no other FTA on the horizon.

> Obama tried to win Democratic support for the deals by negotiating a labor action plan with Colombia, new access for U.S. autos in Korea and a tax agreement with Panama. None of these steps swayed most members of his own party. Except for the United Auto Workers' (UAW) support for the Korean accord, almost every other union opposed all three agreements.

Even the U.S.-Panama FTA (H.R. 3079), which faced the least amount of opposition and passed the House by a 300-129 margin and the Senate by a 77-22 vote, mustered only 66 Democratic votes in the House. The majority of House Democrats, 123, voted against it. In the Senate, 22 Democrats voted no.

The U.S.-Korea FTA (H.R. 3080), which had the backing of the UAW, Ford and House Ways and Means Committee Ranking Member Sandy Levin (D-Mich.), still only drew 59 Democrats, while 130 voted nay. The final House vote was 278 to 151. The Senate vote was 83 to 15, with 14 Democratic senators voting no, joined by only one Republican, Sen. Olympia Snowe (R-Maine). The U.S.-Colombia FTA (H.R. 3078), the most controversial of the three pacts, drew the strongest Democratic opposition in both the House and Senate. The measure passed the House on a 262-167 vote, with only 31 Democrats in favor and 158 opposed. The Senate passed the implementing measure by a 66-33 vote, with a majority of Senate Democrats, 31, voting no. The only GOP nays came from Snowe and fellow Maine Republican Susan Collins.

Meanwhile, it became clear why House Speaker John Boehner (R-Ohio) was reluctant to bring legislation (H.R. 2832) to extend a modified version of the Trade Adjustment Assistance (TAA) program to the House for a vote. He did not have the support of a majority of Republicans for the measure. As part of deal with the White House and Democrats, however, Boehner allowed a vote on TAA immediately after the three FTAs were approved. The bill passed by a 307-to-122 vote, with 189 Democrats voting for it, but Republicans splitting 118 yeas to 122 nays.

House Rejects Ploy to Move China Currency Bill

Frustrated House Democrats, who have been unable to get Speaker John Boehner (R-Ohio) to allow a vote on the China currency bill that passed the Senate Oct. 11 by a 63 to 35 vote, tried unsuccessfully to end run Boehner's opposition by seeking to add the measure to legislation to implement the U.S.-Colombia FTA. During House debate on the Colombia pact, Ways and Means Ranking Member Sandy Levin (D-Mich.) offered an amendment to recommit the bill to the Ways and Means Committee with instructions to attach the same provisions that were in the Senate bill. By a 192-236 margin, the House rejected the amendment.

> Republicans strongly backed Boehner's position, with 235 voting to reject Levin's amendment. Only one Democrat, Rep. Jared Polis (D-Colo.) joined with the GOPers to vote nay. Democrats also voted nearly en bloc for the amendment, with 188 voting yea; joined by only four Republicans: Todd Platts (Pa.), Dana Rohrabacher (Calif), Walter Jones (N.C.) and John Duncan (Tenn.).

The currency bill had bipartisan support in the Senate, with 15 Republicans joining 48 Democrats in support of the measure. Only two Democrats voted nay: Maria Cantwell (Wash.) and Patty Murray (Wash.), plus Independent Joe Lieberman (Conn.). With the legislation expected to be blocked in the House by Boehner and GOP leaders, it may have appeared to be a free vote for senators, who repeatedly called it a "message" bill.

Boehner reiterated his opposition to the currency legislation at a press conference. "I think, given the volatility in the world markets, given the uncertainty about the world economy, for the Congress of the United States to be taking this step at this moment in time poses a very severe risk of a trade war and unintended consequences that could come as a result," he told reporters, according to a Reuters report. "I understand that people are concerned about the value of China's currency. I'm concerned about it as well," he said. "What I don't believe is appropriate is for the Congress of the United States to take this issue up and to do it within a legislative form," Boehner added.

China's Xinhua press service quoted Chinese Vice Foreign Minister Cui Tiankai Oct. 11 also warning that the currency bill could trigger a trade war and hold back global economic recovery. The bill "in no way represents the reality of the economic and trade relationship between China and the United States, and it might have an adverse impact on the development of the relations between the two countries," Cui was quoted in the report. "Should the proposed legislation become law, the only result would be a trade war between China and the U.S. and that would be a lose-lose situation for both sides," Cui added.

Chinese Foreign Aid May Exceed U.S. Assistance

Chinese foreign aid may exceed what the U.S. is giving to developing countries and may also be more than the World Bank is spending, claims an Oct. 12 report from the U.S.-China Economic and Security Review Commission. Based on published estimates, including from New York University's Wagner School, the report says China's annual aid spending rose to $25 billion in 2007 from $51 million in 2002. That aid may have risen to $38.83 billion in 2009. This compares to $26.4 billion in U.S. foreign aid in 2007, which was a decline from $39.1 billion in 2004. "China's foreign assistance has grown dramatically over the last decade, challenging established notions of what foreign aid consists of and how it should be invested," the report states. "China focuses its assistance on its own strategic objectives and economic needs, such as developing infrastructure such as ports used to haul oil and other commodities back to China; expanding access to oil, gas, and other natural resources needed for China's development; and increasing market access for Chinese products," it adds. The report notes that Congress is now considering an increase in the contribution to multilateral development banks (MDBs). If additional funds aren't authorized, the relative U.S. shareholding in the MDB will become diluted. "This could allow China the opportunity to gain more power over the governance of these institutions," the report contends.

* * * Briefs * * *

CJ DETERMINATIONS: State's Directorate of Defense Trade Controls (DDTC) posted long-awaited chart of Commodity Jurisdiction final determinations on its website Oct. 7. List is at www.pmddtc.state.gov.

EXPORT-IMPORT BANK: Export-Import Bank released preliminary export financing numbers Oct. 13 for fiscal year 2011, which ended Sept. 30, 2011, reporting $32 billion in loans, guarantees and insurance, up from $14.4 billion in 2008 and $24.5 billion in 2010.

SYRIA: OFAC issued Oct. 3 General Licenses 13 and 14 for Syria, authorizing payments for overflight of Syria or emergency landing in Syria of aircraft owned or operated by U.S. person or registered in U.S. and transactions related to transmission of telecommunications involving Syria.

ENTITY LIST: BIS in Federal Register Oct. 12 added two Hong Kong entities, Cho-Man Wong and Hang Tat Electronics Enterprises, and removed one from Hong Kong -- Pelorus Enterprises Limited -- based on annual review. Based on their own review request, it also removed one entity from Hong Kong (Polar Star International Co.) and two from New Zealand (Leigh Michau and Q-SPD/Q-Marine International Ltd.).

ANTIBOYCOTT: Tollgrade Communications Inc. of Cranberry Township, Penn., agreed to pay $10,000 to settle four BIS charges that it violate antiboycott regulations by furnishing information about business relationships with boycotted countries or blacklisted persons and failing to report receipt of request to engage in restrictive trade practice or foreign boycott, BIS announced Sept. 29.

MORE ANTIBOYCOTT: World Kitchen LLC of Greencastle, Penn., will pay $10,000 fine to settle five charges of violating antiboycott regulations by failing to report receipt of request to engage in restrictive trade practice or foreign boycott, BIS announced Sept. 23. From 2006 through 2008, World Kitchen engaged in transactions from U.S. to UAE. World Kitchen neither admitted nor denied charges.

EXPORT ENFORCEMENT: Jeng "Jay" Shih, U.S. citizen, and his Queens, N.Y., company, Sunrise Technologies and Trading Corporation, pleaded guilty Oct. 7 in D.C. U.S. District Court to conspiracy to illegally export computers from U.S. to Iran through UAE (see **WTTL**, April 15, page 4). He will be sentenced Jan. 13, 2012. Shih and Sunrise agreed to forfeiture of $1.25 million and be under 10-year denial order to settle BIS charges. Order will be suspended as long as they don't commit new violations.

IRAN: OFAC added Iran's Mahan Air to Specially Designated Nationals list Oct. 12. Airline was already subject of Temporary Denial Order issued by BIS March 2008, so new sanctions may have marginal impact since many firms and financial institutions had already screened and blocked transactions with Mahan.

MEXICO**:** In Federal Register Oct. 14, Federal Motor Carrier Safety Administration said**, "**Based on the information provided by Advocates, OOIDA [Owner Operator Independent Driver Association], and Teamsters, the Agency will not issue long-haul operating authority to Grupo Behr until such time as this review is complete and the above noted comments are fully addressed" (see **WTTL**, Oct. 10, page 4).

TRADE FIGURES: U.S. exports of goods and agriculture in August rose 17% from last August to $126.7 billion, Commerce reported Oct. 13. Imports increased 13% from year ago to $188.1 billion. Services exports went up 9.7% from August 2010 to $50.9 billion, as services imports edge up 2% to $35.1 billion.

TRADE PEOPLE: Senate Finance Committee Oct. 11 approved nominations of Michael Punke to be deputy USTR; Islam A. Siddiqui to be chief USTR agricultural negotiator; Paul Piquado to be assistant secretary of Commerce for import administration; and David S. Johanson to be ITC commissioner.

BIS: In portion of prepared statement not read at Senate Banking Committee hearing on Iran sanctions Oct. 13, Chairman Tim Johnson (D-S.D.) urged confirmation of Eric Hirschhorn to be BIS under secretary. "I want to reiterate my strong support for his immediate confirmation. Under Secretary Hirschhorn has been unanimously approved by this Committee twice for his position, but his nomination has been blocked. Last year, President Obama granted Mr. Hirschhorn a recess appointment. If his nomination is not approved by the Senate prior to the end of this session of Congress, his appointment will expire," his statement said.