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INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

JUNE 13, 2007.—Ordered to be printed

Mr. DODD, from the Committee on Banking, Housing and Urban Affairs, submitted the following

R E P O R T

[To accompany S. 1612]

The Committee on Banking, Housing and Urban Affairs, having had under consideration an original bill (S. 1612) to amend the penalty provisions in the International Emergency Economic Powers Act, and for other purposes, reports favorably thereon and recommends that the bill do pass.

I. PURPOSE

The International Emergency Economic Powers Act, also known as 'IEEPA,' codified presidential national emergency powers to investigate and impose controls on transactions as well as freeze foreign assets under the jurisdiction of the United States. The International Emergency Economic Powers Enhancement Act (hereafter 'the Act') amends Section 206 for the purpose of increasing penalties against violators of sanctions law. The Act would advance foreign policy objectives and protect the national security of the United States by providing the Department of the Treasury and other federal agencies greater ability to deter wrongful investment and hold violators accountable for their actions.

II. BACKGROUND

For thirty years, presidents of the United States have widely exercised their authorities under the International Emergency Economic Powers Act (50 U.S.C. Chapter 35). Under this statute, a president declares a national emergency with respect to an "unusual and extraordinary threat" posed by a country or transnational group. Section 1705 of the law details the president's specific authorities to impose economic sanctions against these

threats, regulating and prohibiting foreign exchange transactions, bank payments or credit transfers, and the importing or exporting of currency or securities, among other powers.

The Office of Foreign Assets Control (OFAC) at the Department of Treasury is principally designated to administer and enforce these economic sanctions activities, in coordination with agencies at the Departments of State, Homeland Security, and Justice. Ultimately, however, as Under Secretary of the Treasury for Terrorism and Financial Intelligence Stuart Levey pointed out in testimony before the Committee on March 21, 2007, the cooperation of private firms is critically important in the success of an economic sanctions regime. Without their adherence to relevant United States laws and regulations, it would be nearly impossible to prevent wrongful investment. By and large, according to the Department of the Treasury, companies meet their sanctions obligations, steering clear of countries and groups designated as threats to the United States. But when private industry does not comply, OFAC imposes penalties in accordance with Section 1705 of the International Emergency Economic Powers Act (IEEPA). Currently, penalties applied by OFAC remain relatively low. The original penalty amount was set at \$10,000 in the IEEPA of 1977. Other than an inflation adjustment raising the level to \$11,000, there were no increases until the renewal of the USA PATRIOT Act in 2005 (Public Law 109-177) raised the level to \$50,000.

III. DESCRIPTION OF THE BILL

In unanimously approving the International Emergency Economic Powers Enhancement Act, the Committee recognized that current penalties are neither adequate nor proportionate in many cases, for deterring companies from investing in bad actors.

Penalties

The Act would increase civil fines to \$250,000 or twice the amount of the transaction. Such a change in law would allow the United States government to impose a penalty commensurate with the scope of the crime. Conversely, today, if a person makes a single illegal transaction, he/she will be fined \$50,000, regardless of the size of the transaction. Rather than impose a single fine to fit every violation, the Act would ensure that penalties reflect the seriousness of a violation.

In addition, the Act would increase criminal penalties to \$1,000,000 with a maximum jail sentence of 20 years. The Act further clarifies the purpose of these criminal penalties to be imposed on a person who intentionally commits or helps support others' violations of certain United States sanctions laws.

Two recent cases help illustrate the need for these increases in penalties. According to OFAC, a large foreign bank with a U.S. presence recently processed 42 transactions totaling \$55 million through the United States, in violation of OFAC sanctions against Iran, Sudan and Cuba. Under current law the maximum penalty OFAC could impose for these violations would be approximately \$1.3 million, an apparently insignificant amount to a multi-national bank. In another example, a U.S. commodities brokerage firm engaged in a single transaction involving commodities from Sudan, valued at \$1.4 million. Because only a single transaction

was involved, the maximum penalty was limited to \$11,000 under then-applicable law. According to OFAC, even today's maximum penalty of \$50,000 seems disproportionately low for such a violation.

The Act would update these penalties to improve sanctions enforcement. For the foreign bank, penalties could have been over \$100 million. For the commodities brokerage company, the criminal penalty could be as high as \$2.8 million based on the value of the transactions.

Effective Date

Under the Act, the changes in penalties would apply to all pending enforcement actions as well as those commenced on or after the date of the Act's enactment.

Reporting

The Committee notes that under Section 1703 of IEEPA the president is required in every possible instance to "consult with the Congress before exercising any of the authorities granted by this chapter" and to "consult regularly with the Congress so long as such authorities are exercised." In addition to "Periodic follow-up reports" to Congress every six months as stipulated in Section 1704(c) of this statute, the president, through his designees shall provide detailed reports on the use of IEEPA authorities to the Committee. OFAC shall pay particular attention in these reports to the exercise of United States foreign policy toward the Islamic Republic of Iran and the Republic of Sudan as well as organizations affiliated with Al Qaeda, the Islamic Resistance Movement (Hamas), Hezbollah, Jemaah Islamiyah, Abu Sayyaf, and the Revolutionary Armed Forces of Colombia—People's Army (FARC).

Export Administration

The Committee recognizes that the International Emergency Economic Powers Act has been applied to authorities outside this law's principal purpose of establishing a framework for the government to impose foreign economic sanctions. Specifically, for the last six years, export controls on 'dual use' technologies have been implemented through the invocation of IEEPA.

In absence of more robust authorities and penalties previously in force by authorization of the Export Administration Act (EAA), the Bureau of Industry and Security (BIS) at the Department of Commerce has been compelled to invoke IEEPA in its execution of investigations and export enforcement activities. According to BIS, such practices have severely hampered investigations and caused reluctance among some prosecutors to bring criminal indictments for export control violations. In addition, the ability to lead other countries to adopt comprehensive export control legislation, as called for by U.N. Security Council Resolution 1540, is undercut by the absence of the United States' own EAA authority.

As the Congressional Research Service recently reported, since 1989, a long-term extension of the Export Administration Act has not been enacted. The export control process was continued from 1989–1994 by temporary statutory extensions of EAA. Thereafter, it was periodically reauthorized for short periods of time, most recently expiring in August 2001.

The Committee does not consider the International Emergency Economic Powers Enhancement Act a substitution for legislation required to update and renew the Export Administration Act. Enacting meaningful export control legislation remains an important objective of this Committee to bar highly sensitive products and know-how from rogue states and terrorist groups, to protect critical technology, and to help curb the proliferation of nuclear, biological, and chemical weaponry.

On March 21, 2007, the Committee on Banking, Housing, and Urban Affairs conducted a hearing entitled “Minimizing Potential Threats from Iran: Assessing the Effectiveness of Current US Sanctions on Iran.” In his testimony, Acting Under Secretary for the BIS Mark Foulon concurred with this assessment, pointing out that the Commerce Department’s export control investigations of 16 cases under these authorities last year led to penalties totaling only \$1.6 million in fines.

IV. HEARINGS

The Committee on Banking, Housing, and Urban Affairs held the following public hearing on United States sanctions policy:

On March 21, 2007: Minimizing Potential Threats from Iran: Assessing the Effectiveness of Current U.S. Sanctions on Iran. Witnesses: Ambassador R. Nicholas Burns, Under Secretary for Political Affairs, Department of State; Honorable Stuart Levey, Under Secretary for Terrorism and Financial Intelligence, Department of the Treasury; Mr. Mark Foulon, Acting Under Secretary for the Bureau of Industry and Security, Department of Commerce

V. DEPARTMENT OF THE TREASURY COMMENT

The Department of the Treasury submitted the following letter of endorsement for the Act.

MAY 15, 2007.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of the Treasury strongly supports the International Emergency Economic Powers Enhancement Act of 2007 and appreciates the leadership of the Chairman and Ranking Member in proposing legislation that significantly enhances the enforcement and deterrent effects of the International Emergency Economic Powers Act (IEEPA) sanctions.

Through IEEPA, the President may respond to unusual and extraordinary threats originating in substantial part outside the United States by, among other things, prohibiting transactions associated with the identified threat. The current penalties under IEEPA do not constitute an effective deterrent to entities that violate IEEPA by engaging in prohibited transactions. This legislation will remedy that problem.

IEEPA is an important tool in the effort to combat terrorist financing and other illicit activity such as WMD proliferation. The Department urges the Committee to approve this critical improvement to IEEPA.

The Office of Management and Budget has advised there is no objection from the standpoint of the President to the language submitted to the Committee by the Department of the Treasury.

Sincerely,

KEVIN I. FROMER,
Assistant Secretary for Legislative Affairs,
Department of the Treasury.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Section 11(b) of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost of the proposed legislation. The Congressional Budget Office has provided the following cost estimate and estimate of costs of private-sector mandates.

JUNE 13, 2007.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the International Emergency Economic Powers Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

PETER R. ORSZAG.

Enclosure.

International Emergency Economic Powers Enhancement Act

The bill would amend the International Emergency Economic Powers Act (IEEPA) to increase the maximum civil and criminal penalties that may result from violations of that act. IEEPA authorizes the President to investigate, regulate, and prohibit certain financial transactions following a declaration of an "unusual and extraordinary threat" originating outside the United States. Under current law, individuals and entities that violate regulations promulgated under IEEPA are subject to civil penalties of up to \$10,000, and criminal penalties of up to \$250,000 and 10 years' imprisonment. Under this legislation, the maximum penalty would be increased to \$250,000 for civil violations and \$1 million and 20 years' imprisonment for criminal violations.

Enacting this bill could increase federal revenues as a result of the collection of additional civil and criminal penalties assessed for violations of IEEPA regulations. Civil penalties are typically assessed by the Office of Foreign Assets Control (OFAC) of the U.S. Treasury, while criminal penalties are assessed in the federal courts. Amounts collected from civil penalties are recorded in the budget as revenues and are deposited into the General Fund of the Treasury. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. Based on information from OFAC and the Administrative Office of the United States Courts, CBO expects that the increases proposed by this legislation would affect relatively few cases per year. As such, we estimate

that enacting this bill would probably have an insignificant effect on the federal budget over the next 10 years.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Daniel Hoople. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. COMMITTEE CONSIDERATION

The Committee on Banking, Housing, and Urban Affairs met in open session on May 16, 2007, and ordered the bill reported, as amended.

