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LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE
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H.R. 2264 – To amend the Sherman Act to make oil-producing and exporting cartels illegal

Floor Situation

H.R. 2264 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative John Conyers (D-MI) on May 10, 2007, and was reported by voice vote, by the Committee on the Judiciary on May 17, 2007.

H.R. 2264 is expected to be considered on the floor of the House on May 22, 2007.

**Note: Similar legislation S. 879 was introduced by Senator Herb Kohl (D-WI) on March 14, 2007, and was ordered to be reported by the Senate Committee on the Judiciary on March 25, 2007.*

Summary

H.R. 2264:

- Prohibits foreign states from forming cartels or other associations to affect the market, supply, price, or distribution of oil, natural gas, or other petroleum product in the United States. The following actions are prohibited:
    - Limiting the production or distribution of oil, natural gas, or other petroleum products;
    - Setting or maintain the price of oil, natural gas, or any petroleum product; or,
    - Otherwise taking any action to restrain the trade of oil, natural gas, or any petroleum product.
- Waives the possibility of sovereign immunity for foreign states found in violation of this legislation.
- Authorizes the U.S. Attorney General to enforce this legislation under antitrust laws, and prohibits any state courts from declining to make a determination "on the merits in an action brought under this section."

Background
According to the Department of Energy (DOE) Energy Information Administration (EIA), "The Organization of Petroleum Exporting Countries (OPEC) was founded in Baghdad, Iraq, in September 1960, to unify and coordinate members' petroleum policies. OPEC members' national oil ministers meet regularly to discuss prices and, since 1982, to set crude oil production quotas. Original OPEC members include Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela. Between 1960 and 1975, the organization expanded to include Qatar (1961), Indonesia (1962), Libya (1962), the United Arab Emirates (1967), Algeria (1969), and Nigeria (1971). Ecuador and Gabon were members of OPEC, but Ecuador withdrew in December 1992, and Gabon followed suit in January 1995. Although Iraq remains a member of OPEC, Iraqi production has not been a part of any OPEC quota agreements since March 1998. EIA estimates that the current eleven OPEC members account for about 40% of world oil production, and about 2/3 of the world's proven oil reserves."

H.R. 2264 was drafted in response to the Ninth Circuit's decision in *International Association of Machinists and Aerospace Workers v. OPEC*, which held that the countries constituting OPEC could not be held liable for antitrust violations because of the act of state doctrine. As such, the bill explicitly eliminates the concepts of sovereign immunity and the act of state doctrine as OPEC's defenses to an antitrust suit.

Additional Views
Committee Republicans have voiced concerns that the bill may have "a litany of consequences for America, both at home and abroad," and have requested a GAO study on the impact the bill may have on U.S. foreign policy, trade balances, and U.S. ability to station troops in the Middle East. Republicans on the Committee have also stated concerns that "this bill could lead to a number of retaliatory actions by these foreign governments, including an oil embargo like the one that occurred in 1973 and the seizure of U.S. assets abroad. Separate and apart from those concerns, the costs of enforcing a judgment against a foreign state-owned entity are unknown and might not be worth the effort."

Cost
The Congressional Budget Office (CBO) has stated that they "cannot estimate a precise cost of implementing H.R. 2264 because we have no basis for assessing the likelihood that the Administration might initiate antitrust actions against foreign states under the bill." CBO cited similar reasons for not being able to assess the impact of H.R. 2264 on direct spending and revenues.

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