



## Provisions to Limit Future Iranian Illicit Procurements for Its Nuclear Programs

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As six world powers, the so-called EU3+3, or “The Six”--the United States, Britain, France, Germany, China, and Russia--negotiate a comprehensive agreement with Iran, it will be vital for them to maintain sanctions and controls on proliferation-sensitive goods, while at the appropriate time creating a verifiable procurement channel for Iran’s legitimate nuclear programs. Proliferation-sensitive goods are those needed in Iran’s nuclear programs and nuclear weapon delivery systems, the latter typically interpreted as covering ballistic missiles. The most effective means available of accomplishing this goal is to maintain the controls on goods in the United Nations Security Council (UNSC) resolutions and mandates, and the associated national implementing legislation that controls such goods, during the duration of the comprehensive deal. This approach would leave intact the UNSC and multilateral infrastructure created to implement these sanctions, including domestic and UN sanction designations of entities violating the resolutions and aggressive efforts to detect and disrupt Iran’s illicit procurement efforts. At the same time, however, a legitimate procurement channel may need to be created to funnel required goods to Iran’s authorized sensitive nuclear programs. A challenge will be creating and maintaining an architecture that exempts imports of goods to Iran’s legitimate nuclear programs and possibly later to its civilian industries, while preventing imports to a banned or covert military nuclear program. Many proliferation sensitive goods are dual-use goods, which have applications both in nuclear and non-nuclear industries and institutions.

The creation of the architecture should be accomplished during the negotiations of the long-term agreement. It will be important that the architecture, whether or not implemented later, be established at the very beginning of the implementation of the long-term agreement in order to adequately deal with this issue. In essence, the implementation of the architecture should not be left to later.

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A divisive issue among those who commented on this paper involved exports to Iran's civilian sector. Those who supported providing proliferation-sensitive goods to the civilian industry thought it best to limit implementing this exemption only after a significant amount of time had passed after implementation has occurred for the monitored procurement channel for authorized nuclear programs. The concern was that an exemption for Iranian civilian industries could be exploited by Iran to procure for banned programs, including missile and other military programs. Moreover, establishing the necessary controls beyond those applied to a dedicated nuclear procurement channel will be very difficult and would depend on achieving some level of confidence that Iran is no longer conducting illicit nuclear trade.

## **Illicit Procurement Not Expected to End**

A comprehensive nuclear agreement is not expected to end Iran's illicit efforts to obtain goods for its missile and other military programs. Iran appears committed to continuing its illicit operations to obtain goods for a range of sanctioned programs. On August 30, 2014, Iranian President Hassan Rouhani stated clearly on Iranian television: "Of course we bypass sanctions. We are proud that we bypass sanctions." Given Iran's sanctions-busting history, a comprehensive nuclear agreement should not include any provisions that would interfere in efforts of the international community to effectively sanction Iranian military programs.

The agreement must create a basis to end, or at least detect with high probability, Iran's illicit nuclear procurements. Evidence suggests that in the last few years Iran has been conducting its illegal operations to import goods for its nuclear program with greater secrecy and sophistication. A long term nuclear agreement should ban Iranian illicit trade in items for its nuclear programs while creating additional mechanisms to verify this ban. Such a verified ban is a critical part of ensuring that Iran is not establishing the wherewithal to:

- Build secret nuclear sites,
- Make secret advances in its advanced centrifuge<sup>1</sup> or other nuclear programs, or
- Surge in capability if it left the agreement.

These conditions argue for continuing all the UNSC and national sanctions and well-enforced export controls on proliferation-sensitive goods.

Under this approach, sanctions would continue on the listed goods in the UNSC resolutions, many of them dual-use in nature, and more generally on those other dual-use goods that could contribute to uranium enrichment, plutonium reprocessing, heavy water, and nuclear weapon delivery systems (see United Nations Security Council resolution 1929, par. 13). The latter is

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<sup>1</sup> Aside from the IR-2m and a few other centrifuge models, little is known about Iran's next generation centrifuges. Quarterly IAEA safeguards reports indicate that Iran has not successfully operated next generation centrifuges on a continuous basis or in significant numbers since their installation began at the Natanz Pilot Fuel Enrichment Plant. This suggests that Iran may be having difficulty with aspects of their design or operation. Iran's failure to deploy next-generation centrifuges in significant quantities is one indication that sanctions were effective to slow or significantly raise the costs of procurement.

often referred to as the “catch-all” provision and mirrors many national catch-all requirements in export control laws and regulations. In the case of Iran, this provision is especially important. Without illicitly obtaining the goods covered by catch-all, Iran would be severely constrained in building or expanding nuclear sites.

The six powers need to manage carefully the transition to a time when imports of goods to Iran are allowed for legitimate nuclear and later possibly for civilian uses. Currently, the world is on heightened alert about Iran’s illicit procurements for its sanctioned nuclear, missile, and military programs. Routinely, this alert has led to the thwarting of many illicit purchases and interdictions of banned goods. But as nations enter into expanded commercial and trade relationships with Iran, a risk is that many countries will effectively stand down from this heightened state of awareness and lose much of their motivation to stop banned sales to Iran even if UN sanctions remain in place. Despite the sanctions and vigilant efforts today, many goods below the sanctions list thresholds but covered by the catch-all condition that bans all goods that could contribute to Iran’s nuclear program now make their way to Iran illicitly. The volume of these sales is expected to increase after an agreement takes effect and many more of these goods could get through successfully. **Unless carefully managed, a key risk is that the sanctions may not hold firm for the below threshold or catch-all goods.** Stopping transfers of explicitly banned items may also become more difficult as business opportunities increase and much of the world de-emphasizes Iran’s nuclear program as a major issue in their foreign policies and domestic regulations. This could be particularly true for China and middle economic powers, such as Turkey, which already have substantial trade with Iran and are expected to seek expanded ties. Other countries with weak export controls may expand trade as well.

The six powers must carefully plan for these eventualities now and include in any agreement an architecture to mitigate and manage proliferation-related procurement risks.

### **Exceptions to Sanctions will need to be monitored**

Iran’s legitimate nuclear activities may need imports. The agreement will need to allow for imports for legitimate nuclear programs, as they do now for the Bushehr nuclear power reactor.

The “modernization” of the Arak reactor would probably involve the most imports, depending on the extent to which international partners are involved. A sensitive area will be any imports, whether equipment, material, or technologies, which are associated with the heavy water portion of the reactor, in the case that the reactor is not converted to light water. Another sensitive set of possible imports involves goods related to the separation of radionuclides from irradiated targets, although goods for reprocessing, i.e. separating plutonium from irradiated fuel or targets, would be banned since Iran is expected to commit in the long-term agreement not to conduct reprocessing. Nonetheless, allowed imports could include goods that would be close in capability to those used in reprocessing, since the boundary in this area between sensitive and non-sensitive equipment is very thin. These goods will therefore require careful monitoring. Iran’s centrifuge program, if reduced in scale to the levels required for U.S.

acceptance of a deal, will result in a large excess stockpile of key goods for IR-1 centrifuges. This stock should last for many years, eliminating the need for most imports. Nonetheless, the centrifuge program may need certain spare parts, raw materials, or replacement equipment. If Iran continues centrifuge research and development, that program may require sensitive raw materials and equipment. Needless to say, the goods exported to Iran's centrifuge programs will require careful monitoring as to their use and long term fate.

Iran's non-nuclear civilian industries and institutions may also want to purchase dual-use goods covered by the sanctions. With renewed economic activity and as part of efforts to expand the high-tech civilian sector, Iranian companies and institutions engaged in civilian, non-nuclear activities can be expected to seek these goods, several of which would be covered by the catch-all condition of the resolutions. Examples of dual-use goods would be carbon fiber, vacuum pumps, valves, computer control equipment, raw materials, subcomponents of equipment, and other goods used in Iran's centrifuge and Arak reactor projects. Currently, these civil industries (Iran's petro-chemical and automotive industries are two such examples) are essentially denied many of these goods under the UNSC resolutions and related unilateral and multilateral sanctions. However, if civilian industries are to be eventually exempted from the sanctions, this exemption must be created with care, implemented no sooner than many years into the agreement, and monitored carefully. Iran could exploit this exemption to obtain goods illicitly for banned activities. It could approach suppliers claiming the goods are for civil purposes but in fact they would be for banned nuclear or military programs. Such a strategy is exactly what Iran's nuclear program has pursued illicitly for many years, including cases where goods were procured under false pretenses by the Iranian oil and gas industry for the nuclear program. There are also many examples of illicit Iranian procurements for its nuclear program where Iranian and other trading companies misrepresented the end use to suppliers.

## **Architecture**

Because the situation is so complex, the agreement will need to include provisions which create a special architecture on top of the existing arrangements under existing UNSC resolutions. This architecture should include at the appropriate time a procurement channel for the authorized nuclear programs, and later, tight controls on any goods approved for export to Iran's civil, non-nuclear entities. The architecture should clearly demarcate those imports which are legal from those that are not. The goal of the architecture would be to carefully monitor any Iranian purchases of proliferation sensitive goods as a way to help provide assurance that Iran does not accumulate in secret the wherewithal to increase its nuclear capabilities or build nuclear weapons. The architecture should include the following elements:

### **1) Iranian non-trafficking pledge**

As part of creating a clear line between legitimate and illicit imports and a framework for establishing a baseline of permitted procurements, Iran should formally in the comprehensive agreement commit not to procure goods for its nuclear programs from abroad in a manner that is considered illicit ("illicit nuclear trafficking or trade"). Such trafficking is illicit if such trade is not authorized:

- by the state in which goods originate;
- by the United Nations Security Council, unilateral, or regional sanctions;
- by the states through which the goods transit; and
- for import into Iran for use in a nuclear program.

## **2) Verifiable end-use and end-user assurances**

### **A) Affirmation by UNSC of remaining sanctions on direct- and dual-use goods and updated dual-use list**

The UNSC in cooperation with the IAEA should review dual-use goods in order to identify a more comprehensive list of goods (“comprehensive list”) that can contribute to Iran’s sensitive nuclear programs. This list should be considered for inclusion on updated sanctions lists and used in the verification of a long term agreement (see below). The list should also be explicitly included or referenced in the long-term agreement or its implementing documents.

Many dual-use goods used in Iran’s sensitive nuclear programs are not listed explicitly under the UN Security Council resolutions but nonetheless are key items necessary for these sensitive nuclear facilities and activities. These are usually captured under catch-all controls. However, the decision to apply catch-all controls is left to each state, and there are states that do not implement this aspect of the resolutions. A comprehensive list should include items already specified under UNSC resolutions, namely the Nuclear Suppliers Group lists on direct use and dual-use goods, and the most important catch-all goods needed in Iran’s sensitive nuclear programs. The catch-all goods could be drawn from watch lists and lists of goods declared by Iran during the 2003 suspension and from lists to be declared under a long-term agreement. The latter lists would include items actually sought and used in nuclear programs. The comprehensive list would strengthen importantly the implementation and enforcement of the sanctions and enable a more effective verification regime for a comprehensive solution.

In parallel, the Nuclear Suppliers Group should accelerate its process of adding more goods to its nuclear related dual-use list. In recent years, it has been adding dual-use items because of increased concerns about their unauthorized use. Examples include additional types of vacuum pumps, pressure transducers, lasers, and frequency converters. The P5+1 should make a priority of accelerating the process at the NSG of adding more key catch-all goods to the nuclear-related dual-use list. Any new items should be added to the sanctioned list of goods in the UNSC Iran resolutions. Because adding new items at the Nuclear Suppliers Group will be time consuming, this process should not take precedence over the development and inclusion of a more comprehensive list in the long-term agreement and used in the verification process of the agreement. Rather, the NSG strengthening process should be viewed as a way to bolster the verification of a long-term agreement.

### **B) Nuclear procurement channel**

Near the beginning of the period of the comprehensive solution, but after establishing confidence in the peaceful nature of Iran's nuclear program,<sup>2</sup> a procurement channel should be established, pursuant to provisions in the agreement, so that Iran can acquire goods and technologies needed in its authorized nuclear programs.

#### **a) UNSC oversight**

The channel should be overseen by the UNSC. The UNSC should re-appoint the Iran Sanctions Committee and its Panel of Experts with an expanded mandate tasking them with ensuring Iran's compliance with UNSC resolutions and in particular the sanctions on proliferation-sensitive goods. The Sanctions Committee would approve all exports to Iran's nuclear programs. It would coordinate with the IAEA and in particular would share information with the IAEA. The IAEA, under this arrangement, would have the task of ensuring that Iranian procurements did not contribute to undeclared nuclear programs.<sup>3</sup> A goal of the Sanctions Committee, the Panel of Experts, and the IAEA would be adequate verification of Iran's imports and their use, described further below.

#### **b) Iranian central procurement organization and reporting procedure**

Iran would need to create a central procurement organization for all nuclear activities that would request items from suppliers. (It already has similar organizations involved in arranging illicit procurements for its nuclear programs, although individuals in these organizations should be excluded from participation in this new, legitimate procurement organization.) With respect to nuclear programs, Iran would need to notify the Sanctions Committee (and the Panel of Experts) of each enquiry to a supplier, and of any subsequent order involving goods on lists in the UNSC sanctions resolutions and developed under the long-term agreement (see above). This organization would need to also report a justification for each of these items. Each item procured via this channel would require an export license from the supplier country and be clearly identified as intended for Iran's nuclear programs. The supplier country would notify the Sanctions Committee each time it received a license request for a sale to Iran, and about the State's decision either to approve or disapprove the export. In addition, the supplier country should notify the Sanctions Committee when it learns of a request for an item on the comprehensive list outside a licensing process, i.e. one that is illicitly sought. The Sanctions Committee would also need to approve each export. This dual reporting requirement on both supplier states and Iran's central procurement agency would have the intended effect of detecting inconsistencies or incidences where Iran or a government failed to report. In anticipation of the relatively large number of export applications, the Sanctions Committee (and the Panel of Experts) should be given expanded resources (discussed further below).

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<sup>2</sup> Such confidence would at a minimum require that Iran has addressed the IAEA's concerns about past and possibly on-going military dimensions of its nuclear program. It would not require the IAEA to have reached a broader conclusion under the Additional Protocol, which Iran has said it will ratify in case of a final deal.

<sup>3</sup> It should be noted that the conditions in the Additional Protocol requiring countries to report sales of certain direct-use and dual-use goods are useful but too limited in numbers of goods and reporting requirements to provide assurance of the absence of non-declared nuclear activities. This is particularly true in the case of Iran which has prided itself on using the black market to outfit its nuclear and military programs over the last several decades.

These procedures would establish tight monitoring on many goods sought by Iran for its nuclear programs. However, there will be other goods that will not make any list but would still be covered by the catch-all condition. Iran should be encouraged to report more goods than just the goods on these lists. Moreover, all goods that can contribute to Iran's nuclear programs would be subject to verification, including end use checks.

### **c) End use investigations**

As part of its mandate, the UN Panel of Experts on Iran would be given additional authority to conduct investigations and checks within Iran on imported catch-all goods. A basic responsibility would be to verify the end use of all goods approved for export to Iran by the Sanctions Committee. To accomplish this goal, the Panel would need the authority for unconditional and unrestricted access to facilities containing these goods. It would also have the authority to follow up its investigatory activities with supplier states. The Panel's mandate would have to be amended by the Iran Sanctions Committee or revised through a subsequent UNSC resolution. The Panel would also need to include more technical experts and staff. It would require more autonomy in reporting than it currently has with regard to the permanent UN Security Council member states. The language in its reports and the issuance of reports should not be subject to UNSC approval. Moreover, the Panel of Experts should retain the ability to advise the Sanctions Committee which entities and individuals to sanction anew, in particular those that do not use the required channel to acquire proliferation sensitive goods.

States whose suppliers would export goods would have end user verification rights as stipulated in export licenses. In the case of any exports to Iran's nuclear program, states should review their end use requirements and bolster them, as needed, to allow for more routine and systematic end user and end use checks on the ground in Iran. Moreover, states should commit to using these rights, and Iran should understand that denial of end use verification would be grounds for suspending exports.

### **d) IAEA verification**

Imported goods going to the nuclear programs in Iran would also be subject to routine IAEA verification, including the IAEA checking on their location and end use. The Sanctions Committee would transmit to the IAEA lists of goods approved for export to Iran's nuclear program and those that are denied. The IAEA would carry out the verification of the location and end use of the goods on these lists as it deems appropriate. Iran would provide the IAEA unconditional and unrestricted access to these sites.

### **e) Iranian declaration**

As part of this verification effort, Iran would provide a list of all key imported and domestically-produced goods in its sensitive nuclear programs as of the date of the signing of the long-term nuclear agreement. Iran has illegally obtained goods which would need to be added to the declared list of key commodities in its sensitive nuclear programs. This declaration is necessary

to achieve a verified baseline of these programs. For example, this declaration would help verify the number of centrifuges Iran has manufactured up to the date of the agreement and its capability to make more. Separate from this declaration, Iran would state to the IAEA the total number of centrifuges it has made. This list of key commodities would be necessary for the IAEA to verify this number of centrifuges. Iran would update this list as key goods are added to this inventory via imports or domestic production. The IAEA would on an on-going basis verify the list. The IAEA will also need to verify domestically produced goods used in the nuclear programs, at least those on the lists to ensure they were not in fact imported and subsequently relabeled falsely as domestically produced. The IAEA would be mandated to follow up its verification activities with supplier states.

#### **f) Financial channel for legitimate procurements**

Financing could occur only through Iranian financial entities that are not sanctioned unilaterally or by the United Nations. Moreover, any currently designated entity or individual would be barred from using this channel. Towards achieving these goals, a specific financial channel should be created, whether through a resolution by the UN Security Council or outside of it, but limited to one or two specific, Iranian non-designated institutions. Those outside of Iran should receive assurances that they would not be sanctioned for carrying out those legitimate transactions, when duly notified to the Sanctions Committee.

#### **g) A Clear Line and Penalties for violations**

Procurements of proliferation-sensitive goods for any nuclear activities outside this channel would be prohibited and considered illicit nuclear trade. This clear line would also help ensure that illicit Iranian procurements can be more easily identified and thwarted.

Major violations of the approved procurement mechanisms, including Iranian failure to report, allow end use checks, or obtain export licenses from suppliers, would lead to the suspension of purchases via this channel and the re-imposition of sanctions on all nuclear programs.

### **C. Managing non-nuclear civil procurements**

A special challenge is how and when to allow Iranian civil, non-nuclear industries and institutions outside the nuclear program access to sanctioned dual-use goods, either listed or covered by catch-all (these industries would have no need for direct-use nuclear goods). An exception for civil, non-nuclear entities to the sanctions on proliferation sensitive goods should occur only after the nuclear procurement channel has operated for a significant period of time during which the IAEA and the UNSC can determine that Iran is abiding by the conditions in the long term deal.

If established, the procedures used to approve or disapprove exports via the nuclear procurement channel should be applied to exports to Iran's civil industries, although a central Iranian procurement organization for this task may not be possible. However, as in the case of the Iranian channel for the nuclear programs, the supplier state would need to issue an export

license for goods and notify the Sanctions Committee of requests, approvals, and denials (which would then transmit the lists to the IAEA). The Sanctions Committee would also need to approve all exports of proliferation-sensitive goods, potentially a daunting task. Sanctioned entities could not participate in procurements. Moreover, imported goods would be subject to verification by the Panel of Experts, the IAEA, and the supplier states. Both the Panel of Experts and the IAEA would also be mandated to follow up their verification activities with supplier states. Violations would lead to the entity being designated by the UNSC and national authorities. Widespread violations would cause the re-imposition of sanctions across the entire civil area.

### **3) Other issues: Continued national and transnational enforcement, detection, and disruption; Reporting by UN Panel of Experts on Iran, UNSC, and IAEA; Outreach by the E3+3**

Enforcement of existing sanctions would continue as before. There will remain the need for the robust intelligence and policy efforts of the United States and its partners internationally to track and disrupt illegal shipments. This effort would necessarily include bilateral contacts with countries not doing enough to implement the sanctions.

To help ensure compliance with the agreement, the IAEA and the Panel of Experts on Iran would need to regularly report on Iran's implementation and compliance with the agreement's provisions relevant to proliferation sensitive goods.

This system will depend on robust national export controls. However, in some countries such controls are lacking or poorly enforced. As a result, the E3+3 would need to launch a major effort to strengthen national export controls internationally, an effort that is worthy in its own right. In particular the United States and the European Union would need to devote significantly more resources to outreach. They would need to target several countries to ensure that Iran cannot seek goods illicitly in these countries or use them as transshipment points.

## **Conclusion**

This proliferation-sensitive procurement architecture should remain in place for the duration of the comprehensive agreement. The six powers must carefully plan for eventualities now and design and implement an architecture that prevents future Iranian illicit procurements under a comprehensive agreement.