

**Preliminary Assessment of the
JCPOA Procurement Channel:
Regulation of Iran's Future Nuclear and Civil Imports and
Considerations for the Future**

By David Albright and Andrea Stricker

Institute for Science and International Security

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I. Introduction:

The Joint Comprehensive Plan of Action (JCPOA) lays out a new international entity and a set of procedures for states to make proliferation-sensitive sales to Iran via a Procurement Channel. This channel is one of the most complex provisions in the JCPOA, and it will need to function effectively for the first ten years of the agreement. Many aspects of the Procurement Channel were left unsettled during the negotiations. During the next several months, the E3+3 will need to establish a range of capabilities and procedures to implement this channel.

The creation of this channel, which is described in only general terms in the JCPOA, is supported by newly passed United Nations Security Council resolution 2231 which endorses the JCPOA overall and makes the provisions legally binding and overseen by the Security Council.² At Implementation Day, Resolution 2231 will terminate all prior UN Security Council resolutions relating to the Iranian nuclear issue.

The purpose of the Procurement Channel is to regulate the flow of goods to Iran’s authorized nuclear programs and non-nuclear civil end users. It also seeks to deny Iran opportunities, or at least help expose any efforts, to violate the JCPOA. This new type of transparency can facilitate the detection of unauthorized Iranian procurements of proliferation-sensitive goods from abroad. These goods could be used in secret nuclear programs or in other ways inconsistent with the JCPOA. The channel can moreover limit Iran’s ability to stockpile goods that it could use to rapidly expand, or surge, its nuclear capabilities if it reneged on the JCPOA or otherwise ended it.

By also including exports to Iran’s non-nuclear civil industry, the channel’s mission is relatively broad in scope. Exports to authorized, sensitive nuclear programs, such as uranium enrichment facilities, are expected to be relatively minor for many years while sales to civil industries, on the other hand, could be quite large in volume.³ The inclusion of Iranian non-nuclear civil end uses complicates the creation and effective implementation of the Procurement Channel.

The JCPOA creates a regulatory body called the Procurement Working Group overseen by the JCPOA’s Joint Commission. In this report, we refer to the full name of the group or use its acronym PWG or just call it the “Working Group.” The Procurement Working Group will report to the Joint Commission within

¹ This paper will be updated as new information is obtained and findings leading to new recommendations are gathered.

² United Nations Security Council Resolution 2231 (2015), <http://www.un.org/press/en/2015/sc11974.doc.htm>

³ David Albright and Olli Heinonen, *Provisions to Limit Future Iranian Illicit Procurements for its Nuclear Programs*, ISIS Report, November 20, 2014. <http://isis-online.org/isis-reports/detail/provisions-to-limit-future-iranian-illicit-procurements-for-its-nuclear-pro/>

30 days on decisions regarding whether to allow the sale of direct-use, nuclear-related dual-use, or certain other dual-use goods to Iran pursuant to proposals that are submitted by UN member states. The Procurement Working Group serves to replace the UN Sanctions Committee and its Panel of Experts on Iran which oversaw Iran's compliance with UN Security Council sanctions resolutions. The new arrangement does not explicitly include an oversight body such as the Panel of Experts.

The justification for creating a new architecture rather than modifying the mission of the existing UN Security Council Sanctions Committee and Panel of Experts appears to be the goal of eliminating sanctions or embargos on Iran. Instead, the new architecture emphasizes authorizations of sales or exports. One negotiator told us that Iran demanded this new architecture to ensure that no remnant of the old sanctions regime would remain. In this spirit, the arms and missile embargoes are replaced in the new UNSC resolution with the need for the Security Council to approve any arms or missile sales to Iran, for five and eight years, respectively. This shift in approach, however, will be hard to reconcile with national sanctions regimes that remain on many of these goods. Any of the main five Security Council member states and Germany (P5+1) that leave in place some sanctions may have disputes with one another over decisions to authorize such transfers in the Procurement Working Group. Moreover, there remain open questions more broadly whether Iran will decide to seek Security Council authorization for arms and missile related imports, and whether it will be held to account for not doing so.

The International Atomic Energy Agency (IAEA) will have authority to check the end use of direct nuclear-use goods and can ostensibly use its authorities under the Additional Protocol and even the JCPOA's Access provision to ask to check the end use of dual-use goods. The state responsible for the sale of nuclear-related dual-use goods will have authority to check the end use of these goods in Iran, although it does not appear to have the authority to check the end use of dual-use goods not on the official dual-use list. Nonetheless, any JCPOA participant can raise procurement related issues within the Joint Commission, such as if a planned suspicious sale to Iran is detected.

The formal duration of the Procurement Channel is ten years. At Termination Day, Resolution 2231 will end and the UNSC will no longer be seized of the Iranian proliferation case, so long as Iran has met its commitments. From that point, unless something replaces the procurement channel, Iran will be freer to import nuclear-related goods, without going through an official oversight channel, but only pending individual states' approval of direct- and dual-use transfers.

The procurement channel ends just as Iran is expected to begin laying the groundwork for a significant expansion of its enrichment program, at which point it is expected to begin seeking the import of large quantities of needed goods. Absent a procurement channel, Iran could after year ten more effectively hide intentions to build up secret nuclear weapons programs. Thus, a serious shortcoming of the JCPOA's procurement provisions is that just when oversight is most needed to effectively regulate sales to Iran's nuclear programs, namely when they are expanding, it ends. In its place will be national monitoring rather than a regulatory system, unless the Procurement Channel is extended by the UN Security Council.

II. Summary of Procurement Channel Provisions:

A new UN resolution terminates nuclear-related Iran sanctions and prohibitions and endorses the JCPOA and its Procurement Channel provisions: Paragraph 17 of the main text of the JCPOA specifies that Iran will "cooperate and act in accordance with the procurement channel in this JCPOA, as detailed in Annex IV, endorsed by the UN Security Council resolution." The UN Security Council resolution

“endorsing this JCPOA will terminate all provisions of previous UN Security Council resolutions on the Iranian nuclear issue – 1696 (2006), 1737 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) – simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran and will establish specific restrictions, as specified in Annex V.” UN Resolution 2231 (2015) was passed on July 20, 2015 and endorsed the JCPOA including its procurement related provisions for the regulation of Iran’s nuclear imports.⁴

The Procurement Working Group reports to the Joint Commission on its recommendations to approve or disapprove exports of nuclear-related goods, technologies, or services to Iran: On Implementation Day, UNSCR 2231 will lift the current set of nuclear-related sanctions on Iran, upon the IAEA reporting that it is simultaneously implementing its nuclear-related commitments under the JCPOA. (Iran will also receive simultaneous relief from U.S. and EU nuclear, financial, and other sanctions).

Membership of the Procurement Working Group: The Joint Commission will designate the members of a Procurement Working Group, to be made up of one member each of the E3+3 countries, Iran, and the EU High Representative, who will be the coordinator.

Decisions taken by the Procurement Working Group, Consensus Voting, and Procedure: Supplier states must receive authorization for the sale of any direct- and dual-use goods to Iran’s nuclear program as contained on Nuclear Suppliers Group (NSG) Parts 1 and 2 lists and certain other dual-use goods as well. They will submit proposals to the UN Security Council. Decisions will be made by consensus vote. The Procurement Working Group’s roles are specified further in Annex IV, section 6 of the JCPOA.

According to the JCPOA, the Procurement Working Group will specifically decide on:

- the supply, sale or transfer directly or indirectly from their territories, or by their nationals the supply, sale or transfer directly or indirectly from their territories, or by their nationals or using their flag vessels or aircraft to, or for the use in or benefit of, Iran, and whether or not originating in their territories, of all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev.12/Part 1, and, if the end-use will be for **Iran's nuclear programme** set out in this JCPOA **or other non-nuclear civilian end-use**, all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev.9/Part 2 (or the most recent version of these documents as updated by the Security Council), **as well as any further items if the relevant State determines that they could contribute to activities inconsistent with the JCPOA (bolding and italics added for emphasis as it pertains to later analysis);**
- the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services related to the supply, sale, transfer, manufacture, or use of the items, materials, equipment, goods and technology described in [subparagraph] above;
- acquisition by Iran of an interest in a commercial activity in another State involving uranium mining, production or use of nuclear materials and technologies as listed in INFCIRC/254/Rev.12/Part 1, and such investments in territories under their jurisdiction by Iran, its nationals, and entities incorporated in Iran or subject to its jurisdiction, or by individuals or entities acting on their behalf or direction, or by entities owned or controlled by them.

The Procurement Working Group will follow a procedure that will entail:

⁴ UN Security Council Resolution 2231 (2015), op cit.

- Receipt of a proposal from a State seeking to make a sale to Iran of an NSG direct-use, NSG dual-use, or certain other dual-use good and each Procurement Working Group member will have 30 days to decide on approval or denial.
- When the proposal relates to items, material, equipment, goods and technology intended to be used in nuclear activities authorized by the JCPOA, the Coordinator will also forward the proposal to the IAEA.
- The state will need to provide a description of the item and supporting information including a description of the goods, contact information about the exporting entity, proposed end-use and end-use location, an end-use certification signed by the Atomic Energy Organization of Iran (AEOI) for sales to nuclear programs or the appropriate authority of Iran attesting the stated end-use (evidently for sales to non-nuclear civil industries); export license information if applicable, and contract dates and transport information; (any missing export license information or other key details must be made available before the shipment of the goods).
- Each participant in the Working Group will have to communicate to the Coordinator within 20 working days whether it approves or rejects the proposal, with a possible 10 day extension if needed.
- The proposal will be recommended for approval as soon as the Coordinator receives formal approvals from all the Procurement Working Group participants or if, at the end of the 30 working day period, the Coordinator has received no disapprovals from any of the Procurement Working Group participants.
- If the proposal is not approved (by consensus) at the end of the 30 days, it may be referred at the request of at least two Working Group participants to the Joint Commission which would then have 10 working days to approve it by consensus only.
- The recommendation of the Joint Commission will be communicated to the UN Security Council within 35 working days, or in case of referral to the Commission, 45 working days from the date the proposal was transmitted.
- The Procurement Working Group will meet every three weeks for reviewing proposals. The IAEA may be invited to attend the meeting as an observer.

Approved Transfers Only and Within the Procurement Channel: In addition, the JCPOA specifies: “All JCPOA participants will act in accordance with the procurement channel and will only engage in transfers and activities referenced in Section 6.1 following approval...” Iran will also “not use, acquire, or seek to procure the items, materials, equipment, goods, and technology referred to in Section 6.1 of this Annex which are inconsistent with this JCPOA.” It is unclear whether the Procurement Working Group will authorize the stockpiling of goods for future use by Iran after the nuclear restrictions come off. By the wording “inconsistent with this JCPOA,” one would expect that they would not.

Prohibitions on Enrichment Related Exports and Transfers: Section P on Transparency Related to Enrichment, Point 73 of Annex 1, includes a provision stipulating that for a period of 15 years Iran “will only engage, including through export of any enrichment or enrichment related equipment and technology, with any other country, or with any foreign entity in enrichment or enrichment related activities, including related research and development activities, following approval by the Joint Commission.”

Catch-All Provision Included in JCPOA: The JCPOA includes a provision preventing the transfer of direct- and dual-use goods on NSG Parts 1 and 2 lists outside the procurement channel *as well as any further items if the relevant State determines that they could contribute to activities inconsistent with the JCPOA.*

This provision is meant to act as a type of “catch-all” provision to prevent the transfer or sale to Iran of goods that are not contained on the NSG lists but which are determined to be intended for use in Iran’s nuclear program or other banned activity under the JCPOA. It should be noted, however, that the decision to prevent the transfer is not a requirement on all states. This type of “catch-all” mechanism has been included in UN Security Council sanctions resolutions on Iran. Unlike in the case of sanctions resolutions, which sought to ban the sale of a broader collection of goods, this catch-all mechanism is an effort to subject a broader array of goods to the procurement channel authorization and oversight process.

Reporting of Procurement Issues to the Joint Commission by JCPOA Participants: The procurement channel provisions include the ability of “any JCPOA participant” to “refer a procurement-related activity to the Joint Commission under the dispute settlement mechanism if it is concerned that such activity is inconsistent with this JCPOA.”

IAEA End-Use Checks on Direct-Use Nuclear Goods and Supplier State Checks on Dual-Use Goods: The document states that “Iran will provide to the IAEA access to the locations of intended use of all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev.12/Part 1” or the NSG direct-nuclear use list, “imported following the procedure under Section 6 of this Annex.” It also states that “Iran will permit the exporting state to verify the end-use of all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev.9/Part 2” or the NSG nuclear dual-use goods list, “imported following the procedure...” The Joint Commission can provide expertise, including experts, to the exporting state or experts to participate in end-use verification upon request. The Procurement Working Group can provide guidance to third parties on procurement activities and must respond to a request within 9 working days.

Reporting by the Joint Commission to the UNSC: The Joint Commission will report to the UN Security Council at least every six months on the status of the Procurement Working Group’s decisions and on any implementation issues.

End to Procurement Channel at Termination Day, which occurs at year 10: The procurement channel will end with the termination of UNSCR 2231 and the end of the Security Council’s seizure of the matter of Iran’s nuclear program. Iran’s imports will then be regulated as they are for most other countries - by standard international and national trade controls such as the NSG and domestic laws and licensing decisions regarding future nuclear-related sales to Iran. Nothing forbids extending the Procurement Channel beyond ten years but a new UN Security Council resolution would be needed.

III. Assessment of Provisions: Commentary and Remediation Steps:

Below we have identified major, key issues expected to arise prior to and during the Procurement Channel’s implementation, posed questions for policymakers to consider, and offered remediation steps to repair what we assess to be the channel’s weaknesses.

“Width” of the Procurement Channel is perhaps too broad

Iran can seek goods for its authorized nuclear programs and non-nuclear civil end uses, which can include industries, universities, and research institutes. The latter uses are expected to involve far more goods than the former.

Commentary

A serious challenge in the JCPOA's procurement channel formulation is the inclusion of non-nuclear civil industries as legitimate recipients of goods along with the authorized nuclear programs. As such, Iran's civil industries will have a clear motivation to connect with overseas suppliers to obtain a range of dual-use goods, including those on the Part 2 list. According to Ian J. Stewart, Head of Project Alpha at King's College London, "The Procurement Channel will thus be relevant to many firms seeking to reengage with Iran in the wake of the agreement and is likely to be a dominant feature of trade with Iran over the next decade."⁵ Many, if not most, of the proposals to the Procurement Working Group could be for Iran's non-nuclear civil industries.

A sounder approach would have been to have a blanket ban on all exports of proliferation-sensitive goods except those approved for Iran's authorized nuclear programs. At a later date, after the procurement channel is fully established and tested, exports to non-nuclear civil end users would then have been allowed.⁶ Under the JCPOA, the Procurement Channel is so broad that unless exports to the civil end users are limited, its ability to be effective could be overwhelmed.

Moreover, Iran's civil industries and universities have been at the core of Iran's illegal procurement efforts for decades. When the nuclear, military, or other sanctioned industries needed goods, they contracted with Iran's civil industries, including its trading companies, to obtain the goods under false pretenses. Universities in the past served as centers for illicit procurement and illicit R&D efforts relating to enrichment and weaponization.⁷ These illicit procurement routes remain open under the JCPOA's procurement channel for Iran's military and terrorist entities.⁸ They may also remain open for the nuclear entities, but such activities would be a violation of the JCPOA. Thus, besides reviewing all proposals for uses inconsistent with the JCPOA, the Procurement Working Group will also need to review all proposals for potential uses for proscribed military, missile, and terrorist purposes.

Possible Remediation Step:

- ❖ The Procurement Working Group should at least initially delay accepting proposals for exports to Iranian non-nuclear civil end uses.
- ❖ As part of establishing procedures to review these proposals, the Procurement Working Group should announce that Iranian trading companies cannot be the end users of any goods or services.

For more issues involving Iranian civilian end users, see also the below section, **Question of Regulating Iranian Entities Making Procurements.**

⁵ Ian J. Stewart, "The Iranian Nuclear Procurement Channel: the most complex part of the JCPOA?" World ECR, http://www.worldecr.com/wp-content/uploads/Iranian-Nuclear-Procurement-Channel_WorldECR1.pdf

⁶ See Albright and Heinonen, *Provisions to Limit Future Iranian Illicit Procurements for its Nuclear Programs.*

⁷ See, for example, ISIS's body of work on illicit efforts in the 1990s by Iranian university-led procurements for the military nuclear organization the Physics Research Centre: <http://isis-online.org/phrc>

⁸ Several years ago, Iran bought electronic equipment in the United States for use in IED's that were used in Iraq against U.S. service personnel. The illicit procurements were handled by Iranian civil companies and involved an international procurement network.

Iran has expressed that it has no intention to stop missile and arms related illicit procurements:

Under the JCPOA, Iran has agreed to act in accordance with the nuclear procurement channel. It has also committed “not to use, acquire, or seek to procure the items, materials, equipment, goods, and technology referred to in Section 6.1 of this Annex for nuclear activities which are inconsistent with [the] JCPOA.” However, in a veiled threat not to abide by the UN Security Council authorization provision for arms and missile imports, President Hassan Rouhani stated on August 22, 2015: “We will purchase weapons from wherever we deem necessary and we are not waiting for anyone’s permission; if we deem necessary we will sell our weapons and we will do this without paying attention to any resolution.”⁹ In August 2014, Rouhani also stated: “Of course we bypass sanctions. We are proud that we bypass sanctions.”¹⁰ So, on one hand, Iran has agreed not to conduct illicit procurement for nuclear purchases, but it appears to be stating that it could violate the five and eight year authorization requirements included in UNSCR 2231 for arms and missile related transfers. Moreover, in addition to violating UNSCR 2231, such procurements would violate remaining national sanctions and laws of many countries covering arms, missiles, and terrorism.

Iran’s conventional military and missile industries depend on foreign procurement of a broad range of dual-use goods, many of which are on the Part 2 dual-use list or would be reasonably expected to be included under the catch-all mechanism of the JCPOA. As a result, if Iran wanted these goods, they would fall under the JCPOA Procurement Channel. Based on President Rouhani’s statements, Iran is unlikely to forgo seeking from abroad these goods which it views as vital to the development, manufacture and maintenance of missiles and conventional arms. If Iran seeks such dual-use goods for these sanctioned programs, it will need to seek them covertly or via the Procurement Channel under false pretenses, e.g. claiming they are for a non-nuclear civil industry when in fact they are not.

Commentary

Iran has not committed under the JCPOA that it will not acquire goods for sanctioned arms, missile, or terrorism programs via the Procurement Channel, or otherwise. In such endeavors, it would be expected to use domestic civil companies or universities to acquire these goods illegally from abroad. The Procurement Working Group is responsible for detecting and thwarting these procurements, but Iran is not under any self-acknowledged obligation not to try to get these goods. If its efforts are thwarted, it appears Iran would have to accept the decision of the Working Group, but the JCPOA does not specify any consequences for violations of these sanctions or bans. It will be interesting if Iran appeals such disapprovals to the Joint Commission. Or would it simply try a different route, e.g. using another domestic company to procure via an overseas supplier, and seeing if it gets caught the next time or if the goods slip through undetected.

Possible Remediation Step:

⁹ Fars News Agency, “Rouhani Stresses Iran's Arms Imports/Exports Irrespective of Western Opposition,” August 22, 2015. <http://english.farsnews.com/newstext.aspx?nn=13940531000708>

¹⁰ BBC News, “Iran President Rouhani hits out at US sanctions,” August 30, 2014. <http://www.bbc.com/news/world-middle-east-28997452>

- ❖ The E3+3 should issue an implementation statement that any use of the procurement channel to violate UN Security Council sanctions or national trade control laws will be a violation of the intent of the JCPOA and grounds for reducing cooperation or re-imposing sanctions.
- ❖ If Iran is found to violate national or international sanctions on arms or missile programs or for terrorism-related purposes, the Working Group should slow down or halt approvals to Iran's nuclear and non-nuclear civil programs, pending a halt to such illicit activities.

Detection and prevention of illicit nuclear-related imports by Iran will be arduous:

Aside from Iran's efforts to misuse the procurement channel to violate non-nuclear sanctions, the detection and enforcement burdens regarding illicit imports by Iran appear to be large for intelligence and enforcement agencies, particularly for those states that want to enforce the JCPOA, in the face of many that will not. How in practice will states ensure that Iran is not illicitly importing nuclear-related goods and avoiding the procurement channel? How will intelligence and enforcement agencies liaise with the Procurement Working Group? Both sides will require a steady flow of information and strong coordination in order for the procurement channel to succeed. In addition, will UN member states cooperate with decisions and requests for action?

As discussed above, a serious shortcoming of the procurement channel is that it allows exports to non-nuclear civil industries. These very industries have been at the core of Iran's illegal procurement efforts for decades. When the nuclear, military, or other sanctioned industries need goods, they contracted with Iran's civil industries, including its trading companies, to obtain the goods under false pretenses. This illicit procurement route remains open under the JCPOA's procurement channel.

Possible Remediation Steps:

- ❖ Each supplier state should expand domestic efforts aimed at the timely detection and disrupting of Iran's illicit procurement attempts and ongoing enforcement of violations. Legislatures should support the deployment of necessary resources to improve executive branch capabilities to detect illicit imports by Iran.
- ❖ The United States and EU states should encourage greater cooperation among allies to improve their timely detection and thwarting of Iran's illicit trade.
- ❖ All UN member states should be encouraged to implement decisions and requests for action by the Procurement Working Group.
- ❖ All UN member states, and particularly the United States and European Union, should continue to prosecute illicit procurement agents as violators of domestic laws under the UN/JCPOA provisions in order to encourage deterrence.

Responsibilities of States are fundamental to success of channel:

The Procurement Channel is centered on states seeking approvals for their domestic companies/universities/research institutes to export goods or services to Iran. Iran does not seek that authorization, although in most cases, the Iranian government or companies, will originate the request.

With the lifting of sanctions, various Iranian entities can be expected to have many requests to buy goods and services from abroad. A subset of these requests will end up being directed to the Procurement

Channel. There is likely to be another subset of requests that should fall within the channel but do not. A portion of these goods will be part of Iranian illicit efforts and deliberately kept out of the channel. Another portion will be inadvertently not included in the channel and originated by civil Iranian end users that are unaware of the requirements of the Procurement Channel and find suppliers who are likewise unaware. The members of the PWG and its allies are responsible to find all these cases where the goods are outside the Procurement Channel and ensure they are thwarted or included in the Procurement Channel. Iran should have an interest in minimizing incidences of inadvertent violators (see section **Question of Regulating Iranian Entities Making Procurements**).

Commentary

The JPCOA creates a major burden on the members of the Procurement Working Group to review sales proposals as to their suitability. It is not enough to review exports from one's own country but they must review all of the proposals received by the Working Group. In addition, members of the Working Group, and other nations, will need to be on the lookout for illegal sales or careless exports that should be routed through the Procurement Channel. As part of their review, these countries will need to delve deeply into Iran's industrial infrastructure to ensure that the goods are not likely to be misused. It is unclear whether such investigations can be done effectively, particularly given the time constraints imposed by the JCPOA on the members of the Working Group (see next section).

Iran is under no substantial requirements to ease this task other than issuing end user certification to importers. In the case of nuclear exports, the Atomic Energy Agency of Iran (AEOI) will issue the certificate. In the case on the non-nuclear civil industries, the JCPOA does not make clear which Iranian entities will provide the end use certification. It is important that the company cannot issue the end user certification; an official Iranian government organization must provide it, making Iran responsible for these imports. However, Iran is not under any obligation to provide the Working Group with data on its domestic companies or, for example, to create a verified registry of importers with established legitimate end uses.

Iran's membership in the Working Group raises questions about whether Iranians can use this membership to further its illicit trade activities in the realm of military, missile, and terrorism. Few expect those illegal activities to stop. Responsible members of the Working Group are expected to block sales which in some cases Iran will know are for illegal purposes.

A major challenge is to ensure that domestic companies export goods via the procurement channel. Will countries, including JCPOA and non-JCPOA UN member states, need to enact new executive order equivalents or laws and regulations for companies to follow? UNSCR 2231 does not mandate national implementation laws but many countries' laws require abidance with UNSC resolutions on a domestic level. However, many countries still do not enforce existing Iran UN sanctions well. How will lapsing countries and/or their companies be penalized or held to account for not following the procurement channel guidelines?

It appears that a great deal of communication will be needed between governments and companies on these issues. The fact is that the procurement channel places a large burden of regulation of sales to Iran on other states and companies. This assumes they will efficiently and reliably be able to interpret the UN Security Council resolution and the procurement channel provisions, seek to implement them, and regulate trade by their suppliers. How will all of these issues be handled before Implementation Day? What is currently being done by the JCPOA member states to prepare?

Possible Remediation Steps:

- ❖ The E3+3 states will need to exercise caution in their deliberations and disseminations within the Working Group to ensure that they do not benefit any Iranian illicit nuclear trade or other banned trade.
- ❖ UN member states should enact new laws or orders regarding implementation of the JCPOA provisions and make the procurement channel requirements known widely to domestic companies and national enforcement authorities.
- ❖ Outreach by governments will be needed to explain the Procurement Channel provisions to domestic companies and ensure they do not circumvent the proscribed, official channel.
- ❖ UN member states should maintain the same (or increased) vigilance regarding exports to Iran that they now have.
- ❖ Trade authorities, enforcement agencies, and prosecution entities in UN member states should seek to detect and stop any suppliers seeking to make sales to Iranian entities outside the procurement channel.
- ❖ Companies not following laws regarding the procurement channel provisions regarding sales to Iran should be fined or prosecuted.

Thirty-day window for reviewing an export proposal is a major weakness:

Under the JCPOA, members of the Working Group have only a maximum of 30 days to approve or reject a proposed export from a supplier country.

Commentary

Will 30 days be adequate for JCPOA countries to undertake due diligence regarding deciding whether to approve, or disapprove, a domestic export? Even fully responsible states can expect challenges, some of which will be difficult to overcome without new resources and commitments. According to the JCPOA, “Each participant in the Procurement Working Group will have to communicate to the Coordinator, within 20 working days, whether it approves or rejects the proposal. The timeline for consideration may be extended for an additional period of 10 working days at the request of a participant of the Procurement Working Group.” Although the JCPOA process requires only one state on the Working Group to stop the export, no state is likely to want to disapprove exports without a justification. But 30 days is unlikely to be sufficient time for states, including the United States, to conduct due diligence on the full-range of expected dual-use exports to Iran, including those a state determines “could contribute to activities inconsistent with the JCPOA.”

Several government experts from at least two JCPOA countries have voiced concern during discussions that this timeframe will not be adequate time to do due diligence, particularly given the need for domestic interagency coordination and for seeking additional information from the supplier, other supplier states or allies, and possibly Iran. The review would entail learning about the supplier planning the export, determining the potential technical end-uses in consultation with national experts and the supplier, determining through the help of intelligence agencies the likelihood of the goods being used for the stated end use by the particular customer in Iran, in addition to working out many other shipment and customs related issues. Putting together an effective national review team and obtaining necessary information domestically and internationally is already a difficult challenge for counterproliferation

efforts. Demanding meaningful review in 20 days (extendable to 30 days) appears unrealistic. It is unclear why negotiators accepted such a tight time limit.

For direct-use nuclear goods, such as those for the rebuilt Arak reactor, the approval process would be expected to be rather quick and should be suitable to meet the 30-day requirement. For goods for the centrifuge program, members of the Working Group will need to determine whether the good is needed, given the limitations on Iran's centrifuge program and its ability to use goods from its dismantled centrifuges and associated equipment. How this need will be determined is not clear. Perhaps, the IAEA can provide necessary information. But would it provide it in a timely manner? For dual-use goods destined for non-nuclear civil industries in Iran, a challenge is determining with reasonable certainty that the goods are needed, are going to legitimate end users, and will not be diverted, perhaps later, to the nuclear program or sanctioned programs, such as missile, arms, or terrorism programs. This category of goods is likely to challenge the 30-day requirement.

Possible Remediation Steps:

- ❖ All PWG member states will need to devote sufficient resources and develop adequate systems to review export proposals quickly and adequately.
- ❖ Supplier states should authorize more resources to improve executive branch capabilities to rapidly review exports to Iran and ensure that they do not contribute to activities inconsistent with the JCPOA.
- ❖ Each of the E3+3 states and the EU central authorities should establish a range of capabilities to process proposals in such a short time. In particular, the major burden will fall on the E3+3 states to establish adequate capabilities prior to Implementation Day. A state model would include an office, or "desk," in its Foreign Ministry that can receive proposals from the Working Group bodies and transmit them promptly within its own government entities, as well as communicate promptly as needed with Iran and other states involved in the supply of goods in the proposal. A rapid method of communication among trusted allies will also be required to ensure full access to available information about Iranian illicit procurement activities. Typically, these types of communication have not occurred promptly in the counterproliferation area, so a more rapid communication capability will need to be worked out by the members of the Working Group. Each state will need an entity(ies), such as its trade department or national laboratories, which can assess technically and commercially the goods as to their end use and possible misuse. The intelligence agencies will have a critical role in informing their own government about a proposal. The state will need a quick, efficient interagency process to evaluate the proposals. In democracies, there will also be a need to inform Parliaments or Congresses about the process, which will inevitably include additional expenditures, and should require periodic reports about the goods exported, the effectiveness of the proposal process, and any non-compliance by Iran.
- ❖ Pending the development of an effective approval process in the E3+3 states, the United States and its European partners, and ideally all the E3+3, should state that they will individually maintain a presumption of denial if they determine that 30 days is not sufficient to adequately review proposals.
- ❖ The meaning of the term "relevant state" in the catch-all condition, namely "any further items if the **relevant State** determines that they could contribute to activities inconsistent with the JCPOA," should be interpreted as any state that determines the item could be used in a nuclear program, whether or not it is the supplier.
- ❖ The Working Group should announce that the sale of any goods to an Iranian trading company will be blocked. Only sales to identified, justified, and verified end users should be allowed.

Dual-Use and Catch-All Implementation are likely to be difficult to carry out and enforce:

Absent a negotiated agreement, what constitutes a catch-all list of goods is at the discretion of a supplier country. Thus, there may be significant differences over whether exports of dual-use goods do not require a proposal being submitted to the Procurement Working Group. Moreover, problems may arise with enforcing the provision when goods are detected being sent to Iran or discovered afterwards.

Commentary

Differences in the interpretation of catch-all and weak enforcement by some supplier states is expected to complicate the Procurement Channel's implementation. The U.S. or European view of what falls under catch-all as it pertains to a nuclear program may be different, for example, than that of China or Russia, leading to potential conflicts in the Working Group or differences over interdicting catch-all goods.

Moreover, countries such as China, Russia, and Turkey, in addition to others that are frequently implicated in export control and transshipment schemes and cases, may continue to pose serious problems to the enforcement of the JCPOA as they have done under UN sanctions. This may be even truer as business opportunities with Iran multiply. Companies seeking to do business with Iran will almost certainly try to avoid following the legal process of submitting proposals to the Procurement Working Group via their states. Will they face consequences for not doing so? Their counterparts in Iran also pose a problem inasmuch as they provide a demand for goods outside the procurement channel. Therefore, a large burden will fall on intelligence and enforcement agencies to detect and sound warnings about illicit imports.

One issue left unaddressed is what happens when a country learns of a dual-use export to Iran by another country and disagrees that it should be allowed. This question, for example, would apply to dual-use goods not on the dual-use list but still important for Iran's nuclear program. This category of goods does not appear to require the submission of a proposal to the Working Group. In this case, the supplier state would take the position that this export was not inconsistent with the JCPOA or it was ignorant of any such potential inconsistency. As a result, it would judge it did not need to submit a proposal to the Working Group or was ignorant of the need to do so. Can the objecting state demand that the export be blocked, even if there is not an export proposal sent to the Working Group? In essence, the state would be insisting that the Working Group receive a proposal before the export occurs? If the export occurs even after the objection, can the objecting state organize the interdiction of the good on its way to Iran?

Possible Remediation Steps:

- ❖ The Procurement Working Group, Joint Commission, and UN Security Council, in addition to national trade control, enforcement, and intelligence efforts, will need to coordinate and be vigilant regarding the matter of exports to Iran attempted by foreign entities and individuals that fall outside the procurement channel or could fall under catch-all controls. There will need to be a steady flow of information to these bodies about procurement related issues.
- ❖ The Working Group should develop a list of goods that are not on the Part 2 dual-use list but are of direct relevance to Iran's nuclear programs. The Working Group should disseminate this list to

major supplier governments and to all UN member states more broadly and ask countries to ensure that their national commerce, customs, intelligence, and enforcement authorities remain vigilant about exports of important catch-all goods to Iran and report them to their national governments, which should in turn report them to the Working Group.

Enforcement and Dispute Resolution appears uncertain, perhaps problematic:

As in many provisions of the JCPOA, enforcement mechanisms and dispute resolution are largely focused on major violations that could lead to the re-imposition, or “snapback,” of sanctions. With regard to more mundane violations or disputes, the JCPOA provides little guidance, including regarding those violations expected to arise in implementing and operating the Procurement Channel. In practice, almost any violation or dispute should go through the JCPOA’s dispute resolution mechanism, which as a first step involves sending the complaint to the Joint Commission for negotiation and hopefully resolution, followed by negotiations among Foreign Ministers and the possible convening of an advisory panel which can issue a non-binding opinion. For most of the expected issues, one would hope the Joint Commission or Foreign Ministers could resolve the issue and create a policy or regulation to be applied to future cases. Whether this process will indeed work is untested, especially since the Joint Commission would decide on such matters by consensus, which Iran as a Joint Commission member may block.

Dispute settlement mechanism needs development:

The ability of “any JCPOA participant” to refer a procurement-related activity to the Joint Commission is included under the dispute settlement mechanism if the activity is prohibited under the JCPOA. There is no mention of steps to be taken by the dispute settlement mechanism regarding investigation of or response to illicit procurements by Iran or Iranian entities. Moreover, as discussed above, it is unclear what the process is to resolve disputes over which catch-all or dual-use goods should be routed through the Procurement Working Group and what happens in case an export should have been so routed.

Iran is also a voting member of the Working Group, which means it can actively advocate and dissemble, potentially disrupting the process. It can also block consensus of rulings it does not agree with.

Possible Remediation Steps:

- ❖ The Joint Commission should determine a method of responding to disputes before Implementation Day so as to avoid unnecessary escalation or conflict.
- ❖ At an early opportunity, states should bring to the Joint Commission the issue of which catch-all dual-use goods require a proposal to the Procurement Working Group.

Consequences lacking for intermediate level violations relating to imports:

There is no mention of specific penalties for Iranian violations of the rules of the Procurement Channel. Iran could conduct incremental illicit procurements that would allow it to undertake prohibited or covert activities. The only “snapback” provision relates to re-imposition of the entire range of UN sanctions but this would possibly terminate the entire JCPOA for Iran.

Although major lapses may be communicated by suppliers and/or governments to the Joint Commission, smaller, less significant lapses may not be reported, and it may be that smaller lapses and attempts by

Iran or Iranian entities to illicitly procure goods would signify, if reported fully and the reports gathered in one place, a larger effort to undertake covert activities or prohibited activities outside the JCPOA.

Possible Remediation Steps:

- ❖ Initially at least, all Iranian violations of the Procurement Channel, whether or not minor, should be referred to the Joint Commission under the Dispute Resolution Mechanism.
- ❖ The Joint Commission and Procurement Working Group should encourage reporting by both JCPOA and non-JCPOA member states on illicit procurement cases by Iran, even in the case that they are merely raising a concern or have unanswered questions about a shipment or possible catch-all goods.
- ❖ The Joint Commission and Working Group should plan for how to respond to Iranian violations and set out intermediate penalties or courses of action. Penalties could include slowing down or halting approvals, or reducing civil nuclear cooperation.

Lack of guidance regarding enforcing interdiction or return of shipments:

As discussed above under Dual-Use and Catch-All Implementation, the JCPOA makes no mention of interdiction or return of shipments of illicit or unauthorized goods.

The Joint Commission's authorities to stop a shipment need clarification. For example, if it receives a report that a good is being sent to Iran via China that should have required an approval from the Working Group, can the Joint Commission decide to act to stop the shipment? How in practice would such an action work? Can they demand that Iran return goods? The JCPOA is silent on these issues.

Possible Remediation Steps:

- ❖ The Procurement Working Group should establish and announce a policy that it intends to demarche both the supplier state and Iran to halt the export of goods to Iran or require their return from Iran or intermediary locations if these goods should have been approved by the Procurement Working Group prior to export.
- ❖ The Joint Commission or the E3+3, will need to determine how to act to prevent or interdict imminent shipments to Iran of unauthorized goods and determine how to have goods returned by Iran, possibly following or pending a review through the dispute resolution process.
- ❖ The E3+3 and UN member states may require the equivalent of executive orders, regulations, or laws so that regulatory and enforcement agencies can enforce interdiction requests and halt the shipment of goods. However, states should also be able to act alone or collectively to stop an illicit shipment to Iran.

Need for Transparency and Oversight:

The JCPOA includes few provisions that require transparency of the decisions of the PWG or oversight over its operations and decisions. In addition, the JCPOA and UNSCR do not provide a role for the current UN Panel of Experts on Iran which has overseen Iran's compliance with Security Council sanctions resolutions and provided advice and recommendations to the Sanctions Committee on additional entities and individuals to consider for sanctions. Once Implementation Day occurs, the Panel as currently

mandated will cease functioning. However, the role of a Panel of Experts is not ruled out and there continues to be a need and room for advice from it using its long experience in sanctions oversight.

Possible Remediation Steps:

- ❖ The Security Council should consider authorizing a continued role for the existing, or appointing a new, Panel of Experts as an advisory and consultative body to the UN Security Council.
- ❖ Under the JCPOA, the PWG is required to submit on a regular basis implementation and compliance reports to the Security Council. These reports should be made public.
- ❖ Congress should require the U.S. administration to regularly report, at least annually, on the status, scope, and implementation of the Procurement Channel and on any cases of non-compliance or non-cooperation by Iran.
- ❖ All member states of the United Nations should submit annual Procurement Channel implementation reports to the UN Security Council.

Additional Procurement Working Group implementation and organizational issues:

Question of regulating Iranian entities making procurements:

Despite the requirement for export or import proposals to go through the Procurement Working Group, the world may soon have to grapple with the reality that now-sanctioned Iranian entities and individuals long known for making or attempting illicit procurements for the Iranian nuclear program will be allowed to procure such goods via the procurement channel. How well will this new arrangement work? A valid question is whether these companies and individuals can be trusted to follow a new legal procedure given their past practices of deception, law breaking, and sanctions circumvention?

The requirement that the AEOI or another government entity sign an end-use certification for all proposed direct- and dual-use imports should provide some accountability on the part of Iran. In addition, Iran will need to regulate its own importers on some level, including a large collection of domestic and foreign subcontractors, trading companies, universities, research institutes, and procurement agents. Iran will need to accept responsibility for regulating or shutting down entities and individuals that attempt imports outside the procurement channel. Of course, Iran may have actually organized an illegal effort that is detected by the PWG or other countries. In that case, Iran could just be proclaiming a false sense of shock at the revelation of the activities of a company or other entity operating outside the channel. Any subsequent judicial or administrative process would be expected to be phony. However, in some cases, the illicit activity may occur without the knowledge or consent of the Iranian government. Nonetheless, even if Iran proclaims ignorance, all of these activities outside the Procurement Channel should be viewed as violating the JCPOA.

Possible Remediation Steps:

- ❖ The Procurement Working Group should investigate and ensure that each official Iranian agency that issues end user certificates is doing so consistently with the intention of the JCPOA and the United Nations Security Council resolutions. For example, agencies with historical procurement links to the Iranian military or Islamic Revolutionary Guards Corps should be excluded from consideration or given the added and on-going scrutiny, including visits by the PWG's Coordinator.

- ❖ Now-sanctioned Iranian entities on UN and national sanctions lists should warrant extra scrutiny when submitting an import or export proposal to the Procurement Working Group regarding the intended end use.
- ❖ The E3+3 should make it clear to Iran that entities once known for making illicit procurements for the nuclear program will receive extra scrutiny and that such proposals could require more than 30 days to investigate.
- ❖ Iran should implement laws making imports outside the channel illegal and impose penalties on offending entities and individuals.
- ❖ Iran should conduct outreach to its non-nuclear civil end users to ensure they understand the requirements of the Procurement Channel, including the need for an official end use certification. Iran should have an interest in this outreach to prevent these entities from violating the JCPOA inadvertently.
- ❖ The Procurement Working Group should monitor Iranian companies for violations and recommend sanctions against these companies and individuals and reduce the number of approvals if Iran is not taking action or the action is inadequate.

Prohibitions on Enrichment-Related Transfers but not on other nuclear technologies and goods:

Iran is prohibited from transferring enrichment and enrichment related equipment and technology but is not explicitly prohibited from transferring other types of nuclear-related goods, including technology. This weakness raises concerns about Iran's reported, past or possibly on-going cooperation with North Korea on nuclear matters and whether Iran will interpret these provisions as not covering non-enrichment areas of cooperation and knowledge sharing.

Iran has stated its intention to export nuclear and nuclear-related goods and services. As it develops its nuclear and civil industries, these exports could become frequent.

Possible Remediation Steps:

- ❖ The E3+3 and the IAEA will need to vigilantly monitor Iran's compliance with its commitment not to transfer enrichment-related goods and services and bring violations to the Joint Commission and the Procurement Working Group.
- ❖ The IAEA and the Procurement Working Group should carefully monitor any Iranian exports of Part 1 or Part 2 goods, or catch-all goods. The PWG should in particular look for any re-transfers of goods, including technology or intellectual property, which were originally imported via the Procurement Channel or developed as a result of those imports. With that concern in mind, as a condition for approving an export to Iran, the PWG should ban re-transfers of the exported goods, associated technology, or derived goods without the approval of the PWG or the UN Security Council if the Procurement Channel no longer exists. Such Iranian re-transfers without authorization should be considered as inconsistent with the JCPOA and should be referred to the Joint Commission (or UN Security Council) as a violation of the JCPOA.

End-use Check provisions need development:

How soundly will the end-use check provisions be enforced regarding Iran's imports? The IAEA should be able to see the use of direct-use goods in the Iranian nuclear program. But what happens if some suppliers do not actually follow up on the end use of dual-use goods? Few suppliers conduct end use verification today on dual-use goods, so the addition of this procedure is an improvement over the

current system. The JCPOA does not require end-use checks on such goods. States may be content not to follow up on end use. Ostensibly the lack of IAEA access to verify dual-use sales' end uses could be mitigated by its Access provision, for example, if it or the Joint Commission became concerned that a dual-use good was being used for undeclared or otherwise prohibited activities.

The JCPOA permits the U.S. government to check the end use of Part 2 dual-use goods authorized by export by the United States to Iran. However, can it check the end use of U.S. goods, or goods that include U.S. products, exported from another country?

One concern also centers on the passage of time regarding dual-use imports. Dual-use goods could be procured by Iran under the guise of non-nuclear, civilian justifications, and after a certain amount of time has gone by, diverted for a nuclear use. An example would be Iran procuring large quantities of Part 2 controlled carbon fiber with a claimed non-nuclear civilian use. Would a supplier (or the IAEA) follow up on the end use of this material periodically, or after a few years have passed? Iran could divert the material for use in fabricating large numbers of advanced centrifuges after the purchase fades from memories and its initial end-use has been checked.

Possible Remediation Steps:

- ❖ Suppliers of dual-use goods to Iran should be encouraged by the Procurement Working Group to undertake end-use checks in Iran, including repeat visits over successive years.
- ❖ The Procurement Working Group, IAEA, and national authorities will need to have a good inventory of authorized dual-use good imports by Iran and should periodically check the end use of these procurements over the long term and determine if their use remains consistent with the JCPOA.
- ❖ The United States should obtain assurances from Iran that it can conduct end use checks in Iran when the goods are exported from the United States. Since the United States has no diplomatic relations with Iran, Iran may seek to block such end use verification as it has done with regards to IAEA inspectors, where U.S. nationals are banned from taking part in inspections.
- ❖ The United States should insist that the approval of exports of Part 2 dual-use goods from other states that are of U.S. origin or contain U.S. products or technology include a condition that end-use checks will include U.S. experts. This stipulation should be a condition of the Working Group's approval of the export to Iran, as allowed under Annex IV, paragraph 6.8. Other supplier states, such as those that sell extensively to countries such as China and Turkey, should be encouraged to insist on a similar arrangement.
- ❖ In cases where there is suspicion of covert or undeclared activities, the Working Group should ask the IAEA to use its authorities under the Additional Protocol to conduct end-use checks of dual-use goods in Iran. This guidance should include a statement that failure by Iran to allow access could lead to the triggering of the Access provision of the JCPOA.

Miscellaneous Conditions:

The PWG needs to institute several other procedures or capabilities, including:

- ❖ Detailed rules on the supporting information that is required for an export, such as what should be included as a "description of the item" in a proposal. This description should include the manufacturer, the type and name of equipment, the model or part name and number, and its year of manufacture;

- ❖ A searchable database of all exports (and denied exports) to Iran. This database, constructed with the latest Big Data technology, should include all proposals to the PWG and additional trade data provided by UN member states. The data should include detailed information on the goods, manufacturers, suppliers, shippers, freight forwarders, transshipment locations, and Iranian end users. It should be available to the PWG members and the IAEA, as needed. The servers for this database should be located in the United States or one of its European allies but accessible at additional locations.
- ❖ The language(s) to be used by the PWG, its members, and supplier countries in official communications¹¹; and
- ❖ What type of office and number of staff will support the PWG Coordinator.

End to Procurement Channel after Year Ten and the Future:

The Procurement Channel controls end after ten years. The lack of any specific mechanism to replace the procurement channel after ten years is a significant shortcoming of this arrangement. Serious questions arise about how countries will monitor Iran’s likely nuclear buildup once it has the ability to legally procure vast quantities of dual-use and possibly direct-use goods. The United States, its allies, and other members of the E3+3 should prepare well ahead of time for how member states will respond to Iranian purchase requests and ensure that requests do not further potential Iranian proliferation after the agreement ends.

Possible Remediation Step:

- ❖ A reasonable approach is for the UN Security Council to renew the Procurement Channel for a second ten years of operation.

IV. Overall Assessment

The JCPOA procurement channel turns on its head the recommendations [developed by ISIS last November](#) as a suggested architecture for regulating Iran’s future nuclear and dual-use procurements, as well as providing strong assurance that Iran is not illicitly procuring goods. ISIS recommended leaving all sanctions in place and creating a workable channel that could be monitored, allowing only approved goods to the nuclear program, while prohibiting non-nuclear industries from importing dual-use goods, until the channel is firmly established. The JCPOA removes all sanctions at the start of the agreement and allows any Iranian entity to make imports so long as they use the channel and gain authorization. Compliance with the procurement channel will thus be much more difficult to monitor and it will be much more difficult to detect Iranian violations which could signify non-compliance with the JCPOA.

E3+3 countries should anticipate many regulatory and practical hurdles in carrying out their commitments, particularly regarding weak Iran sanctions implementation countries – and their companies – implementing the dual-use and catch-all controls and submitting proposals to the Working Group, allowing imports by now-sanctioned Iranian entities, interdicting or blocking dual-use and catch-all goods, and how national authorities expect to realistically detect illicit or unauthorized imports by Iran. Many questions remain over how end-use checks will be successfully implemented.

¹¹ As noted in Stewart, “The Iranian Nuclear Procurement Channel: the most complex part of the JCPOA?” op. cit.

Summary of Recommendations:

“Width” of the Procurement Channel is perhaps too broad:

- ❖ The Procurement Working Group should at least initially delay accepting proposals for exports to Iranian non-nuclear civil end uses.
- ❖ As part of establishing procedures to review these proposals, the Procurement Working Group should announce that Iranian trading companies cannot be the end users of any goods or services.

Iran has expressed that it has no intention to stop missile and arms related illicit procurements:

- ❖ The E3+3 should issue an implementation statement that any use of the procurement channel to violate UN Security Council sanctions, or national trade control laws will be a violation of the intent of the JCPOA and grounds for reducing cooperation or re-imposing sanctions.
- ❖ If Iran is found to violate national or international sanctions on arms or missile programs or for terrorism-related purposes, the Working Group should slow down or halt approvals to Iran’s nuclear and non-nuclear civil programs, pending a halt to such illicit activities.

Detection and prevention of illicit nuclear-related imports by Iran will be arduous:

- ❖ Each supplier state should expand domestic efforts aimed at the timely detection and disrupting of Iran’s illicit procurement attempts and ongoing enforcement of violations. Legislatures should support the deployment of necessary resources to improve executive branch capabilities to detect illicit imports by Iran.
- ❖ The United States and EU states should encourage greater cooperation among allies to improve their timely detection and thwarting of Iran’s illicit trade.
- ❖ All UN member states should be encouraged to implement decisions and requests for action by the Procurement Working Group.
- ❖ All UN member states, and particularly the United States and European Union, should continue to prosecute illicit procurement agents as violators of domestic laws under the UN/JCPOA provisions in order to encourage deterrence.

Responsibilities of States are fundamental to success of channel:

- ❖ The E3+3 states will need to exercise caution in their deliberations and disseminations within the Working Group to ensure that they do not benefit any Iranian illicit nuclear trade or other banned trade.
- ❖ UN member states should enact new laws or orders regarding implementation of the JCPOA provisions and make the procurement channel requirements known widely to domestic companies and national enforcement authorities.
- ❖ Outreach by governments will be needed to explain the Procurement Channel provisions to domestic companies and ensure they do not circumvent the proscribed, official channel.
- ❖ UN member states should maintain the same (or increased) vigilance regarding exports to Iran that they now have.
- ❖ Trade authorities, enforcement agencies, and prosecution entities in UN member states should seek to detect and stop any suppliers seeking to make sales to Iranian entities outside the procurement channel.

- ❖ Companies not following laws regarding the procurement channel provisions regarding sales to Iran should be fined or prosecuted.

Thirty-day window for reviewing an export proposal is a major weakness:

- ❖ All PWG member states will need to devote sufficient resources and develop adequate systems to review export proposals quickly and adequately.
- ❖ Supplier states should authorize more resources to improve executive branch capabilities to rapidly review exports to Iran and ensure that they do not contribute to activities inconsistent with the JCPOA.
- ❖ Each of the E3+3 states and the EU central authorities should establish a range of capabilities to process proposals in such a short time. In particular, the major burden will fall on the E3+3 states to establish adequate capabilities prior to Implementation Day. A state model would include an office, or “desk,” in its Foreign Ministry that can receive proposals from the Working Group bodies and transmit them promptly within its own government entities, as well as communicate promptly as needed with Iran and other states involved in the supply of goods in the proposal. A rapid method of communication among trusted allies will also be required to ensure full access to available information about Iranian illicit procurement activities. Typically, these types of communication have not occurred promptly in the counterproliferation area, so a more rapid communication capability will need to be worked out by the members of the Working Group. Each state will need an entity(ies), such as its trade department or national laboratories, which can assess technically and commercially the goods as to their end use and possible misuse. The intelligence agencies will have a critical role in informing their own government about a proposal. The state will need a quick, efficient interagency process to evaluate the proposals. In democracies, there will also be a need to inform Parliaments or Congresses about the process, which will inevitably include additional expenditures, and should require periodic reports about the goods exported, the effectiveness of the proposal process, and any non-compliance by Iran.
- ❖ Pending the development of an effective approval process in the E3+3 states, the United States and its European partners, and ideally all the E3+3, should state that they will individually maintain a presumption of denial if they determine that 30 days is not sufficient to adequately review proposals.
- ❖ The meaning of the term “relevant state” in the catch-all condition, namely “any further items if the **relevant State** determines that they could contribute to activities inconsistent with the JCPOA,” should be interpreted as any state that determines the item could be used in a nuclear program, whether or not it is the supplier.
- ❖ The Working Group should announce that the sale of any goods to an Iranian trading company will be blocked. Only sales to identified, justified, and verified end users should be allowed.

Dual-Use and Catch-All Implementation are likely to be difficult to carry out and enforce:

- ❖ The Procurement Working Group, Joint Commission, and UN Security Council, in addition to national trade control, enforcement, and intelligence efforts, will need to coordinate and be vigilant regarding the matter of exports to Iran attempted by foreign entities and individuals that fall outside the procurement channel or could fall under catch-all controls. There will need to be a steady flow of information to these bodies about procurement related issues.
- ❖ The Working Group should develop a list of goods that are not on the Part 2 dual-use list but are of direct relevance to Iran’s nuclear programs. The Working Group should disseminate this list to major supplier governments and to all UN member states more broadly and ask countries to

ensure that their national commerce, customs, intelligence, and enforcement authorities remain vigilant about exports of important catch-all goods to Iran and report them to their national governments, which should in turn report them to the Working Group.

Enforcement and Dispute Resolution appears uncertain, perhaps problematic:

Dispute settlement mechanism needs development:

- ❖ The Joint Commission should determine a method of responding to disputes before Implementation Day so as to avoid unnecessary escalation or conflict.
- ❖ At an early opportunity, states should bring to the Joint Commission the issue of which catch-all dual-use goods require a proposal to the Procurement Working Group.

Consequences lacking for intermediate level violations relating to imports:

- ❖ Initially at least, all Iranian violations of the Procurement Channel, whether or not minor, should be referred to the Joint Commission under the Dispute Resolution Mechanism.
- ❖ The Joint Commission and Procurement Working Group should encourage reporting by both JCPOA and non-JCPOA member states on illicit procurement cases by Iran, even in the case that they are merely raising a concern or have unanswered questions about a shipment or possible catch-all goods.
- ❖ The Joint Commission and Working Group should plan for how to respond to Iranian violations and set out intermediate penalties or courses of action. Penalties could include slowing down or halting approvals, or reducing civil nuclear cooperation.

Lack of guidance regarding enforcing interdiction or return of shipments:

- ❖ The Procurement Working Group should establish and announce a policy that it intends to demarche both the supplier state and Iran to halt the export of goods to Iran or require their return from Iran or intermediary locations if these goods should have been approved by the Procurement Working Group prior to export.
- ❖ The Joint Commission or the E3+3, will need to determine how to act to prevent or interdict imminent shipments to Iran of unauthorized goods and determine how to have goods returned by Iran, possibly following or pending a review through the dispute resolution process.
- ❖ The E3+3 and UN member states may require the equivalent of executive orders, regulations, or laws so that regulatory and enforcement agencies can enforce interdiction requests and halt the shipment of goods. However, states should also be able to act alone or collectively to stop an illicit shipment to Iran.

Need for Transparency and Oversight:

- ❖ The Security Council should consider authorizing a continued role for the existing, or appointing a new, Panel of Experts as an advisory and consultative body to the UN Security Council.
- ❖ Under the JCPOA, the PWG is required to submit on a regular basis implementation and compliance reports to the Security Council. These reports should be made public.

- ❖ Congress should require the U.S. administration to regularly report, at least annually, on the status, scope, and implementation of the Procurement Channel and on any cases of non-compliance or non-cooperation by Iran.
- ❖ All member states of the United Nations should submit annual Procurement Channel implementation reports to the UN Security Council.

Additional Procurement Working Group implementation and organizational issues:

Question of regulating Iranian entities making procurements:

- ❖ The Procurement Working Group should investigate and ensure that each official Iranian agency that issues end user certificates is doing so consistently with the intention of the JCPOA and the United Nations Security Council resolutions. For example, agencies with historical procurement links to the Iranian military or Islamic Revolutionary Guards Corps should be excluded from consideration or given the added scrutiny of a certain end-use check.
- ❖ Now-sanctioned Iranian entities on UN and national sanctions lists should warrant extra scrutiny when submitting an import or export proposal to the Procurement Working Group regarding the intended end use.
- ❖ The E3+3 should make it clear to Iran that entities once known for making illicit procurements for the nuclear program will receive extra scrutiny and that such proposals could require more than 30 days to investigate.
- ❖ Iran should implement laws making imports outside the channel illegal and impose penalties on offending entities and individuals.
- ❖ Iran should conduct outreach to its non-nuclear civil end users to ensure they understand the requirements of the Procurement Channel, including the need for an official end use certification. Iran should have an interest in this outreach to prevent these entities from violating the JCPOA inadvertently.
- ❖ The Procurement Working Group should monitor Iranian companies for violations and recommend sanctions against these companies and individuals and reduce the number of approvals if Iran is not taking action or the action is inadequate.

Prohibitions on Enrichment-Related Transfers but not on other nuclear technologies and goods:

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- ❖ The IAEA and the Procurement Working Group should carefully monitor any Iranian exports of Part 1 or Part 2 goods, or catch-all goods. The PWG should in particular look for any re-transfers of goods, including technology or intellectual property, which were originally imported via the Procurement Channel or developed as a result of those imports. With that concern in mind, as a condition for approving an export to Iran, the PWG should ban re-transfers of the exported goods, associated technology, or derived goods without the approval of the PWG or the UN Security Council if the Procurement Channel no longer exists. Such Iranian retransfers without authorization should be considered as inconsistent with the JCPOA and should be referred to the Joint Commission (or UN Security Council) as a violation of the JCPOA.

End-use Check provisions need development:

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- ❖ The Procurement Working Group, IAEA, and national authorities will need to have a good inventory of authorized dual-use good imports by Iran and should periodically check the end use of these procurements over the long term and determine if their use remains consistent with the JCPOA.
- ❖ The United States should obtain assurances from Iran that it can conduct end use checks in Iran when the goods are exported from the United States. Since the United States has no diplomatic relations with Iran, Iran may seek to block such end use verification as it has done with regards to IAEA inspectors, where U.S. nationals are banned from taking part in inspections.
- ❖ The United States should insist that the approval of exports of Part 2 dual-use goods from other states that are of U.S. origin or contain U.S. products or technology include a condition that end-use checks will include U.S. experts. This stipulation should be a condition of the Working Group's approval of the export to Iran, as allowed under Annex IV, paragraph 6.8. Other supplier states, such as those that sell extensively to countries such as China and Turkey, should be encouraged to insist on a similar arrangement.
- ❖ In cases where there is suspicion of covert or undeclared activities, the Working Group should ask the IAEA to use its authorities under the Additional Protocol to conduct end-use checks of dual-use goods in Iran. This guidance should include a statement that failure by Iran to allow access could lead to the triggering of the Access provision of the JCPOA.

Miscellaneous Conditions:

- ❖ Detailed rules on the supporting information that is required for an export, such as what should be included as a "description of the item" in a proposal. This description should include the manufacturer, the type and name of equipment, the model or part name and number, and its year of manufacture;
- ❖ A searchable database of all exports (and denied exports) to Iran. This database, constructed with the latest Big Data technology, should include all proposals to the PWG and additional trade data provided by UN member states. The data should include detailed information on the goods, manufacturers, suppliers, shippers, freight forwarders, transshipment locations, and Iranian end users. It should be available to the PWG members and the IAEA, as needed. The servers for this database should be located in the United States or one of its European allies.
- ❖ The language(s) to be used by the PWG, its members, and supplier countries in official communications; and
- ❖ What type of office and number of staff will support the PWG Coordinator.

End to Procurement Channel after Year Ten and the Future:

- ❖ A reasonable approach is for the UN Security Council to renew the Procurement Channel for a second ten years of operation.