

## Smart Sanctions Enforcement and Relief

July 2014

### SUMMARY

Iran's record of nuclear deception does not inspire confidence in Tehran's commitment to honor any final nuclear agreement with the P5+1. If a final nuclear agreement between the P5+1 and Iran does not meet the recommendations contained in the Iran Task Force [memo on the Parameters of an Acceptable Agreement](#), the House and Senate should defend American sanctions against Iran and resist pressure to trade sanctions relief for a bad deal.

However, should an acceptable agreement be reached that fully addresses Iran's nuclear and ballistic missile programs, Congress must play a role, in cooperation with the Obama administration, to construct and oversee a smart sanctions architecture of effective enforcement and relief.<sup>1</sup> This architecture should deter and punish Iranian non-compliance with such an agreement; provide a vital enforcement mechanism to support a monitoring, verification, and inspection regime; and curb Iran's support for terrorism and its abuse of human rights.

### BACKGROUND: TERMINATION CRITERIA FOR IRAN SANCTIONS

U.S. law ties the termination of many of the most punitive financial and energy sanctions to specific criteria set out in the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) as modified by the Iran Threat Reduction Act (ITRA).<sup>2</sup> They require the President to certify to Congress that:

- “the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism;” and,
- “Iran has ceased the pursuit, acquisition, and development, and verifiably dismantled its nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.”

It seems unlikely that any deal under consideration will meet these termination criteria. Any sanctions relief, therefore, cannot ignore that many of the toughest economic sanctions are tied to these termination criteria.

This memo is based on a longer report by Iran Task Force members Mark Dubowitz and Richard Goldberg. That report is available online here: [http://www.defenddemocracy.org/stuff/uploads/documents/Final\\_Smart\\_Sanctions\\_Report.pdf](http://www.defenddemocracy.org/stuff/uploads/documents/Final_Smart_Sanctions_Report.pdf)

1. This memo addresses the U.S. sanctions regime only and not the U.N. Security Council sanctions or the sanctions regimes of other countries.

2. U.S. House of Representatives, 111<sup>th</sup> Congress, 2<sup>nd</sup> Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 401, *Government Printing Office*, 2010, page 40. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>). U.S. House of Representatives, 112<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

## PRINCIPLES GOVERNING SANCTIONS RELIEF

No sanctions relief should be provided to Iran unless a final agreement verifiably and permanently prevents the regime from pursuing either a uranium or plutonium pathway to a nuclear weapon. If such an agreement is reached, policymakers should craft limited sanctions relief, based on the following principles, where the relief:

- preserves core elements of the financial and energy sanctions architecture until Iran has ended all forms of illicit activity since rebuilding that architecture and regaining international buy-in would be extremely challenging;
- recognizes the inherent asymmetry between the reciprocal concessions provided as part of a comprehensive agreement. Indeed, it may be more difficult for the P5+1 to re-impose sanctions in a timely manner in the event of Iranian non-compliance than it will be for Iran to re-start or re-construct key elements of its nuclear and ballistic missile infrastructure;
- provides the United States and its P5+1 partners with sufficient economic leverage through the maintenance of specific sanctions after an agreement is signed to deter and commensurately punish Iranian-noncompliance. This will provide leverage to support a monitoring, verification, and inspection regime, and to include snap-back components that provide a mechanism for U.S. unilateral and third-party sanctions to be expeditiously re-imposed if Iran violates the terms of a long-term agreement;
- maintains the original-stated rationale for the sanctions against Iran, particularly the financial sanctions designed to protect the integrity of the global financial system from the illicit activities of Iranian entities; and,
- reaffirms sanctions related to terrorism and human rights to support the Obama administration's stated policy that terrorism and human rights sanctions are distinct from "nuclear-related sanctions" and therefore not precluded as a result of any agreement. This will ensure that, after a long-term agreement on the status of Iran's nuclear program is reached, the United States continues to pressure Iran to end its support for global terrorism, active support for the Bashar al-Assad regime in Syria, and its vast system of domestic repression at home.

## PROTECTING THE INTEGRITY OF THE GLOBAL FINANCIAL SYSTEM FROM ILLICIT IRANIAN FINANCE

U.S. Treasury Under Secretary David Cohen has explained that a primary goal of the strictures on Iran is to "protect the integrity of the U.S. and international financial systems."<sup>3</sup> Iran's list of financial crimes is long and well-established. According to the Financial Action Task Force (FATF), an international body comprised of 34 members plus the European Commission and the Gulf Co-operation Council,<sup>4</sup> "Iran's failure to address the risk of terrorist financing ... poses [a serious threat] to the integrity of the international financial system."<sup>5</sup> Beginning in 2007, the Treasury Department designated 23 Iranian and Iranian-allied foreign financial

3. David Cohen, "Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen Before the New York University School of Law on 'The Law and Policy of Iran Sanctions,'" *New York University School of Law*, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

4. A list of the members of FATF can be found FATF's website. "FATF Members and Observers," *Financial Action Task Force Website*, accessed June 23, 2014. (<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>)

5. The Financial Action Task Force, Public Statement, "FATF Public Statement 14 February 2014," February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

institutions as “proliferation supporting entities” under Executive Order 13382.<sup>6</sup> Of these, at least eight banks were designated for their ties to Iran’s Islamic Revolutionary Guard Corps (IRGC) or because they were controlled by banks with IRGC links.<sup>7</sup> Treasury in 2006 also sanctioned Bank Saderat as a “terrorism supporting entity” under Executive Order 13224 for facilitating fund transfers to Hezbollah, Hamas, Palestinian Islamic Jihad, and other terrorist organizations.<sup>8</sup>

In 2011, invoking Section 311 of the PATRIOT Act, Treasury found the entire “Islamic Republic of Iran as a jurisdiction of primary money laundering concern.” Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass destruction,” and “the illicit and deceptive financial activities that Iranian financial institutions... engage in to facilitate Iran’s illicit conduct and evade sanctions.” Treasury targeted the Central Bank of Iran and made it clear that the country’s entire financial system posed “illicit finance risks for the global financial system.”<sup>9</sup>

Treasury’s finding led to the “Menendez-Kirk amendment,” Congressional sanctions under Section 1245 of the National Defense Authorization Act of 2012 against foreign financial institutions conducting transactions with the Central Bank of Iran (with certain humanitarian and crude oil exceptions).<sup>10</sup>

## DANGERS OF PREMATURE SANCTIONS RELIEF

It seems improbable that any final agreement regarding Iran’s nuclear program will resolve all of the money laundering and illicit finance concerns regarding the Central Bank of Iran. To date, the administration has not rescinded its PATRIOT Act Section 311 finding which made it clear that the country’s entire financial system presents a risk. Indeed, no Iranian bank is truly an independent financial institution. None escapes the control of the regime.

Washington knows all too well the dangers of giving bad banks access to the global financial system. Wielding its PATRIOT Act Section 311 authorities, Treasury targeted Macau-based Banco Delta Asia in 2005 as a primary laundering concern as part of the campaign against North Korea’s illicit financial activities.<sup>11</sup> Within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world—including Beijing, the lifeline for North Korean capital.

But, as former Treasury official Juan Zarate explains, that action was later undercut by U.S. diplomats whose priority was securing a nuclear deal with North Korea at all costs.<sup>12</sup> Facing a North Korean negotiating team that refused to make concessions before sanctions relief and a North Korean regime which had defiantly conducted its first nuclear test,<sup>13</sup> Foggy Bottom advocated for the release of frozen North Korean funds

6. U.S. Department of the Treasury, Press Release, “Treasury Designates Major Iranian State-Owned Bank,” January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

7. Bank Sepah (Iran); Bank Melli (Iran); Arian Bank (Iran); Bank Kargoshaee (Iran), controlled by Bank Melli; Future Bank (Bahrain), controlled by Bank Melli; Post Bank of Iran (Iran), controlled by Bank Sepah; Ansar Bank (Iran); Mehr Bank (Iran).

8. U.S. Department of the Treasury, Press Release, “Treasury Cuts Iran’s Bank Saderat Off from U.S. Financial System,” September 8, 2006. (<http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>)

9. U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

10. U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, “National Defense Authorization Act for Fiscal Year 2012,” Section 1245: Imposition of Sanctions With Respect to the Financial Sector of Iran, Government Printing Office, 2011. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)

11. U.S. Department of the Treasury, Press Release, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act,” September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

12. Juan Zarate, *Treasury’s War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013).

13. David E. Sanger, “North Koreans Say They Tested Nuclear Device,” *The New York Times*, October 9, 2006. (<http://www>

on good faith. They ultimately prevailed, and Chinese banks renewed their financial relationships with Pyongyang. Washington lost its leverage and its credibility by divorcing the 311 finding from the illicit conduct that had prompted the designation in the first place. Undeterred, North Korea moved forward with its nuclear weapons program and its money laundering, counterfeiting, and other financial crimes.

U.S. diplomats currently negotiating with Iran should take heed. Compromising the integrity of the U.S. and global financial system in order to conclude a limited, long-term agreement with North Korea neither sealed the deal nor protected the system.

Until the Islamic Republic renounces and ceases its support of terrorism, ends its military-nuclear and ballistic missile programs, and cleans up the illicit financial activities that have funded this behavior for decades, there is no such thing as a clean Iranian bank. Unless Iran demonstrably changes its financial conduct, a nuclear deal, regardless of its terms, should not expunge Tehran's long rap sheet of financial crimes in support of terrorism and proliferation.

### ELEMENTS OF SMART SANCTIONS RELIEF

The U.S. administration and Congress will need to work together to develop and refine a very limited and flexible sanction relief framework that enforces a final nuclear agreement with Iran and maintains pressure on the regime to comply with international laws and norms.

This sanctions relief framework should be based on: (1) the final agreement meeting a series of parameters; (2) the careful sequencing of sanctions relief tied to Iran meeting its obligations under an agreement; (3) the creation of a permissible financial channel through which trade and financial transactions can occur; (4) temporary suspension of only those sanctions which can quickly be "snapped-back" should Iran fail to comply with the agreement; (5) the maintenance of all conduct-based sanctions until Treasury can certify that the behavior which prompted the designation has ceased; and, (6) a series of Presidential certifications that Iran has changed its behavior in critical areas of concern.

If a final agreement meets a series of parameters outlined in the Iran Task Force's Parameters of an Acceptable Agreement memo, Congress and the administration should:

- 1. Develop a rehabilitation program for designated Iranian banks that puts the onus on Tehran to demonstrate that they are no longer engaged in illicit financial conduct.*

The rehabilitation program should include statute-mandated benchmarks governing any decision by Treasury to suspend the designations of qualifying banks and include snap-back provisions that will immediately re-designate banks that re-engage in illicit financial transactions. CISADA and Section 1245 of the FY2012 NDAA should be amended to ensure that any foreign financial institution transacting with a permanently banned Iranian bank will be automatically subject to penalties under such statutes.

- 2. Carefully select a handful of banks, which are not designated by the United States or any other jurisdiction, and have no record of engaging in deceptive financial practices, as a channel for permissible financial transactions.*

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[nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all](http://nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all))

Treasury should consider using European and/or American banks with an established presence in Tehran as a “permissible channel” instead of any Iranian banks. These Western banks have a great deal more to lose in terms of credibility, will be more fearful of U.S. penalties, and thus will have a stronger incentive to police this channel. They could also make significant profits by providing this channel to compensate for these risks.

*3. The President should be required to provide a certification to Congress before the Treasury Department can rescind its PATRIOT Act Section 311 finding with respect to Iran’s financial system.*

The report should certify that Iran is no longer a “jurisdiction of primary money laundering concern,” no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” or any “illicit and deceptive financial activities.” To make this certification, Treasury must be confident that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.”<sup>14</sup> Legislation should be passed to enable Congress to affirm or reject this certification.

*4. The President should be required to certify, before suspending or lifting sanctions against the Central Bank of Iran, that Iran is no longer a jurisdiction of primary money laundering concern and the CBI is no longer engaged in any of the illicit activities specified under U.S. law.*

To make this certification, Treasury must be confident that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.” Legislation should be passed to enable Congress to affirm or reject this certification.

*5. Temporarily suspend refined petroleum sanctions.*

In order to test the Iranian government’s intentions, and provide average Iranians with immediate benefits from a nuclear deal, refined petroleum sanctions should be immediately and temporarily suspended for twelve months pursuant to the President’s national security interest waiver under CISADA.<sup>15</sup> Congress should legislate conditions for a “snap-back” to deter or punish Iranian non-compliance with the final agreement. The President and Congress should also define through legislation a sunset provision for when these temporary suspensions will become permanent, which should include a Presidential certification that Iran is no longer a state sponsor of terrorism and the Central Bank is not a money laundering concern.

*6. Temporarily suspend investment, technology-related, and sector-based energy sanctions.*

Certain investments, technology-related sanctions, and sector-based energy sanctions can already be suspended for 180 days pursuant to the President’s national security interest waiver authority – either through the Iran Sanctions Act or the Iran Freedom and Counter-Proliferation Act (IFCA),<sup>16</sup> which was enacted as part of the FY2013 National Defense Authorization Act. Rather than repeal or terminate these sanctions, the President should use the national security waivers to certify every 180 days that

14. U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

15. U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 102, Government Printing Office, 2010, page 14. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

16. U.S. Department of State, “Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012,” accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

Iran is fulfilling its commitments under the comprehensive nuclear agreement and that no energy-related monies, technologies, goods, or services are being used in Iran's energy sector to support illicit proliferation activities or terrorism. If the President cannot make this certification, all energy sanctions should snap back into effect. The President and Congress should agree to automatically renew the provisions of the Iran Sanctions Act for an additional five-year period when it ceases to be effective on December 31, 2016, and define through legislation a sunset provision for when these temporary suspensions will become permanent.

*7. Maintain imports of Iranian crude oil at current levels until Iran is no longer a state sponsor of terrorism and the CBI is no longer a primary money laundering concern.*

The significant reduction requirement under FY2012 NDAA Section 1245 should be amended to allow for the maintenance of current levels of crude oil imports from Iran so long as Iran complies with the terms of the final nuclear agreement. The President and Congress should define through legislation a sunset provision for when these temporary suspensions will become permanent. Since Section 1245 is linked to the Central Bank of Iran's role in supporting terrorism and other financial crimes, Iran's oil buyers should not be permitted to increase their imports of crude oil from Iran until the President can certify that Iran is no longer a state sponsor of terrorism and the CBI is no longer a primary money laundering concern.

*8. Maintain escrow on oil revenues and prohibition on repatriation of funds but move funds to other jurisdictions where Iran prefers to purchase goods and services.*

Oil revenues are currently accumulating in escrow accounts subject to the "February 6" restrictions of ITRA.<sup>17</sup> Under current law, Iran can only spend these escrow funds on non-sanctionable goods, as defined under U.S. law, in the countries where they are accumulating (China, India, Japan, South Korea, Turkey, and Taiwan) or on humanitarian goods from a third country. Under a sanctions relief plan, these escrow funds could be made available for transfer to a select few "qualified foreign banks" (for example in Europe) as determined by the Treasury Department. Iran would then have access to these oil revenues for the purposes of purchasing unlimited amounts of non-sanctionable goods from European countries, or other qualifying jurisdictions, where Iran prefers to import goods. None of these escrowed oil funds can be repatriated back to Iran until Treasury certifies that Iran has met the conditions for the lifting of the PATRIOT Act Section 311 finding, is no longer a "primary money laundering concern," and is no longer a state sponsor of terrorism.

*9. Temporarily Suspend Sector-Based Sanctions Based on Presidential Certifications.*

Congressional legislation should amend IFCA to allow temporary suspensions of sector-based sanctions if the President can regularly certify that such sectors are not linked to the IRGC or involved in supporting terrorism or other illicit activities as stipulated under U.S. law. If the President cannot make this certification for a given sector, that sector's sanctions should snap back into effect.

*10. Tie Gold Sanctions Relief to Money Laundering Certifications.*

Iran's money laundering and sanctions evasion activities will likely remain a concern even after a nuclear agreement is reached. Therefore, rather than suspend gold sanctions based on the nuclear agreement,

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17. Kenneth Katzman, "Iran Sanctions," Congressional Research Service, May 7, 2014, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

Congressional legislation should amend IFCA to allow temporary suspensions of precious metals sanctions if the President can certify that the Iranian financial sector, including the CBI, is no longer a jurisdiction of primary money laundering concern – and define a sunset provision for when these temporary suspensions will become permanent. This should include a Presidential certification that Iran is no longer a state sponsor of terrorism subject to Congressional affirmation or rejection.

### *11. Expand terrorism sanctions and maintain all IRGC sanctions.*

Iran's continued support for global terrorism and the Assad regime in Syria requires U.S. terrorism sanctions to be maintained and expanded, notwithstanding any nuclear deal. This is consistent with statement from Obama administration officials including Jake Sullivan, national security adviser to Vice President Biden and deputy assistant to President Obama, who stated:

“The wording of the Joint Plan of Action ... speaks to the issue of nuclear-related sanctions. And that word was chosen very carefully, nuclear-related, because we have made clear that sanctions relating to terrorism and sanctions relating to human rights violations are not covered by the discussions that we are having on the nuclear file and that we are prepared to continue to follow through on that ... I can tell you, as a matter of policy this administration is committed to continuing to enforce and follow through on that set of sanctions.”<sup>18</sup>

Additionally, no sanctions, whether based on the IRGC's nuclear, ballistic missile, or terrorism activities, should be lifted against any entity or financial institution specifically designated because of its connection to the IRGC unless, and until, the President certifies that Iran is no longer a state sponsor of terrorism and the IRGC no longer meets the criteria as a designated entity under U.S. law. This includes sector-based sanctions connected to the IRGC passed pursuant to Executive Order or legislation. An administration determination would be required with respect to each Iranian bank and its continued ties to the IRGC.

### *12. Enforce and expand human rights sanctions.*

No human rights sanctions should be lifted pursuant to a comprehensive nuclear agreement with Iran but rather significantly expanded. These are not economic sanctions against the Iranian economy but targeted sanctions imposing travel bans and asset freezes on human rights abusers and stiff penalties against those who provide support to these abusers. Congress should direct the U.S. intelligence community to establish an interagency task force dedicated to finding and seizing assets of these human rights abusers.

This is consistent with Obama administration statements on human rights sanctions. For example, in the same speech quoted above, Jake Sullivan also endorsed enhanced human rights sanctions:

“We must continue to speak out against the gross violations of human rights and fundamental freedoms in Iran ... we need to stand against the human rights abuses and violations of fundamental freedom, including religious freedom, happening in Iran ... this is an important line of effort that has to continue regardless of what is happening on the nuclear file or on any other issue.”<sup>19</sup>

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18. Jake Sullivan, “Washington Forum: A Conversation with Jake Sullivan, Deputy Assistant to President Obama and National Security Adviser to Vice President Joe Biden,” Foundation for Defense of Democracies Washington Forum 2014, May 1, 2014. ([http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal\\_transcript\\_WF14.pdf](http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal_transcript_WF14.pdf))

19. Jake Sullivan, “Washington Forum: A Conversation with Jake Sullivan, Deputy Assistant to President Obama and National Security Adviser to Vice President Joe Biden,” Foundation for Defense of Democracies Washington Forum 2014, May 1, 2014. ([http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal\\_transcript\\_WF14.pdf](http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal_transcript_WF14.pdf))

## CONCLUSION

The sanctions relief architecture outlined in this memo should be adopted and implemented only if a final agreement between the P5+1 and Iran fully addresses Iran's nuclear and ballistic missile programs in a way that permanently removes this threat to global peace and security. Congressional leaders must remain clear-eyed about the nature of the Iranian regime in order to structure any sanctions relief in a way that ensures compliance with international agreements and pressures the regime to end all other illicit activities. Congress can justifiably claim credit for its role in designing many of the toughest sanctions that forced Tehran to the negotiation table – it should now assert its prerogative in helping to defend the core sanctions architecture it built.

The Iran Task Force's goal is to lend expertise on Iran's internal politics, nuclear science, and sanctions regime to the legislative branch. By providing the necessary intellectual capital, this group can help to strengthen Congress's role in a potential final nuclear agreement with Iran. This group of former government officials and nuclear, legal, and sanctions experts provides advice and recommendations to policymakers in order to ensure that any final deal prevents Iran's uranium and plutonium pathways to a nuclear weapon.

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