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The Great Unwinding

Iranian Nuclear Negotiations and Principles for Sanctions Relief

POLICY BRIEF



By Elizabeth Rosenberg and Colin H. Kahl

After decades of isolation, the Iranian regime may finally be willing to limit its nuclear program in exchange for relief from punishing economic sanctions. The quantity and severity of sanctions has increased dramatically in recent years as a consequence of Tehran's nuclear behavior. Hassan Rouhani, Iran's new president, believes he has the support of the Iranian people to reach a nuclear accommodation with the international community and a green light from Supreme Leader Ayatollah Ali Khamenei to negotiate an accord with the United States and the other members of the P5+1 (Britain, China, France, Germany and Russia). Rouhani has been engaged in a diplomatic marathon to convince the world of his sincerity, and broke new ground in a phone call with President Obama on September 27.

The new tone on all sides is refreshing, but the real test will come when the parties agree to take concrete actions. It remains unclear precisely how

Iran and the P5+1 will amend their previous negotiating positions – which resulted in stalemate – when the parties resume nuclear talks in Geneva on October 15. Nevertheless, the broad requirements for a deal seem clear. On October 3, Under Secretary of State Wendy Sherman, the lead U.S. negotiator, testified:

We will be looking for specific steps by Iran that address core issues, including but not limited to, the pace and scope of its [uranium] enrichment program, the transparency of its overall nuclear program, and stockpiles of enriched uranium. The Iranians in return will doubtless be seeking some relief from the comprehensive international sanctions that are now in place.¹

If Iran takes the necessary steps to ensure it cannot rapidly “breakout” and develop nuclear weapons – at the very least including capping Iranian uranium enrichment at the 5 percent level (sufficient for civilian power plants but far away from bomb-grade material), putting strict limits on the number of centrifuges and the stockpile of low enriched uranium, accepting intrusive inspections, halting the construction of a plutonium reactor that could open an alternative pathway to nuclear weapons, and coming clean on past weapons-related research – Tehran will expect significant sanctions relief in return.

We outline the major elements of current sanctions targeting Iran and explore what an unwinding of the sanctions regime might involve. Ultimately, as part of a confidence-building deal with Tehran, some near-term sanctions relief may be possible through the temporary suspension of certain punitive U.S. and international measures. But a significant “unwinding” of sanctions will require a sustained period of concrete and verified Iranian actions to put real constraints on their nuclear program.

International Sanctions on Iran

Diverse and intertwined international sanctions target a variety of Iranian activities of concern to the international community. These include nuclear enrichment, arms procurement, regional provocation, sponsorship of terrorism and human rights abuse.² The sanctions also impose limits on general trade and investment with Iran on the theory that denying revenues to Tehran reduces its ability to conduct illicit activities. The strength of these measures is their multilateral, multi-layered nature, and the fact that financial institutions and companies in the biggest economies of the world, with the most valuable and convertible currencies, must heed their requirements.

Sanctions target (or “designate”) a number of Iranian individuals and entities, and economic sectors directly or indirectly involved in proliferation-related activities, terrorism and human rights abuses, including the Islamic Revolutionary Guard Corps, the Central Bank of Iran and numerous private Iranian banks.³ In practice and by design, international sanctions also target several commercial industries key to Iran’s major revenue sources and in which money for illicit purposes may be laundered or the shipments of illicit goods commingled. Commercial activities covered by sanctions include trade, investment and facilitation of petroleum, natural gas, refined products

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and petrochemicals, and trade in gold and precious metals. They also cover activities in the insurance, shipping, shipbuilding, port operation, airline and auto assembly sectors.

Sanctions work in concert to impede types of trade or financial activity, targeting both the physical and financial sides of a deal. For example, energy trade with Iran is constrained not only by sanctions limits on physical deals, but also by sanction limits on the financial institutions supporting or intermediating the deals, the shippers moving the crude tankers, the insurers of the crude cargoes and the ways that revenue for oil sales can be repatriated or converted into different currencies, and in which jurisdictions the revenues can be spent.

The restrictive power of the sanctions stems primarily from economic prohibitions against international financial dealings with designated Iran-linked entities. They are designed to deny Tehran the ability to make and move money that can support activities of grave concern to the international community, including those associated with its nuclear program. The comprehensive sanctions regime established in recent years has successfully isolated Iran politically, exposed Iran’s activities of concern to the international community and has caused great economic pain for the country.⁴

Key Actors in the Sanctions Regime

THE UNITED NATIONS

Several U.N. Security Council Resolutions (UNSCRs 1737, 1747, 1803 and 1929)⁵ sanction activities and entities involved in Iranian

proliferation and arms trade. A variety of countries and international organizations have adopted their own sanctions to implement Iran UNSCR provisions. Some jurisdictions have gone much further, adopting extensive sanctions targeting diverse illicit Iranian activities and covering various economic areas. The United States and the EU have adopted the most detailed, broad-ranging sanctions against Iran, with some of the most expensive and severe penalties for violation. Among the toughest sanctions are those designed to cut Iran off from the international financial system and limit Iran's oil trade. Other countries, including Canada, Japan, South Korea, Australia, Switzerland and the United Kingdom have put in place more limited sanctions that are nevertheless complementary and symbolically important.

U.S. SANCTIONS

In the United States, Congress has placed sanctions against Iran through a variety of laws over several decades. The president, under a variety of Executive Orders (EOs) has also sanctioned Iran through the authority of the International Emergency Economic Powers Act (IEEPA) and renewable "national emergencies" declared in relations with Iran. Key legislated sanctions include the Iran Sanctions Act (ISA), which has been amended many times; the 2010 Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA); the National Defense Authorization Act (NDAA) of 2012; the 2012 Iran Threat Reduction Act (TRA); and Iran Freedom and Counter-Proliferation Act of 2012 (IFCA). The Congressionally-authored sanctions and the EOs contain considerable redundancy.⁶

Some U.S. sanctions prevent direct interaction by U.S. persons with designated Iran-linked entities, and others are "secondary" prohibitions that prevent U.S. persons from interacting with *any* international entities that interact with designated Iran-linked entities. These broader measures are designed to

force individuals and institutions around the world to choose between doing business with Iran or the United States. Most often, financial institutions have chosen the latter. Some of the most prominent U.S. sanctions target Iran's nuclear procurement activities (EO 13382), its support for terrorism (EO 13224), its energy sector (including, but not limited to, ISA, NDAA, TRA and EOs 13574 and 13622) and its banking activity (including, but not limited to, CISADA and EOs 13599 and 13645).

The State and Treasury Departments are primarily responsible for enforcing Iran sanctions.⁷ They maintain a degree of flexibility, since EOs and some congressional sanctions are discretionary. Enforcement of the mandatory congressional sanctions also involves some flexibility depending on how certain terms are interpreted, such as "significant reduction" of Iranian oil imports and "significant transaction" with a designated entity. Additionally, there is discretionary scope that stems from presidential determinations that the market or circumstances will bear the imposition of sanctions, waivers on the basis of national security interest or a special rule for some energy sanctions.

EUROPEAN SANCTIONS

The EU imposes sanctions through the European Council's Foreign Affairs Committee, as agreed upon by all 28 member states. They are enforced by member states and apply only to interaction with specific designated entities. EU sanctions substantially parallel the U.S. sanctions in the areas covered, banning certain trade with Iran including oil, provision of insurance and reinsurance services, transferring nuclear and dual-use technology, and trading arms. European sanctions also cover banking activities and ban EU entities (most notably the Society for Worldwide Interbank Financial Telecommunication or SWIFT) from providing payment messaging services to EU-designated Iranian banks and the Iranian Central Bank.

The Impact of Sanctions

The sanctions that most hurt the Iranian economy are in the financial and energy sectors, because they have constrained Iran's ability to sell oil and access and move its revenues. Exports have dropped to roughly 1 million barrels per day from 2.5 million barrels per day before the most painful recent sanctions took effect in 2011.⁸ Banking sanctions have also cut Iran off from most international financial institutions and have greatly limited its ability to conduct international deals, and move, convert and store money – which has contributed to the decline in the Islamic Republic's oil trade. Economists generally believe that the sanctions have greatly contributed to the alarming devaluation of Iran's currency, perhaps 60 percent over the last two years, soaring inflation, an economic contraction of roughly five percent over the last couple of years and increased unemployment.⁹

Hemmed in by sanctions, Iran has been forced to accept payment for some of its oil sales in non-convertible currencies and bartered goods. Tehran has also resorted to elaborate evasion schemes to try and access reserves frozen in financial institutions that are not willing to trigger sanctions by handing over or moving Iranian money. Domestic economic mismanagement has exacerbated the situation and has narrowed the ability of the Central Bank to manage the situation.

Principles for Possible Sanctions Relief

The multilateral and interdependent character of Iran sanctions presents a logistical challenge for any effort to lessen or reconfigure sanctions in response to progress in nuclear talks. To be clear, non-nuclear Iran sanctions focused on terrorism and human rights would not be eased by progress on the nuclear issue. If a nuclear accommodation can be achieved then the only sanctions that should be rolled back are those related to Iran's nuclear activities or the generation of revenue Tehran can

use to finance nuclear activities. This may mean that some targets simultaneously subject to sanctions under multiple programs would only see a lifting of the nuclear-related sanctions and therefore still face economic constraints. Iran would have to renounce terrorism, make amends and appropriately address its human rights problems before any sanctions related to this conduct would be lifted. Also, national and international stakeholders would have to align their objectives in an effort to unwind the sanctions, and begin with principles – not road maps – for what nuclear concessions and sanctions relief would look like.

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In Geneva, the P5+1 cannot promise to change the UNSCR-imposed Iran sanctions, which must be approved not only by the permanent five members of the Security Council but also by a simple majority of the 15 Security Council members. Similarly, the three EU members represented in the P5+1 cannot change the EU sanctions without agreement from all 28 member states. The U.S. negotiators in Geneva, represented by the State Department, do have the ability to relieve some of the sanctions. However, significant and enduring relief from U.S. sanctions would require the administration to convince a skeptical U.S. Congress that a final nuclear settlement would be meaningful and verifiable. This is not likely to happen anytime soon, not least because policy hawks in Washington, and elsewhere, will require a sustained interim period of Iranian compliance with confidence-building agreements that demonstrate

Tehran's genuine commitment to constrain its nuclear activities. Additionally, the details of proportionate sanctions relief will take months to solidify under the best conditions.

At the same time, Iran cannot be expected to make significant concessions in negotiations or implement meaningful constraints on its nuclear program unless it receives meaningful relief from the sanctions. This means that the Obama administration will need to identify the areas where it has the ability to lessen sanctions (or suspend the implementation of sanctions) during the initial stages of implementing an agreement. Some such measures would not necessarily require legal changes, and could provide near-term economic relief by loosening restrictions on the physical and financial sides of trade in certain products.

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The administration will also need to work with Congress to maintain the leeway legislators have given to U.S. negotiating representatives in Geneva, and manage the expectations on all sides that no meaningful deal will come quickly or be seen as absolutely optimal by all sides. Lawmakers committed to the strategy of increasing punishing sanctions to elicit Iranian concessions may be tempted to push forward with new sanctions if they are unsatisfied with the progress of talks or if a road map is not laid out immediately.

There is also talk on Capitol Hill of sharply limited executive discretion and waiver authority in both existing and future sanctions.¹⁰ Such steps could undermine the ability of P5+1 negotiators to move forward if Iran believes that U.S. offers of sanctions relief are simply not credible. Stripping presidential waiver authority could also

complicate the Obama administration's efforts to keep many of Iran's closest trading partners from exiting the international coalition currently isolating Iran. Tremendous sanctions efficacy is derived from the adherence of China, Japan, Korea, India and a few other remaining Iranian energy consumers to trade bans. If Congress takes away the administration's leverage to craft an accommodation with Iran that is viable for Iran's main trading partners, it will alienate and drive away these countries. The result may be quite significantly diminished international sanctions efficacy.

Washington will also need to work closely with all EU partners to identify specific European sanctions changes to be implemented, or mandates to be suspended or lifted, at upcoming EU Foreign Affairs Council meetings. This could deliver real sanctions relief for Iran and broaden permissible transactions and areas of commerce. Any measure of relief from the harshest economic sanctions, such as those dealing with payment messaging services and insurance and reinsurance provision, should only be considered once confidence in a nuclear deal has been built and tested.

The Balance of Concessions

The Obama administration must strike the appropriate balance between relieving sanctions and concessions on the nuclear issue. It should not be seen as so eager to suspend sanctions that Iranian negotiators believe that cosmetic changes to Tehran's nuclear behavior will meaningfully relieve the economic pressure. At the same time, U.S. negotiators should not be so limited in what they offer that Iran sees little value in a deal. Sanctions relief should be proportional to concrete and verifiable concessions by Iran.

Relief from any sanctions – whether through U.S. executive action, Congressional legislation, modifications delivered by the EU or a combination of all of these – should also include provisions for

automatic reinstatement if Iran does not comply with the terms of any nuclear agreement. Creating new mechanisms to achieve this will require immense effort and creativity. Similarly, the administration will have to reach out to the business community and relevant national regulatory authorities to clarify exactly what kinds of new commerce are legitimate, and under what conditions. This will be extremely difficult work, but it is essential to a breakthrough on the Iran nuclear standoff.

Stakeholders must get on the same page now and decide what calibrated sanctions relief would look like if a deal appears likely. Successful diplomacy with Iran requires a coordinated approach from the international community to unwind sanctions if these nations are to maintain enough collective pressure to keep Iran moving towards meaningful constraints on its nuclear program.

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ENDNOTES

1. Wendy Sherman, Under Secretary of State for Political Affairs, "Reversing Iran's Nuclear Program," Statement to the Foreign Relations Committee, U.S. Senate, October 3, 2013, 3-4.
2. For an overview of sanctions against Iran, see: U.S. Department of the Treasury, "Iran Sanctions," Treasury.gov, October 10, 2013, <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>; U.S. Department of States, *Overview of U.S. Sanctions on Iran Pertaining to Activities and Transactions by non-U.S. Individuals and Entities* (July 23, 2013); and Congressional Research Service, *Iran Sanctions*, CRS 7-5700 (July 26, 2013).
3. U.S. Department of the Treasury, Office of Foreign Assets Control, *Specially Designated Nationals and Blocked Persons List* (October 7, 2013).
4. Sherman, "Reversing Iran's Nuclear Program"; and David Cohen, Under Secretary of the Treasury For Terrorism And Financial Intelligence, "Iran Sanctions: Ensuring Robust Enforcement, And Assessing Next Steps," Statement to the Committee On Banking, Housing And Urban Affairs, U.S. Senate, June 4, 2013.
5. United Nations Security Council, *Resolution 1737* (2006); United Nations Security Council, *Resolution 1747* (2007); United Nations Security Council, *Resolution 1803* (2008); and United Nations Security Council, *Resolution 1929* (2010).
6. Redundancy occurs because EOs implement statute and help to standardize and extend statutory authorities. Also, congressional statutes have reiterated authorities established by EOs to enshrine them in permanent statute.
7. Aside from these two executive branch agencies, there are other agencies that have responsibilities and authorities to control exports to and public investment in Iran.
8. Margaret McQuaile, "Iran launches high-stakes charm offensive," Platts, September 23, 2013, <http://www.platts.com/news-feature/2013/oil/iran/index>.
9. Sherman, "Reversing Iran's Nuclear Program," 2.
10. John Hudson, "Liberal Democrats Move to Torpedo Iran Sanctions Bill," ForeignPolicy.com's The Cable blog, July 29, 2013, http://thecable.foreignpolicy.com/posts/2013/07/29/liberal_democrats_move_to_torpedo_iran_sanctions_bill.

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