The Iranian Nuclear Procurement Channel: the most complex part of the JCPOA?

The JCPOA includes measures aimed to ensure that single- and dual-use items of nuclear relevance cannot be diverted to any clandestine nuclear program in Iran nor stockpiled. These measures form the basis of the Procurement Channel, a unique mechanism designed to control the supply of nuclear-relevant items to the country which Iran has committed to. Ian J. Stewart explains how it should work.

On 14 July 2015, the E3+3 reached an historic agreement with Iran, known as the Joint Comprehensive Plan of Action ('JCPOA'), over the future of the country's much-disputed nuclear program.[1] The agreement locks in various measures that are intended to ensure that Iran cannot produce nuclear weapons without such an effort being detected in good time (thus deterring 'breakout' scenarios) and provides Iran, in turn, with much-needed sanctions relief.

The JCPOA includes measures intended to ensure that single and dual-use goods of nuclear relevance cannot be diverted to support any clandestine nuclear program in Iran, and that Iran cannot unduly stockpile such goods for nuclear end uses in the future. These measures form what the plan calls the 'Procurement Channel', which will be operationalised through a Procurement Working Group ('PWG') of the Joint Commission. Iran has committed to ensure that all procurement of nuclear-relevant goods – whether for nuclear end uses or civil end uses – will be procured through this mechanism. This is a somewhat unique mechanism, which raises numerous operational and political questions.[2]

It is important to note that while the Procurement Channel is for nuclear-relevant goods, many of the items that Iran will have to procure through it have industrial and commercial uses, including in the petrochemical sector. The Procurement Channel will thus be relevant to many firms seeking to re-engage with Iran in the wake of the agreement and is likely to be a dominant feature of trade with Iran over the next decade. Moreover, the agreement places a substantial compliance burden on the service sectors and on exporting states – much more so than is usual for trade control arrangements.

The Procurement Channel

The channel was first publicly mentioned in an earlier version of the July agreement, in April 2015, which contained no specifics about what the Procurement Channel was or how it would function.[3] The JCPOA goes considerably further, specifying how the procurement will function and what goods will pass through it.

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In terms of the scope of the Procurement Channel, the relevant paragraphs are 6.1.1 and 6.1.2 of Annex IV of the JCPOA:[4]

> 6.1.1 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; and,
>
> 6.1.2. 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 (a) above;

What Is controlled?

In practice, there are three main categories of goods that will routinely be referred to the procurement working group. These are Nuclear Suppliers Group ('NSG') 'Trigger List' items, NSG dual-use items, and non-listed items with a nuclear utility (akin to 'catchall'). These are taken in turn.

Trigger List goods

Trigger List goods are typically identifiable as items with a clear nuclear fuel cycle utility. They include nuclear reactors, complete centrifuges, and other items that are 'specially designed or modified' for a nuclear end use. There is in fact an internationally recognised list of these items, and it is this list that is recognised by the JCPOA. Typically, these items do not have other commercial uses, although there are niche specialist end uses for some Trigger List items, such as heavy water (deuterium oxide), which has uses in the oil industry as well as certain specialist scientific applications).

According to the text of the JCPOA, Trigger List exports will be reviewed by states, the Procurement Working

Group, and the IAEA in order to ensure that they are used for stated end uses.

In practice, there will likely be few exports to Iran that fall into this category. The main items are likely to relate to the redesign of the Arak heavy water reactor. International support for any future reactors (including light water reactors and fuel for such reactors) likely will have to be referred to the PWG, although the UNSCR states that approval in advance by the Security Council is not required.[5]

Dual-use goods

The JPCOA requires that proposed exports of NSG-controlled dual-use goods be referred to the Procurement Channel. The NSG dual-use list includes manufacturing equipment, parts and components that can be used in or to make nuclear-relevant technologies but that can also be used for other industrial and commercial applications.

Many goods captured by the NSG dual-use list can be used for petrochemical and aerospace applications (for example, bellows-sealed values, vacuum pressure transducers, carbon fibre, and filament winding equipment). As such, it is likely that that many exports destined to nominally industrial (rather than nuclear) end uses will be referred to the PWG.

As discussed further below, the exporting state or the PWG can request that end-use verification be undertaken to confirm that the goods have not been diverted to nuclear end uses. In practice, this will require access to non-nuclear sites.

Non-listed goods

Since UN Security Council sanctions were first adopted against Iran's nuclear program in 2006, the majority of cases reported to the UN's Iran sanctions Panel of Experts have related to goods not listed by the NSG's Trigger List or dual-use list. This highlights that Iran has required – and will continue to require – non-listed items for its nuclear fuel cycle. As such, it has been necessary to include provisions on non-listed goods in the JCPOA.

In practice, the JCPOA provides states with an option to refer cases to the Procurement Channel should they believe that the export of the goods is relevant to the JCPOA. This is loosely the equivalent of the 'catch-all mechanism' that has been included in previous UN Security Council sanctions resolutions, and is also implemented by many states as part of their export control regulations. It should be noted that this mechanism in the JCPOA does differ from traditional catch-all controls, however: in particular, it seems unlikely that non-listed goods destined for Iran's declared nuclear program would be blocked by the PWG.

Trade services and technical Assistance

Paragraph 6.1.2 of the JCPOA text covers the provision of services and assistance In conducting nuclear-related trade with Iran. The measures in this paragraph apply to both dual-use and Trigger List goods. The inclusion of dual-use goods in the scope of this paragraph is unusual and will create substantial challenges for the trade service sectors, including the shipping, finance and insurance sectors. In this context, UN Security Council document S/2015/28 provides a starting point in considering how commercial entities might comply.[6]

The inclusion of NSG dual-use goods in the scope of work for the Procurement Channel could greatly expand the number of cases it reviews.

Arms and Missile-related goods

The JCPOA does not refer to the supply of arms or missile-related technologies to Iran, although these are covered by the draft Security Council resolution. The missile-related sanctions to be proposed in this resolution are likely to extend to Missile Technology Control Regime-listed dual-use goods. At this stage, it is unclear how overlaps in missile-related and nuclear-related controls will be handled. In practice, it appears that rather than containing a prohibition (i.e. 'sanctions'), the resolution will contain a requirement that arms and missile transfers be authorised by the Security Council – authorisation that likely be withheld for five years and eight years, respectively.

Role of the Procurement Working Group

In addition to the European External Action Service, which will administer the Procurement Working Group, there will be seven participating states: the UK, U.S., France, Germany, Russia, China and Iran.

The PWG will respond to specific requests by states to export goods to Iran. In practice, this will involve each state (see below) forwarding to the PWG licence applications received at the national level that are deemed relevant to the JCPOA. The participants will have 20 working days (extendable to 30) to consider any one export. The review will take place in parallel to national export licence assessment.

The PWG requires consensus to authorise exports to Iran: if any one participant objects, the export will not be approved. However, any party can refer cases to the PWG's parent body, the Joint Commission if they feel that the JCPOA is not being honoured (i.e., Iran could take issue with the refusal of a licence and refer it to the Joint Commission).

It is not yet clear if and how often referrals may be refused. Reasons for refusal are likely to include the risks of stockpiling and the risk of diversion to military and missile end uses. If the JCPOA breaks down, the Procurement Channel will cease operation.

The number of cases that the PWG will have to review is difficult to predict. The number of exports to nuclear end uses is likely to be relatively low. However, the inclusion of NSG dual-use goods in the scope of work for the Procurement Channel could greatly expand the number of cases it reviews. The closest parallel is the case of Iraq in the 1990s. The International Atomic Energy Agency's Iraq Nuclear Verification Office purportedly reviewed some 18,000 contracts over its lifetime.

The potentially high volume of referrals creates challenges. Each participating government must be able to review each referral as if it was an export licence. Typically, an individual licence assessor at the national level may deal with a few hundred to (at most) a few thousand licence applications per year. Applied to the PWG, this could mean that each participating government would need to devote several specialist staff to the

task. This will be particularly important given the relatively tight timescales for the review of licence proposals (20 working days). The JCPOA also does not define what language referrals should be submitted in, so there is a possibility that translation time would also need to be accounted for.

The role of the International Atomic Energy Agency

The IAEA is requested to monitor and verify the JCPOA. In practice, in the context of the Procurement Channel, it is likely that the IAEA will have to confirm that any procurements made through the Procurement Channel are consistent with the JCPOA. This will mean ensuring that the end use for nuclear goods has been declared and that the number of goods being procured is consistent with the needs of the program (i.e., that goods are not being unduly stockpiled). The IAEA will have to act promptly for this role to be carried out successfully: those states that participate in the Procurement Channel are required to indicate within 20 working days whether or not they object to the proposed export.

The second role for the IAEA is likely to be in verifying that goods imported to Iran are being used as intended. This will involve conducting end-use verification of export of Trigger List items to Iran. Therefore, the IAEA would have to be selective about which imports it undertakes end-use verification. In practice, this task will likely be wrapped into the IAEA's inspection plan for Iran which already includes periodic visits to some sites. It is conceivable that visits may be required for other sites, meaning that the access process specified in the JCPOA would be used.

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The third role will be in monitoring Iran's declarations against Iran's actual imports. This is routine business for the IAEA, although in the case of Iran the IAEA will have access to additional information provided by Member States.

Role of industry and the private sector

The Procurement Channel exists to facilitate trade. Industry and the private sector can benefit from the existence of the Procurement Channel. Nonetheless, it is not envisioned that there will be direct interaction between the Procurement Channel and industry in terms of referrals. Instead, national licensing agencies will act as go-betweens, referring cases to the Procurement Channel as necessary.

The only foreseen exception to this rule is with regards to awareness-raising and outreach. Procurement Channel officials might, with the consent of national authorities, conduct awareness-raising activities for the private sector. This could include issuing guidance on compliance and due diligence. This activity would have to be coordinated with the Security Council's Iran sanctions Panel of Experts if, as expected, the Security Council extends the mandate of the Panel.

It should be noted that paragraph 6.1.2 appears to require trade service providers to take measures beyond those that they usually would for traditional export controls. Further guidance on interpreting this paragraph will be required.

Role of Iran

Iran's central role in the Procurement Channel has some interesting elements. Iran will participate in the Procurement Working Group and be involved the decision-making process to decide what goods it can and cannot import, although Iran cannot override decisions of the other members on its own. Iran is also required to attest that the stated end use for goods that it imports through the channel is accurate. Specifically, Iran is required to provide 'a statement of the proposed end use and end-use location, along with an end-use certification signed by the Atomic Energy Organisation of Iran or the appropriate authority attesting the stated end use'.

This latter role is unusual: usually, it is the actual end-user that would sign an end-user undertaking. By requiring bodies authorised by the Iranian government to sign end-user undertakings, the Joint Commission can hold the Iranian government responsible for diversion of any products. It does, nonetheless, require Iran to put in place mechanisms to provide such attestation. It is also unusual for commercial entities that are importing goods to be required to know the control status of the goods. Therefore, an industry outreach and education campaign will be required in Iran.

Other states

The purpose of the Procurement Working Group is to consider exports of nuclear-relevant goods from other states to Iran. Conceivably, Iran could import such goods from any of the 193 UN member states (and indeed other countries). Therefore, a central aspect of the Procurement Channel will involve referral of relevant exports from states to the Procurement Channel. This will most likely be implemented by export-licensing organisations in each state. Logistics and practical matters will have to be worked out, including in relation to the language of submission.

States will also be able to (and in some cases required to) conduct end-user verification of dual-use exports to Iran. The Joint Committee will provide assistance to states in undertaking this activity and Iran is required to provide access to conduct such end-use verification. Nonetheless, this could be a resource-intensive task for states and may deter some states

Links and notes

[1] For the complete text of the JCPOA, see 'Iran deal – an historic day', EEAS Website: http://eeas.europa.eu/top_stories/2015/150714_iran_nuclear_deal_en.htm (Accessed 16/07/2015)

[2] The closest precedence is the mechanism implemented against Iraq in the 1990s.

[3] See 'Parameters for a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran's Nuclear Program', U.S. Department of State, 2 April 2015. Available online at: http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm (Accessed 16/07/2015)

[4] Paragraph 6.1.3 also addresses the issue of whether Iran can buy stakes in uranium producing entities outside the territory.

[5] The Security Council resolution may contain exclusions for light water reactors, which are exempt from the current sanctions resolutions.

[6] S/2015/28: 'Sanctions compliance in the maritime transport sector', .15 January 2015. Available online at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/28 (Accessed 16/07/2015)

[7] Actually, an outdated version of the Trigger List from the 1990s.

Box 1: Necessary information

(a) a description of the item; (b) the name, address, telephone number, and email address of the exporting entity; (c) the name, address, telephone number, and email address of the importing entity; (d) a statement of the proposed end use and end-use location, along with an end-use certification signed by the AEOI or the appropriate authority of Iran attesting the stated end use; (e) export licence number if available; (f) contract date, if available; and (g) details on transportation, if available; provided that if any of the export licence number, contract date, or details on transportation are not available as of the time of submittal of the proposal, such information will be provided as soon as possible and in any event as condition of approval prior to shipment of the item.

from exporting goods to Iran when end-use verification would be necessary.

As is standard practice with UN sanctions resolutions, states will likely also be required to submit implementation reports to the UN Security Council. Historically, reporting rates for sanctions resolutions have been low. High-level diplomacy should therefore be used to ensure complete and accurate reporting.

Consideration should also be given regarding how to build capacity at the national level to help implement and support the Procurement Channel. Certain synergies exist with the mechanisms of Security Council Resolution 1540. These should be taken advantage of.

Monitoring illicit procurement

Iran's nuclear program has been constructed largely using goods that have been imported illicitly from other countries. The JCPOA includes a requirement that all procurement be made through the Procurement Channel specifically to prevent illicit trade in the future.

A continuance of illicit trade would thus constitute non-compliance with the agreement. The Security Council resolution supporting the JCPOA spells out the consequences of this non-compliance, but if taken to its fullest extent, a violation could result in the use of the UN sanctions snapback mechanism.

Broader issues

The Procurement Channel is a hugely complex mechanism. As such, it raises numerous broader issues and challenges.

Commercial confidentiality

In order to be able to review referrals, the Procurement Working Group will require access to key information on proposed exports (See 'Box 1: Necessary information'). The need to share commercial information with several states could naturally cause concerns about confidentiality at the national or industry level. It is notable, therefore, that the provision of certain information (including pricing information) is not specifically required under the JCPOA terms. Nonetheless, exporters may be hesitant about providing other required information and assessors may be hindered by the lack of pricing information. This trade-off has nonetheless been agreed.

Corruption

The requirement for the Iranian government or authorised parties to provide attestation for end-use undertakings could lend itself to corruption and profiteering. The Joint Commission may thus wish to monitor who in Iran is involved in the authorisation (i.e. whether they have links with the Islamic Revolutionary Guards Corps, or other entities about whom the international community retains concerns).

Precedence for other states

The JCPOA makes clear that it does not set a precedent for other states. Nonetheless, consideration should be given in due course as to what the implications of the Procurement Channel are for the international non-proliferation framework. Presently, states that implement an additional protocol to their safeguards agreement with the IAEA provide the IAEA with reports on exports (and imports) of certain Trigger List goods.[7] Could and should this reporting requirement be extended to dual-use goods? Are there grounds for extending the requirement for the IAEA to verify the nuclear need associated with Trigger List transfers? These are questions that are politically difficult. Nonetheless, they should be considered in the fullness of time.

Conclusions

The Procurement Channel will be perhaps the most complex aspect of the JCPOA to implement. It requires all states to implement complex measures and requires Iranian persons and entities to cooperate. Nonetheless, the modalities outlined in the JCPOA do appear to be implementable, although several practical issues must still be addressed. The next step will be the adoption of the UN Security Council Resolution.

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