

Closing Loopholes: Another Vital Aspect of Sanctions on Iran

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Brief Analysis

In the coming weeks, the United States and its allies will attempt to push additional Iran sanctions through the UN Security Council. Defense Secretary Robert Gates has indicated that "the United States and like-minded countries" could also impose at least some additional sanctions on their own. Although stronger sanctions are certainly needed to deter Iran on the nuclear issue, they alone are unlikely to pressure Tehran into changing its behavior. Just as important are efforts to plug the gaps and loopholes in the current sanctions regime.

Iranian Evasion

A number of overlapping sanctions are already in place against Iran, imposed by the UN, European Union, Britain, and the United States. One of the primary means of evading these regimes is through re-exports. Generally, export-control laws distinguish between different countries in determining the legality of a specific transaction. For example, dual-use goods, which can have commercial or military applications (including in the nuclear sector), may be sent to some countries but not to others. Iran often takes advantage of this framework, evading U.S. laws and international sanctions by setting up front companies and middlemen in countries to which these types of items can be legally exported. In most cases, the sellers are not told that the goods will be re-exported to Iran -- though many other sellers are willing to turn a blind eye.

The best known of these re-export hubs is Dubai, where thousands of Iranian businesses engage in illicit trade. Extensive re-export networks can also be found in Malaysia, Hong Kong, Thailand, Singapore, and Europe. These networks allow Iranians to procure much-needed American and European technology that they would otherwise be unable to obtain. A recent Associated Press report described a case in which a Chinese company used a Taiwan-based agent to divert more than a hundred pressure gauges (a device with both commercial and nuclear applications) to Iran, misleading the Swiss seller about the ultimate destination.

Iran's procurement networks extend to U.S. shores as well. In December 2009, for example, California-based suspect Jirair Avanesian was indicted for illegally exporting a specialized vacuum pump -- a device with potential nuclear applications -- to Iran via the United Arab Emirates. According to the Justice Department, he was directed by an individual in Iran.

U.S. Response

To counter Iran's extensive global re-export activities, the Justice Department and the Department of Homeland Security have dramatically increased their focus on investigating and prosecuting these types of cases. In fact, Iran has become the Justice Department's top priority in terms of export-control prosecutions, accounting for more than twenty cases in 2008 -- far more than any other country.

Washington has also posted investigators at many U.S. embassies to perform "end-use checks," that is, determining whether the address listed on the shipping or license forms is actually the ultimate destination. For example, under the State Department's "Blue Lantern" program, U.S. authorities perform both pre- and post-license and post-shipment checks to ensure the legitimacy of transactions involving certain dual-use items. In 2007, they performed 705 end-use checks, with 23 percent resulting in an unfavorable finding (46 percent of which involved recipients in East Asia). Similarly, a U.S. investigator posted to the United Arab Emirates from 2002 to 2006 found numerous instances of diverted goods. According to the New York Times, 40 percent of the cases investigated there involved problems such as missing items (suggesting re-exportation) or uncooperative businesses. For example, a woodworking shop could not explain why it was ordering high-end American technology to make metal parts that could also be used in building missile system components.

Lack of Support from Other Countries

Despite this increased focus on enforcement, the U.S. and international export-control regime remains limited in its effectiveness, largely because few other countries take the issue as seriously as does the United States. Most countries, including some of Iran's major trading partners, do not devote significant resources to investigating or prosecuting export-control violations. And despite ramping up its own efforts in

recent years, Washington still devotes relatively few resources to the issue, particularly in terms of the number of investigators performing physical end-use checks overseas. Compounding this, the UN does not have an independent monitoring team in place to track compliance with its Iran-related resolutions, as it does with numerous other sanctions regimes. Instead, countries self-report on their progress in this area -- an obviously flawed approach.

Europe's shortcomings in this area are especially glaring. Unlike the United States, neither the EU nor its individual member states dispatch investigators abroad to perform end-use checks. Consequently, they must rely on information from license applications and shipping forms to determine an item's ultimate destination -- sources that are easily falsified. In fact, some European technology companies have recently been advertising their sophisticated products as "ITAR-free," meaning they possess no American components and therefore lie outside the jurisdiction of U.S. International Traffic in Arms Regulations.

To its credit, the EU did pass a comprehensive control measure in 2009, establishing a system for regulating the export of dual-use items at the EU level. Although this was an important first step, it left enforcement entirely to the member states -- the EU does not investigate whether member governments or individual companies are in compliance.

Another problem is that there is no centralized, easily accessible list of "bad actors," such as repeat export-control violators or identified front companies, that government officials and the private sector can consult as they evaluate individual transactions (though some information is shared at the governmental level through the multilateral Nuclear Suppliers Group). Washington's own lists are complicated enough. For example, the Treasury, State, and Commerce Departments each maintain separate blacklists, and although European agencies and businesses might check the better-known Treasury list before approving certain transactions, they are unlikely to search through the other lists. Similarly, U.S. agencies and firms probably do not examine all of the individual European country lists.

Improving the System

The United States and the EU could take a number of steps to dramatically improve the export-control system and make it more difficult for Iran to evade current and future sanctions. First, they could enhance cooperation on efforts to disrupt and dismantle illicit Iranian procurement networks operating around the world. Their existing Customs Mutual Assistance Agreement, signed in 1997, already allows for broad sharing of information on customs-related matters.

Specifically, they could establish joint end-use investigation teams at high-risk locations worldwide. These teams would be responsible for coordinating with host governments to conduct onsite verifications, ensuring that dual-use goods have reached their intended destination and were not re-exported to Iran. U.S. Immigration and Customs Enforcement, with sixty-three offices in forty-four countries, could lead this effort. Because the Europeans are new to this field and would need to get up to speed quickly, working with more experienced American counterparts would be necessary. In addition, physical end-use checks require the approval of host countries, and the EU may have broader access than the United States in certain locations.

Second, the United States and the EU could lead the charge to create a universal database of bad actors. This information could be housed by the World Customs Organization, an intergovernmental body based in Brussels. Such a resource would allow public- and private-sector officials to access crucial data more easily, helping them determine whether particular transactions involve parties that have previously engaged in illicit trade. Finally, to prevent Iran from identifying undercover operations and current targets, the database's administrators could limit sensitive information regarding active investigations to law enforcement authorities only.

Finally, both the United States and the EU should push for creation of an independent monitoring team as part of the next round of sanctions targeting Iran. While the focus on identifying the Iranian entities that should be designated is appropriate and necessary, tracking and stopping Iran from evading these sanctions is also a critically important part of the equation.

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