

Senate Foreign Affairs, Defence and Trade References Committee

Inquiry into the partial suspension of sanctions against Iran

My thanks to the Committee for the Opportunity to make a submission. The Australian Strategic Policy Institute (ASPI) does not take corporate positions on any issue. The comments in this submission are my personal views only. I have some relevant experience as a former Deputy Secretary of Defence for Strategy between 2009 and 2012, when I had responsibility for managing the Defence Export Control Office and for the Defence Organisation's involvement in preventing the proliferation of Weapons of Mass Destruction. As the executive director of ASPI I have closely followed and written on strategic issues in the Middle East.

It is too early to tell if Iran intends to genuinely constrain its nuclear program as set out in the Joint Comprehensive Plan of Action (JCPOA) negotiated between Iran and the P5 plus Germany and brought into effect on 'implementation day', 16 January 2016. Sanctions were suspended or lifted on that day after the International Atomic Energy Agency (IAEA) certified that Iran had complied with the stipulated nuclear dismantlement commitments under the agreement.

In essence, the JCPOA is the product of a bet made by the negotiators that Iranian nuclear ambitions will be moderated in return for lifting broad economic sanctions. While sanctions relief is already being implemented it remains to be seen if Iran will constrain its previous use of covert programs to acquire nuclear and missile technology and skills.

The best public indication we have so far of Iranian intent after signing the JCPOA comes from evidence presented to the United States Senate Armed Services Committee by James R. Clapper, the Director of National Intelligence, on February 9, 2016 in the annual *Worldwide Threat Assessment of the US Intelligence Community*. On Iran's nuclear intentions, the threat assessment said:

Iran probably views the Joint Comprehensive Plan of Action (JCPOA) as a means to remove sanctions while preserving some of its nuclear capabilities, as well as the option to eventually expand its nuclear infrastructure. We continue to assess that Iran's overarching strategic goals of enhancing its security, prestige, and regional influence have led it to pursue capabilities to meet its nuclear energy and technology goals and give it the ability to build missile-deliverable nuclear weapons, if it chooses to do so. Its pursuit of these goals will dictate its level of adherence to the JCPOA over time. We do not know whether Iran will eventually decide to build nuclear weapons.

We also continue to assess that Iran does not face any insurmountable technical barriers to producing a nuclear weapon, making Iran's political will the central issue. Iran's implementation of the JCPOA, however, has extended the amount of time Iran would need to produce fissile material for a nuclear weapon from a few months to about a year. The JCPOA has also enhanced the transparency of Iran's nuclear activities, mainly through improved access by the International Atomic Energy Agency (IAEA) and investigative authorities under the Additional Protocol to its Comprehensive Safeguard Agreement.

As a result, the international community is well postured to quickly detect changes to Iran's declared nuclear facilities designed to shorten the time Iran would need to produce fissile material. Further, the JCPOA provides tools for the IAEA to investigate possible breaches of

prohibitions on specific R&D activities that could contribute to the development of a nuclear weapon.¹

There is good and bad news here. The JCPOA is said to have extended by some months the time Iran would need to produce fissile material for a weapon and may assist verification efforts, but it is only a matter of political will, not capability, as to whether Iran will chose to develop a nuclear weapon. If Tehran takes that track it will presumably do so covertly, to reduce the amount of time Washington and other countries will have to 'snap-back' (in President Obama's phrase) with a new sanctions regime.

It is not surprising that the US and Australia have retained a broad set of autonomous sanctions specifically designed to prevent Iranian access to nuclear weapons and missile technologies; proscribe a range of organisations and individuals associated with WMD proliferation; and maintain sanctions on conventional military capabilities and key Iranian military units.

While broader economic sanctions are being lifted it is ironic that comprehensive sanctions remain in place and focussed precisely on the nuclear activities that the JCPOA was negotiated to stop. Notwithstanding the IAEA's certification of compliance over Iranian *overt* nuclear development programs, Western countries remain concerned about the risk of *covert* Iranian nuclear developments. They should be concerned given Iran's record in this area.

I make the following recommendations to the Committee for its consideration.

1. Seek a classified briefing on Iranian covert nuclear and missile proliferation activity.

Regrettably much of the information relating to Iranian weapons proliferation is highly classified. The *Worldwide Threat Assessment* referenced earlier is based on a massive volume of classified data. A classified brief will enable the Committee to assess the level of risk associated with Iran's capability to pursue covert nuclear and missile development outside of the framework of the JCPOA.

2. Advise Government to take a cautious and measured approach to lifting sanctions based on an assessment of likely American actions after the Presidential election.

It should be noted that the JCPOA has qualified support within the Obama Administration and is roundly condemned by many American political figures outside of the Administration. In 2015 Congress passed the Iran Nuclear Agreement Review Act (INARA) which establishes that if the President does not certify every 90 days that Iran is fully complying with the JCPOA, Congress may expedite consideration of legislation that would re-impose any Iran sanctions.²

Of the candidates for the Presidency, Donald Trump has sharply criticised Obama for supporting the JCPOA, saying '[Obama] negotiated a disastrous deal with Iran, and then we watched them ignore its terms even before the ink was dry. Iran cannot be allowed to have a nuclear weapon, cannot be allowed.'³ Hillary Clinton has supported the deal, but said that 'as President, my approach will be to

¹ James R. Clapper, Director of National Intelligence, *Worldwide Threat Assessment of the US Intelligence Community*. Statement to the United States Senate Armed Services Committee, February 9, 2016. Page 8. Available at: https://www.dni.gov/files/documents/SASC_Unclassified_2016_ATA_SFR_FINAL.pdf.

² Kenneth Katzman, *Iran Sanctions* 23 March 2016 Congressional Research Service report (7-5700. RS20871). Pages 66-67. Available at: <https://www.fas.org/sgp/crs/mideast/RS20871.pdf>.

³ Donald Trump, 'Transcript: Donald Trump's Foreign Policy Speech' *New York Times* 27 April 2016. Available at: http://www.nytimes.com/2016/04/28/us/politics/transcript-trump-foreign-policy.html?_r=0.

distrust and verify. I will vigorously enforce the nuclear deal as part of a comprehensive strategy that confronts all of Iran's negative actions in the region.'⁴

The implications for Australia is that the next US President may not support the JCPOA or could take a much harder line on Iranian compliance. Congress would likely seek to impose a more stringent sanctions regime. In addition to the INARA law there are no fewer than a dozen Congressional proposals for new sanctions legislation.⁵

For its part the Iranian state will be aware that the JCPOA may not last long as United States policy. The prospect of renewed sanctions may encourage a view that Iran should use this brief window of opportunity to secure proliferation objectives before sanctions resume.

The most sensible course of action for Australia is not to get too far ahead of possible American changes of policy after the Presidential election. A significant reversal of American policy in response to concerns about Iranian nuclear developments would presumably force a reconsideration of Australian policy. Following Hillary Clinton's advice to 'distrust and verify' Australia should remove sanctions slowly and only after evidence of a positive Iranian intent to abide by the JCPOA.

3. Advise Government to develop with the United States a combined classified assessment of Iranian covert proliferation.

A combined classified assessment with the United States would establish an intelligence base to inform future decision-making about lifting sanctions. The assessment needs to assess Iranian interest in covert proliferation in addition to IAEA judgements about Iran's overt nuclear programs and their conformity to the JCPOA.

4. Advise the Government to develop a 'snap-back' plan for the rapid reimposition of sanctions should Iranian non-compliance with the JCPOA force that response.

Government should have the necessary regulations drafted to allow a swift re-imposition of sanctions should other countries adopt this course of action. It would be important for Australia not to lag the international community in this effort, nor to find that loopholes in regulations are unable to prevent exports that might in some way assist an Iranian nuclear or missile program should any come to the attention of Western Governments.

5. Advise Government to take a cautious approach in facilitating Australian trade and investment with Iran.

A number of serious risks are associated with moving too quickly to facilitate trade and investment with Iran. First our ability to lift sanctions regimes can be done far more quickly than the detailed intelligence analysis can be done to establish evidence of covert proliferation. Second, because of the classified nature of this analysis, it can be problematic to share the results of these assessments with firms seeking to expand business opportunities in Iran. Third, Australia's ability to 'snap-back' with fresh sanctions will, by definition, lag behind covert proliferation activities. Once sanctions are lifted it may not be possible to bring an effective sanctions regime back into existence. Fourthly the range of current American and Australian sanctions form a very complex body of regulations and laws. These are difficult to interpret with a view to providing the private sector with actionable and accurate advice on trade and investment.

⁴ Hillary Clinton, *Statement on Iran* 16 January 2016. Available at: <https://www.hillaryclinton.com/briefing/statements/2016/01/16/statement-on-iran/>.

⁵ Katzman, *ibid*. Pages 67-70.

The Australian government should be mindful not to put itself into a situation where it may need to alter or amend advice to the private sector on Iranian investment options. In order to avoid potentially costly mistakes the Government should proceed cautiously to facilitating increased trade and investment with Iran. Government should be mindful that the Middle East has a rapidly changing strategic landscape, especially in the area of weapons proliferation. Correct advice to Australian business today may not remain valid or accurate for long. The most prudent advice Government should offer about trade and investment opportunities in Iran is that business should proceed with great caution.

6. Advise Government to be particularly cautious in supporting exports to Iran which may have dual civil and military/nuclear use.

The Department of Foreign Affairs and Trade submission of 11 April 2016 to this inquiry says that:

The lifting of sanctions on Iran offers new export opportunities for Australian businesses, particularly in mining (equipment, technology and services), oil and gas, water resource management, healthcare and education. In the lead up to and following the JCPOA nuclear deal, Austrade received strong interest in these potential opportunities from Australian companies, industry bodies and educational institutions.

While broader sanctions have been lifted following the JCPOA it is important to understand that many exports can have both civilian and military uses. Mining equipment, technology and services, for example are just as important to the construction of underground nuclear facilities as they are to natural resource extraction. As has been observed with Iranian covert programs in the past, Tehran can take measures to hide the intended purpose of dual-use goods, or indeed simply divert useful acquisitions to more covert purposes. The Australian Government should take particular care over export approvals that may have dual use applications.

Overall, while there may be legitimate export and investment opportunities arising in Iran after the JCPOA, the prudent approach is to proceed slowly and carefully with expanding business connections. The evolving nature of Iranian political intent will ultimately shape whether the JCPOA was the right strategic choice. There is no benefit and, indeed, substantial risk for the Australian Government and business community to get too far ahead of the international community in lifting sanctions.

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