



The Iran Nuclear Deal's Procurement Channel: Overcoming Post-Implementation Day Issues

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Investing the time, attention, and resources is critical to ensuring that the Procurement Channel will be successful at regulating exports of proliferation-sensitive goods to Iran. However, troubling compromises and exemptions have already been made that begin to call into question if the Procurement Channel can operate effectively. In particular, the highly sensitive Fordow centrifuge plant and the modernization of the Arak reactor were exempted from the Procurement Channel. Moreover, Russia appears to have been playing a disruptive role that is not being effectively countered. The risk is that Iran will exploit these divisions and compromises to continue buying for its banned missile and conventional military programs and industries, and it will find growing opportunities to buy goods secretly for undeclared nuclear programs or activities.

The Procurement Channel is a potentially valuable transparency and verification condition in the Joint Comprehensive Plan of Action (JCPOA) aimed at controlling the export of goods to Iran's authorized nuclear programs and non-nuclear, civil end users. This condition was institutionalized in United Nations Security Council (UNSC) resolution 2231 in January 2016. Under the JCPOA and the resolution, the Procurement Channel's purpose, for the first ten years of the JCPOA, is to regulate the flow of sensitive goods to Iran's authorized nuclear programs and non-nuclear civil end users. It seeks to deny Iran opportunities, or at least help expose any efforts, to violate the JCPOA and increase the transparency of Iran's nuclear programs. In particular, an effective Procurement Channel would provide confidence that Iran is not acquiring or stockpiling goods for undeclared nuclear activities, including a covert gas centrifuge facility, or for a surge in building up its nuclear capabilities if the nuclear deal collapses. These activities are particularly difficult for international inspectors to detect, even with the Additional Protocol in effect.

Since Implementation Day, the P5+1 and UN Secretariat have been establishing the administrative aspects of this new international architecture. The process involves a state submitting a proposal to the UN Security Council, Security Council Affairs Division, and the UNSC Facilitator on behalf of a company residing in that particular state that wants to export certain goods to Iran. The UN in turn sends the proposal, via the JCPOA Joint Commission, to the Procurement Working Group (PWG), which is the primary decision-making body for the

Procurement Channel. Members of the PWG include one voting member each of the P5+1 and Iran. However, setting up this infrastructure has proven difficult; ISIS has spoken to several officials from different P5+1 governments who have reported significant challenges.

Broader sets of analyses of current and potential issues with the Procurement Channel as well as remediation steps were released by ISIS in [August](#) and [December](#) 2015.

Problem of a Lack of Time for Effective Review of Proposals

A major weakness of the Procurement Channel provisions in the UNSC resolution and JCPOA is the limited time-frame for action to decide on an export to Iran. The number of entities involved in assessing sales proposals and the short timeline for deciding to approve or disapprove a proposal are fundamental challenges for the Procurement Channel. Figure 1 by the UN Security Council facilitator shows the process of submitting proposals and recommending an action to the Procurement Channel, abbreviated PC. It should be noted that in figure 1 JC stands for Joint Commission and includes the PWG (admittedly rather confusing).

3.A) PROCUREMENT CHANNEL: PROCEDURE

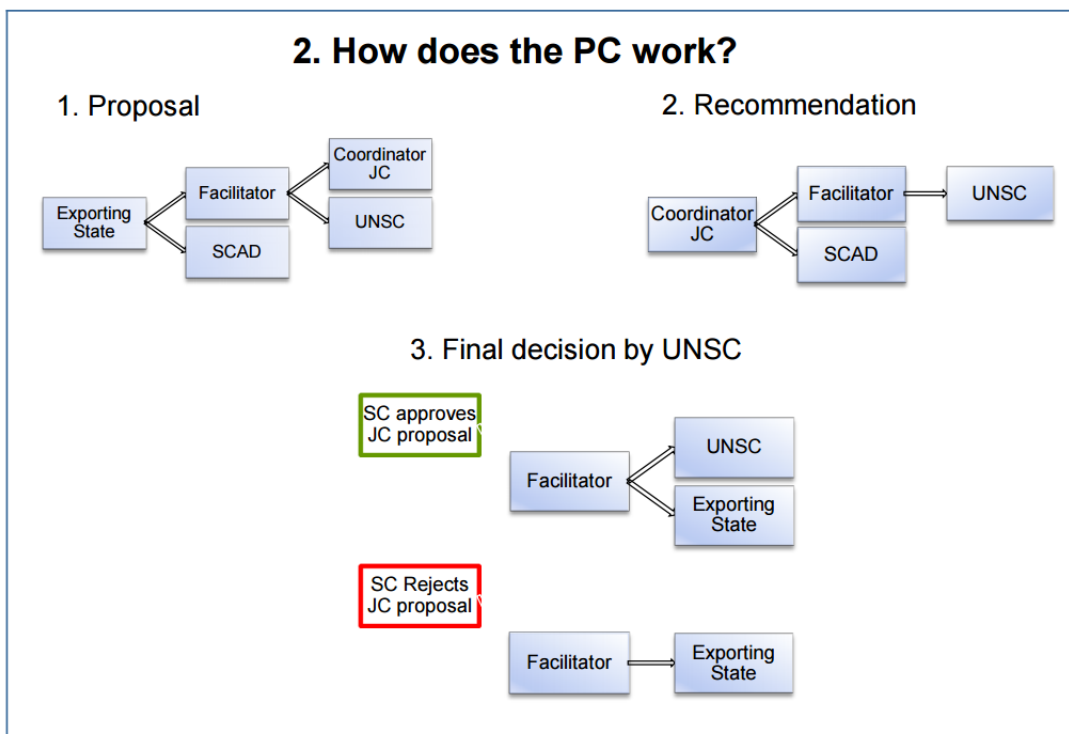


Figure 1: Process of submitting a proposal to the PWG and receiving a recommendation (SCAD=Security Council Affairs = Division; JC=Joint Commission (also denoting Procurement Working Group); UNSC and SC=UN Security Council). Credit: Open Briefing of the UN Security Council Facilitator, Implementation of Security Council Resolution 2231 (2015), New York, March 1, 2016. [http://www.un.org/en/sc/2231/pdf/Facilitator-presentation-Implementation-of-resolution-2231\(2015\).pdf](http://www.un.org/en/sc/2231/pdf/Facilitator-presentation-Implementation-of-resolution-2231(2015).pdf)

The JCPOA Procurement Working Group, which decides by consensus whether to authorize a proposal, has only 20 days, extendable to 30 days, to deny a proposal and inform the Security Council of its decision. This timeframe requires unusually quick investigations of whether a proposal should be blocked.

A 20 or 30 day timeframe is extremely difficult for PWG state export control and counter-proliferation bureaucracies to manage. Key entities and analysts of countries in the PWG reviewing these export proposals will have typically no more than one to five days per agency to review a proposal and determine if it should be blocked, according to interviews with officials from governments of the P5+1. It remains unclear whether this short timeline for decision making will create an environment of gridlock, hasty decisions, or inadequate time for investigating the end use or end user of goods proposed for a sale. Decision making will become even more difficult when a proposed sale is submitted by an Iranian end user that was previously sanctioned or is suspected of being linked to Iran's military or missile industries.

Russia Has Been a Disruptive Force; Has Found an Ally in China

Given the short time frames to act to block a proposal, efficiency and speed in the process are critical. According to P5+1 officials, Russia attempted to exploit the lack of clarity about Procurement Channel rules and functions to weaken its effectiveness, and has been supported by China in some of those endeavors. One official accused Russia of attempting to manipulate the whole process. Russia's action may also polarize decision making at the Procurement Working Group by creating *de facto* voting blocs, with Russia, China, and Iran on the one hand, and the United States, Britain, France, and Germany on the other. Russia's role overall appears to be to complicate the rejection of proposals within the tight guidelines imposed by the JCPOA and isolate certain sensitive exports from the Procurement Channel process.

Russia has said that proposals should not have to use an electronic form where information is entered online rather than a paper or document form. Western countries wanted to make an electronic form mandatory and Russia disagreed. Electronic forms are common on the internet and used by even small retailers interested in doing internet business. The process to send proposals will be akin to buying from a retailer such as Amazon and sending a handwritten purchase order scanned for delivery as an attachment to an e-mail. Impediments to creating an electronic form for proposals are not difficulty or cost. In terms of minimizing mistakes and increasing efficiency, electronic forms are far better. Given their simplicity, they are readily usable.

Russia may claim a victory on this issue. Despite the ease of using electronic forms, the United Nations has not yet required them. On its web site, the United Nations encourages applicants to send proposals by e-mail to SC-Resolution2231@un.org using a model application form that would be scanned and e-mailed. The UN office says: "It is helpful to submit the proposals in a

machine readable format as this is likely to speed up the review process.”¹ By using such an inefficient method, the United Nations increases the chance of mistakenly entering key data into a UN or state database and delaying assessments of proposals.

Russia also spearheaded an effort, with Chinese aid, to create exemptions – or no need to use the Procurement Channel – for the Fordow centrifuge plant and the modernization of the Arak reactor. Russia and China are responsible for the renovations at these two sensitive sites. In the case of Fordow, gas centrifuges will be converted to perform the enrichment/depletion of stable, non-uranium isotopes. The first phase of the Russian/Iranian cooperation involves Russia evaluating how Iran can use existing cascades at Fordow for isotope production. This evaluation will be done in Russia, although sensitive centrifuge technology could be transferred to Iran in Russia. Such a transfer could happen in secret and outside the purview of the PWG. In the second phase, Russia will assist Iran to reconfigure the cascades at Fordow for stable isotope separation. Any goods would be exported to Iran in the second phase and would likewise not go through the Procurement Channel. This will occur similarly in the case of the Arak reactor. The initial design work will be done in China and then the later delivery of parts will be outside the Procurement Channel. These exemptions undermined the fundamental purpose of the Procurement Channel to control internationally goods to sensitive portions of the Iranian nuclear program.

The United States and European countries ultimately acceded to Russia’s and China’s demands that these services should be exempt in UNSC resolution 2231, which reduces U.S. and European oversight over transfers of goods and services to sensitive nuclear facilities and programs. These exemptions also make it more difficult to gain assurance that illicit transfers will not occur.

Although transfers in the exempted categories must be reported to the Security Council facilitator 10 days in advance, it is reasonable to assume that Russia and China’s reporting will not be complete. Both Russia and China have been lax in enforcing export control laws and sanctions and have proven on many occasions in the UN Panels of Experts on Iran and North Korea that they are willing to block investigations, stonewall the panels on the provision of information, provide misleading or incomplete information, and protect their own nationals from scrutiny. Overall, these exemptions have served to weaken the Procurement Channel and set dangerous precedents for it.

A test run of the Procurement Working Group procedures in December 2015 revealed another issue where Russia’s role was disruptive. With regard to missile and conventional military misuse, Iran has tried to argue, with Russian support, that anything military related is not the business of the PWG. This argument would in essence state that the PWG does not have jurisdiction over any exports to Iran’s military or missile industries, all of which need a considerable amount of dual-use equipment. Iran appears to be arguing that it will seek to buy

¹ See “Information on the Procurement Channel,” <http://www.un.org/en/sc/2231/pdf/160113-Information-on-the-procurement-channel.pdf>

banned equipment under a civilian cover, and if caught by the PWG, the PWG can only send the issue to the UN Security Council for a decision. It cannot stop the sale on its own authority. Of course, the United States would be expected to block any approval for a sale at the Security Council. So, in that sense, the Iranian effort will not be successful. But Iran, with Russian support, may be seeking to reduce the PWG's credibility internationally and hinder its operations.

Disrupting Past Denials: Russia has also tried to weaken the way the PWG would handle the issue of previous denials by supplier states of sales to Iran. This effort seeks to subvert a longstanding practice by likeminded bodies, in particular the Nuclear Suppliers Group (NSG), to communicate denial information and ensure the most informed decisions about making an export.

An extensive body of information exists about supplier denials to Iranian entities. These denials have been shared among NSG and Missile Technology Control Regime (MTCR) members. The sharing is called "denial notification" and involves dual-use goods listed on control lists. There are also goods that are denied as part of a "catch-all" condition. They are unlisted goods that are technologically suitable for WMD use. This denial is called "complementary information" and shared likewise with other suppliers in the NSG. Under the existing system, if a supplier wants to sell the same or a similar good to the denied party, it must go to the denying party and ask why the sale was denied.

Russia proposed to delete all these denials. Given that Iran is still openly committed to illicit procurements for its missile and conventional weapons program and could seek to violate the JCPOA on nuclear-related procurements, Russia's actions are counter-productive and would needlessly weaken the process. Supplier states need to know the existing body of denials in order to make a sound and timely decision about whether a sale could violate the JCPOA or UNSC resolution 2231. On the PWG application, there should be a place to mark if a denial has occurred and if the new supplier country consulted with the original denying country.

Challenges of End Use Verification

It is unclear whether countries will actually check the end use of nuclear dual-use goods by Iran as mandated by the JCPOA and UNSCR 2231. China, for example, which is less vigilant about proliferation-sensitive exports, may not be diligent about checking the end use of a Procurement Channel-authorized, dual-use good it has sold to Iran.

Danger of Illicit Missile Procurements

Iran has implicitly stated that it will continue illicitly procuring missile and missile-related goods. These illicit efforts could happen outside the Procurement Channel, but for certain dual-use goods, they may occur within the Procurement Channel. In the latter case, where Iran actively seeks to deceive the PWG, it may reckon that its chances of success are higher by falsely listing

a civilian end use than seeking the goods outside the channel. To the extent that the PWG process is weakened and end use checks rare, Iran's chances of success are likely to increase.

High-level Iranian officials have stated that they will not only refuse to heed the UNSCR 2231 ban on missile related imports but also work on missiles, including test launches. The weaker language in resolution 2231 that "calls on" Iran to refrain from missile tests of nuclear-capable missiles has motivated Russia and China to argue, incorrectly, that such launches do not violate the resolution. Their legal interpretation will likely lead them to block actions at the Security Council to penalize Iran. Iran will essentially be able to work on one key facet of nuclear weapons – perfecting its nuclear-capable missile delivery systems – while only temporarily limiting its nuclear programs. This development may create further regional and international insecurity regarding Iran's intentions after the nuclear restrictions start to lift at year 10 to 15 of the JCPOA. To the extent that the PWG cannot provide assurance that it has blocked missile and military related exports via the Procurement Channel, the PWG's credibility will be undermined.

Unwieldy, Poorly Funded Bureaucracy

The UN Security Council, Security Council Affairs Division, and the UNSC Facilitator will be the recipient of proposals from governments on proposed sales by domestic suppliers of nuclear or nuclear dual-use goods to Iran. The UN Secretariat is reportedly highly understaffed, under experienced in Iran nuclear and procurement issues, and underfunded to undertake such important oversight and facilitation roles for the Procurement Channel.

The United Nations has [released sets of guidance](#) for countries on how to submit proposals and what information to include in an application, such as item descriptions and end use authorizations from the Iranian Atomic Energy Organization or for the time being Iran's Ministry of Foreign Affairs. (Notably, more detailed guidance was only released in March - two months after Implementation Day.)

Poor Outreach: Related to the above issue is the problem of poor outreach by the United Nations to UN member states on the Procurement Channel. The United Nations reportedly has not received a budget to conduct its own outreach, which will require the P5+1 to handle these efforts for the time being. Since countries must set up and inform domestic suppliers of proper channels for making a nuclear or nuclear-dual use sale to Iran, broad outreach is key to ensuring countries have adequate time and resources to ensure compliance. There continues to be a rather serious problem of lag time between adequately informing UN member states of their obligations, those states ensuring compliance domestically, and the already two-month operating time of the Procurement Channel.

A fundamental challenge is ensuring that companies and governments are able to know when a good requires the approval of the PWG and thus the state's submission of a proposal to the UN Security Council. In countries that poorly enforce export controls, such as China, or effectively do not have them, such as Vietnam, there are real concerns that the companies or authorities

will not be able to know when a dual-use good falls inside the Procurement Channel. In countries which Iran has exploited to obtain a wide range of goods illegally for its nuclear and missile programs, the Procurement Channel approach may simply not be implemented or implemented so poorly as to render it inoperable.

Compliance and Enforcement is Unclear

It is unclear whether the Joint Commission and UN Security Council will take a serious line toward issues of Iranian or foreign entities exporting proliferation-sensitive goods to Iran without going through the Procurement Channel or illegitimately using the Procurement Channel. If a Chinese company, for example, makes a nuclear dual-use sale to Iran, will China take action to ensure the good's interdiction or its return? If a non-JCPOA state makes such a sale, what can the P5+1 do to motivate that state or other countries in its transit path to intercept the good or require its return? Further, in many cases, detecting such exports or imports will require intelligence information. For example, it may be difficult to know whether the Iranian government has authorized a domestic entity to make a proliferation-sensitive import outside the Procurement Channel and it may be able to deny any involvement.

Recommendations

The following recommendations may reduce Procurement Channel and PWG dysfunction and improve their effectiveness:

- The exemptions for Fordow and the Arak reactor need to be recognized as a poor choice and require additional scrutiny. The United States and European JCPOA members should insist that China and Russia report in detail their intended sales and transfers in these exempted categories to the Joint Commission's Procurement Working Group with the understanding that these reports require verification by the P5+1 and IAEA. If one member state in the PWG disagrees with the transfer or raises an undeclared transfer, that transfer should be blocked or, if tangible, removed from Iran.
- No further exemptions of the Procurement Channel should be given.
- Governments entering proposal data into electronic forms should be instituted by the UN Secretariat as a new requirement in the proposal process.
- Previous denials should be clearly marked on any proposal including whether the original denying state has been contacted.
- All states should send any denial information of sensitive goods to the United Nations and the PWG.

- The United Nations should maintain an adequately funded, technically competent, and independent entity to oversee the Procurement Channel, including regularly issuing reports about its functioning.
- The United States and its allies at the PWG should focus especially on detecting and preventing potential sales to Iranian military industries, missile programs, conventional military programs, and past sanctioned entities or individuals.
- The United States and European JCPOA member states should consistently raise the issue of end use checks for authorized sales to Iran with any state that makes them. They should continually pressure states to make these end use visits or encourage the IAEA to ask for access to these goods in the course of safeguarding Iran's nuclear program.
- Outreach by the United Nations will be critical. Given that such outreach has been negligible, the United States and European JCPOA member states will need to conduct outreach to UN member states, including informing them of the ongoing bans on missile and military transfers to Iran.
- In the event that UN bureaucratic gridlock continues over an outreach budget for UNSCR 2231 compliance, the United States and European JCPOA members should carry out their own aggressive outreach campaigns to educate UN member states on their Procurement Channel and other obligations under UNSCR 2231 and remaining national and regional sanctions.
- Being in compliance with UNSCR 2231 should include Iran returning any banned goods, including missile or military related goods, which are revealed to have been sent there.
- The United States and European JCPOA member states should impose a greater number of unilateral sanctions targeting the Iranian ballistic missile and military programs.
- The United States and European members of the Joint Commission's Procurement Working Group should adopt a policy of automatic denial of a sales proposal if they have not had adequate time to investigate the end use or end user or have suspicions about either of these. Under the Procurement Channel guidelines, governments can re-submit proposals if they are denied, offering more time for an in-depth investigation. Further, the United States and its allies on the PWG should announce that the sale of any goods to an Iranian trading company will be blocked.
- The United States and its allies should develop a list of commonly sought catch-all goods and distribute it to all UN member states and emphasize that all states should seek PWG authorization for catch-all goods.

- The Joint Commission and the United States and its partners should institute a method to notify the Financial Action Task Force, financial institutions, and financial regulators of an approved or rejected proposal. The financial sector should treat transactions involving Iran of any high tech dual-use goods that have not been approved by the PWG as subject to extra scrutiny and diligence.
- Since the only penalty outlined in the JCPOA is full snapback of previous UN Security Council sanctions resolutions on Iran, in the case of its involvement in noncompliance, the United States and its allies need to decide on intermediate penalties and how to provide enforcement to prevent and address unauthorized procurements by Iranian and foreign entities. With regard to Iran, penalties could include slowing down or halting approvals, or reducing civil nuclear cooperation, additional sanctions, or if violations of the Procurement Channel persist, the re-imposition of financial sanctions.
- The U.S. Congress should develop legislation to effectively monitor and enforce the Procurement Channel.

Too Many Problems to Succeed?

It may be that the JCPOA Procurement Channel, with all of its challenges, will not function effectively or have the necessary buy-in from UN member states to be used when required. The P5+1 countries may not be able to overcome the difficulty of resolving the issues raised above. The recommendations may assist in overcoming many of the outstanding issues, but without planning now and without support from all UN member states, the Procurement Channel may not be the hoped for solution to effectively regulating and monitoring Iran's nuclear and nuclear-dual use procurements under the JCPOA. If that is the case, the JCPOA will be weakened and its verifiability questioned.